

THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT ROUNDABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON HAMPDEN BYPASS) COMPULSORY PURCHASE ORDER 2022

THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT TO CULHAM THAMES BRIDGE) SCHEME 2022

THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT ROUNDABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON HAMPDEN BYPASS) (SIDE ROADS) ORDER 2022

THE CALLED-IN PLANNING APPLICATION BY OXFORDSHIRE COUNTY COUNCIL FOR THE DUALLING OF THE A4130 CARRIAGEWAY, CONSTRUCTION OF THE DIDCOT SCIENCE BRIDGE, ROAD BRIDGE OVER THE APPLEFORD RAILWAY SIDINGS AND ROAD BRIDGE OVER THE RIVER THAMES, AND ASSOCIATED WORKS BETWEEN THE A34 MILTON INTERCHANGE AND THE B4015 NORTH OF CLIFTON HAMPDEN, OXFORDSHIRE (APPLICATION NO: R3.0138/21

PLANNING INSPECTORATE REFERENCE:

APP/U3100/V/23/3326625 and NATTRAN/SE/HAO/286 (DPI/U3100/23/12)

**Appendices to the Proof of Evidence of
BERNARD CARL GREEP
(Planning Policy)**

Appendices

Appendix BG2.1	Planning Policy Table
Appendix BG2.2	Plan Showing the HIF1 Scheme
Appendix BG2.3	Appeal Decisions and Examiner Reports Referred to in Section 4 of My Proof
Appendix BG2.4	Heritage Note
Appendix BG2.5	'Planning on the Doorstep: The Big Issues – Green Belt'
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Appendix BG2.7	Sustainable Growth of Cathedral Cities and Historic Towns

Appendix BG2.1 Planning Policy Table

Appendix A Planning Policy Table

Adopted Development Plan and Key NPPF Paragraphs	Policy	Policy Wording
Principle of Development		
SOLP	Policy TRANS1b Supporting Strategic Transport Investment	<p>1. The Council will work with Oxfordshire County Council and others to:</p> <ul style="list-style-type: none"> • Deliver the transport infrastructure which improves movement in and around Didcot, including measures that help support delivery of the Didcot Garden Town; • Support measures identified in the Local Transport Plan for the district including within the relevant area strategies; • Support sustainable transport measures that improve access to/ from proposed major development around Oxford; • Support delivery of the safeguarded transport improvements as required to help deliver the development required in this plan period and beyond; • Ensure that the impacts of new development on the strategic and local road network, including the A34 and M40, are adequately mitigated; • Support the development and delivery of a new Thames River crossing between Culham and Didcot Garden Town, the A4130 widening and road safety improvements from the A34 Milton Interchange to Didcot, a Science Bridge over the A4130 and railway into the former Didcot A power station site and the Clifton Hampden Bypass; and • Support, in association with major development, the delivery of new or improved roads, such as a bypass or edge road, including sustainable transport improvements, linked where appropriate with relevant Neighbourhood Development Plans and any wider County Council highway infrastructure strategy.
SOLP	Policy TRANS3 Safeguarding of Land for Strategic Transport Schemes	<p>1. Land is safeguarded to support the delivery of the following identified transport schemes:</p> <ul style="list-style-type: none"> • Clifton Hampden bypass; • A new Thames River crossing between Culham and Didcot Garden Town; • Didcot Northern Perimeter Road; • Science Bridge, Didcot; • (A4130/ B4493) Didcot Central transport corridor improvements;

		<ul style="list-style-type: none"> • Southern Didcot Spine Road; and • A4130 road safety improvements. <p>5. As the options for the schemes progress, the impact of the schemes will be subject to thorough assessment. This will include full environmental and archaeological assessments working in association with the relevant statutory bodies. Where schemes are located in areas of Flood Zones 2 and 3, a flood risk sequential test and the exception test should be undertaken as part of the appraisal process.</p>
SOLP	Policy STRAT1 The Overall Strategy	<p>1. Proposals for development in South Oxfordshire will be assessed using national policy and guidance and the whole of the Development Plan and should be consistent with the overall strategy of:</p> <ul style="list-style-type: none"> • Focusing major new development in the Science Vale including sustainable growth at Didcot Garden Town and Culham so that this area can play an enhanced role in providing homes, jobs and services with improved transport connectivity; • Providing strategic allocations at Culham, including necessary infrastructure and community facilities; and • Supporting and enhancing the economic and social dependencies between our towns and villages.
SOLP	Policy STRAT2 South Oxfordshire Housing and Employment Requirements	<p>1. During the plan period, provision will be made to meet the following requirements:</p> <p>2. Housing requirements</p> <ul style="list-style-type: none"> • South Oxfordshire Minimum Housing Requirement - 18,600 between 1 April 2011 and 31 March 2035; • 4,950 homes addressing Oxford's unmet housing need • (between 1 April 2021 and 31 March 2035). • Total housing requirement for the plan period 23,550 homes. South Oxfordshire District Council <p>The annual requirement is as follows:</p> <ul style="list-style-type: none"> • 2011/12 to 2025/26 - 900 homes per annum; • 2026/27 to 2031/32 - 1,120 homes per annum; • 2032/33 to 2034/35 - 1,110 homes per annum. <p>3. Employment land requirements</p> <ul style="list-style-type: none"> • South Oxfordshire Minimum Employment Land Requirement 39.1 hectares between 1 April 2011 and 31 March 2035. <p>4. These requirements are to be delivered in accordance with the spatial strategy set out in STRAT1.</p> <p>5. The locations and trajectory for housing development is identified in Policy H1.</p> <p>6. The appropriate level of new housing and employment will be monitored and a review undertaken within five years following the adoption of the Local Plan, taking into account the most up-to-date evidence available at that time.</p> <p>This policy contributes towards achieving objectives 2 & 3.</p>

<p>SOLP</p>	<p>Policy STRAT3 Didcot Garden Town</p>	<p>1. Within the Didcot Garden Town masterplan area the Local Plan will:</p> <ul style="list-style-type: none"> • Promote Didcot as the gateway to the Science Vale; • Identify Didcot as the focus of sustainable major new development for Science Vale; • Strike a balance to provide for housing growth and economic growth; and • Assist in having policies supporting the acquisition of significant funding investment and safeguarding land to implement infrastructure schemes; • enable flexibility and resilience to plan for future changes, including changing community needs, addressing climate change and impacts, supporting technology and scientific advances in infrastructure provision; • require infrastructure to unlock development in Didcot Town Centre, Didcot and the wider area; • support the continued delivery of development in the Science Vale and Didcot Enterprise Zones. <p>3. Significant infrastructure improvements are committed to under Policy TRANS1b Supporting Strategic Transport Investment. Infrastructure will need to be in place to enable sites allocated in the Local Plan in and around Didcot to be delivered.</p>
<p>SOLP</p>	<p>Policy STRAT8 Didcot Garden Town</p>	<p>Site area: 77 hectares</p> <ol style="list-style-type: none"> 1. Proposals for the redevelopment and intensification of the Culham Science Centre will be supported where this does not have an unacceptable visual impact, particularly on the character and appearance of the surrounding countryside and the Registered Parkland associated with Nuneham House. 2. In combination with the adjacent strategic allocation (Policy STRAT9) this site will deliver at least a net increase in employment land of 7.3 hectares (with the existing 10 hectares of the No.1 site retained but redistributed across the two strategic allocations). The exact siting and phasing of the employment development must be agreed through the master planning and subsequent planning application process including addressing any heritage assets and their settings in accordance with Policy ENV6 and the NPPF. 3. Proposals for development on the site should seek to achieve a net gain in biodiversity. Any residual biodiversity loss should be offset through a recognised offsetting scheme. 4. Opportunities that support job growth and appropriate diversification or enterprise “clustering” will be supported to complement the wider development proposed in the area. Working proactively with the UK Atomic Energy Authority and development partners a masterplan for the site that facilitates this growth must be prepared and agreed with the Local Planning Authority. 5. Proposals will be expected to deliver low carbon development and renewable energy in accordance with STRAT4. 6. The Culham Science Centre is removed from the Green Belt and inset as shown on Land inset from the Green Belt Boundary (Appendix 4) to enable this development to be brought forward. <p>This policy contributes towards achieving objectives 1, 3 & 8</p>
<p>SOLP</p>	<p>Policy STRAT9 Land Adjacent to Culham Science Centre Site Area: 217 hectares</p>	<p>2. Proposals to develop Culham will be expected to deliver:</p> <p>vi) all necessary infrastructure, referring to the Infrastructure Delivery Plan, which is likely to include:</p> <ol style="list-style-type: none"> a. New junctions onto the A415 and significant contributions towards the Clifton Hampden Bypass, the Didcot to Culham River Crossing, and upgrading the A4074/B4015 junction at Golden Balls; and b. Provision for excellent sustainable transport facilities including, but not limited to, new and improvements to existing cycle and footpaths including contributions towards a ‘Cycle Premium Route’ that is proposed between Didcot and Culham; provision of a new cycle bridge and associated connectivity and paths across the River Thames to connect appropriately with Abingdon on Thames to the north of the site; bus improvements including provision of a scheduled bus service, with a minimum of two buses per hour between Berinsfield, Culham and Abingdon, with options to extend or vary services to locations such as Cowley, Chalgrove and Didcot.

<p>SOLP</p>	<p>Policy STRAT10 Berinsfield Garden Village</p>	<ol style="list-style-type: none"> 1. Berinsfield Garden Village is defined as the existing village and any future development that is contiguous to the existing village including land within the strategic allocation in Policy STRAT10i: Land at Berinsfield Garden Village. 2. All development within the Berinsfield Garden Village will meet the Garden Village principles as set out by the Town and Country Planning Association (TCPA) and in accordance with the Berinsfield Garden Village principles below: <ol style="list-style-type: none"> i) stewardship and legacy – a cared for garden village of attractive built and natural environments, healthy and accessible nurseries and classrooms with residents involved in managing space and facilities; ii) forward thinking – a resilient garden village, masterplanned at a human scale that incorporates sustainable energy, adaptable homes and smart street lighting that avoids night sky light pollution; iii) landscape led – a green garden village with a minimum 38 per cent usable green space in built-up areas, minimum 10 per cent biodiversity net gain and design that responds visually to topography and aspect, multi-functional blue-green infrastructure with integrated SuDS from rooftop to attenuation; iv) strong sense of place – a connected garden village that creates attractive walking and cycling links between the existing village, new development and the surrounding countryside; v) healthy, vibrant community – a healthy garden village with integrated open space that incorporates ‘edible landscape’, orchards, allotments, natural play, private and community gardens, space for healthy lifestyles and social mixing, tenure blind housing and full integration of mixed tenure homes; vi) sustainable transport and access – an accessible garden village that prioritises walking and cycling, well designed parking solutions, integrated public transport, built in capacity in homes, businesses and public space to enable innovative transport solutions and safe neighbourhoods with natural surveillance and smart lighting; vii) attention to detail – a legible garden village that people can find their way in, through landmarks, character areas and waymarked routes, detailed design to make local trips more attractive on foot or by bike and use of high-quality materials and design. <p>This policy contributes towards achieving objectives 1, 2, 4, 5, 6, 7 & 8</p>
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VoWHLP	Core Policy 1 Presumption in Favour of Sustainable Development	Planning applications that accord with this Local Plan 2031 (and where relevant, with any subsequent Development Plan Documents or Neighbourhood Plans) will be approved, unless material considerations indicate otherwise.																																							
VoWHLP	Core Policy 4 Meeting Our Housing Needs	<p>The housing target for the Vale of White Horse District is for at least 20,560 homes to be delivered in the plan period between 2011 and 2031a. 12,495 dwellings will be delivered through strategic allocations. 1,840 dwellings remain to be identified and will be allocated through the Local Plan 2031 Part 2 or Neighbourhood Development Plans or through the Development Management process. The contribution of all sources of housing supply are shown by the following table:</p> <table border="1" data-bbox="604 570 1656 789"> <thead> <tr> <th>Category</th> <th>Number of Dwellings</th> </tr> </thead> <tbody> <tr> <td>Housing requirement for the full plan period (Apr 2011 to Mar 2031)</td> <td>20,560^a</td> </tr> <tr> <td>Housing Completions (Apr 2011 to Mar 2016)</td> <td>3,065</td> </tr> <tr> <td rowspan="4">Housing Supply (Apr 2016 to Mar 2031)</td> <td>Known Commitments</td> <td>4,468</td> </tr> <tr> <td>Local Plan 2031 Part 1 allocations</td> <td>12,495</td> </tr> <tr> <td>Local Plan 2031 Part 2 allocations</td> <td>1,000^b</td> </tr> <tr> <td>Windfalls</td> <td>840</td> </tr> </tbody> </table> <p>^a This target addresses needs arising in the Vale of White Horse. If or when required, needs arising elsewhere in the Housing Market Area, will be addressed by timely and effective cooperative working in accordance with Core Policy 2.</p> <p>^b The Local Plan Part 2 allocation will be reduced where dwellings are allocated in Neighbourhood Development Plans or come forward through the Development Management Process.</p> <p>Strategic Allocations</p> <p>Development will be supported at strategic site allocations where it meets the requirements set out within the Site Development Templates shown by Appendix A and in accordance with the policies of the Development Plan taken as a whole. The following tables show how the level of housing required through strategic development sites will be distributed:</p> <p>Abingdon-on-Thames and Oxford Fringe Sub-Area:</p> <table border="1" data-bbox="598 1130 1982 1430"> <thead> <tr> <th>Settlement/ Parish</th> <th>Settlement/ Type</th> <th>Site Name</th> <th>Number of Dwellings</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Abingdon-on-Thames</td> <td rowspan="2">Market Town</td> <td>North of Abingdon-on-Thames</td> <td>800</td> </tr> <tr> <td>North-West of Abingdon-on-Thames</td> <td>200</td> </tr> <tr> <td>Kingston Bagpuize with Southmoor</td> <td rowspan="3">Larger Village</td> <td>Thames</td> <td>280</td> </tr> <tr> <td>Radley</td> <td>East of Kingston Bagpuize with</td> <td>240</td> </tr> <tr> <td></td> <td>South of Kennington</td> <td>270</td> </tr> <tr> <td>Sub total</td> <td></td> <td></td> <td>1,790</td> </tr> </tbody> </table> <p>South East Vale Sub-Area</p>	Category	Number of Dwellings	Housing requirement for the full plan period (Apr 2011 to Mar 2031)	20,560 ^a	Housing Completions (Apr 2011 to Mar 2016)	3,065	Housing Supply (Apr 2016 to Mar 2031)	Known Commitments	4,468	Local Plan 2031 Part 1 allocations	12,495	Local Plan 2031 Part 2 allocations	1,000 ^b	Windfalls	840	Settlement/ Parish	Settlement/ Type	Site Name	Number of Dwellings	Abingdon-on-Thames	Market Town	North of Abingdon-on-Thames	800	North-West of Abingdon-on-Thames	200	Kingston Bagpuize with Southmoor	Larger Village	Thames	280	Radley	East of Kingston Bagpuize with	240		South of Kennington	270	Sub total			1,790
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Settlement/Parish	Settlement/Type	Site Name	Number of Dwellings
Wantage	Market Town	Crab Hill (North East Wantage and South East Grove)	1,500
Grove	Local Service Centre	Grove Airfield	2,500
Harwell and Milton Parishes east of the A34 adjoining Didcot Town	Adjoining Didcot Town	Valley Park	2,550
Harwell	Larger Village	West of Harwell	200
Milton Parish west of the A34		Milton Heights	400
Sutton Courtenay		East of Sutton Courtenay	220
Sub total			9,055

Western Vale Sub-Area

Settlement/Parish	Settlement/Type	Site Name	Number of Dwellings
Faringdon	Market Town	Land South of Park Road, Faringdon	350
		South-West of Faringdon	200
Great Coxwell	Adjoining Faringdon Market Town	East of Coxwell Road Faringdon	200
		South of Faringdon	200
Shrivenham	Larger Village	North of Shrivenham	500
Stanford-in-the-Vale		West of Stanford-in-the-Vale	200
Sub total			1,650

Development at Market Towns, Local Service Centres and Larger Villages

There is a presumption in favour of sustainable development within the existing built area of Market Towns, Local Service Centres and Larger Villages in accordance with Core Policy 1.

Development outside of the existing built area of these settlements will be permitted where it is allocated by the Local Plan 2031 Part 1 or has been allocated within an adopted Neighbourhood Development Plan or future parts of the Local Plan 2031. This development must be adjacent, or well related, to the existing built area of the settlement or meet exceptional circumstances set out in the other policies of the Development Plan and deliver necessary supporting infrastructure.

Development at Smaller Villages

At the Smaller Villages, limited infill development may be appropriate within the existing built areas of these settlements, or if it is allocated within an adopted Neighbourhood Development Plan or future parts of the Local Plan 2031. Proposals for limited infill development will be supported where they are in keeping with local character and are proportionate in scale and meet local housing needs, and/ or provide local employment, services and facilities.

Open Countryside

		<p>Development in open countryside will not be appropriate unless specifically supported by other relevant policies as set out in the Development Plan or national policy.</p>																					
<p>VoWHLP</p>	<p>Core Policy 4a Meeting Our Housing Needs</p>	<p>The strategy for meeting the housing target for the Vale of White Horse is set out within Core Policy 4: Meeting our Housing Needs (Local Plan 2031: Part 1) and includes details of the strategic allocations necessary to meet this target, along with a policy framework for development.</p> <p>This policy sets out how the Council will address housing needs arising from elsewhere in the Housing Market Area, expressly the quantum of unmet housing need for Oxford City to be addressed within the Vale of White Horse of 2,200 homes, as agreed at the Oxfordshire Growth Board meeting in September 2016.</p> <p>The housing target for the Vale of White Horse is for at least 22,760 homes to be delivered in the plan period between 2011 and 2031. 2,252 dwellings will be delivered through strategic allocations (LPP1 Allocations). 2,420 dwellings will be delivered through additional allocations (LPP2 Allocations). The agreed quantum of unmet housing need for Oxford City to be addressed within the Vale of White Horse of 2,200 dwellings will be provided for through either strategic or additional sites within the Abingdon on-Thames and Oxford Fringe Sub-Area*. Additional site allocations also complement those set out within the Part 1 plan to assist with delivering the Spatial Strategy and supporting infrastructure delivery.</p> <p>Additional dwellings (for example, windfalls) will be delivered through Neighbourhood Development Plans or through the Development Management Process. The contribution of all sources of housing supply are shown by the following table, which supersedes the table set out in Core Policy 4:</p> <table border="1" data-bbox="604 829 1969 1239"> <thead> <tr> <th colspan="2">Category</th> <th>Number of dwellings</th> </tr> </thead> <tbody> <tr> <td colspan="2">Housing requirement for the full plan period (Apr 2011 to Mar 2031)</td> <td>22,760</td> </tr> <tr> <td colspan="2">Housing Completions (Apr 2011 to Mar 2018)</td> <td>6,300</td> </tr> <tr> <td rowspan="4">Housing Supply (Apr 2018 to Mar 2031)</td> <td>Known Commitments</td> <td>13,387</td> </tr> <tr> <td>Local Plan 2031: Part 1 allocations</td> <td>2,252</td> </tr> <tr> <td>Local Plan 2031: Part 2 allocations</td> <td>2,420</td> </tr> <tr> <td>Windfalls</td> <td>1,000</td> </tr> <tr> <td colspan="2">Total Supply (at 31 March 2018)</td> <td>25,359</td> </tr> </tbody> </table> <p>Additional Allocations</p> <p>In addition to the strategic site allocations set out in Core Policy 4, development will be supported at the additional site allocations through a masterplanning process involving the community, local planning authority, developer and other stakeholders, where development meets the requirements set out within the Site Development Templates shown by Appendix A and are in accordance with the Development Plan taken as a whole. The following tables show how the level of housing required through additional sites will be distributed:</p> <p>Abingdon-on-Thames and Oxford Fringe Sub-Area</p>	Category		Number of dwellings	Housing requirement for the full plan period (Apr 2011 to Mar 2031)		22,760	Housing Completions (Apr 2011 to Mar 2018)		6,300	Housing Supply (Apr 2018 to Mar 2031)	Known Commitments	13,387	Local Plan 2031: Part 1 allocations	2,252	Local Plan 2031: Part 2 allocations	2,420	Windfalls	1,000	Total Supply (at 31 March 2018)		25,359
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VoWHLP	Core Policy 5 Housing Supply Ring	<p>The Council will employ a ring-fence approach to housing delivery in the Science Vale area as shown by Figure 4.3 and set out on the Adopted Policies Map.</p> <p>For the purposes of the assessment of housing land supply, the ring-fence area will be treated as a separate sub-area with a housing requirement of 11,850 homes in the plan period (593 homes per annum) in support of the 15,850 jobs planned in this sub area and as a contribution towards the district's housing need set out in Core Policy 4.</p> <p>The supply calculations for the ring fence area and the rest of district area will be combined to provide a district wide calculation.</p> <p>Any proposals for development within the ring fence area, whether a five year housing supply is in place or not, will still need to demonstrate conformity with relevant national and local policy.</p>																																					
VoWHLP	Core Policy 6 Meeting Business and Employment Need	<p>218 hectares of land is identified for future employment development on the following strategic sites and saved Vale Local Plan 2011 allocations.</p> <table border="1"> <thead> <tr> <th>Site Name</th> <th>Sub-Area</th> <th>Type of Site</th> <th>Available Development Land (Hectares)</th> </tr> </thead> <tbody> <tr> <td>Milton Park</td> <td rowspan="2">South East Vale</td> <td>Saved Local Plan 2011 allocation</td> <td>28*</td> </tr> <tr> <td>Harwell Campus</td> <td>Saved Local Plan 2011 allocation</td> <td>93 (Enterprise Zone)</td> </tr> </tbody> </table>	Site Name	Sub-Area	Type of Site	Available Development Land (Hectares)	Milton Park	South East Vale	Saved Local Plan 2011 allocation	28*	Harwell Campus	Saved Local Plan 2011 allocation	93 (Enterprise Zone)																										
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			35 (Outwith EZ)
Monks Farm, North Grove		New mixed use strategic allocation	6
Didcot A		Identified future potential supply	29**
South of Park Road, Faringdon	Western Vale	New mixed use strategic allocation	3
		Other saved Local Plan 2011 allocations	24.2
Total			218

*The 28 hectares to be provided at Milton Park includes sites covered by the Local Development Order (LDO) which are not within the area of the Local Plan 2011 allocation. A map showing the extent of the LDO and the area of the Local Plan 2011 allocation is included at Appendix C.

** The Didcot A Power Station site consists of around 47 hectares for potential redevelopment. The Employment Land Review recommends that 29 hectares of this land should be identified for employment development. Development at this site should be considered in accordance with Core Policy 16: Didcot A Power Station.

Employment and business development as part of mixed-use development will be supported at Monks Farm, Grove and South of Park Road, Faringdon where this meets the requirements set out within the Site Development Templates shown by Appendix A, and in accordance with the Sub-Area Strategies. The other saved Vale Local Plan 2011 employment allocations are:

Site Name	Sub-Area	Available Development Land (Hectares)
Abingdon Business Park at Wyndyke Furlong	Abbingdon/ Oxford Fringe	0.7
Abingdon Science Park at Barton Lane		0.7
Cumnor Hill		0.3
Wootton Business Park		1.5
Milton Hill Business and Technology Park	South East Vale	11.2
Grove Technology Park		5.4
Land adjacent to A420 (4&20 site), Faringdon	Wester Vale	4.2
Land north of Park Road (HCA site), Faringdon		0.2
Total		24.2

Proposals for employment related development on unallocated sites will be supported in accordance with Core Policy 28: New Employment Development on Unallocated Sites. In addition to the sites identified for new employment development, a number of existing strategic employment sites have been identified in the SubArea Strategies. These sites will be safeguarded for employment uses in accordance with Core Policy 29: Change of Use of Existing Employment Land and Premises.

<p>VoWHLP</p>	<p>Core Policy 7 Providing Supporting Infrastructure and Services</p>	<p>All new development will be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. Infrastructure requirements will be delivered directly by the developer and/or through an appropriate financial contribution prior to, or in conjunction with, new development. Where appropriate, developers will be expected to collaborate on the provision of infrastructure which is needed to serve more than one site. In ensuring the timely delivery of infrastructure requirements, development proposals must demonstrate that full regard has been paid to the Infrastructure Delivery Plan and all other relevant policies of this plan.</p> <p>If infrastructure requirements could render the development unviable, proposals for major development should be supported by an independent viability assessment on terms agreed by the relevant parties including the Council and County Council, and funded by the developer. This will involve an open book approach. Where viability constraints are demonstrated by evidence, the Council will:</p> <ul style="list-style-type: none"> i. prioritise developer contributions for essential and then other infrastructure in line with the definitions as set out in paragraph 4.42 and the detail of requirements outlined in the IDP, and/or ii. use an appropriate mechanism to defer part of the developer contributions requirement to a later date, or iii. as a last resort, refuse planning permission if the development would be unsustainable without inclusion of the unfunded infrastructure requirements taking into account reasonable contributions from elsewhere including CIL <p>The Council's Delivering Infrastructure Strategy will include both a CIL Charging Schedule and a Supplementary Planning Document for Section 106 and Section 278 legal agreements that will provide more detail about its approach to securing developer contributions.</p> <p>Upon adoption of the CIL Charging Schedule, CIL will be used to pool developer contributions towards a wide range of new and improved infrastructure necessary to deliver new development.</p> <p>Where not covered by the CIL Charging Schedule, infrastructure and services, including provision for their maintenance, should be delivered directly by the developer through the development management process and in accordance with the Regulation 122 Tests*.</p> <p>Infrastructure and services will be sought through the negotiation of planning obligations, conditions, levy, undertaking and/or other agreement as secured through the planning permission, to mitigate the direct impacts of development and secure its implementation.</p> <p>* The Community Infrastructure Levy Regulations 2010.</p>				
<p>VoWHLP</p>	<p>Core Policy 15 Spatial Strategy for South East Vale Sub-Area</p>	<p>Our over-arching priority for this Sub-Area is to secure the aligned delivery of housing and employment growth together with the infrastructure required to achieve sustainable development. Development in the South East Vale Area should be in accordance with the Settlement Hierarchy set out in Core Policy 3:</p> <p>Market Town: Wantage</p> <p>Local Service Centre: Grove</p> <p>Larger Villages: Blewbury, East Hendred, Harwell, Harwell Campus*, Milton and Sutton Courtenay</p> <p>Smaller Villages: Appleford, Ardington, Chilton, Milton Heights**, Rowstock, Upton and West Hendred</p> <p>*Harwell Campus has facilities and services equivalent to a Larger Village ** Milton Heights has facilities and services within a short walk that are equivalent to those offered by a Larger Village.</p> <p>Housing Delivery</p> <p>At least 12,450 new homes will be delivered in the plan period between 2011 and 2031. 9,055 dwellings will be delivered through strategic allocations. 416 dwellings remain to be identified and will be allocated through the Local Plan 2031 Part 2 or Neighbourhood Development Plans or through the Development Management Process. The contribution of all sources of housing for this Sub-Area are shown by the following table:</p> <table border="1" data-bbox="590 1451 1988 1531"> <thead> <tr> <th data-bbox="590 1451 1524 1495">Category</th> <th data-bbox="1530 1451 1988 1495">Number of Dwellings</th> </tr> </thead> <tbody> <tr> <td data-bbox="590 1500 1524 1531">Housing requirement for the full plan period (Apr 2011 to Mar 2031)</td> <td data-bbox="1530 1500 1988 1531">12,450</td> </tr> </tbody> </table>	Category	Number of Dwellings	Housing requirement for the full plan period (Apr 2011 to Mar 2031)	12,450
Category	Number of Dwellings					
Housing requirement for the full plan period (Apr 2011 to Mar 2031)	12,450					

Housing Completions (Apr 2011 to Mar 2016)	1,031	
Housing Supply (Apr 2016 to Mar 2031)	Known Commitments	1,725
	Local Plan 2031 Part 1 allocations	9,055
	Local Plan 2031 Part 2 allocations	56
	Windfalls	360

Housing Supply Ring Fence 11,850 new homes are 'ring-fenced' for the purposes of the assessment of housing land supply within this Sub-Area in accordance with Core Policy 5. Development will be supported at the strategic site allocations through a masterplanning process involving the community, local planning authority, developer and other stakeholders where development meets the requirements set out within the Site Development Templates shown by Appendix A and are in accordance with the Development Plan taken as a whole. Design, delivery and implementation detail will also be set out in the Local Plan 2031 Part 2. The following table shows how the level of housing required within this Sub-Area through the strategic development sites will be distributed:

Settlement/Parish	Settlement Type	Site Name	Number of Dwellings
Wantage	Market Town	Crab Hill (North East Wantage and South East Grove)	1,500
Grove	Local Service Centre	Monks Farm (North Grove)	885
		Grove Airfield	2,500
Harwell and Milton parishes, east of the A34 adjoining Didcot town	Adjoining Didcot Town	Valley Park	2,550
		North West Valley Park	800
Milton parish west of the A34	Larger Village	Milton Heights (Smaller Village)	400
Harwell		West of Harwell	200
Sutton Courtenay		East of Sutton Courtenay	220
Total			9,055

Employment

208 hectares of employment land will be provided for business and employment growth in accordance with Core Policy 6. In addition, the following strategic employment sites will be safeguarded for employment use in line with Core Policy 29:

Strategic employment sites:

- Grove Technology Park
- Grove Road, Wantage
- Downsview Road, Grove
- Station Road, Grove
- Existing Business Premises around Didcot Power Station (not including vacant surplus land)

		<p>Milton Park Site</p> <p>Harwell Campus</p>
VoWHLP	Core Policy 16 Didcot A Power Station	<p>The Council supports the redevelopment of the Didcot A site to provide a high quality mixed-use development. The site will continue to be reserved for a range of uses, particularly employment (B1, B2 and B8). Other acceptable uses for the site include, but are not limited to, residential (C1, C2 and C3), ancillary retail, an element of bulky goods retail, leisure (D2) and community uses. Any proposed uses for the site must have regard to relevant policies contained within South Oxfordshire District Council's Adopted Core Strategy.</p> <p>The proposed route of the new Science Bridge and A4130 re-routing is safeguarded. Planning permission will not be granted for development that would prejudice the construction or effective operation of this highway infrastructure in accordance with Core Policy 17.</p>
VoWHLP	Core Policy 16b Didcot Garden Town	<p>Proposals for development within the Didcot Garden Town Masterplan Area, as defined on the Adopted Policies Map and shown by Figure 2.8, will be expected to demonstrate how they positively contribute to the achievement of the Didcot Garden Town Masterplan Principles (Figure 2.7).</p> <p>Figure 2.7: Didcot Garden Town Masterplan Principles</p> <ol style="list-style-type: none"> 1. Design – The Garden Town will be characterised by design that adds value to Didcot and endures over time; it will encourage pioneering architecture of buildings and careful urban design of the spaces in between, prioritising green spaces over roads and car parks. All new proposals should show the application of the Council's adopted Design Guide SPD and demonstrate best practice design standards. 2. Local Character – The Garden Town will establish a confident and unique identity, becoming a destination in itself that is distinctive from surrounding towns and villages whilst respecting and protecting their rural character and setting. Didcot's identity will champion science, natural beauty, and green living, in part delivered through strengthened physical connections and active public and private sector collaboration with the Science Vale. 3. Density and tenure – The Garden Town will incorporate a variety of densities, housing types and tenures to meet the needs of a diverse community. This will include high density development in suitable locations, such as in central Didcot and near sustainable transport hubs; higher density development will be balanced by good levels of public realm and accessible green space. 4. Transport and movement – The Garden Town will reduce reliance on motorised vehicles and will promote a step-change towards active and public transport through the creation of a highly legible, attractive and accessible movement network and the appropriate location of housing, employment and leisure facilities. The Garden Town will seek to improve opportunities for access to sport and physical activities through Sport England's Active Design Principles. Cycling and pedestrian links between the Garden Town, its surrounding villages, and natural assets and the strategic employment sites will be enhanced. 5. Heritage – the Garden Town will conserve and enhance heritage assets, both designated and non-designated, within and adjacent to the development area. This includes the Scheduled Monuments of the settlement sites north of Milton Park and east of Appleford and any archaeological remains and historic landscapes and / or landscape features identified in the Oxfordshire Historic Environment Record, the Oxfordshire Historic Landscape Character Assessment, other sources and / or through further investigation and assessment. 6. Landscape and Green Infrastructure – New development in the Garden Town will enhance the natural environment, through enhancing green and blue infrastructure networks, creating ecological networks to support an increase (or where possible achieve a net gain) in biodiversity and supporting climate resilience through the use of adaptation and design measures. The Garden Town will also seek to make effective use of natural resources including energy and water efficiency, as well as exploring opportunities for promoting new technology within developments. Innovative habitat planting and food growing zones will characterise the Garden Town and, in turn, these measures will support quality of life and public health. 7. Social and community benefits – The planning of the Garden Town will be community-focused, creating accessible and vibrant neighbourhoods around a strong town centre offer of cultural, recreational and commercial amenities that support well-being, social cohesion and vibrant communities. The Garden Town will embrace community participation throughout its evolution. It will promote community ownership of land and long-term stewardship of assets where desirable.

VoWHLP	Core Policy 17 Delivery of Strategic Highway Improvements within the South-East Vale Sub-Area	<p>In order to deliver the growth in the South East Vale Sub-Area and the wider Science Vale Area, the Science Vale Area Strategy has identified highways infrastructure to mitigate the impact of the planned growth across Science Vale and to secure the future economic viability of the area.</p> <p>Within the South East Vale Sub-Area this will include contributions towards the infrastructure identified within the Science Vale Area Strategy:</p> <ul style="list-style-type: none"> • Backhill Lane junction on the A4130; • Science Bridge and A4130 re-routing through the Didcot A site; • A4130 dualling between Milton Interchange and Science Bridge; • a new strategic road connection between the A415 east of Abingdon-Thames and the A4130 north of Didcot, including a new crossing of the River Thames; and • improvement of the strategic cycle network.
VoWHLP	Core Policy 18 Safeguarding of Land for Transport Schemes in the South East Vale Sub- Area	<p>Land is safeguarded to support the delivery of the identified transport schemes listed by Core Policy 17.</p> <p>Any proposals for development that may reasonably be considered to impact the delivery of the identified transport schemes (as shown by the maps in Appendix E of the Local Plan and the Adopted Policies Map) should demonstrate the proposal would not harm their delivery.</p> <p>Planning permission will not be granted for development that would prejudice the construction or effective operation of the transport schemes listed.</p>
VoWHLP	Core Policy 18a Safeguarding of Land for Strategic Highway Improvements within the South-East Vale Sub-Area	<p>Land is safeguarded to support the delivery of a new Thames River Crossing between Culham and Didcot, in accordance with Core Policy 18 (Local Plan 2031: Part 1).</p> <p>This policy updates the area safeguarded as shown by the Adopted Policies Map and Appendix B.</p> <p>In addition to land safeguarded for identified transport schemes set out in Core Policy 18 (Local Plan 2031: Part 1) the following schemes are also safeguarded:</p> <ul style="list-style-type: none"> • dedicated access to / from the A34 to Milton Park • provision for a new pedestrian and cycle bridge across the A34 at Milton Heights • Cinder Track cycle improvements <p>These schemes are safeguarded in accordance with Core Policy 18 and as shown by maps in Appendix B and the Adopted Policies Map a.</p> <p><small>a The area shown on the Adopted Policies Map illustrates where Core Policy 18 will apply. It does not seek to show a precise alignment for the transport scheme, which will need to be informed by detailed design work, carried out in consultation with Oxfordshire County Council and other relevant parties.</small></p>

Sustainable Development/Climate Change		
SOLP	Policy DES7 Efficient use of Resources	<p>1. New development is required to make provision for the effective use and protection of natural resources where applicable, including:</p> <ul style="list-style-type: none"> ii) minimising waste and making adequate provision for the recycling, composting and recovery of waste on site using recycled and energy efficient materials; iv) making efficient use of water, for example through rainwater harvesting and grey water recycling, and causing no deterioration in, and where possible, achieving improvements in water quality (including groundwater quality); vi) ensuring that the land is of a suitable quality for development and that remediation of contaminated land is undertaken where necessary; vii) avoiding the development of the best and most versatile agricultural land, unless it is demonstrated to be the most sustainable choice from reasonable alternatives, by first using areas of poorer quality land in preference to that of a higher quality; and viii) re-using vacant buildings and redeveloping previously developed land, provided the land is not of a high environmental value.
SOLP	Policy DES8 Promoting Sustainable Design	<p>1. All new development should seek to minimise the carbon and energy impacts of their design and construction. Proposals must demonstrate that they are seeking to limit greenhouse emissions through location design, landscape and planting taking into account any nationally adopted standards and in accordance with Policies DES10: Carbon Reduction and DES7: Efficient Use of Resources.</p> <p>2. All new development should be designed to improve resilience to the anticipated effects of climate change. Proposals should incorporate measures that address issues of adaptation to climate change taking account of best practice. These include resilience to increasing temperatures and wind speeds, heavy rainfall and snowfall events and the need for water conservation and storage.</p> <p>3. All new development should be built to last. Proposals must demonstrate that they function well and are adaptable to the changing requirements of occupants and other circumstances.</p> <p>4. The Council will not refuse planning permission for infrastructure of an outstanding or innovative design which promote high levels of sustainability or help raise the standard of design.</p>
VoWHLP	Core Policy 40 Sustainable Design and Construction	The Council encourages developers to incorporate climate change adaptation and design measures to combat the effects of changing weather patterns in all new development.
VoWHLP	Core Policy 43 Natural Resources	<p>The Council encourages developers to make provision for the effective use of natural resources where applicable, including:</p> <ul style="list-style-type: none"> • Minimising waste and making adequate provision for the recycling of waste on site; • Using recycled and energy efficient materials; • Maximising re-use of materials; • Causing no deterioration in, and where possible, achieving improvements in water quality; and • Re-using previously developed land, provided it is not of high environmental value.

<p>NPPF</p>	<p>Paragraph 7 Paragraph 8 Paragraph 135 Paragraph 159</p>	<p>Paragraph 7: The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner.</p> <p>Paragraph 8 provides that achieving sustainable development means the planning system has three overarching objectives (economic, social and environmental), which should be pursued in mutually supportive ways:</p> <ul style="list-style-type: none"> a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure. b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being. c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy. <p>Paragraph 135 states planning decisions should ensure that developments:</p> <ul style="list-style-type: none"> a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change; f) create places that are ...accessible and which promote health and well-being, with a high standard of amenity for ... future users. <p>Para 159 states new development should be planned for in ways that:</p> <ul style="list-style-type: none"> a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and <p>can help to reduce greenhouse gas emissions, such as through its location, orientation and design.</p>
<p>Culham NP</p>	<p>Policy CUL 7 Nature Recovery and Climate Change</p>	<ul style="list-style-type: none"> A. The Parish contains a variety of green and blue infrastructure that provides an environmental support system for the community and wildlife. The Neighbourhood Plan designates this as a Network, as shown on the Policies Map, for the purpose of promoting nature recovery and for mitigating climate change. The Network comprises the Water Meadows between the village and Sutton Pools, Andersey Island Water Meadows, woodland, trees, hedgerows, Culham Brook SSSI and other land of biodiversity value. B. Development proposals that lie within or adjoining the Network are required to have full regard maintaining and improving the functionality of the Network, including delivering a net gain to biodiversity, in the design of their layouts and landscaping schemes. C. Proposals that will harm the functionality or connectivity of the Network will not be supported. Development proposals that will lead to the extension of the Network, which includes the delivery of allotments for the use of the village, will be supported, provided they are consistent with all other relevant policies of the development plan.

Green Belt		
SOLP	Policy STRAT6 Green Belt	1. To ensure the Green Belt continues to serve its key functions, it will be protected from harmful development. Within its boundaries, development will be restricted to those limited types of development which are deemed appropriate by the NPPF, unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

VoWHLP	Core Policy 13 The Oxford Green Belt	<p>The Oxford Green Belt area in the Vale, as amended following the local Green Belt Review, will continue to be protected to maintain its openness and permanence. Proposals for inappropriate development will not be approved except in very special circumstances*.</p> <p>The following forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt:</p> <ul style="list-style-type: none"> • Local transport infrastructure that can demonstrate a requirement for a Green Belt location. <p>* 'Very special circumstances' will not exist unless the potential harm, is clearly outweighed by other considerations.</p>
NPPF	Paragraph 142 Paragraph 152 Paragraph 153 Paragraph 155	<p>Paragraph 142 states the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.</p> <p>Paragraph 152 states inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.</p> <p>Paragraph 153 states when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.</p> <p>Paragraph 155 states that certain forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. Included under this category is; local transport infrastructure which can demonstrate a requirement for a Green Belt location.</p>
Landscape and Visual Amenity		
SOLP	Policy ENV1 Landscape and Countryside	<ol style="list-style-type: none"> 1. The highest level of protection will be given to the landscape and scenic beauty of the Chilterns and North Wessex Downs Areas of Outstanding Natural Beauty (AONBs): <ul style="list-style-type: none"> • Development in an AONB or affecting the setting of an AONB will only be permitted where it conserves, and where possible, enhances the character and natural beauty of the AONB; and • Development proposals that could affect the special qualities of an AONB (including the setting of an AONB) either individually or in combination with other developments, should be accompanied by a proportionate Landscape and Visual Impact Assessment. 2. South Oxfordshire's landscape, countryside and rural areas will be protected against harmful development. Development will only be permitted where it protects and, where possible enhances, features that contribute to the nature and quality of South Oxfordshire's landscapes, in particular: <ul style="list-style-type: none"> • Trees (including individual trees, groups of trees and woodlands), hedgerows and field boundaries; • Irreplaceable habitats such as ancient woodland and aged or veteran trees found outside ancient woodland; • The landscapes, waterscapes, cultural heritage and user enjoyment of the River Thames, its tributaries and flood plains; iv) other watercourse and water bodies;

		<ul style="list-style-type: none"> • The landscape setting of settlements or the special character and landscape setting of Oxford; • Topographical features; • Areas or features of cultural and historic value; and • Important views and visually sensitive skylines; and) aesthetic and perceptual factors such as tranquillity, wildness, intactness, rarity and enclosure. <p>3. Development which supports economic growth in rural areas will be supported provided it conserves and enhances the landscape, countryside and rural areas.</p> <p>4. The Council will seek the retention of important hedgerows. Where retention is not possible and a proposal seeks the removal of a hedgerow, the Council will require compensatory planting with a mixture of native hedgerow species</p>
SOLP	Policy DES6 Residential Amenity	<p>1. Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses, when considering both individual and cumulative impacts, in relation to the following factors:</p> <ul style="list-style-type: none"> ii. dominance or visual intrusion.
VoWHLP	Core Policy 44 Landscape	<p>The key features that contribute to the nature and quality of the Vale of White Horse District's landscape will be protected from harmful development and where possible enhanced, in particular:</p> <ul style="list-style-type: none"> • Features such as trees, hedgerows, woodland, field boundaries, watercourses and water bodies; • Important landscape settings of settlements; • Topographical features; • Areas or features of cultural and historic value; • Important views and visually sensitive skylines; and • Tranquillity and the need to protect against intrusion from light pollution, noise, and motion. <p>Where development is acceptable in principle, measures will be sought to integrate it into the landscape character and/or the townscape of the area. Proposals will need to demonstrate how they have responded to the above aspects of landscape character and will be expected to:</p> <ul style="list-style-type: none"> • Incorporate appropriate landscape proposals that reflect the character of the area through appropriate design and management; and • Preserve and promote local distinctiveness and diversity and, where practical, enhance damaged landscape areas. <p>High priority will be given to conservation and enhancement of the natural beauty of the North Wessex Downs AONB and planning decisions will have regard to its setting.</p>
VoWHLP	Development Policy 23 Impact of Development on Amenity	<p>Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to the following factors:</p> <ul style="list-style-type: none"> ii. dominance or visual intrusion.

<p>NPPF</p>	<p>Paragraph 135 Paragraph 136 Paragraph 180 Paragraph 182</p>	<p>Paragraph 135 states that developments should be "<i>visually attractive as a result of good architecture, layout and appropriate and effective landscaping</i>" and are sympathetic to the local landscape setting, built environment and local character.</p> <p>Paragraph 136 states that "<i>Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.</i>"</p> <p>Paragraph 180 states that valued landscapes should be protected and enhanced.</p> <p>Paragraph 182 gives great weight to conserving and enhancing Areas of Outstanding Natural Beauty which has one of the highest status of protection. It states "<i>development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.</i>"</p>
<p>Burcot & Clifton Hampden Neighbourhood Plan</p>	<p>Policy BCH9 Local Landscape Character</p>	<p>The culturally and historically important local landscape character of the parish, and in particular the waterscape of the River Thames corridor and its setting, will be conserved and where possible enhanced. Large-scale development of any kind will be inappropriate within open countryside and the river corridor.</p>
<p>Burcot & Clifton Hampden Neighbourhood Plan</p>	<p>Policy BCH6 Design Principles in Clifton Hampden</p>	<p>1. Proposals for development will be supported, provided they sustain and enhance the distinctiveness of the village and, where appropriate, the character and appearance of the Clifton Hampden Conservation Area and its setting.</p>
<p>Water and Flood Risk</p>		
<p>SOLP</p>	<p>Policy EP4 Flood Risk</p>	<p>1. The risk and impact of flooding will be minimised through:</p> <ul style="list-style-type: none"> • Directing new development to areas with the lowest probability of flooding; • Ensuring that all new development addresses the effective management of all sources of flood risk; • Ensuring that development does not increase the risk of flooding elsewhere; and • Ensuring wider environmental benefits of development in relation to flood risk. <p>2. The suitability of development proposed in Flood Zones will be strictly assessed using the 'Sequential Test' and where necessary the 'Exceptions Test'. A sequential approach should be used at site level.</p> <p>3. A site-specific Flood Risk Assessment (FRA) should be provided for all development in Flood Zones 2 and 3.</p> <p>4. All development proposals must be assessed against the current South Oxfordshire Strategic Flood Risk Assessment or any updates and the Oxfordshire Local Flood Risk Management Strategy to address locally significant flooding. Appropriate mitigation and management measures must be implemented and maintained.</p>

		<p>5. All development will be required to provide a Drainage Strategy. Development will be expected to incorporate Sustainable Drainage Systems and ensure that run-off rates are attenuated to greenfield run-off rates. Higher rates would need to be justified and the risks quantified.</p> <p>6. Sustainable Drainage Systems should seek to enhance water quality and biodiversity in line with the Water Framework Directive.</p>
VoWHLP	Development Policy 30 Watercourses	<p>Development of land that contains or is adjacent to a watercourse will only be permitted where it would not have a detrimental impact on the function or setting of the watercourse or its biodiversity, or the detrimental impact can be appropriately mitigated.</p> <p>Plans for development adjacent to or encompassing a watercourse should include a minimum 10m buffer zone along both sides of the watercourse to create a corridor of land and water favourable to the enhancement of biodiversity.</p> <p>Proposals which involve culverting a watercourse are unlikely to be considered acceptable.</p> <p>Development which is located within 20m of a watercourse will require a construction management plan to be agreed with the Council before commencement of work to ensure that the watercourse will be satisfactorily protected from damage, disturbance or pollution.</p>
VoWHLP	Core Policy 42 Flood Risk	<p>The risk and impact of flooding will be minimised through:</p> <ul style="list-style-type: none"> • Directing new development to areas with the lowest probability of flooding; • Ensuring that all new development addresses the effective management of all sources of flood risk; • Ensuring that development does not increase the risk of flooding elsewhere; and • Ensuring wider environmental benefits of development in relation to flood risk. <p>The suitability of development proposed in flood zones will be strictly assessed using the Sequential Test, and, where necessary, the Exceptions Test. A sequential approach should be used at site level.</p> <p>A site-specific flood risk assessment will be required for all proposals including minor development and change of use in Flood Zone 2 and 3 and, in Critical Drainage Areas, and also where proposed development or a change of use to a more vulnerable class that may be subject to other forms of flooding. Appropriate mitigation and management measures will be required to be implemented.</p> <p>All development proposals must be assessed against the Vale of White Horse and South Oxfordshire Strategic Flood Risk Assessment and the Oxfordshire Local Flood Risk Management Strategy to address locally significant flooding. Appropriate mitigation and management measures must be implemented.</p> <p>All development will be required to provide a drainage strategy. Developments will be expected to incorporate sustainable drainage systems and ensure that runoff rates are attenuated to greenfield run-off rates. Higher rates would need to be justified and the risks quantified.</p> <p>Sustainable drainage systems should seek to enhance water quality and biodiversity in line with the Water Framework Directive (WFD).</p>

<p>NPPF</p>	<p>Paragraph 165 Paragraph 168 Paragraph 172 Paragraph 173</p>	<p>Paragraph 165 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.</p> <p>Paragraph 168 states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Footnote 50 requires a Flood Risk Assessment to accompany applications for development in Flood Zones 2 and 3.</p> <p>Paragraph 173 states development should only be allowed in areas at risk of flooding where it can be demonstrated that the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons; the development is appropriately flood resistant and resilient; it incorporates sustainable urban drainage systems, unless there is clear evidence that this would be inappropriate; any residual risk can be safely managed; and safe access and escape routes are included where appropriate.</p>
<p>Transport</p>		
<p>SOLP</p>	<p>Policy TRANS2 Promoting Sustainable Transport and Accessibility</p>	<p>1. The Council will work with Oxfordshire County Council and others to:</p> <ul style="list-style-type: none"> • Ensure that where new development is located close to, or along, existing strategic public transport corridors, bus and/or rail services can be promoted and strengthened in response to increases in demand for travel and freight; • Ensure new development is designed to encourage walking and cycling, not only within the development, but also to nearby facilities, employment and public transport hubs; • Support provision of measures which improve public transport (including Park & Ride), cycling and walking networks within and between towns and villages in the district; • Support, where relevant, sustainable transport improvements in the wider Didcot Garden Town area and in and around Oxford, particularly where they improve access to strategic development locations; • Promote and support improvements to the transport network which increase safety, improve air quality, encourage use of sustainable modes of transport and/or make our towns and villages more attractive; and • Ensure the needs of all users, including those with impaired mobility are planned for in development of transport improvements.
<p>SOLP</p>	<p>Policy TRANS4 Transport Assessments, Transport Statements and Travel Plans</p>	<p>1. Proposals for new developments which have significant transport implications that either arise from the development proposed or cumulatively with other proposals will need to submit a Transport Assessment or a Transport Statement, and where relevant a Travel Plan. These documents will need to take into account Oxfordshire County Council guidance and Planning Practice Guidance and where appropriate, the scope should be agreed with Highways England.</p> <p>2. Appropriate provision for works and/or contributions will be required towards providing an adequate level of accessibility by all modes of transport and mitigating the impacts on the transport network. Consideration should be given to the cumulative impact of relevant development both in South Oxfordshire and adjacent authorities, and how this links to planned infrastructure improvements. This should take into account the latest evidence base work, which, where relevant, will inform the scoping of the Transport Assessment and Travel Plan.</p> <p>3. The Transport Assessment or Transport Statement should, where relevant:</p> <ul style="list-style-type: none"> • Illustrate accessibility to the site by all modes of transport;

		<ul style="list-style-type: none"> • Show the likely modal split of journeys to and from the site; • Detail the proposed measures to improve access by public transport, cycling and walking to reduce the need for car travel and reduce transport impacts; • Illustrate the impact on the highway network and the impact of proposed mitigation measures where necessary; • Include a Travel Plan (that considers all relevant forms of transport including accessible transport for disabled people) where appropriate; and • Outline the approach to parking provision.
SOLP	Policy CF1, Safeguarding Community Facilities	4. A community facility or service may be essential, either because it is one of a limited number of that nature in a settlement or area, or is fundamental to the quality and convenience of everyday life in a settlement. This includes the protection of Public Rights of Way including bridleways and by-ways. If suitable alternative provision already exists, any facility or service will not be considered essential.
SOLP	Policy TRANS5 Consideration of Development Proposals	Proposals for all types of development will, where appropriate: <ul style="list-style-type: none"> ii) provide safe and convenient routes for cyclists and pedestrians, both within the development, and including links to rights of way and other off-site walking and cycling routes where relevant.
VoWHLP	Development Policy 31 Protection of Public Rights of Way, National Trails and Open Access Areas	<p>Development on and / or over public rights of way will be permitted where the development can be designed to accommodate satisfactorily the existing route, or where the right of way is incorporated into the development site as an attractive, safe and continuous route. Alternative routes will need to be made equally or more attractive, safe and convenient to rights of way users.</p> <p>The Council will actively seek opportunities to improve the accessibility and the addition of new connections and status upgrades to the existing rights of way network, including National Trails. Proposals of this nature will be supported where they would not lead to increased pressure on sensitive sites, such as those of important ecological value.</p> <p>Development will not be permitted where proposals remove, narrow or materially impair the approved line of the Thames Path or Ridgeway National Trails, key connecting routes, and / or public access to them.</p>
VoWHLP	Core Policy 33 Promoting Sustainable Transport and Accessibility	<p>The Council will work with Oxfordshire County Council and others to:</p> <ul style="list-style-type: none"> • Actively seek to ensure that the impacts of new development on the strategic and local road network are minimised; • Ensure that developments are designed in a way to promote sustainable transport access both within new sites, and linking with surrounding facilities and employment; • Support measures identified in the Local Transport Plan for the district, including within the relevant local area strategies; • Support improvements for accessing Oxford; • Ensure that transport improvements are designed to minimise any effects on the amenities, character and special qualities of the surrounding area; and • Promote and support improvements to the transport network that increase safety, improve air quality and/or make our towns and villages more attractive

VoWHLP	Core Policy 35 Promoting Public Transport, Cycling and Walking	<p>The Council will work with Oxfordshire County Council and others to:</p> <ul style="list-style-type: none"> • Encourage the use of sustainable modes of transport and support measures that enable a modal shift to public transport, cycling and walking in the district; • Ensure new development is located close to, or along, existing strategic public transport corridors, where bus services can then be strengthened in response to increases in demand for travel; • Ensure that new development is designed to encourage walking as the preferred means of transport, not only within the development, but also to nearby facilities and transport hubs; • Ensure that new development encourages and enables cycling not only through the internal design of the site, but also through the provision of cycle friendly infrastructure to link the new residents with nearby services, employment areas, educational facilities and public transport hubs where interchange can be provided for longer distance travel; • Seek to support the provision of new cycling routes where the proposals are consistent with the other policies of this plan; • Ensure proposals for major development are supported by a Transport Assessment and Travel Plan, in accordance with Oxfordshire County Council guidance.
VoWHLP	Development Policy 17 Transport Assessments and Travel Plans	<p>Proposals for ‘major’ development will need to be supported by a Transport Assessment or Statement and Travel Plan in accordance with Oxfordshire County Council guidance, including their Walking and Cycling Design Standards, and the latest National Planning Practice Guidance. The scope of the assessment should be agreed with the County Council as the highway authority, in association with the district council, as the planning authority. Highways England should also be consulted as appropriate, in accordance with Highways England guidance.</p> <p>The Transport Assessment and Travel Plan should consider opportunities to support the take up of electric and / or low emission vehicles, in accordance with latest best practice, and in particular if part of mitigation identified in line with Development Policy 26: Air Quality.</p> <p>The Transport Assessment and Travel Plan will need to demonstrate consistency with Core Policy 37: Design and Local Distinctiveness in addition to the sustainable transport priorities identified in Local Plan 2031: Part 1 and other relevant Local Plan policies.</p>
NPPF	Paragraph 114 Paragraph 115	<p>Paragraph 114 states that it should be ensure that significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.</p> <p>Paragraph 115 states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.</p>
Culham NP	Policy CUL 8 Sustainable Travel	<p>A. The Neighbourhood Plan identifies the existing Sustainable Travel Network, as shown on the Policies Map, for the purpose of supporting active travel in the Parish.</p> <p>B. Development proposals on land that lies within or adjacent to the Network should sustain, and where practicable, enhance the functionality of the Network by virtue of their layout, means of access and landscape treatment.</p> <p>C. Proposals that will harm the functioning or connectivity of the Network will not be supported.</p> <p>D. The comprehensive masterplan for the strategic allocation STRAT9 Land adjacent to Culham Science Centre will be expected to demonstrate that the masterplan layout enables safe and secure access to the required social infrastructure for the existing village of Culham through new, and improvement to, existing cycleways, footpaths, and bus services.</p>

<p>SOLP</p>	<p>Policy DES1 Delivering High Quality Development</p>	<p>1. All new development must be of a high quality design that:</p> <ul style="list-style-type: none"> • Uses land efficiently while respecting the existing landscape character; • Enhances biodiversity and, as a minimum, leads to no net loss of habitat; • Incorporates and/or links to a well-defined network of Green and Blue Infrastructure;
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		<ul style="list-style-type: none"> • Is sustainable and resilient to climate change; • Minimises energy consumption; • Mitigates water run-off and flood risks; • Takes into account landform, layout, building orientation, massing and landscaping; • Provides a clear and permeable hierarchy of streets, routes and spaces to create safe and convenient ease of movement by all users; and • Is designed to take account of possible future development in the local area. <p>2. Where development sites are located adjacent to sites that have a reasonable prospect of coming forward in the future, integration with the neighbouring site should form part of the proposal's design.</p>
SOLP	Policy DES2 Enhancing Local Character	<p>1. All new development must be designed to reflect the positive features that make up the character of the local area and should both physically and visually enhance and complement the surroundings.</p> <p>2. All proposals for new development should be informed by a contextual analysis that demonstrates how the design:</p> <ul style="list-style-type: none"> • Has been informed by and responds positively to the site and its surroundings; and • Reinforces place-identity by enhancing local character. <p>3. Where a Character Assessment has been prepared as part of a made Neighbourhood Development Plan, a proposal must demonstrate that the positive features identified in the Assessment have been incorporated into the design of the development.</p> <p>4. Where there is no local Character Assessment a comprehensive contextual analysis of the local character should be prepared as part of an application. This should identify the positive features that make up the character of the area. The proposal must demonstrate that these positive features have been incorporated into the design of the development.</p> <p>5. Proposals that have the potential to impact upon a Conservation Area or the setting of a Conservation Area should also take account of the relevant Conservation Character Appraisal.</p>
SOLP	Policy DES33 Design and Access Statements	<p>1. Where an application is required to be supported by a Design and Access Statement, this must demonstrate how the development proposal meets the design objectives and principles set out in the South Oxfordshire Design Guide.</p> <p>2. The Design and Access Statement should be proportional to the scale and complexity of the proposal. It should include:</p> <ul style="list-style-type: none"> • A clear drawing trail that shows how the design of the proposal and the rationale behind it has evolved and clearly demonstrates that the design objectives and principles set out in the South Oxfordshire Design Guide have been considered at the outset and throughout the process and have been met by the final design; • A constraints and opportunities plan that clearly informs the design process and final design; • The delivery implementation phases and strategies to be put in place to ensure the timely delivery of infrastructure and services when they are needed by new residents; and • How consultation with the existing community and communities in the surrounding area has informed the design of the development.

SOLP	Policy ENV5 Green Infrastructure in New Developments	<p>1. Development will be expected to contribute towards the provision of additional Green Infrastructure and protect or enhance existing Green Infrastructure.</p> <p>2. Proposals should:</p> <ul style="list-style-type: none"> • Protect, conserve or enhance the district’s Green Infrastructure; • Provide an appropriate level of Green Infrastructure with regard to requirements set out in the Green Infrastructure Strategy, AONB Management Plan or the Habitats Regulations Assessment; • Avoid the loss, fragmentation, severance or other negative impact on the function of Green Infrastructure; • Provide appropriate mitigation where there would be an adverse impact on Green Infrastructure; and • Provide an appropriate replacement where it is necessary for development to take place on areas of Green Infrastructure. <p>3. All Green Infrastructure provision should be designed with regard to the quality standards set out within the Green Infrastructure Strategy, or where relevant the Didcot Garden Town Delivery Plan. Consideration should also be given to inclusive access and contributing to gains in biodiversity, particularly through the use of appropriate planting which takes account of changing weather patterns. Where new Green Infrastructure is provided, applicants should ensure that appropriate arrangements are in place to ensure its ongoing management and maintenance.</p>
SOLP	Policy DES6 Residential Amenity	<p>1. Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses, when considering both individual and cumulative impacts, in relation to the following factors:</p> <ul style="list-style-type: none"> i) loss of privacy, daylight or sunlight; ii) dominance or visual intrusion; vi) external lighting.
VoWHLP	Core Policy 37 Design and Local Distinctiveness	<p>All proposals for new development will be required to be of high quality design that:</p> <ul style="list-style-type: none"> • Responds positively to the site and its surroundings, cultural diversity and history, conserves and enhances historic character and reinforces local identity or establishes a distinct identity whilst not preventing innovative responses to context; • Creates a distinctive sense of place through high quality townscape and landscaping that physically and visually integrates with its surroundings; • Provides a clear and permeable structure of streets, routes and spaces that are legible and easy to navigate through because of the use of street typology, views, landmarks, public art and focal points; • Is well connected to provide safe and convenient ease of movement by all users, ensuring that the needs of vehicular traffic does not dominate at the expense of other modes of transport, including pedestrians and cyclists, or undermine the resulting quality of places; • Incorporates and/or links to high quality Green Infrastructure and landscaping to enhance biodiversity and meet recreational needs, including Public Rights of Way; • Is built to last, functions well and is flexible to changing requirements of occupants and other circumstances; and

		<ul style="list-style-type: none"> • Is sustainable and resilient to climate change by taking into account landform, layout, building orientation, massing and landscaping to minimise energy consumption and mitigate water run-off and flood risks
VoWHLP	Development Policy 23 Impact of Development on Amenity	<p>Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to the following factors:</p> <ul style="list-style-type: none"> i. loss of privacy, daylight or sunlight ii. dominance or visual intrusion vi. external lighting.
NPPF	Paragraph 135 Paragraph 137 Paragraph 139	<p>135. Planning policies and decisions should ensure that developments:</p> <ul style="list-style-type: none"> a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. <p>137. Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.</p> <p>139. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to: a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.</p>
Culham NP	Policy CUL 5 Design Code for Culham	Development proposals in Culham will be supported provided they have full regard to the essential design considerations and general design principles set out in the Culham Design Code attached as Appendix B.

<p>Culham NP</p>	<p>Policy CUL 10 Light Pollution</p>	<p>A. All development proposals should be designed to minimise the occurrence of light pollution. Development proposals should employ energy-efficient forms of lighting that also reduce light scatter and have regard with the current guidelines established for rural areas by the Institute of Lighting Professionals (ILP).</p> <p>B. Proposals for all development will be expected to demonstrate how it is intended to prevent light pollution. Information on these measures must be submitted with applications, and where a development would potentially impact on light levels in the area, an appropriate lighting scheme will be secured by planning condition.</p>
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Historic Environment		
SOLP	Policy ENV6 Historic Environment	<p>1. Proposals for new development that may affect designated and non-designated heritage assets should take account of the desirability of sustaining and enhancing the significance of those assets and putting them to viable uses consistent with their conservation. Heritage assets include statutorily designated Scheduled Monuments, Listed Buildings or structures, Conservation Areas, Registered Parks and Gardens, Registered Battlefields, archaeology of national and local interest and non-designated buildings, structures or historic landscapes that contribute to local historic and architectural interest of the district’s historic environment, and also includes those heritage assets listed by the Oxfordshire Historic Environmental Record.</p> <p>2. Proposals for new development should be sensitively designed and should not cause harm to the historic environment. Proposals that have an impact on heritage assets (designated and non-designated) will be supported particularly where they:</p> <ul style="list-style-type: none"> i. Conserve or enhance the significance of the heritage asset and settings. The more important the heritage asset, the greater the weight that will be given to its conservation; ii. Make a positive contribution to local character and distinctiveness (through high standards of design, reflecting its significance, including through the use of appropriate materials and construction techniques); iii. Make a positive contribution towards wider public benefits; iv. Provide a viable future use for a heritage asset that is consistent with the conservation of its significance; and/or v. Protect a heritage asset that is currently at risk. <p>3. Non-designated heritage assets, where identified through local or neighbourhood plan-making, Conservation Area Appraisal or review or through the planning application process, will be recognised as heritage assets in accordance with national guidance and any local criteria. Development proposals that directly or indirectly affect the significance of a non-designated heritage asset will be determined with regard to the scale of any harm or loss and the significance of the asset.</p> <p>4. Applicants will be required to describe, in line with best practice and relevant national guidance, the significance of any heritage assets affected including any contribution made by their setting. The level of detail should be proportionate to the asset’s importance. In some circumstances further survey, analysis and/or recording will be made a condition of consent.</p>
SOLP	Policy ENV7 Listed Buildings	<p>1. Proposals for development, including change of use, that involve any alteration of, addition to or partial demolition of a listed building or within the curtilage of, or affecting the setting of a listed building will be expected to:</p> <ul style="list-style-type: none"> i. Conserve, enhance or better reveal those elements which contribute to the heritage significance and/or its setting; ii. Respect any features of special architectural or historic interest, including, where relevant, the historic curtilage or context, such as burgage plots, or its value within a group and/or its setting such as the importance of a street frontage or traditional shopfronts; and iii. Be sympathetic to the listed building and its setting in terms of its siting, size, scale, height, alignment, materials and finishes (including colour and texture), design and form, in order to retain the special interest that justifies its designation through appropriate design, with regard to the South Oxfordshire Design Guide.

		<p>2. Development proposals affecting the significance of a listed building or its setting that will lead to substantial harm or total loss of significance will be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that demonstrably outweigh that harm or loss or where the applicant can demonstrate that:</p> <ul style="list-style-type: none"> • The nature of the heritage asset prevents all reasonable uses of the site; • No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; • Conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and • The harm or loss is outweighed by the benefit of bringing the site back into use. <p>3. Development proposals that would result in less than substantial harm to the significance of a listed building will be expected to:</p> <ul style="list-style-type: none"> • Minimise harm and avoid adverse impacts, and provide justification for any adverse impacts, harm or loss of significance; • Identify any demonstrable public benefits or exceptional circumstances in relation to the development proposed; and • Investigate and record changes or loss of fabric, features, objects or remains, both known and unknown, in a manner proportionate to the importance of the change or loss, and to make this information publicly accessible.
SOLP	Policy ENV8 Conservation Areas	<p>1. Proposals for development within or affecting the setting of a Conservation Area must conserve or enhance its special interest, character, setting and appearance. Development will be expected to:</p> <ul style="list-style-type: none"> • Contribute to the Conservation Area's special interest and its relationship within its setting. The special characteristics of the Conservation Area (such as existing walls, buildings, trees, hedges, burgage plots, traditional shopfronts and signs, farm groups, medieval townscapes, archaeological features, historic routes etc.) should be preserved; • Take into account important views within, into or out of the Conservation Area and show that these would be retained and unharmed; • Respect the local character and distinctiveness of the Conservation Area in terms of the development's: siting; size; scale; height; alignment; materials and finishes (including colour and texture); proportions; design; and form and should have regard to the South Oxfordshire Design Guide and any relevant Conservation Area Character Appraisal; • Be sympathetic to the original curtilage of buildings and pattern of development that forms part of the historic interest of the Conservation Area; • Be sympathetic to important spaces such as paddocks, greens, gardens and other gaps or spaces between buildings which make a positive contribution to the pattern of development in the Conservation Area; • Ensure the wider social and environmental effects generated by the development are compatible with the existing character and appearance of the Conservation Area; and/or • Ensure no loss of, or harm to any building or feature that makes a positive contribution to the special interest, character or appearance of the Conservation Area. <p>2. Where a proposed development will lead to substantial harm to or total loss of significance of a Conservation Area, consent will only be granted where it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss</p> <p>3. Where a development proposal will lead to less than substantial harm to the significance of a Conservation Area, this harm will be weighed against the public benefits of the proposal.</p>

<p>SOLP</p>	<p>Policy ENV9 Archaeology and Scheduled Monuments</p>	<ol style="list-style-type: none"> 1. Development must protect the site and setting of Scheduled Monuments or nationally important designated or undesignated archaeological remains. 2. Applicants will be expected to undertake an assessment of appropriate detail to determine whether the development site is known to, or is likely to, contain archaeological remains. Proposals must show the development proposals have had regard to any such remains. 3. Where the assessment indicates archaeological remains on site, and development could disturb or adversely affect archaeological remains and/or their setting, applicants will be expected to: <ol style="list-style-type: none"> i. Submit an appropriate archaeological desk-based assessment; or ii. Undertake a field evaluation (conducted by a suitably qualified archaeological organisation), where necessary. 4. Nationally important archaeological remains (whether scheduled or demonstrably of equivalent significance) should be preserved in situ. Non-designated archaeological sites or deposits of significance equal to that of a nationally important monument will be assessed as though those sites or deposits are designated. 5. Where a proposed development will lead to substantial harm to or total loss of significance of such remains consent will only be permitted where it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. 6. Where a development proposal will lead to less than substantial harm to the significance of such remains, this harm will be weighed against the public benefits of the proposal. 7. For other archaeological remains, the effect of a development proposal on the significance of the remains, either directly or indirectly, will be taken into account in determining the application. 8. In exceptional cases, where harm to or loss of significance to the asset is considered to be justified, the harm should be minimised, and mitigated by a programme of archaeological investigation, including excavation, recording and analysis. Planning permission will not be granted until this programme has been submitted to, and approved by, the Council and development should not commence until these works have been satisfactorily undertaken by an appropriately qualified organisation. The results and analysis of findings subsequent to the investigation should be published and made available to the relevant local and county authorities.
<p>SOLP</p>	<p>Policy ENV10 Historic Battlefields, Registered Parks and Gardens and Historic Landscapes</p>	<ol style="list-style-type: none"> 1. Proposals should conserve or enhance the special historic interest, character or setting of a battlefield, or park or garden on the Historic England Registers of Historic Battlefields or Register of Historic Parks and Gardens of Special Historic Interest in England. 2. Any harm to or loss of significance of any heritage asset requires clear and convincing justification. Substantial harm to or loss of these assets should be wholly exceptional in the case of Registered Historic Battlefields and Grade I and Grade II* Registered Historic Parks and Gardens and exceptional in the case of Grade II Registered Historic Parks and Gardens. 3. All development proposals must be assessed against the current South Oxfordshire Strategic Flood Risk Assessment or any updates and the Oxfordshire Local Flood Risk Management Strategy to address locally significant flooding. Appropriate mitigation and management measures must be implemented and maintained. 4. All development will be required to provide a Drainage Strategy. Development will be expected to incorporate Sustainable Drainage Systems and ensure that run-off rates are attenuated to greenfield run-off rates. Higher rates would need to be justified and the risks quantified. 5. Sustainable Drainage Systems should seek to enhance water quality and biodiversity in line with the Water Framework Directive.

VoWHLP	Core Policy 39 The Historic Environment	<p>The Council will work with landowners, developers, the community, Historic England and other stakeholders to:</p> <ul style="list-style-type: none"> • Ensure that new development conserves, and where possible enhances, designated heritage assets and non-designated heritage assets and their setting in accordance with national guidance and legislation.
VoWHLP	Development Policy 36 Heritage Assets	<p>Proposals for new development that may affect heritage assets (designated and non-designated) must demonstrate that they conserve and enhance the special interest or significance of the heritage asset and its setting in accordance with Core Policy 39 (Local Plan 2031: Part 1), and particularly where they:</p> <ul style="list-style-type: none"> • Make a positive contribution to local character and distinctiveness; and / or • Make a positive contribution towards wider social and economic benefits; and / or • Provide a viable future use for a heritage asset that is consistent with the conservation of its significance; and / or • Provide a sustainable, non-damaging use for a heritage asset that is currently at risk of neglect, decay or other threats. <p>Heritage assets are an irreplaceable resource, and will be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.</p> <p>When considering the impact of a proposed development on the significance of a designated heritage asset, great weight will be given to the asset's conservation (and the more important the asset, the greater the weight that will be given). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harms to its significance.</p> <p>Any harm to, or loss of, the significance of a designated heritage asset will require clear and convincing justification.</p> <p>In weighing applications that directly, or indirectly affect non-designated heritage assets, a balanced judgement will be made having regard to the scale of any harm or loss and the significance of the heritage asset.</p> <p>Developers will also be expected to report, publish and deposit the results of any investigations into heritage assets with the Historic Environment Record (HER) and the relevant local and county authorities.</p>
VoWHLP	Development Policy 37 Conservation Areas	<p>Proposals for development within or affecting the setting of a Conservation Area must demonstrate that it will conserve or enhance its special interest, character, setting and appearance. Development will be expected to:</p> <ol style="list-style-type: none"> i. Demonstrate that it contributes to the conservation area's special interest and its relationship within its setting; ii. Take into account important views within, into or out of the conservation area and show that these would be retained and unharmed; iii. Respect the local character and distinctiveness of the conservation area in terms of the development's: siting; size; scale; height; alignment; materials and finishes (including colour and texture); proportions; design; and form, in accordance with the Design Guide Supplementary Planning Document and any relevant Conservation Area Character Appraisal; iv. Be sympathetic to the original curtilage of the dwelling and pattern of development that forms part of the historic interest of the conservation area; v. Be sympathetic to important spaces such as paddocks, greens, gardens and other gaps or spaces between buildings which make a positive contribution to the pattern of development in the conservation area; vi. Ensure the wider social and environmental effects generated by the development are compatible with the existing character and

		<p>appearance of the conservation area, and</p> <p>vii. Ensure no loss of or harm to any building or feature that makes a positive contribution to the special interest, character or appearance of the conservation area unless the development would make an equal or greater contribution in terms of public benefit.</p>
VoWHLP	Development Policy 38 Listed Buildings	Proposals within the setting of a Listed Building must demonstrate that they will respect, preserve or enhance features that contribute to the special interest and significance of the building, including, where relevant, structures and trees, the historic curtilage or context, such as burgage plots, parkland or fields or its value within a group and / or its setting, such as the importance of a street frontage or traditional shopfronts, designed landscapes or historic farmyards.
VoWHLP	Development Policy 39 Archaeology and Scheduled Monuments	<p>Development will be permitted where it can be shown that it would not be detrimental to the site or setting of Scheduled Monuments or nationally important designated or non-designated archaeological remains.</p> <p>When researching the development potential of a site, applicants will be expected to undertake an assessment of appropriate detail to determine whether the site is known or is likely to contain archaeological remains, and demonstrate how the development proposals have had regard to any such remains.</p> <p>Where the assessment indicates known archaeological remains on site, and development could disturb or adversely affect important archaeological remains and / or their setting, applicants will be expected to:</p> <ul style="list-style-type: none"> • Submit an appropriate archaeological desk-based assessment; or • Undertake a field evaluation (conducted by a suitably qualified, archaeological organisation) where necessary. <p>Nationally important archaeological remains (whether scheduled or demonstrably of equivalent significance) should be preserved in situ. Development proposals that would lead to substantial harm or total loss of significance of such remains will only be permitted in exceptional circumstances where:</p> <ul style="list-style-type: none"> • It can be clearly and convincingly demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the circumstances in paragraph 133 of the NPPF apply. <p>For other archaeological remains, the effect of a development proposal on the significance of the remains, either directly or indirectly, will be taken into account in determining the application. As such assets are also irreplaceable, the presumption will be in favour of the avoidance of harm. The scale of the harm or loss will be weighed against this presumption and the significance of the heritage asset.</p> <p>Where harm to or loss of significance to the asset is considered to be justified, the harm should be minimised and mitigated by a programme of archaeological investigation, including excavation, recording and analysis. Planning permission will not be granted until this programme has been submitted to, and approved by, the local planning authority, and development should not commence until these works have been satisfactorily undertaken by an appropriately qualified organisation. The results and analysis of findings subsequent to the investigation should be published and made available to the Historic Environment Record (HER) and the relevant local and county authorities.</p>

<p>NPPF</p>	<p>Paragraph 200 Paragraph 205 Paragraph 203 Paragraph 207</p>	<p>Paragraph 200 states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.</p> <p>Paragraph 205 states that great weight should be applied to conservation of heritage assets when their significance is impacted by development. Development that would result in substantial harm will be refused (paragraph 201) unless "it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss".</p> <p>Paragraph 203 states in determining applications, local planning authorities should take account of:</p> <ul style="list-style-type: none"> a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) The desirability of new development making a positive contribution to local character and distinctiveness. <p>Paragraph 207 states where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:</p> <ul style="list-style-type: none"> a) The nature of the heritage asset prevents all reasonable uses of the site; b) No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; c) Conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) The harm or loss is outweighed by the benefit of bringing the site back into use.
<p>Culham NP</p>	<p>Policy CUL 6 Local Heritage Assets</p>	<p>The Neighbourhood Plan identifies buildings as Local Heritage Assets as included in the Appendix B and shown on the Policies Map, for the purposes of applying development plan policies on non-designated heritage assets:</p> <ul style="list-style-type: none"> i. The Lion, High Street; ii. Nos. 7 – 11 The Green; iii. 22-23 High Street; iv. School House, High Street; v. Kiln Cottage; vi. Station House; vii. The Railway Inn; viii. Tollgate Cottage; ix. 60 Abingdon Road; x. Maud Hales Terrace, Abingdon Bridge; xi. Pill boxes (Types FW3/24 The Burycroft; FW3/24C & FW3/28A at Appleford Bridge; FW3/28A at Sutton Bridge; FW3/24C at Sutton Pools; FW3/28A at Zouch Farm and FW3/28A at Tollgate Road).

Biodiversity		
SOLP	Policy ENV2 Biodiversity - Designated Sites, Priority Habitats and Species	<p>1. The highest level of protection will be given to sites of international nature conservation importance (Special Areas of Conservation). Development that is likely to result in a significant effect, either alone or in combination, on such sites will need to satisfy the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).</p> <p>2. Sites of Special Scientific Interest (SSSI) are of national importance. Development that is likely to have an adverse effect on a SSSI (either on its own or in combination with other developments) will only be permitted in exceptional circumstances, where it can be demonstrated that the benefits of the development in the location proposed clearly outweigh any harm to the special interest features and the SSSI's contribution to the local ecological network. In such circumstances, measures should be provided (and secured through planning conditions or legal agreements) that would mitigate or, as a last resort, compensate for the adverse effects resulting from development.</p> <p>3. Development likely to result, either directly or indirectly to the loss, deterioration or harm to:</p> <ul style="list-style-type: none"> • Local Wildlife Sites; • Local Nature Reserves; • Priority Habitats and Species; • Legally Protected Species; • Local Geological Sites; • Ecological Networks (Conservation Target Areas); • Important or ancient hedges or hedgerows; and • Ancient woodland and veteran trees will only be permitted if: <ol style="list-style-type: none"> i. the need for, and benefits of the development in the proposed location outweigh the adverse effect on the interests; ii. it can be demonstrated that it could not reasonably be located on an alternative site that would result in less or no harm to the interests; and iii. measures will be provided (and secured through planning conditions or legal agreements), that would avoid, mitigate or as a last resort, compensate for the adverse effects resulting from development. <p>4. Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) will be refused planning permission, unless there are wholly exceptional reasons justifying the granting of planning permission.</p> <p>5. Where development has the potential to affect a proposed wildlife site the developer must undertake surveys and assessments to determine whether the site meets the criteria for Local Wildlife Site status.</p>
VoWHLP	Core Policy 45 Green Infrastructure	<p>A net gain in Green Infrastructure, including biodiversity, will be sought either through on-site provision or off-site contributions and the targeted use of other funding sources. A net loss of Green Infrastructure, including biodiversity, through development proposals, will be resisted.</p> <p>Proposals for new development must provide adequate Green Infrastructure in line with the Green Infrastructure Strategy. All major applications must be accompanied by a statement demonstrating that they have taken into account the relationship of the proposed development to existing Green Infrastructure and how this will be retained and enhanced. Proposals will be required to contribute to the</p>

		<p>delivery of new Green Infrastructure and/or the improvement of existing assets including Conservation Target Areas in accordance with the standards in the Green Infrastructure Strategy and the Habitats Regulations Assessment.</p>
<p>VoWHLP</p>	<p>Core Policy 46 Conservation and Improvement of Biodiversity</p>	<p>Development that will conserve, restore and enhance biodiversity in the district will be permitted. Opportunities for biodiversity gain, including the connection of sites, large-scale habitat restoration, enhancement and habitat re-creation will be actively sought, with a primary focus on delivery in the Conservation Target Areas. A net loss of biodiversity will be avoided.</p> <p>The highest level of protection will be given to sites and species of international nature conservation importance (Special Areas of Conservation and European Protected Species). Development that is likely to result in a significant effect, either alone or in combination, on such sites and species will need to satisfy the requirements of the Habitat Regulations.</p> <p>Development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity or of importance for geological conservation interests, either directly or indirectly, will not be permitted unless:</p> <ul style="list-style-type: none"> • The need for, and benefits of, the development in the proposed location outweighs the adverse effect on the relevant biodiversity interest; • It can be demonstrated that it could not reasonably be located on an alternative site that would result in less or no harm to the biodiversity interests; and • Measures can be provided (and are secured through planning conditions or legal agreements), that would avoid, mitigate against or, as a last resort, compensate for, the adverse effects likely to result from development. <p>The habitats and species of importance to biodiversity and sites of geological interest considered in relation to points i) to iii) comprise:</p> <ul style="list-style-type: none"> • Sites of Special Scientific Interest (SSSI); • Local Wildlife Sites; • Local Nature Reserves; • Priority Habitats and species listed in the national and local Biodiversity Action Plan; • Ancient Woodland and veteran trees; • Legally Protected Species; and • Locally Important Geological Sites. <p>The level of protection and mitigation should be proportionate to the status of the habitat or species and its importance individually and as part of a wider network.</p> <p>It is recognised that habitats/areas not considered above (i.e. Nationally or Locally designated and not priority habitats) can still have a significant biodiversity value within their local context, particularly where they are situated within a Conservation Target Area and/or they have good potential to be restored to priority habitat status or form/have good potential to form links between priority habitats or act as corridors for priority species. These habitats will be given due weight in the consideration of planning applications. If significant harm to these sites cannot be avoided (through locating on an alternative site with less harmful impacts) it will be expected that mitigation will be provided to avoid a net loss in biodiversity or, as a last resort, compensation will be required to offset the impacts and achieve a net gain in biodiversity.</p>

NPPF	Paragraph 180 Paragraph 188	<p>Paragraph 180 states that planning decisions should contribute to and enhance the natural and local environment by:</p> <ul style="list-style-type: none"> a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures; <p>Paragraph 188 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.</p>
Burdett & Clifton Hampden Neighbourhood Plan	BCH8 Green Infrastructure	<ol style="list-style-type: none"> 1. The Neighbourhood Plan designates a Green Infrastructure Network, as shown on the Policies Map, for the purpose of providing an environmental support system for communities and wildlife. The Network comprises the River Thames corridor, the recreation ground, play areas, amenity green spaces, natural and semi-natural greenspace, accessible countryside space, allotment land, ancient woodland, hedgerows, veteran trees, public rights of way and land of biodiversity value. 2. Development proposals that lie within or adjoining the Network are required to have full regard to the need to protect the value and resilience of the Network, and to deliver new green infrastructure measures and/or a net gain to general biodiversity assets. Full surveys of any affected Network assets should accompany any planning application. 3. Proposals that will lead to the loss of land lying within the Network and that will undermine its integrity will be resisted. Development proposals that will lead to the extension of the Network will be supported, provided they are consistent with all other relevant policies of the development plan.
Noise and Vibration		
SOLP	Policy DES6 Residential Amenity	<ol style="list-style-type: none"> 1. Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses, when considering both individual and cumulative impacts, in relation to the following factors: <ul style="list-style-type: none"> iii) noise or vibration;
SOLP	Policy ENV12 Pollution – Impact of Development on Human Health, the Natural Environment and/or Local Amenity (Potential Sources of Pollution)	<ol style="list-style-type: none"> 1. Development proposals should be located in sustainable locations and should be designed to ensure that they will not result in significant adverse impacts on human health, the natural environment and/or the amenity of neighbouring uses. 3. The consideration of the merits of development proposals will be balanced against the adverse impact on human health, the natural environment and/or local amenity, including the following factors: <ul style="list-style-type: none"> • noise or vibration.

VoWHLP	Development Policy 23 Impact of Development on Amenity	Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to the following factors: iii. noise or vibration
VoWHLP	Development Policy 25 Noise Pollution	Noise-generating development that would have an impact on environmental amenity or biodiversity will be expected to provide an appropriate scheme of mitigation that should take account of: <ul style="list-style-type: none"> • The location, design and layout of the proposed development; • Existing levels of background noise; • Measures to reduce or contain generated noise; and • Hours of operation and servicing. Development will not be permitted if mitigation cannot be provided within an appropriate design or standards.
NPPF	Paragraph 193	Paragraph 193 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment and states that development should minimise and mitigate noise omitted from new development.
Air Quality		
SOLP	Policy EP1 Air Quality	1. In order to protect public health from the impacts of poor air quality: <ol style="list-style-type: none"> i. Development must have regard to the measures laid out in the Council's Developer Guidance Document and the associated Air Quality Action Plan, as well as the national air quality guidance and any Local Transport Plans; iii. All development proposals should include measures to minimise air pollution at the design stage and incorporate best practice in the design, construction and operation of the development; iv. Where a development has a negative impact on air quality, including cumulative impact, developers should identify mitigation measures that will sufficiently minimise emissions from the development. Where mitigation is not sufficient the impacts should be offset through planning obligations; and v. Development will only be permitted where it does not exceed air pollution levels set by European and UK regulations.

SOLP	Policy ENV12 Pollution – Impact of Development on Human Health, the Natural Environment and/or Local Amenity (Potential Sources of Pollution)	<p>1. Development proposals should be located in sustainable locations and should be designed to ensure that they will not result in significant adverse impacts on human health, the natural environment and/or the amenity of neighbouring uses.</p> <p>3. The consideration of the merits of development proposals will be balanced against the adverse impact on human health, the natural environment and/or local amenity, including the following factors:</p> <ul style="list-style-type: none"> • Noise or vibration.
SOLP	Policy DES6 Residential Amenity	<p>1. Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses, when considering both individual and cumulative impacts, in relation to the following factors:</p> <p style="padding-left: 40px;">iv. Smell, dust, heat, odour, gases or other emissions.</p>
VoWHLP	Development Policy 23 Impact of Development on Amenity	<p>Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to the following factors:</p> <ul style="list-style-type: none"> • Dust, heat, odour, gases or other emissions.
VoWHLP	Development Policy 26 Air Quality	<p>Development proposals that are likely to have an impact on local air quality, including those in, or within relative proximity to, existing or potential Air Quality Management Areas (AQMAs) will need to demonstrate measures / mitigation that are incorporated into the design to minimise any impacts associated with air quality.</p> <p>Where sensitive development is proposed in areas of existing poor air quality and / or where significant development is proposed, an air quality assessment will be required.</p> <p>The Council will require applicants to demonstrate that the development will minimise the impact on air quality, both during the construction process and lifetime of the completed development, either through a redesign of the development proposal or, where this is not possible or sufficient, through appropriate mitigation in accordance with current guidance.</p> <p>Mitigation measures will need to demonstrate how the proposal would make a positive contribution towards the aims of the Council's Air Quality Action Plan.</p> <p>Mitigation measures will be secured either through a negotiation on a scheme, or via the use of a planning condition and / or planning obligation depending on the scale and nature of the development and its associated impacts on air quality</p>

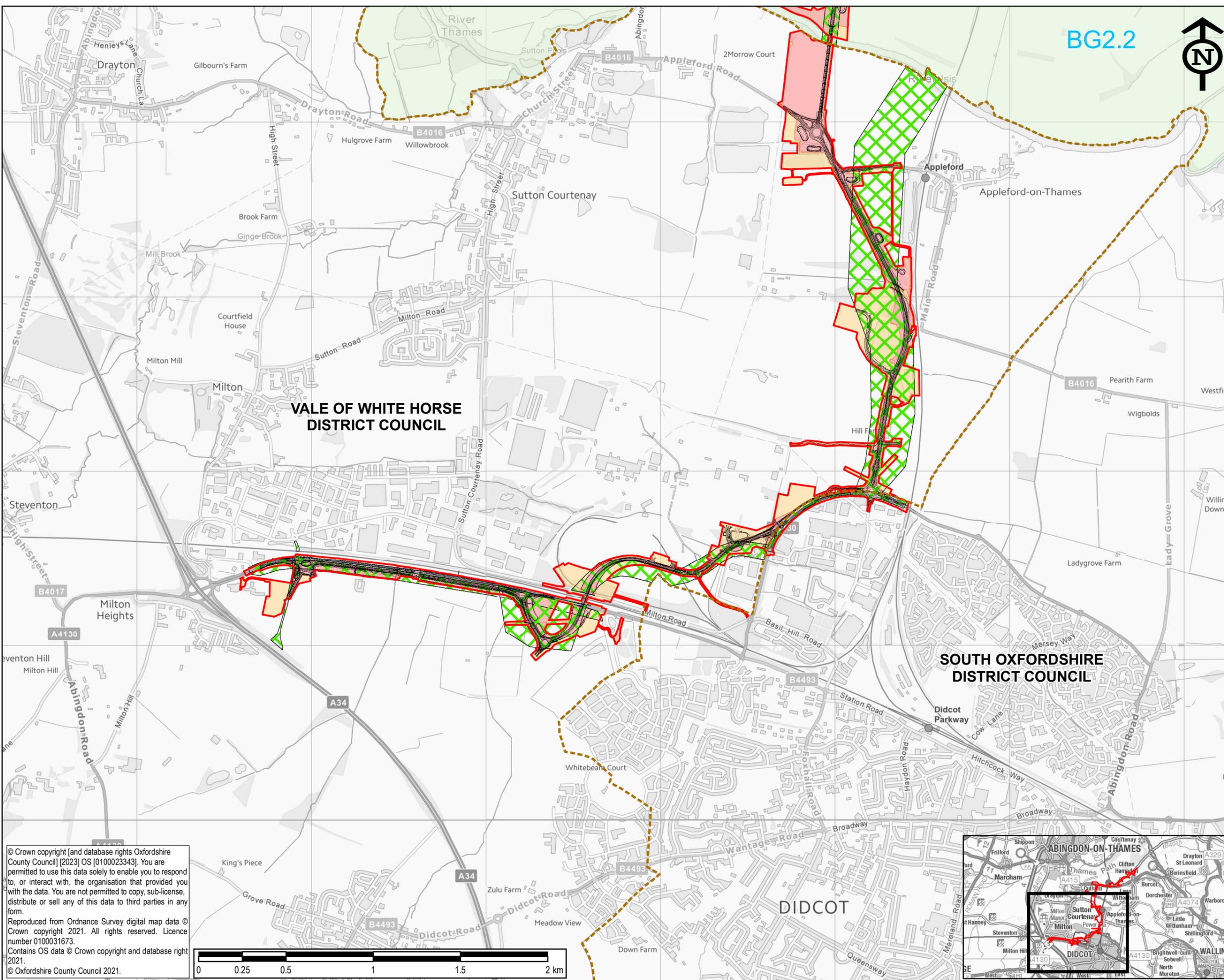
<p>NPPF</p>	<p>Paragraph 192 Paragraph 193</p>	<p>192. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.</p> <p>Paragraph 193 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment and states that development should minimise and mitigate noise omitted from new development.</p>
<p>Minerals and Waste</p>		
<p>Oxfordshire Minerals and Waste Core Strategy</p>	<p>Policy M8 Safeguarding Mineral Resources</p>	<p>Mineral resources in the Mineral Safeguarding Areas shown on the Policies Map are safeguarded for possible future use. Development that would prevent or otherwise hinder the possible future working of the mineral will not be permitted unless it can be shown that:</p> <ul style="list-style-type: none"> • The site has been allocated for development in an adopted local plan or neighbourhood plan; or • The need for the development outweighs the economic and sustainability considerations relating to the mineral resource; or • The mineral will be extracted prior to the development taking place. <p>Mineral Consultation Areas, based on the Mineral Safeguarding Areas, are shown on the Policies Map.</p>
<p>Oxfordshire Minerals and Waste Core Strategy</p>	<p>Policy M9 Safeguarding Mineral Resources</p>	<p>Existing and permitted infrastructure that supports the supply of minerals in Oxfordshire is safeguarded against development that would unnecessarily prevent the operation of the infrastructure or would prejudice or jeopardise its continued use by creating incompatible land uses nearby.</p> <p>Safeguarded sites include the following rail depot sites which are safeguarded for the importation of aggregate into Oxfordshire:</p> <ul style="list-style-type: none"> • Appleford Sidings, Sutton Courtenay (existing facility); and • any other aggregate rail depot sites which are permitted, as identified in the Annual Monitoring Report. <p>Other safeguarded sites will be defined in the Minerals and Waste Local Plan: Part 2 – Site Allocations Document.</p> <p>Proposals for development that would directly or indirectly prevent or prejudice the use of a site safeguarded for mineral infrastructure will not be permitted unless:</p> <ul style="list-style-type: none"> • The development is in accordance with a site allocation for development in an adopted local plan or neighbourhood plan; or • It can be demonstrated that the infrastructure is no longer needed; or • The capacity of the infrastructure can be appropriately and sustainably provided elsewhere.

Oxfordshire Minerals and Waste Core Strategy	Policy W11 Safeguarding Waste Management Sites	<p>Provision will be made for waste management facilities to provide capacity that allows Oxfordshire to be net self-sufficient in the management of its principal waste streams – municipal solid waste (or local authority collected waste), commercial and industrial waste, and construction, demolition and excavation waste – over the period to 2031.</p> <p>Provision for facilities for hazardous waste, agricultural waste, radioactive waste and waste water/sewage sludge will be in accordance with policies W7, W8, W9 and W10 respectively.</p>
SOLP	Policy EP5: Minerals Safeguarding Areas	<ol style="list-style-type: none"> 1. Minerals are a non-renewable resource, therefore to safeguard future potential extraction, development will be directed away from Minerals Safeguarding Areas. 2. Where development in Minerals Safeguarding Areas cannot be avoided, developers are encouraged to extract minerals prior to non-mineral development taking place, where this is practical and environmentally feasible.
NPPF	Paragraph 217 Paragraph 218	<p>Paragraph 217 states when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy.</p> <p>Paragraph 218 state local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.</p>
Ground Conditions/Land Contamination		
SOLP	Policy DES6 Residential Amenity	<ol style="list-style-type: none"> 1. Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses, when considering both individual and cumulative impacts, in relation to the following factors: <ul style="list-style-type: none"> v. pollution, contamination or the use of/or storage of hazardous substances;
SOLP	Policy ENV11 Pollution - Impact from Existing and/ or Previous Land Uses on New Development (Potential Receptors of Pollution)	<ol style="list-style-type: none"> 1. Development proposals should be appropriate to their location and should be designed to ensure that the occupiers of a new development will not be subject to individual and/or cumulative adverse effect(s) of pollution. Proposals will need to avoid or provide details of proposed mitigation methods to protect occupiers of a new development from the adverse impact(s) of pollution. 2. Unless there is a realistic potential for appropriate mitigation, development will not be permitted if it is likely to be adversely affected by pollution. Factors can include, but are not limited to: ...contamination of the site or its surroundings and hazardous substances nearby; ...land instability; 3. Opportunities to mitigate and/or remediate the impacts of pollution on the natural environment should also be considered wherever possible and related to a development. 4. Development on contaminated land will not be permitted unless the contamination is effectively treated by the developer to prevent any harm to human health and the natural environment (including controlled waters).

VoWHLP	Development Policy 27 Land Affected By Contamination	<p>Proposals for the development, redevelopment or re-use of land known, or suspected, to be contaminated, will be required to submit a Contaminated Land Preliminary Risk Consultant Report.</p> <p>Planning conditions may be imposed where the Council is satisfied that all risks associated with the development, environment, controlled waters and neighbouring land uses from land affected by contamination have been identified and the development is viable.</p> <p>Proposals that fail to demonstrate that the intended use would be compatible with the condition of the land, or which fail to exploit appropriate opportunities for decontamination, will be refused.</p>
VoWHLP	Core Policy 43 Natural Resources	<p>The Council encourages developers to make provision for the effective use of natural resources where applicable including:</p> <ul style="list-style-type: none"> vi. Ensuring that land is of a suitable quality for development and that remediation of contaminated land is undertaken where necessary; vii. Avoiding the development of the best and most versatile agricultural land, unless it is demonstrated to be the most sustainable choice from reasonable alternatives, by first using areas of poorer quality land in preference to that of a higher quality; and viii. Re-using previously developed land, provided it is not of high environmental value.

Appendix BG2.2 Plan Showing the HIF1 Scheme

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BG2.2



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LEGEND

- Red Line Planning Application Boundary
- HIF 1 Highway Scheme
- District Boundary
- Land Safeguarded For The HIF 1 Scheme
- Temporary Land Take
- Permanent Land Take
- Oxford Green Belt

First Issue	AG	15/12/2023	P01
Revision Details	By	Date	Suffix
	Check		

Purpose of Issue
FOR INFORMATION

Client
OXFORDSHIRE COUNTY COUNCIL
 County Hall
 New Road
 Oxford
 OX1 1ND

Project Title
DIDCOT GARDEN TOWN HIF 1 SCHEME

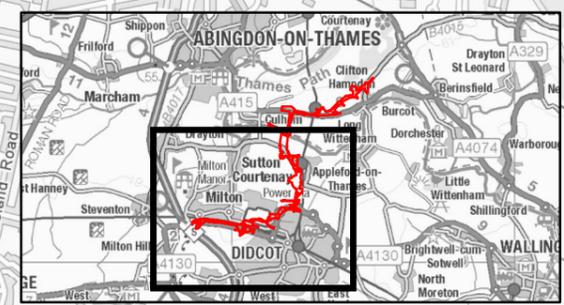
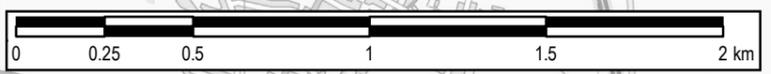
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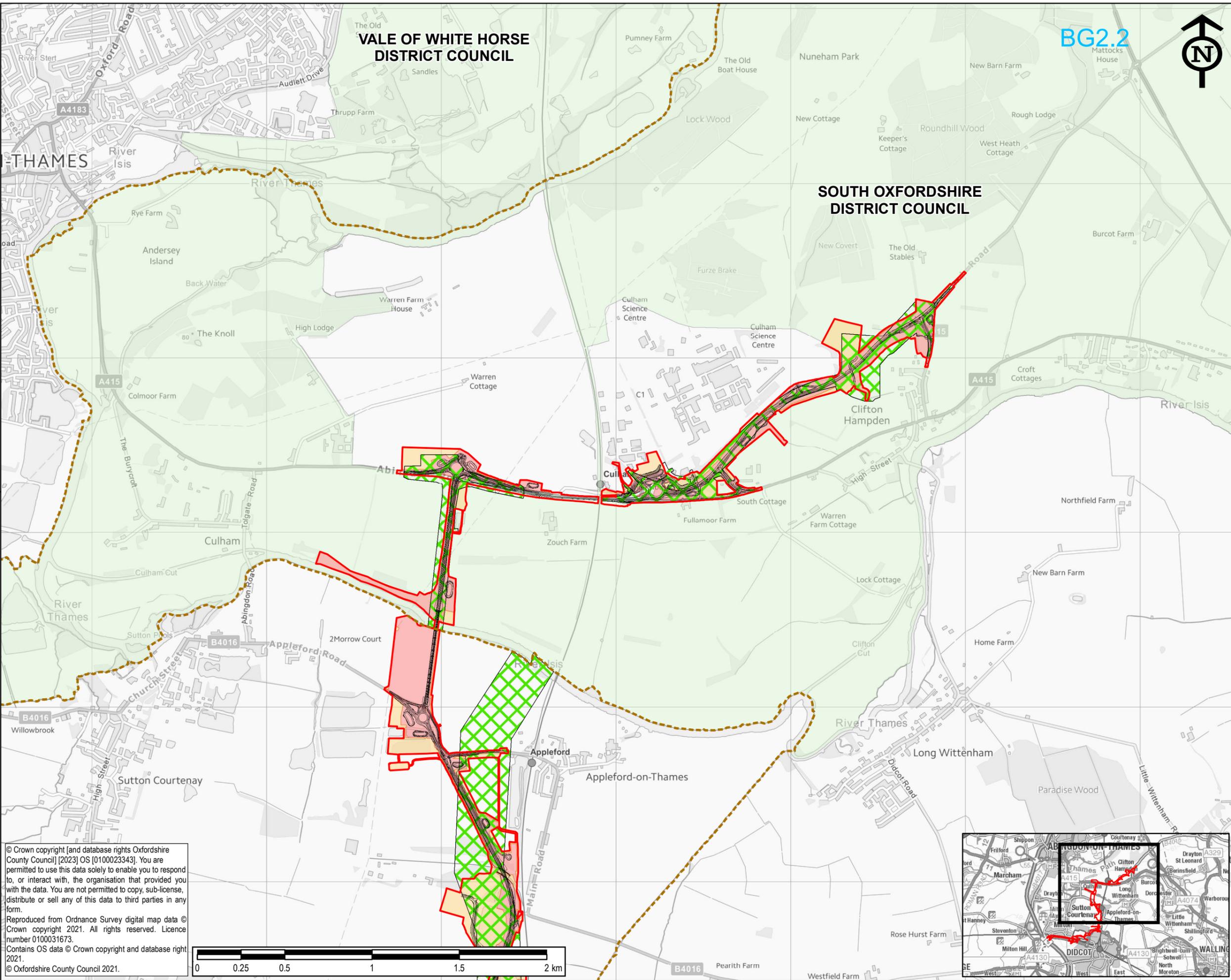
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Internal Project No. 60632497	Suitability S2	Discipline Planning		
Scale @ A3 1:20,000				

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- LEGEND**
- Red Line Planning Application Boundary
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 - Temporary Land Take
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First Issue	AG	AM	15/12/2023	P01
Revision Details	By	Check	Date	Suffix

Purpose of Issue
FOR INFORMATION

Client
OXFORDSHIRE COUNTY COUNCIL

Project Title
DIDCOT GARDEN TOWN HIF 1 SCHEME

Drawing Title
PLANNING POLICY GREEN BELT SHEET 2 OF 2

Designed	Drawn	Checked	Approved	Date
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Scale @ A3		Discipline		
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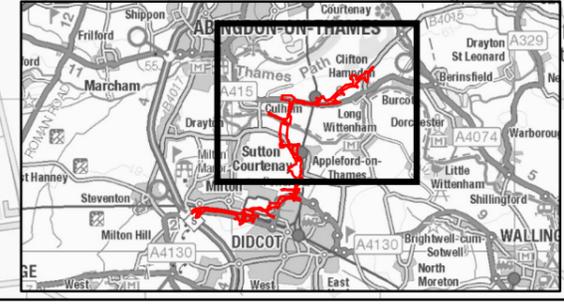
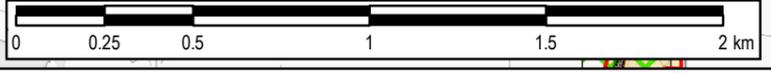
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Originator	Location	Role		

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Appendix BG2.3 Appeal Decisions and Examiner Reports Referred to in Section 4 of My Proof

- BG2.3a** Land At Heathrow North Service Station, Shepiston Lane, Hayes (November 2021)
- BG2.3b** Dog Inn, Henley Road, Mappleborough Green B80 7DR (August 2021)
- BG2.3c** Secretary of State Decision Ref: APP/W0530/W/3210008 Whittlesford, Hinxton (April 2020)
- BG2.3d** Land North East of Junction 37 of the A1(M) Motorway, Marr Roundabout, Doncaster (July 2019)
- BG2.3e** Cobham Motorway Service Station, Cobham, Elmridge (February 2016)
- BG2.3f** Ouchthorpe Lane, Fieldhead, Wakefield (January 2016)
- BG2.3g** Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire (February 2015)
- BG2.3h** Land North of Berry Hill Purification Works, Throop, Bournemouth (October 2014)
- BG2.3i** Application for the Grade Separation of Junction 10A Serving the M1 (October 2013)
- BG2.3j** Application for the proposed M54 to M6 Link Road Development Consent Order (TR010054-001200) (21 April 2022)
- BG2.3k** M54 to M6 Link Road (TR010054-001200) – Extracts from Examiners' Report (21 July 2021)

**BG2.3a Land At Heathrow North Service Station, Shepiston Lane, Hayes
(November 2021)**



Appeal Decision

Site Visit made on 21 September 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2021

Appeal Ref: APP/R5510/W/21/3279160

Land At Heathrow North Service Station, Shepiston Lane, Hayes UB3 1LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by EG Group Limited against the decision of London Borough of Hillingdon.
 - The application Ref 76359/APP/2021/1525, dated 16 April 2021, was refused by notice dated 21 June 2021.
 - The development proposed is the development of an electric vehicle charging facility, access road, substation, switchgear enclosure and associated infrastructure.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The timing of this appeal has been such that both main parties have had the opportunity to comment on the effect of the revised Framework upon their respective cases and I have taken these matters into consideration in reaching my decision. I have determined the appeal in the context of the revised Framework, using the paragraph numbers of the latest version of the Framework.

Main Issue

3. The main issues are:
 - Whether or not the proposed development would be inappropriate development within the Green Belt, having regard to the Framework and any relevant development plan policies;
 - Whether or not the proposed development would preserve the openness of the Green Belt or conflict with the purposes of including land within it;
 - The effect of the proposed development on the character and appearance of the surrounding area; and
 - If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

4. The appeal site is located within the Green Belt, sandwiched between the M4 motorway to the south of the site and Shepiston Lane to the north. Heathrow airport is a short distance to the south of the M4. The appeal site lies immediately adjacent to a recently developed drive-through coffee shop and car park on Shepiston Lane, itself an extension to an existing petrol filling station (PFS) complex, whilst a short distance further west lies a large modern hotel.
5. The appeal site is comprised of sloping bunds surrounding the southern and eastern sides of the coffee shop car park and access roads. Photographs submitted by the appellant show these areas to be recently re-graded and replanted to grass. Trees and shrubs provide a visual screen atop the bund to the south and the motorway beyond, with a more overgrown scrubby area to the east. Three trees, protected by a Tree Preservation Order, stand within the site.

Whether inappropriate

6. The fundamental aim of Green Belt policy, the Framework states, is to prevent sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Openness is the absence of development and it has both spatial and visual aspects. Framework paragraph 138 sets out the five purposes of the Green Belt.
7. The construction of new buildings within the Green Belt should be considered, with the exception of the forms of development set out at Framework paragraph 149, to be inappropriate. Framework paragraph 150 goes on to state that certain other forms of development are also not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Local Plan: Part One (LP1) policy EM2, Local Plan: Part 2 (LP2) policy DME14 and London Plan policy G2 reflect the provisions of the more recent Framework and I give them weight accordingly.
8. It is submitted by the appellant that the proposed electric vehicle (EV) charging station is not inappropriate development by virtue of Framework paragraph 150. That paragraph states that engineering operations¹ and local transport infrastructure which can demonstrate a requirement for a Green Belt location² may be considered to be not inappropriate development, subject to the provisos set out above.
9. However, with regard to engineering operations whilst the proposal does contain elements which may be considered engineering operations in their own right, these works are part and parcel of a larger overall development which should be assessed as a whole. Taking the proposal as a whole, therefore, I do not consider the proposed development to be an engineering operation for the purposes of Green Belt assessment.
10. The Framework does not define what constitutes 'local transport infrastructure'. However, the Council have not explicitly challenged the appellant's approach that the proposed development should be considered under the local transport

¹ Framework paragraph 150(b)

² Framework paragraph 150(c)

infrastructure provision set out in the Framework². Nor have the Council, despite disputing the extent to which the proposal requires a Green Belt location, sought to challenge the appellant's assessment of alternative EV charging points close to the appeal site and the nearby motorway junction.

11. The proposal would provide transport-related infrastructure in the form of ten EV charging units in an immediate area not well served by the fastest public EV charging points. Whilst the source and nature of the energy provided by the charging units may differ from that provided by fuel pumps at a conventional PFS they are essentially similar in purpose. Neither party has robustly or comprehensively demonstrated how the proposal falls within the Framework's description of 'local transport infrastructure' as opposed to merely being infrastructure related to transport.
12. Even if I were to conclude that the proposed EV charging station could satisfactorily be considered as 'local transport infrastructure' however, the Framework states that a requirement for a Green Belt location must be demonstrated. The appellant is in the business of providing roadside facilities that provide a fuel, retail and food and drink offer. This, it is explained, precludes the delivery of stand-alone EV recharging facilities, or the delivery of EV charging facilities at other, non-Euro Garages, sites.
13. The appellant operates two other sites within the vicinity of Heathrow airport and the motorway network. Neither, the appellant states, are suitable or preferable to the appeal site. I have no evidence to suggest that that is disputed but nor does it demonstrate a requirement for a Green Belt location in the current instance. For the appellant, it may be desirable but that does not amount to a requirement in the parlance of the Framework. Nor has it been demonstrated that existing facilities at the appellant's other sites could not be repurposed to accommodate the shift, likely to continue ahead of legislative changes regarding the sale of new petrol and diesel-engined vehicles in 2030, from petrol and diesel vehicles to EVs. As such, the extent of the appellant's demonstration of alternative sites is limited and fettered as a consequence and cannot be relied upon to demonstrate a requirement for a Green Belt location.
14. Thus, for these reasons, the proposed EV charging station development is not local transport infrastructure, nor has it been demonstrated that it requires a Green Belt location. The exception provided by Framework paragraph 150(c) does not therefore apply to the proposal before me.

Openness

15. Even if I were to conclude that the proposal was 'local transport infrastructure' which could demonstrate a requirement for a Green Belt location, Framework paragraph 150 development must also preserve the openness of the Green Belt and not conflict with the purposes of including land within it. I turn now to the matter of openness and the purposes of including land within the Green Belt.
16. The existing drive-through coffee shop building stands adjacent to the forecourt entrance to the PFS. In very broad terms, its physical and visual relationship with the PFS canopy is very similar to that of the kiosk / shop / sales building with the canopy. It is also evident upon reading the conclusions

of a previous Inspector in relation to the 'drive-thru' development³ that this relationship was a key element of the reasoning in allowing that appeal.

17. The appeal site is on the far side of the drive-through coffee shop's car park from that building and, in turn, the rest of the PFS. Although not substantial structures in the manner of the PFS forecourt canopy or the drive-through building, the canopies over the charging bays are nevertheless not insignificant structures. Whilst the appellant seeks to emphasise the modest scale of the charging points and downplay their size, I do not agree, and they add to the bulkiness and clutter of the proposed development.
18. Each canopy would stand between approximately 3.2 metres and 3.8 metres in height, each supported by a single vertical column. Their sloping roofs would be angled towards the south, with solar panels atop, in two rows of three and four canopies, respectively. The roofs would almost overlap each other resulting in a rise-and-fall roofline along the length of both rows.
19. Although essentially open-sided, the structures would not, from many angles, be viewed in the manner projected by the submitted elevations. Viewed dynamically, the height of the canopies and their rise-and-fall roofs and the cumulative impact of two rows of charging units and canopies would be a substantial intervention on a site some distance from the existing coffee shop and PFS complex.
20. Unlike the coffee shop unit relative to the PFS, the charging station would stand some distance from the coffee shop building and further still from the PFS. Although seen in close context with the furthest, open extent of the existing car park, the canopies would appear dislocated in both visual and physical terms from the existing buildings and structures within the coffee shop and PFS complex. So too would the substation and switchgear enclosure, where two substantial cabinets would be set within a recessed area in the northern bund, detached from both the existing development and structures, and also detached from the proposed EV charging stations and canopies.
21. Moreover, both elements would be sited within what is currently a sloping, landscaped bund beyond the eastern and northern edges of the existing car park. Neither the canopies, the charging units, substation and switchgear nor access road and turning area would be within, or contained by, the existing bunds. That the coffee shop building and its car park was contained within the existing bunds was a source of support for the previous development. That would not be the case in this instance, the proposal instead extending into and beyond the existing bunds previously considered to visually contain other developments, and into an area of scrub vegetation and trees beyond.
22. Due to the distance between the appeal site, the proposed structures within it and existing buildings and structures at the coffee shop and PFS complex, the proposal would result in the further, incremental, outward spread of existing development. There would as a consequence be a loss of openness in both spatial terms, through the presence of the canopy structures and charging units, and in visual terms from the further outward spread of development along Shepiston Lane.

³ APP/R5510/W/19/3229922

23. Although the extent to which the appeal site and neighbouring group of buildings can spread further eastwards along Shepiston Lane is limited by the narrowing spit of land between it and the motorway, the continued spread of development at this location would cause harm to the openness of the Green Belt. I acknowledge the constant presence of the motorway and its proximity to the appeal site, and the effect that this has on the experience of the Green Belt in this location. However, this to my mind does not diminish the Green Belt harm that would arise from the proposed development.
24. The area of scrub vegetation and trees beyond the existing developed area of the petrol filling station and coffee shop building makes an important contribution, in the context of the surrounding uses, to Green Belt openness. The appeal site is part of that area and contributes to openness and as such contributes to providing relief from the oppressive nature of the motorway and its traffic. The further outward spread of development around the existing PFS complex would erode the openness of a pressured area of Green belt, causing further, albeit limited, harm to openness.
25. Local Plan: Part 1 (LP1) policy EM2 states that proposals within the Green Belt will be assessed against national and London Plan policies, whilst Local Plan: Part 2 (LP2) policy DMEI4 and London Plan policy G2 reflect the Framework's approach to development in the Green Belt. The proposal would not, for the reasons set out above, benefit from the exceptions provided by Framework paragraph 150(b) or 150(c) and is therefore inappropriate development in the Green Belt.

Character and appearance

26. The proposed EV charging station would be viewed in the commercial and transport related context of the existing PFS and drive-through buildings. Within the drive-through building's associated car park are a range of fixtures and fittings, including lighting columns, height restriction beams, signage and an intercom unit for ordering. The EV charging units and canopy structures would not be out of place amongst such features.
27. Whilst the proposal would result in moderate harm to Green Belt openness for the reasons set out above, it does not necessarily follow that the proposal would be harmful to the character or appearance of the surrounding area. Despite the loss of overgrown vegetation from the area to the east of the existing car park, the proposed development would be seen in the context of the heavily commercialised PFS and drive-through building. The hotel building further to the west adds to the cluster of commercial and transport-related buildings, whilst the motorway is an ever-present factor within the Shepiston Lane environment.
28. The charging units and canopies would not be entirely alien structures in the context of the PFS complex and whilst the proposal would fail to preserve openness, causing moderate harm in terms of Green Belt openness, it would not cause harm to the character or appearance of the appeal site and its immediate locality. However, the absence of harm or conflict with LP2 policy DMEI4, insofar as its provisions relate to matters of character and appearance, is a neutral factor and weighs neither in support of, nor against, the proposal.

Other considerations

29. It is not disputed between the parties that local EV charging provision is limited in terms of both numbers of units and access to the fastest forms of charging units. The need for further and improved provision is noted by the Council. The 2030 Government target for prohibiting the sale of new diesel and petrol vehicles is drawing closer and the parties acknowledge the need for increased provision of, and access to, EV charging facilities to further facilitate the shift in the method of propulsion and the uptake of EVs.
30. The proposed development would also facilitate access to some of the fastest chargers currently available – capable, it is stated by the appellant⁴, of adding up to 218 miles of range to a suitable vehicle in just 15 minutes - and faster than the locally available alternatives. Despite the somewhat limited qualitative and quantitative assessment of provision and demand for charging facilities, these broad factors nevertheless carry significant weight in support of the proposal.
31. The canopy above each charging unit would accommodate solar PV panels which would provide the main power source for the charging points. The sustainable source of energy for the units, at least in the main, is also a positive factor which weighs moderately in support of the proposed development.
32. Taken together, these factors, and the contribution that the scheme would make towards an albeit unquantified reduction in carbon emissions and improving local air quality, all weigh in support of the proposal. I therefore give these factors significant weight in the role that they would play in encouraging a shift away from petrol and diesel-engined vehicles and ensuring that EV charging facilities become as accessible as petrol filling stations.

Green Belt balance

33. Inappropriate development is, by definition, harmful to the Green Belt. Substantial weight should be given to any harm to the Green Belt and proposals should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
34. The proposed development is inappropriate development in the Green Belt which fails to preserve the openness of the Green Belt. It would also result in the further outward sprawl of development around the petrol filling station. These are all matters to which I give substantial weight, in line with the Framework's approach to such matters. The proposal would as a consequence be in conflict with the purposes of including land within the Green Belt.
35. There are, as I have set out above, other considerations to which I give moderate and significant weight to and which weigh significantly in support of the proposal. The absence of harm to character and appearance is a neutral factor which weighs neither in support of nor against the proposal.

⁴ 'Charging Times and Distance Guide' Electric Car Chargers Uk / Office of Low Emission Vehicles – based on chargers being 150kW (Ultra) to 375kW

36. The Framework is clear that not only should substantial weight be given to any Green Belt harm, but that 'very special circumstances' will not exist unless that harm, and any other harm, is clearly outweighed by other considerations. Whilst there are therefore other considerations that weigh in support of the proposal in the Green Belt balance, they would not, either individually or cumulatively, clearly outweigh the Green Belt harm sufficient to amount to the 'very special circumstances' envisaged by the Framework.

Conclusion

37. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR

BG2.3b Dog Inn, Henley Road, Mappleborough Green B80 7DR (August 2021)



Appeal Decision

Site visit made on 22 June 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/J3720/W/21/3267947

Dog Inn, Henley Road, Mappleborough Green B80 7DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Euro Car Parks Limited against the decision of Stratford on Avon District Council.
 - The application Ref 20/02106/FUL, dated 28 July 2020, was refused by notice dated 10 November 2020.
 - The development is erection of a 1 x 4 metre high column with automatic number plate recognition (ANPR) camera.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Development has been carried out and therefore planning permission is being sought retrospectively. The appeal has been determined using the plans submitted to the Council, which provide the basis for which planning permission is being sought.
3. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.

Main Issues

4. The main issues are:
 - (a) whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - (b) the effect on the Green Belt's openness and the area's character and appearance; and
 - (c) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify development.

Reasons*Inappropriate Development*

5. The site comprises land associated with the Dog Inn, which is a grass verge located adjacent to an access off Henley Road. The immediate vicinity is characterised by residential dwellings, education facilities and garden centres. Beyond that is open countryside, and this is reflective of the site's location within the West Midlands Green Belt.
6. The development comprises the erection of a 1 x 4 metre high column with an automatic number plate recognition (ANPR) camera and associated cabinet. It is understood that the ANPR camera functions for the private benefit of the Dog Inn and is of limited utility to the wider public transport network.
7. In this context, the Framework is clear that new buildings are inappropriate development in the Green Belt, and there is no evidence in front of me demonstrating that the ANPR camera does not comprise a building¹.
8. Therefore, to be regarded as not inappropriate development it would need to satisfy one of the exceptions identified under Paragraph 149 of the Framework or comprise a specified form of other development under Paragraph 150 of the Framework.
9. Paragraph 150 c) of the Framework sets out that local transport infrastructure is regarded as being not inappropriate in the Green Belt, provided such infrastructure preserves its openness, does not conflict with the purposes of including land within it and can demonstrate the need for a Green Belt location.
10. In this case, and in the absence of tangible countervailing evidence, the development would serve a private interest associated with the operation of the Dog Inn and would not contribute to the wider public transport network.
11. Consequently, I cannot conclude that it is local transport infrastructure, and it would not fall within Paragraph 150 c) of the Framework. Accordingly, the development comprises a new building which fails to satisfy the exceptions identified under Paragraph 149 of the Framework or comprise a specified form of other development under Paragraph 150 of the Framework.
12. Therefore, the development comprises inappropriate development in the Green Belt. Paragraph 147 of the Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework goes on to establish that substantial weight is given to any harm to the Green Belt.
13. Policy CS10 within Stratford-on-Avon District Core Strategy 2016 (CS) provides the development plan's Green Belt policy and is largely consistent with the Green Belt policy within the Framework insofar as it is relevant to the subject matter of this case.

¹ Any structure or erection under Section 336 of the Town and Country Planning Act 1990.

14. In essence it also resists inappropriate development in the Green Belt, except in cases where very special circumstances are justified in accordance with the provisions of national policy and does not include provision for development akin to ANPR cameras within the Green Belt.

Effect on Openness and Character and Appearance

15. It is clear from the site's context that the development would sit amongst other similar kinds of structures and erections, such as lampposts, traffic lights, signage, bollards, and electrical kiosks, among other things. The development would be similar in its utilitarian nature, scale, and siting, and alongside these other structures and erections would be read collectively as an item of street furniture. This helps the development assimilate neatly into the local context.
16. Given the limited footprint of the development, it would have a correspondingly limited effect on the spatial component of the Green Belt's openness. Similarly, due to its relationship and consistency with other street furniture in the immediate locality, the development would have a limited effect on the visual component of the Green Belt's openness.
17. Notwithstanding the above, there is no evidence that an assessment of openness or other such effects on the Green Belt can overcome my earlier findings on the provisions within Paragraph 147 and 149 of the Framework, which makes clear that inappropriate development is, by definition, harmful to the Green Belt.
18. The development would assimilate into the character and appearance of the area for similar reasons outlined in my preceding paragraphs in relation to effects on openness, due to its position amongst other similar forms of street furniture. Consequently, it would not harm the character and appearance of the area or the qualities of the Arden Special Landscape Area.
19. Overall, the development would not harm the character and appearance of the area and would be in accordance with Policy CS.9, CS.12 and AS.10 of the CS, which among other things requires development to respect the relationship with the landscape. However, the development would still harm the Green Belt by reason of inappropriateness.

Other Considerations and Very Special Circumstances

20. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.
21. In relation to effects on the character and appearance of the area, an absence of harm or a reduced level of harm should not be counted as a positive consideration in support of the development, wherein the relevant judgement² has established that the absence of a severe harm cannot reduce the harm by reason of inappropriateness.

² R (Lee Valley Regional Park Authority) v Broxbourne BC [2015] EWHC 185 (Admin)

22. In order for other considerations to clearly outweigh the totality of harm these must be positive factors that weigh in favour of the proposal. Enhancing the Green Belt's openness may comprise one such other consideration that could potentially be advanced in support of a development. However, there is no evidence of enhancements being delivered in conjunction with the development in this case.
23. It is understood that the ANPR camera functions for the private benefit of the Dog Inn and is not of any utility or operational benefit to the wider public transport network. There may be other benefits associated with how the Dog Inn operates on a day to day basis and socio-economic benefits therein. However, it has not been demonstrated how the ANPR camera would boost socio-economic activity or reduce antisocial activity to any particular degree.
24. For example, among other things, there are no business records demonstrating the positive effect the ANPR camera has had on trade since it was installed. Consequently, it is not clear what level of public benefit can be derived from the development.
25. I note the emerging Site Allocations Plan. However, given that it has not been examined, allocations within the plan can change accordingly, and would carry limited weight in the balance.
26. Overall, the development is inappropriate development in the Green Belt, and I have found that the other considerations in this case would be limited and would not clearly outweigh the identified Green Belt harm which carries substantial weight.
27. The very special circumstances necessary to justify the development do not exist. Consequently, the development would not accord with Paragraphs 147, 148, 149 and 150 of the Framework, or Policy CS.10 of the CS, which among other things seek to control inappropriate development in the Green Belt.

Conclusion

28. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

BG2.3c Secretary of State Decision Ref: APP/W0530/W/3210008 Whittlesford, Hinxton (April 2020)



Ministry of Housing,
Communities &
Local Government

Paul Rogers
Terence O'Rourke

Our ref: APP/W0530/W/18/3210008
Your ref: S/4099/17/OL

Paul.rogers@torltd.co.uk

9 April 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY
SMITHSONHILL LIMITED
LAND TO THE EAST OF THE A1301, SOUTH OF THE A505 NEAR HINXTON AND
WEST OF THE A1301, NORTH OF THE A505 NEAR WHITTLESFORD, HINXTON
APPLICATION REF: S/4099/17/OL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Woolcock BNatRes(Hons) MURP DipLaw MRTPI who held a public local inquiry on 11-13, 18-21 June and 2-5 July into your client's appeal against the decision of South Cambridgeshire District Council to refuse your client's application for planning permission for an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/ north of A505, and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works in accordance with application ref: S/4099/17/OL, dated 20 November 2017.
2. On 23 October 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Phil Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 2853
Email: PCC@communities.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR311, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On 19 December 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the decision by South Cambridgeshire District Council to resolve to approve planning application S/4329/18/OL on 24 October 2019. These representations were then circulated to the main parties.
7. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of these representations is at Annex B. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of the South Cambridgeshire Local Plan 2018, which was adopted in September 2018. The application was originally determined by the Council in the context of the South Cambridgeshire Development Control Policies DPD 2007, the South Cambridgeshire Core Strategy DPD 2007 and the draft South Cambridgeshire Local Plan 2014. The Secretary of State considers that relevant development plan policies include those set out at Annex B of the IR.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

Green Belt

13. The part of the proposal to take place in the Green Belt includes the bus/cycle interchange and pedestrian/cycle connections along with part of the proposed bridge. The Secretary of State has carefully considered the Inspector's assessment of the proposals impact on the Green Belt at IR320-331 and he considers that the transport infrastructure would provide useful connections for general public use. He further agrees with the Inspector at IR326 that it would be very difficult to achieve the transport infrastructure works without using Green Belt land. The Secretary of State agrees with the Inspector (IR326) that the interchange works are local transport infrastructure that would require a Green Belt location.
14. The Secretary of State agrees with the Inspector at IR327 that the transport infrastructure would erode the open feel of this part of the Green Belt in special and visual terms and would harm openness. He further agrees with the Inspector at IR328 that the works would have an urbanising influence on this part of the open countryside and that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. However, he agrees with the Inspector (IR329) that the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the threshold set out at paragraph 146 of the Framework. As such he concludes that the exception for local transport infrastructure would apply, and that the proposed development would therefore not be inappropriate development in the Green Belt. As such the Secretary of State concludes that the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy.

Impact on character and appearance

15. The Secretary of State has considered the impact of the proposals on character and appearance as set out in IR332-342. He notes that the site is not a designated landscape and is identified in the Local Plan as Landscape Character Area B – Chalklands. The Secretary of State agrees with the Inspector's view at IR335 that a development of this scale in this location would have an adverse effect on the landscape character of the area of substantial significance. He also agrees with the Inspector that mitigation measures would never completely screen the built form within the AgriTech park, but would transform the open landscape by closing off distant views and by increasing the sense of enclosure. The Secretary of State agrees with the Inspector that this would result in a major landscape change that would not be mitigated over time.
16. In terms of visual effects, the Secretary of State agrees with the Inspector at IR337 that the scheme would have an enduring adverse effect of moderate to substantial significance on the visual amenity of the area. Overall, the Secretary of State agrees with the Inspector at IR342 that the proposed development would have an adverse effect on the character and appearance of an area of substantial significance. He agrees with the Inspector that due to the impacts of the proposal on local character and distinctiveness,

the proposal would conflict with SCLP Policy NH/2 and would also conflict with the design principles set out in SCLP Policy HQ/1.

Impact on the setting and appearance of designated heritage assets

17. There are six heritage assets in the locality of the proposed development, four of which are designated, including the Grade II listed Hinxtion Grange, the Grade II* listed Hinxtion Church of St Mary and St John the Evangelist and Hinxtion conservation area. The Secretary of State has considered the Inspector's consideration of the heritage impacts at IR343-349. He agrees with the Inspector that the loss of open land adjacent to designated park land at Hinxtion Grange would result in harm to the listed buildings at the Grange. He further agrees that this harm would be less than substantial. He also agrees that the proposal would also result in an adverse change to the setting to the Hinxtion conservation area and the Church of St Mary and St John the Evangelist. He agrees with the Inspector (IR346-347) that this harm would be less than substantial, that there would not be an impact on Pampisford Hall, and that there would be moderate harm caused to the significance of a non-designated WWII pillbox. The Secretary of State agrees with the Inspector at IR348 that the proposal would lead to less than substantial harm to both designated and non-designated heritage assets. He further agrees that this harm would be of moderate significance. In line with paragraph 193 of the Framework, the Secretary of State considers that considerable weight should be given to these harms.

Impact on agricultural land

18. The proposal would result in the loss of 33 ha of best and most versatile (BMV) agricultural land. The Inspector considers at IR349 that this loss would be at odds with the requirement in the Framework to recognise the economic and other benefits of BMV agricultural land. He agrees with the Inspector's conclusion that this loss would result in some harm to agricultural land with an adverse effect of minor significance.

Transport and highway safety

19. The Secretary of State has considered the Inspector's consideration of transport and highway matters at IR350-355. He agrees with the Inspector's conclusions that subject to the appropriate planning conditions and obligations, there are no grounds to dismiss the appeal for highway safety reasons. He further agrees that securing highway improvements through the scheme would be a benefit of minor significance, and that the proposal would comply with SCLP Policies TI/2, TI/3 and TI/8.

Employment and economic benefits

20. The Secretary of State has carefully considered the Inspector's consideration of the employment and economic impacts of the proposal at IR365-376. He agrees that there would be benefits in providing agricultural land for field trials and that the proposed incubator units would be beneficial to start up enterprises and that the provision of AgriTech employment floorspace would generate considerable economic benefits. He agrees with the Inspector's view at IR370-371 that the benefits of the proposed AgriTech park could only be realised if an effective user restriction was imposed to ensure the occupiers complied with specified AgriTech requirements so that the development did not become a general business park, which would be of limited benefit. He agrees with the Inspector that none of the proposed conditions to restrict occupation would meet the tests of necessity, reasonableness and precision, and that the absence of an appropriate mechanism to control occupation of the park diminishes the weight that can be given to

the claimed benefits of the development. The Secretary of State agrees with the Inspector's conclusion at IR375 that the need for and benefits of the proposed development would be of minor significance.

Biodiversity

21. The Secretary of State agrees with the Inspector's view at IR356-357 that the proposal would, overall, have a beneficial effect of minor significance on biodiversity of the area.

Planning conditions

22. The Secretary of State has given consideration to the Inspector's analysis at IR372-374 and IR390-408 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

23. Having had regard to the Inspector's analysis at IR409-411, the planning obligation dated 31 July 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR410 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal.

Occupation of the site

24. The Secretary of State has had regard to the Inspector's conclusion (IR417) that were he minded to allow the appeal, it would be necessary to go back to the parties to devise controls on the future occupation of the site. However, the Secretary of State agrees that (IR381) even were the site to be used as an AgriTech park, and substantial weight thus to be afforded to the benefits of the scheme, the planning balance would still fall against the proposal. As such the Secretary of State concludes that any such controls would not alter his decision, and it is therefore not necessary to seek the parties' views on them.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in conflict with SCLP policies NH/2 regarding character and landscape, HQ/1 concerning preservation of the rural area, NH/3 on preserving agricultural land, SC/9 on countryside, E/9 regarding the promotion of clusters, and S/7 on development outside development frameworks, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

26. The Secretary of State considers that the proposal's impact on character and appearance attracts substantial weight against the proposal. The loss of BMV agricultural land also attracts slight weight against the proposal. Conflict with the aims of the Framework also weighs against the proposal.

27. The Secretary of State considers that the economic benefits attract slight weight in favour of the proposal and that the provision of biodiversity improvements and transport benefits also provide slight weights in favour of the proposal.
28. As the Secretary of State has concluded that the proposal would not result in harm to the Green Belt, and that there would be no conflict with local or national Green Belt policy, this is neutral in the planning balance.
29. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the above heritage assets is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm.
30. Overall the Secretary of State considers that the benefits of the appeal scheme as set out above are not collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the heritage assets. He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.
31. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission. He therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/ north of A505, and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works in accordance with application ref: S/4099/17/OL, dated 20 November 2017.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
34. A copy of this letter has been sent to South Cambridgeshire District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex B Schedule of representations

Representations received in response to the Secretary of State's letter of 9 December 2019

Party	Date
Terence O' Rourke, on behalf of the appellant	13 January 2020
Duxford Parish Council	14 January 2020
Ickleton Parish Council	16 January 2020
South Cambridgeshire District Council	16 January 2020
Hinxton Parish Council	17 January 2020



Report to the Secretary of State for Housing, Communities and Local Government

by **John Woolcock** BNatRes(Hons) MURP DipLaw MRTPI
an Inspector appointed by the Secretary of State

Date: 18 November 2019

Town and Country Planning Act 1990 Sections 78 and 79

appeal by

SmithsonHill Limited

against the decision of

South Cambridgeshire District Council

Inquiry Held on 11-13, 18-21 June and 2-5 July 2019

Land to the east of the A1301, south of the A505 near Hinxton and west of the A1301, north of the A505 near Whittlesford

File Ref: APP/W0530/W/18/3210008

File Ref: APP/W0530/W/18/3210008**Land to the east of the A1301, south of the A505 near Hinxtton and west of the A1301, north of the A505 near Whittlesford**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by SmithsonHill Limited against the decision of South Cambridgeshire District Council.
- The application Ref.S/4099/17/OL, dated 20 November 2017, was refused by notice dated 13 March 2018.
- The development proposed is an AgriTech technology park comprising up to 112,000 m2 (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/north of A505 and infrastructure works including new vehicular access, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works.
- The appeal was recovered for determination by the Secretary of State by direction dated 23 October 2018.

Summary of Recommendation: The appeal be dismissed.

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ABBREVIATIONS

AAP	Area Action Plans
BMV	Best and most versatile agricultural land
CCC	Cambridgeshire County Council
CD	Inquiry Core Document
CPCA	Cambridgeshire and Peterborough Combined Authority
CPIER	Cambridgeshire and Peterborough Independent Economic Review
CPRE	Campaign to Protect Rural England
DAS	Design and Access Statement
Defra	Department for Environment Food and Rural Affairs
DPC	Duxford Parish Council
EA	Environment Agency
EIA	Environmental Impact Assessment
ECC	Essex County Council
ES	Environmental Statement
FEI	Further Environmental Information
<i>Framework</i>	<i>Revised National Planning Policy Framework 2018</i>
GLVIA3	<i>Guidelines for Landscape and Visual Impact Assessment, Third Edition</i> Landscape Institute
GAPC	Great Abington Parish Council
<i>Guidance</i>	<i>National Planning Practice Guidance</i>
HPC	Hinxton Parish Council
IPC	Ickleton Parish Council
ID	Inquiry Document – document submitted at Inquiry
LAPC	Little Abington Parish Council
LCA	Landscape Character Area
LSCC	London Stansted Cambridge Consortium
LVIA	Landscape and visual impact assessment
MSA	Motorway services area
NE	Natural England
NDO	Neighbourhood Development Order
NIAB	National Institute of Agricultural Botany
NPSE	<i>Noise Policy Statement for England</i>
NUGV	North Uttlesford Garden Village
PPC	Pampisford Parish Council
SCDC	South Cambridgeshire District Council
SCLP	South Cambridgeshire Local Plan 2018
section 106	Section 106 of the Town and Country Planning Act 1990
SoCG1	Statement of Common Ground dated 3 October 2018 and updated on 3 June 2019
SoCG2	Transport Statement of Common Ground 16 May 2019
SoCG3	Statement of Common Ground re amended parameter plan
VSC	Very special circumstances for Green Belt policy
WPC	Whittlesford Parish Council
WWII	Second World War
1990 Act	Town and Country Planning Act 1990 as amended

Procedural and background matters

1. The application by SmithsonHill Limited (hereinafter the appellant) is for outline planning permission with all matters reserved. However, the application plans to be determined include parameter plans for land use, movement and access, landscape and open space, development density and height. Other details show on plans and the appeal documentation are illustrative material not forming part of the outline application.
2. The application was accompanied by an Environmental Statement (ES), dated November 2017, in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (hereinafter the EIA Regulations).¹ An addendum was submitted in February 2018 with additional information about transport, drainage and flood risk.² Further Environmental Information was submitted in May 2019 (FEI); with an additional landscape and visual impact assessment (LVIA), revisions to the traffic and lighting assessments, and an ecological walkover survey update.³ In response to consultation about the FEI 15 written submissions were received.⁴
3. South Cambridgeshire District Council (SCDC) refused the application on 9 grounds because, in summary, the proposal would conflict with relevant policies concerning; (1) unsustainable development located outside of the village development Framework and within the open countryside; (2) prematurity; (3) harm to the Cambridge Green Belt; (4) an inadequate LVIA and failure to preserve or enhance the local character of the area and unacceptable adverse impact on the countryside and landscape character; (5) insufficient information in the Transport Assessment; (6) a Stage 1 / 2 Road Safety Audit had not been carried out on all the submitted drawings; (7) insufficient information about parking demand and provision; (8) harm to the setting and significance of heritage assets; and (9) the loss of Best and Most Versatile (BMV) agricultural land.
4. The application was determined in the context of the then adopted South Cambridgeshire Development Control Policies DPD 2007, the South Cambridgeshire Core Strategy DPD 2007 and the draft South Cambridgeshire Local Plan 2014. These were superseded with the adoption of the South Cambridgeshire Local Plan 2018 (SCLP) in September 2018. Reason for Refusal 2 concerning prematurity was subsequently withdrawn in April 2019.⁵ SCDC also made a minor change to the wording of Reason for Refusal 6 to refer to the Local Highway Authority being not able to fully assess the scheme on the submitted information.
5. On 23 October 2018 the appeal was recovered for decision by the Secretary of State by a direction made under section 79 of the 1990 Act. The reason for the

¹ CD2.4. The transitional provisions in the Environmental Impact Assessment (EIA) Regulations 2017 mean that the 2011 EIA Regulations continue to apply because the request for a scoping opinion was made on 6 February 2017.

² CD3.3.

³ CD12.1-12.4.

⁴ Red Folder on Appeal File part 2.

⁵ CD5.5.

direction was that the appeal involves proposals for significant development within the Green Belt.

6. A Pre-Inquiry Note was issued on 7 May and updated on 30 May 2019 to deal with procedural matters.⁶ A Statement of Common Ground (SoCG1) between the appellant and SCDC is dated 3 October 2018 and was updated on 3 June 2019.⁷ Following the submission of further evidence and analysis, along with discussions after the application had been determined, the appellant, Cambridgeshire County Council (CCC) and Highways England signed a Statement of Common Ground on Transport Planning Matters dated 16 May 2019 (SoCG2).⁸ Following agreement at the Inquiry about the terms of planning obligations SCDC formally withdrew reasons for refusal 5, 6 and 7.
7. SCDC advised on 10 June that 12 written objections to the application had not been included in the appeal documents, and so objectors had not been notified about the appeal or the Inquiry. Letters giving notice were delivered on 10 June 2019.⁹ None of those notified has made any representations either on the appeal or to say that they wish to do so or to appear at the Inquiry. In those circumstances the appellant considers that it can properly be concluded that none of those affected has been prejudiced by SCDC's error. As the Inquiry was not closed in writing until 16 August 2019 there was an opportunity for those who wished to do so to appear or to submit written submissions.
8. On the first day of the Inquiry the appellant submitted a revised landscape and open space parameter plan Drawing No.235701B-LA-PP103A.¹⁰ Given that the parameter plans are part of the proposal assessed in the ES and FEI, the parties agreed at the Inquiry that this would be an amendment to the proposed development at the appeal stage. The parties agreed a statement of common ground (SoCG3) in relation to this proposed revision.¹¹ SoCG3 provides that the original plan contained a minor error and omitted to show the removal of approximately 70 m of hedgerow along the north-eastern side of the A1301 to accommodate the northern visibility splay for the proposed access. The revised plan indicated a replacement hedgerow planted slightly further back into the appeal site.
9. The parties agree, given that the proposed changes are minor, that there would be no prejudice to any interested persons if the appeal was determined on the basis of the revised parameter plan. Whether the determination of the appeal should be on the basis of the amended parameter plan is a matter for the Secretary of State. The Inquiry proceeded on the basis that it would hear evidence about both the original and amended parameter plans. During the discussion about possible planning conditions the appellant requested that an addition be made to the description of the proposed development to specify 'surface' water pumping. There was no objection to this minor correction.

⁶ PIN on file.

⁷ CD1.6.

⁸ CD1.7.

⁹ ID7.

¹⁰ APP5.5.

¹¹ ID50.

10. I visited the area in which the appeal site is located on several occasions during the course of the Inquiry, on different days and at various times of the day, including the am and pm peak hours for traffic. An accompanied site visit was conducted on 4 July 2019, which included visiting Granta Park and Chesterford Business Park.¹²
11. Draft planning obligations were submitted in the lead up to the Inquiry. The terms of an agreement were discussed at the Inquiry, and the parties were given time for a signed version to be submitted. The agreement between the appellant, landowners, SCDC and CCC is dated 31 July 2019.¹³ The section 106 obligations include provisions concerning a public and private transport service strategy, a private shuttle bus, parking management and monitoring, a new bus/cycle interchange, along with improvement works to McDonalds roundabout, and to the junctions at A505/Moorfield Road and A505/Hunts Road. The obligations are summarised in Annex A to this report.

The proposed development

12. The scheme proposes an AgriTech technology park comprising up to 112,000 m² (gross) of employment floorspace. How AgriTech development would be defined is considered in more detail later in this report.
13. Planning conditions agreed by the appellant and SCDC would limit the gross external floorspace of the permitted use classes to;
- B1a office / B1b R&D / B1c light industrial - 92,000 m²
 - B1b laboratories - 11,800 m²
 - A3 / A5 - 2,000 m²
 - D1 - 3,000 m²
 - D2 - 3,200 m²
14. The appeal site consists of a main part (108.6 ha) proposed for commercial development, along with a 6.9 ha site for a bus/cycle interchange to the north-west of the main site. This would be accessed via a proposed foot/cycle bridge over the A505/A1301. Vehicular access to the main site would be via a new roundabout on the A1301. The scheme also proposes on and off-site highway works and improvements. Planning conditions would require works to be carried out to Junction 10 of the M11 and to the junction of the A11/A1307 prior to the occupation of buildings. A proposed planning condition would limit on-site car parking to 2,000 spaces.
15. Approximately 10.9 ha of land within the southern part of the main site would continue in agricultural use, with top soil from the development being redistributed over these fields to improve the agricultural land quality.
16. The proposed development would result in the loss of agricultural land, including 33 ha of grade 2 and 3a agricultural land, which is classified as BMV agricultural land.¹⁴

¹² The itinerary for the site visit is at ID70.

¹³ ID58.2.

¹⁴ ID23 and SoCG1 paragraph 5.28.

The site and surroundings

17. The A1301 forms the western boundary of the main site, beyond which lies farmland in the shallow valley floor of the River Cam with the village of Duxford (2 km from the site) on the western banks of the river. The site is bordered to the north by farmland, beyond which lies the A505 and the villages of Sawston and Pampisford (3 km and 1.5 km respectively). To the north-east is farmland, Pampisford Hall and its Park and Garden (1.5 km), the A11, Granta Park (a science, technology and bio-pharmaceutical park) and Great Abington (3 km). The Babraham Institute Campus also lies to the north.¹⁵ To the east the site is bordered by four private residences, by Hinxton Grange, Mighton Products (a sash window business), beyond which is farmland and the A11. Tichbaulk Road, which is a permissive right of way, borders the appeal site to the south. To the south-west are the village of Hinxton and the Wellcome Trust Genome Campus, a world leading campus for genome and biodata research.¹⁶ Cambridge city centre is approximately 12 km to the north of the main site. The main research/technology and business parks in and around Cambridge are shown on ID22 and companies listed at ID34.
18. The bus/cycle interchange site lies both within the countryside and within the Cambridge Green Belt, north of the A505, west of the A1301 and east of Whittlesford Parkway railway station, and includes a strip running north towards Sawston and the McDonald's roundabout. The River Cam runs through this part of the appeal site, beyond which lie a small industrial estate, the station and the railway line. Mill Farm Lane and a small cluster of dwellings lie to the north-west of the site. An aerial photograph of the appeal site and surrounds is at ID16.
19. Immediately to the south of the appeal site and Tichbaulk Road is Hall Farm, the main proposed "future expansion area" for the Genome Campus. An outline planning application for this development was submitted in December 2018.¹⁷ At the time of the Inquiry this had not been determined.
20. There are six heritage assets in the locality, four of which are designated; Hinxton Grange (grade II), the Stable and Coach House (grade II), Hinxton Church of St Mary and St John the Evangelist (grade II*), and Hinxton conservation area. Hinxton Grange associated designed parkland is a non-designated heritage asset (Historic Environment Record No.12121). A World War two (WWII) pillbox to the south-east of the Grange is also a non-designated heritage asset (Historic Environment Record No.15107).

¹⁵ ID56.

¹⁶ ID55 and ID61.

¹⁷ The outline planning application (ref: S/4329/18/OL), submitted in December 2018, is for a phased mixed use development comprised of up to 150,000 m² of flexible employment uses including research and development, office and workspace and associated uses falling within Use Classes B1, B2 and B8; up to 1,500 residential dwellings (Use Class C3); supporting community uses and social infrastructure including a nursery (Use Classes D1); conference facility (Use Class D1) and associated hotel (Use Class C1); retail uses including shops (Use Class A1).

21. The appeal site lies wholly within National Character Area 87, the East Anglian Chalk.¹⁸ In the Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape 1991, the site is located in character area 2 – Chalklands, within an area described as a broad-scale landscape of large fields, trimmed hedges and few tree over a smooth rolling chalkland landform.¹⁹ The site is located in character area B – Chalklands in the South Cambridgeshire District Design Guide SPD adopted March 2010. Key characteristics of this Landscape Character Area (LCA) are a distinctive landform of smooth rolling chalk hills and gently undulating chalk plateau, a mostly large-scale arable landscape of arable fields, low hedges and few trees giving it an open, spacious quality, in which small beech copses on the brows of hills, and occasional shelterbelts, are important features. This LCA has mostly a strong rural character though this is disrupted immediately adjacent to major roads, such as the A505 and the M11.²⁰

Planning policy guidance and statutory requirements

Development plan

22. The development plan for the area includes the South Cambridgeshire Local Plan 2018 (SCLP). Relevant policies are summarised in Annex B of this report.

National policy and guidance

23. *National Planning Policy Framework* (hereinafter the *Framework*) paragraph 80 provides that decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. This is particularly important where Britain can be a global leader in driving innovation. The *Framework* cites the Government's 2017 *Industrial Strategy: Building a Britain fit for the future*. Paragraph 82 of the *Framework* states that decisions should recognise and address the specific locational requirements of different sectors, including making provision for clusters or networks of knowledge and data-driven, creative or high technology industries.

24. Paragraphs 133, 134, 143, 144 and 146 of the *Framework* set out relevant policy for Green Belts, which is considered in more detail later in this report. Paragraph 170 provides that decisions should contribute to and enhance the natural environment by, amongst other things; protecting and enhancing valued landscapes, sites of biodiversity, or geological value and soils in a manner commensurate with their statutory status or identified quality in the development plan; recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMV agricultural land, and of trees and woodland; minimising impacts on and providing net gains for biodiversity. Footnote 53 states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

¹⁸ CD9.5.

¹⁹ CD9.1.

²⁰ CD6.9.

25. The parties commented on the recent revisions to the *National Planning Practice Guidance* (hereinafter the *Guidance*).²¹ The *Guidance* provides that the impact of a proposal on the openness of the Green Belt requires a judgement based on the circumstances. It adds that relevant matters could include spatial (volume) as well as visual impacts, along with the degree of activity generated, including traffic generation. In assessing the possibility of potential harm to a designated heritage asset the *Framework* requires it to be categorised as either less than substantial harm or substantial harm, and that great weight should be given to the asset's conservation. Any such harm requires clear and convincing justification. The *Guidance* provides that within each category of harm the extent of harm may vary and should be clearly articulated.

Statutory duty

26. The development must be considered in the context of the statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the desirability of preserving the setting of the grade II* listed Parish Church of St Mary and St John the Evangelist, and the grade II listed Hinxtton Grange, its stable and coach house.

The case for South Cambridgeshire District Council (SCDC)

The following summary of SCDC's case broadly follows SCDC's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.²²

The nature of the proposed development

27. There is a lack of clarity as to what form the proposed development could take. A substantial measure for research and development is not sought or expected. By day 9 of the Inquiry, the appellant was suggesting a new condition to control the use of the proposed development for AgriTech, which would comprise "all or any of the following purposes namely research into, development of, commercialisation of and production of goods, services and applications for use in agriculture, horticulture and the food chain". The wide breadth and scope of this definition is of concern.
28. The floorspace proposed could be delivered as B1(a) office floorspace or B1(c) light industrial floorspace. The appeal scheme could be one large corporate headquarters or multiple small manufacturing operations, producing goods for the food chain. The intended and likely range of occupiers are important matters which are material both to whether the claimed benefits of this scheme would be achieved and whether there is a need for a large single greenfield site, in the countryside, to accommodate such uses.
29. The proposals are wholly and entirely speculative. There are no committed future occupants for any of the floorspace proposed, and no material expressions of interest. Nor is the development funded. The proposals are in

²¹ ID71 and ID72.

²² ID2 and ID66.

outline form at this stage, but it is quite remarkable that no support in the form of a commitment or active consideration of the take up of floorspace can be shown by the appellant. The need for the proposals, and their claimed benefits, must be considered in that context.

30. SmithsonHill comprises Russell Smith Farms, a family farming business, and the Hill Group, a firm of housebuilders, with some limited experience in commercial development (Classes A and B1(a)). The appellant has no experience in the AgriTech sector, let alone in the bringing forward of development for that sector. This undermines confidence that the scheme and its claimed benefits can or would be successfully delivered. The appellant company (formerly known as Hinxton Land Limited) was at first promoting the appeal site for development, including as a corporate HQ, a conference centre or a hotel, without any suggestion of the need or appropriateness of AgriTech development on the site.²³
31. What the appellant seeks to secure here is without any established precedent in the UK. The absence of any precedent is not of itself a factor weighing against the proposal. However, it is certainly a factor which should lead to caution, particularly in conjunction with the wholly speculative nature of the scheme, as to whether the claimed need is genuine and whether there is confidence the claimed benefits can be delivered.

Character and appearance

32. It is common ground that the proposals would cause significant adverse landscape and visual effects, but there is disagreement about the extent, physical and temporal, of those effects. The appellant maintains that the proposals looked at as a whole "conserve" and "retain" the character of the local landscape, rather than enhance it. This cannot however be reconciled with its acceptance that there would be a substantial adverse effect on the landscape character within the entirety of the land within the red line during the construction stage reducing, in its judgement, to slight only by year 15.²⁴ Phasing over 15 years would mean that substantial adverse effects on the landscape would be accepted for up to 30 years after construction commences.
33. The timing of the primary mitigation proposals, the bunds and planting intended to screen the development, would depend upon the phasing of the proposals and cannot therefore be relied upon as delivering mitigation, as intended, at the start of construction or at any time before completion. The primary mitigation in large measure would depend upon the phasing because the bunds would be created through the topsoil generated by progressive cut and fill. There would be substantial adverse effects on the landscape within the appeal site for up to 30 years, a period of time which the GLVIA3 considers to be long-term.²⁵ This of itself renders the proposals in conflict with the local and national landscape policies.

²³ CD7.15 pp 2325.

²⁴ ID40 p 1, APP5.2 paragraph 5.1.8, CD2.4 p 9-14 and CD2.3 p 69.

²⁵ *Guidelines for Landscape and Visual Impact Assessment, Third Edition* Landscape Institute at CD9.4 paragraph 5.51.

34. However, the effects on landscape character would in reality be far greater, in two main respects: first, those effects would be experienced across the wider area of open Chalklands landscape within which the appeal site sits; second, they would not subside as a result of mitigation even by year 15 (i.e. after 30 years from the commencement of construction).
35. On the first point, there are important differences between the parties with respect to the definition of the landscape baseline, in particular whether the appeal site is to be treated as part of the open chalklands LCA or subdivided into two LCAs: (a) the wooded and enclosed Granta Valley LCA (identified as L5 on ID40), which covers the western side of the appeal site to be developed under the proposals, and (b) the open Chalk Hills LCA (identified as L6) which covers the eastern side of the appeal site to be kept largely free from built development under the proposals. The origin of L5 is the Cambridge Inner Green Belt Study of 2015.²⁶ However, it was beyond the scope of the Study to carry out a full and comprehensive assessment of the landscape character of the whole of the Cambridge Green Belt, or, indeed, the character of the countryside outside the Green Belt.
36. The appeal site is an indivisible part of a wider tract of arable land and parkland within the triangle of land defined by the fixed boundaries of the A11, the A505 and the A1301, which represents the gently undulating character of the Chalklands landscape, recognised in both the Cambridgeshire Landscape Guidelines and the South Cambridgeshire District Design Guide.²⁷ This LCA has a broad scale landscape of large fields with limited tree cover, and this description correctly and properly reflects any reasoned assessment of the appeal site and its landscape character and context.²⁸ This landscape is a “valued landscape” in *Framework* paragraph 170(a) terms.
37. There would be a substantial adverse effect beyond the immediate confines of the site frontage to include the A1301, Tichbault Lane, the A505 and the rural setting of Hinxton, which would reduce to moderate adverse for a wider part of the triangular tract of Chalklands LCA in which the site lies, by reason of the severing effect of the proposals on the landscape character of that area.
38. It would not be possible to meaningfully mitigate the landscape effects of the proposals. The bridge proposed across the A505/A1301 would inevitably urbanise the local highways network and would not be capable of any meaningful mitigation. The quantum, mass, siting, and the partially elevated position in which the buildings comprising the business park would be located, would erode the established landscape character. This would unavoidably generate substantial adverse landscape impacts which cannot acceptably be addressed. The proposed landscape strategy could over time, and to some extent, shield some element of these buildings from wider view, but the enclosing of the appeal site on its southern and western boundaries by bunds up to 3.5 m high with planting would erode the open nature of the site and its existing character and landscape contributions.

²⁶ CD9.3.

²⁷ LPA3.2 paragraphs 5.9-5.18, and SoCG1 paragraphs 5.20-5.21.

²⁸ CD9.1, CD6.9, LPA3.2 paragraph 6.78, and CD9.4 Box 5.1 at p 84.

39. Given the limited space available to accommodate bunds within the parameter plans, 3.5 m high bunds would likely be highly engineered features. Screening built development within the site would itself appear alien in the otherwise open Chalklands landscape. This is demonstrated by the photomontages for viewpoint 2 from the Church of St Mary and St John the Evangelist looking north²⁹, viewpoint 4 from the A1301 looking west³⁰, and viewpoint 10 from Tichbault Road looking north³¹. The “shallow bunding” present at the boundary of part of the existing Wellcome Trust campus, is not a precedent for the incongruous bunding and planting that the appellant proposes.
40. The appellant relies on secondary mitigation to reduce landscape effects at year 15 from moderate to slight.³² Secondary mitigation is defined within the ES as potential measures that could come forward at the reserved matters stage, including minimising the scale of buildings and articulation of built form, architectural design, boundary treatments, the use of materials, design and location of lighting and internal landscape structure. But at detailed design stage it would not be possible to compel the introduction of buildings at a height less than the maxima shown on the height parameters plan. Furthermore, several of these matters, such as internal landscape structure, are already encompassed within the parameter plans included within the assessment of primary mitigation, such that there is a risk of double-counting.
41. Regarding visual impact, the appellant accepts significant visual effects from many receptors during construction and at completion. This extent of impact would remain for receptors along Tichbault Road, from Hinxton Grange and from Hinxton conservation area at year 15 following completion with primary mitigation.³³ However, the visual effects would be greater and much more extensive than accepted by the appellant.³⁴
42. The principal differences between the parties relate to (1) the effect of primary and secondary mitigation on visual impact, and the visual effect therefore at 15 years following completion, (2) the visual effects of the highways infrastructure element of the proposals on receptors, in particular when approaching the McDonalds roundabout, and (3) the significance of visual effects that would be felt by more distant receptors.
43. The appellant uses secondary mitigation to justify a reduction in visual impact for receptors at Hinxton Grange from a moderate adverse (and significant) impact at year 15 post completion with primary mitigation, to a slight adverse impact (which is not significant) in the same year when regard is had to secondary mitigation. The Design and Access Statement (DAS) recognises that Hinxton Grange was designed to have an open view across the designed parkland to the west.³⁵ That view has not changed since Hinxton Grange was built in 1835. But it would change substantially with the introduction of the

²⁹ CD12.2 Figures 9.29-33.

³⁰ CD12.2 Figures 9.39-43.

³¹ CD12.2 Figures 9.60a-62b.

³² CD2.4 Table 9.4 pp 9-28/30.

³³ CD2.4 Table 9.3 at 9-28, APP5.2 at 5.1.21, and CD12.1 paragraphs 2.52-4.

³⁴ ID40 sets out a comparison table by the landscape experts for landscape and visual effects. For views ‘DH Views [number]’ refers to SCDC’s evidence, ‘RB V[number]’ the appellant’s.

³⁵ CD2.3 Figure 16 p 27.

proposed built development, which would be seen as straddling the parkland on its northern and southern sides from viewpoint 3.³⁶ There would be a substantial adverse effect on this receptor at completion, which would not reduce by year 15 as the designed view currently enjoyed from this location would be unavoidably lost.

44. Primary mitigation would not reduce the visual effects for receptors at Tichbault Road because the mitigation would alter an otherwise open view. There is no evidence to suggest that Tichbault Road, a permissive right of way, is any less well used or valued by local inhabitants than other parts of the limited rights of way network which is available for them to use. The adverse effects on pedestrians using Tichbault Road would be substantial at both completion and year 15. If it is assumed that primary mitigation would have the effect of screening the site from Pampisford and Hinxtton conservation area receptors would not benefit from secondary mitigation internal to the site.
45. With respect to the A1301 roundabout, the appellant's assessment claims effects would be slight by completion (year zero). This conclusion again simply does not withstand scrutiny. Viewpoint 4 show that an open view is currently enjoyed across the appeal site, which would be replaced by significant bunding and perimeter planting enclosing the site from view.³⁷ However, that view would not be typical given that it omits from view the proposed access roundabout which would necessarily remove a section of the frontage hedgerow and introduce signage, lighting and other roadside paraphernalia. Receptors using the A1301 would experience different amounts of development along it. The level of impact would be moderate increasing to substantial adverse when approaching the McDonalds roundabout.
46. Receptors travelling along the A505 and A1301 approaching the McDonalds roundabout would experience significant adverse effects when the highways elements of the proposals came into view, which could not be mitigated. Those road corridors would inevitably change from rural in character to urban due to the introduction of a prominent bridge of 7.5 m in height (9.9 m total including parapets) altering the skyline and the introduction of footways, crossing points, lighting and the bus/cycle interchange.
47. For more distant visual receptors moderate adverse effects would be experienced by pedestrians on footpaths 68/7 and 134/1, and the receptors at Ickleton Road between Duxford and Abbey Farm, at Coploe Hill, and at Quicksett Road and Duxford Road. Views from the higher ground at Coploe Hill and Quicksett Road, towards and over the Cam Valley are identified as particularly sensitive in the Essex Landscape Study.
48. The proposals would conflict with SCLP Policy NH/2 since the development would not respect and retain local character and distinctiveness of the local landscape. It would not preserve or enhance the character of the local rural area nor would it respond to its context in the wider landscape and so would be at odds with Policy HQ/1 1.a, nor would it be compatible with its location or appropriate in terms of its surrounding area (HQ/1 1.d). The inevitable requirement of external lighting would give rise to harm to the surrounding

³⁶ CD12.2 Figures 9.34-38.

³⁷ CD12.2 Figures 9.39-43.

countryside contrary to Policy SC/9. The harm identified should attract significant weight.

Heritage assets

49. The heritage assets at Hinxton Grange were designed as a cohesive whole in 1835 following Parliamentary enclosure of Hinxton Parish in 1833. The designed parkland landscape is of high value to the significance of the listed buildings and remains intact from the layout as designed. The particular designed view enjoyed westwards from Hinxton Grange across its parkland makes an essential contribution to the significance of the grade II listed building. A positive contribution is also made by the reciprocal views from the A1301, from which the main house sitting elevated within its parkland setting, and thus its status, may be appreciated from outside the appeal site. The importance of these views is that they were designed to emphasise the status and wealth of the occupier.
50. The avenue is a strong feature in the local landscape. Its role in the significance of the heritage assets at Hinxton Grange is recognised in the DAS, which refers to the open views enjoyed from the avenue through gaps north towards the Church Tower at Pampisford and south towards Hinxton Church. Agricultural land within the appeal site forms part of the designed landscape setting of the listed buildings and has high value through the historic and functional association it shares with the listed buildings as the landholding of the farm.
51. The effects the proposed development would have on the heritage assets at Hinxton Grange are agreed, namely the proposals would lead to (1) the loss of open farmland that formed the estate, 2) the loss of open land to the south and west of the designed parkland which allows an understanding of the designed parkland within the surrounding agricultural land, 3) the presence of built development along the park boundary to the south and west, and along and either side of the avenue, which would close off the principal designed views from Hinxton Grange and introduce incongruous modern development, and 4) the loss or closing off of the open views currently enjoyed from the house of the wider area and reciprocal views, including from the A1301.³⁸ The experts agree on the extent of harm these effects would have on the significance of the grade II listed Hinxton Grange as within the middle of the range of less than substantial harm. This harm attracts great weight and importance in the planning balance both as a matter of law and of policy.³⁹
52. There is some measure of disagreement however on the extent of harm to the stable and coach house and the non-designated parkland landscape. The level of harm must correspond with the agreed level of harm identified for the grade II listed Hinxton Grange given that, as is also agreed, there is group value between these assets. Therefore, the level of harm to the stable and coach house would be within the middle of the less than substantial scale. With respect to the designed parkland, the level of harm caused to this heritage

³⁸ CD2.4 paragraph 6.99.

³⁹ *East Northamptonshire DC & Barnwell Manor Wind Energy Ltd v Secretary of State* [2015] 1 WLR 45; and *R (Forge Field Society) v Sevenoaks DC* [2015] JPL 22. *Framework* paragraph 193.

asset would be moderate to high. Suggested enhancements to this heritage asset through the removal of damaged trees and the introduction of public access might give rise to a slight beneficial effect, but would not contribute positively towards its significance in heritage terms.

53. The experts agree that the harm to Hinxton conservation area and the grade II* Church of St Mary and St John the Evangelist, through change to setting, is less than substantial at the lower end of the range.
54. It is common ground that the appeal site comprises part of the setting of the WWII pillbox, which was sited in its present location because of the topography and open fields. Its setting makes more than a neutral contribution to the heritage asset's significance. The proposals, by introducing buildings that would substantially close off views westward, would erode that significance.
55. Harm would be caused to the significance of the grade II listed Hinxton Grange and its separately listed stable and coach house, as well as the non-designated designed parkland, the Hinxton conservation area and the Church of St Mary and St John the Evangelist (grade II*). As a matter of law, great weight and importance must be attached to this harm.
56. It is only if public benefits outweigh the cumulative harm to the significance of the designated heritage assets that planning permission should be granted in accordance with national and development plan policy.⁴⁰ Harm to the significance of the designed parkland is moderate to high and the harm to the WWII pillbox is moderate. *Framework* paragraph 197 requires a balanced judgement to be taken having regard to the scale of that harm and the significance of the assets.
57. The public benefits balance is addressed later, but it is submitted that the public benefits of the proposal do not outweigh the heritage or indeed any other harm. As such, a conflict with SCLP Policies NH/14 and HQ/1 (and in this context in particular HQ/1 1.b arises. For the same reasons, given the acknowledged level of harm, which is not outweighed by public benefits, there is conflict with *Framework* paragraph 196 and 197.

Agricultural land

58. The proposals would result in the loss of 33 ha of grade 2 and 3a BMV agricultural land. SCLP Policy NH/3 directs that permission should be refused unless sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land. The appellant argues that the loss of this agricultural land would be compensated for by the proposals enabling advances in agricultural productivity elsewhere. But this argument relies upon a need for a development of this size for a dedicated AgriTech park, and that the occupiers of the park would generate new technologies that would lead to improved agricultural productivity.
59. For the reasons set out later, no need has been demonstrated for the floorspace in this location. Secondly, the speculative nature of the proposal casts significant doubt upon whether the scheme would attract occupiers who would be capable of generating the new agricultural productivity improvements

⁴⁰ *Framework* paragraph 196 and SCLP Policies NH/14 and HQ/1 1.b.

upon which the appellant relies. Thirdly, and in any event, AgriTech businesses or institutions who may wish to take up floorspace in South Cambridgeshire have ample opportunity to do so in existing business locations, or within future floorspace which will be delivered pursuant to existing commitments or consistently with the policies of the SCLP. As such, any benefits that such organisations may deliver in terms of agricultural advancement would be secured in any event.

60. Accordingly, the proposals conflict with Policy NH/3 of the SCLP. In particular, given the policy conflict which the development generates, and its adverse impacts, the loss to productive agricultural land cannot be considered as sustainable. The loss of this land is also in conflict with *Framework* paragraph 170(b) which requires decision-makers to recognise the economic and other benefits of the BMV agricultural land. For these reasons, the proposals would conflict with Policies NH/3 and HQ/1 1.b of the SCLP and paragraph 170(b) of the *Framework*.

Need and benefits

61. SCDC recognises the economic importance of the AgriTech sector nationally and regionally, and shares the support expressed by Government and of others for fostering and capitalising the opportunities presented by this sector. However, it does not accept that these important objectives require the release for development of a large greenfield site in a sensitive location such as the appeal site, which gives rise to substantial conflict with local and national policy. The objective for the sector can be achieved through the use and redevelopment of existing floorspace, through commitments and through planned growth consistent with the recently adopted SCLP and other components of the recently adopted development plan.
62. The appellant's claims that there is a pressing need for a 50 ha AgriTech park must be considered in the context of there being no identified occupier with identified need for any part of the proposed floorspace, let alone one who is prepared to commit or indeed to express a firm intention to occupy the proposed park or any part of it. The need would seem doubtful when considered in this context alone.

(a) Pattern of existing AgriTech related development

63. It is common ground that there is an established presence of AgriTech businesses and research establishments (both commercial and academic) in and around Cambridge, as well as in the wider East of England region, which is operating successfully.⁴¹ These include some large multinational AgriTech operators, including Bayer Crop Sciences, Monsanto, Syngenta and Certis. AgriTech businesses and institutions are distributed around South Cambridgeshire and the surrounding area. ID32 shows 18 AgriTech businesses occupying existing business parks or locations. It follows therefore that there already exists a cluster of AgriTech businesses dispersed throughout the area, which is not dependent on, nor does it require, co-location on a single site. The existing pattern demonstrates that there is no impediment to AgriTech

⁴¹ CD2.5 paragraphs 2.56-2.49 (pp 32-33) and paragraphs 5.4-5.6 (p 83).

businesses occupying spaces on existing multi-disciplinary business and research parks.

64. There is no evidence to demonstrate that any AgriTech operator already established in Greater Cambridge is failing to thrive or to realise its potential by reason of the absence of space for co-location on a single large dedicated site. No evidence has been submitted that any operator was disincentivised from locating in Greater Cambridge (or indeed the UK) by the absence of sites.
65. A successful cluster does not require co-location as opposed to agglomeration within a geographic area, as demonstrated by the operation of other successful clusters operating in and around Cambridge. The Cambridge biomedical and life sciences cluster is well established and highly successful. It operates from a range of locations in and around Cambridge including within University Departments within the City, at the biomedical campus in the south, the Cambridge Science Park to the north, the Wellcome Trust Genome Campus at Hinxton, and at Granta Park and the Babraham Research Parks in rural South Cambridgeshire.⁴² A 20 mile radius from the centre of Cambridge is a widely used definition of the Cambridge life sciences cluster, demonstrating that this highly successful cluster operates successfully on a distributed basis without co-location on a single site.⁴³
66. Moreover, the opportunities for interaction and knowledge exchange between organisations within the cluster is widely recognised as being successfully facilitated and achieved by networking organisations, exemplars of which are well established in and around Cambridge.⁴⁴ It is notable that such networking organisations, including in respect of venture capital, are already established in the AgriTech sector through AgriTech East and Cambridge AgriTech and they transcend the various locations that comprise the cluster.⁴⁵ Seen in the context of this clear evidence, the need for 50 ha of co-locational space is simply not made out.

(b) Adjacency to agricultural land for field trials

67. The appellant asserts a need for not less than 10 ha of land for field trials, with the quality of that land being determined by matters of soil structure and characteristics, including moisture content, field topography and the ability to carry out rotational cropping. However, what has become apparent during the Inquiry is that there is in fact no need for AgriTech operators to be sited adjacent to fields to be used for crop and seed trials, as such trials could be spread around a range of farms.
68. The National Institute for Agricultural Botany (NIAB), a world leader in plant-based research does not require such adjacency. The NIAB uses several hundreds of hectares around Cambridge and its surroundings, much of it in the Duxford area, for its field trials, notwithstanding that its principal research base

⁴² ID35.

⁴³ APP4.2 paragraph 5.26.

⁴⁴ ID33 pp 1-3, 5-6 and 8-9, CD7.11 p 60, CD 7.5 p 11 and CD 7.18 p 48.

⁴⁵ ID33 pp 4 and 7.

is on the edge of Cambridge, at Huntingdon Road.⁴⁶ The world renowned Rothamsted Research Institute, based at Harpenden, Hertfordshire uses land at Woburn, Bedfordshire and at Brooms Barn Farm in Suffolk for its field trials.⁴⁷ More locally, organisations who use Russell Smiths Farms land for crop trials rotate those fields regularly and, for example, KWS, based at Thriplow, use fields adjacent to the appeal site, at Hinxton, which is some six miles from their Thriplow base.⁴⁸ The need for AgriTech operators to be adjacent to fields to carry out crop and seed trials is not made out.

69. It is difficult to see how on any logical basis factors such as accessibility, quality of environment and a parkland setting can give rise to a need for what is proposed here. The allocation of land and wider policy support for employment development within the SCLP has been formulated and identified by reference to the availability of sustainable modes of transport. For example, established business parks such as the Cambridge Science Park, which is allocated for expansion through SCLP Policy E/1, are located close to main transport hubs, such as Cambridge North Station. Existing business and research parks are of consistently high quality (e.g. Granta Park, Babraham and Cambourne Business Park) and new development, delivered consistently with policy, can be expected to be of the same standard.

(c) The availability of existing, committed and planned employment floorspace and its suitability for the AgriTech sector

70. The generous supply of employment land in the Cambridge area, in qualitative as well as quantitative terms, can accommodate further demand from the AgriTech sector in whatever form it may take. This existing floorspace comprises various forms, including office, B1(b) and B1(c) floorspace, in varied locations. Current and anticipated availability, within just zones 4-5 (the Bio Cluster and out of town sites), comprises 251,500 sq.ft., representing some 69% of the proposed floorspace through the appeal scheme. This unavoidably represents a snapshot in time, but considers only zones 4 and 5 and, as such, it considers only a partial supply of existing floorspace.⁴⁹ For the remaining 13 years of the current local plan period, commitments and planned supply amount to over four times the assessed need. The SCLP provides for a significantly larger quantum of floorspace than is required to deliver 22,000 new jobs to 2031.⁵⁰ The allocated floorspace provided through the SCLP and other Area Action Plans (AAP) are being delivered.⁵¹

71. Existing and established employment locations, including business and research parks, have existing capacity as well as capacity to grow. At Granta Park there is committed but unimplemented floorspace for an additional 62,789 m², which

⁴⁶ LPA2.3 Appendix C. It is notable that NIAB has disposed of its fields located adjacent to its existing and expanding Huntingdon Road base for development, and in so doing has lost access to an existing bridge crossing the A14 to link those fields with others that it owns to the north (see ID47 and ID57).

⁴⁷ ID36.

⁴⁸ CD2.3 p.22.

⁴⁹ APP4.2 paragraphs 5.11 and 6.3 (as amended by ID38).

⁵⁰ CD6.7A paragraphs 2.36-2.37 and CD5.6 paragraph 134.

⁵¹ ID19 and ID46.

could be developed for an AgriTech development.⁵² Chesterford Research Park has consented floorspace for two new buildings of 28,000 sq.ft. and 22,000 sq.ft.⁵³ At the Cambridge Research Park, there is again clear existing capacity along with unimplemented floorspace arising from a 2012 planning permission and a current application for planning permission for 28,000 m² of mixed B-class floorspace, which is to include not less than 10,096 m² of B1(a) and B1(b) floorspace.⁵⁴ There is also available floorspace at the Cambridge Science Park and at Cambourne.⁵⁵ Quantitatively, there is a generous amount of floorspace available to any AgriTech operator who wishes to expand or to relocate to Cambridge or South Cambridgeshire.

72. In qualitative terms, the need for adjacency to fields for trials has not been demonstrated. No qualitative reason for need arises from adjacency. Many existing and proposed business and research parks in rural South Cambridgeshire are surrounded by agricultural fields in any event. The opportunities for knowledge exchange are well established within the Cambridge clusters, including amongst AgriTech businesses and institutions, which operate without co-location on a single site. It is difficult to see why an office based AgriTech business could not operate successfully in one of the established business parks in and around Cambridge or in South Cambridgeshire, nor indeed is there any reason why any AgriTech light-industrial business operating within use class B1(c) could not take up business floorspace in existing or planned locations in the District, or indeed the wider sub-region.
73. The alternative site assessment submitted by the appellant considered in detail only sites of at least 50 ha.⁵⁶ But the need for co-location on a single site has not been demonstrated. The assessment also includes, as a central criterion, matters concerning soil quality and hydrology, associated with the use of at least 10 ha of land for crop trials. However, adjacent land for crop and seed trials is not necessary. The appellant's evidence concerning alternative sites is unreliable and should be discounted. Moreover, Mr Hill's evidence reveals that the decision to promote the appeal site for AgriTech uses was a product of him becoming familiar with the site as a result of passing it when travelling to work. The entire exercise set out in the Planning Statement concerning the assessment of alternative sites (flawed as it is) is an after-the-event attempt to justify a decision to advance a site which was not accompanied by any attempt to consider alternatives and in particular more suitable and less harmful opportunities for provision of floorspace for the AgriTech sector.

(d) Any policy support for the delivery of AgriTech floorspace in the form proposed by the appellant.

⁵² This represents the position as at March 2018, the last monitoring date. Part of this floorspace has now been taken up in the form of the Illumina building.

⁵³ ID37.2.

⁵⁴ There are a range of occupiers at the Cambridge Research Park including B1 and research and development operators (e.g. Horizon and Stemcell Technology).

⁵⁵ ID39 and ID51.

⁵⁶ CD2.5 and updated APP8.3 Appendix J.

74. SCDC wishes to attract new investment and employment, in all sectors with a link to Cambridge, including the AgriTech sector, and the SCLP has been prepared and adopted precisely to secure this. However, and notably, nowhere in either Government policy or expressions of support for the AgriTech sector, set out in the Industrial Strategy (CD7.3), in "Growing the Bioeconomy" (CD7.22) and the UK Strategy for Agricultural Technology (CD7.2), nor in those of the Combined Authority, is there stated to be a requirement for a single 50 ha site dedicated to the AgriTech sector, and particularly for AgriTech development of the very broad nature proposed by the appellant. It is notable in particular that the Cambridgeshire and Peterborough Independent Economic Review (CPIER), September 2018 (CD7.11), recognises the opportunities for the sub-region from the AgriTech sector, but confirms that "business space is not a critical issue in the Cambridge and Peterborough area".⁵⁷ The support expressed for AgriTech, which is shared by SCDC, does not require what is proposed here.

(e) The need for incubator space and floorspace for start-up businesses

75. The need for and benefits of the proposed incubator space must be considered in the following context. Start-up and spin-off businesses are a well-established and important element of the economy of Cambridge and South Cambridgeshire.⁵⁸ The appellant's evidence refers to several named examples of successful start-up businesses in the sectors which are located in and around Cambridge.⁵⁹ That Cambridge and South Cambridgeshire are demonstrably attractive locations for start-up and spin off businesses, including in the AgriTech sector, suggests that there is no quantitative or qualitative constraint related to land supply which is inhibiting the sector.

76. Moreover, SCDC is taking active steps to secure more floorspace for new and growing businesses. The Cambridge Compass Enterprise Zone includes within it the Cambourne Business Park, the Cambridge Research Park and Northstowe. The authorities and landowners within the Enterprise Zone are actively seeking to bring forward new floorspace for start-up and developing businesses.⁶⁰ Furthermore, the SCLP identifies Northstowe, North-West Cambridge, Cambridge Northern Fringe East and the Cambridge Science Park as especially suited to include provision for start-ups, SME's and incubator units.⁶¹ The Bradfield Centre, within the Cambridge Science Park, is a good

⁵⁷ The Combined Authority for Cambridgeshire and Peterborough in its Non-Statutory Strategic Spatial Framework (CD6.8) supports the strategy set out in the SCLP 2018 and is not seeking to depart from it. If, however, in due course, the Combined Authority were to make more direct suggestions in terms of the AgriTech sector or any other sector of the economy through further iterations of the non-statutory spatial plan, SCDC has expressly committed to have regard to such suggestions, which would inform the new joint local plan with Cambridge City, to be produced in accordance with the timeframe set out in SCLP Policy S/13.

⁵⁸ CD6.7A paragraph 8.47 p 183 and CD2.5 paragraph 5.28.

⁵⁹ APP2.2 paragraph 2.2.25.

⁶⁰ ID15 p 2, ID46 Annex 3 and ID48 annexes 1 and 2.

⁶¹ SCLP Policy E/9 paragraph 2. Development at Northstowe is the subject of the extant Northstowe AAP 2007. Development at NorthWest Cambridge is the subject of the extant North-West Cambridge AAP 2009. Development at both Northstowe and at North West Cambridge is presently under construction, as described at ID19.

example of new “incubator” floorspace being provided, as is the new incubator space being delivered at the Babraham Research Park.⁶²

77. There is no identified need for additional provision beyond that which already exists, and which is now being planned for. The provision of incubator space on the appeal site is therefore a factor of limited weight here.

f) Conclusion

78. The appellant’s justification for what it proposes is in large measure based on there being a compelling but unmet need for new AgriTech floorspace to be delivered and that the appeal site is the only feasible location to meet this need. Its case in this respect has not withstood scrutiny. In quantitative and qualitative terms there is ample floorspace available for AgriTech operators to take up, without the need to release this large sensitive greenfield site for development.

Employment and the economy

79. In terms of construction jobs, plainly any development if carried out will generate construction jobs and value. That factor therefore cannot be a benefit of itself which can justify an otherwise unacceptable development in planning terms.
80. The speculative nature of the proposal is such that the claimed operational employment and economic benefits cannot be remotely assured at this stage. The appellant’s forecast of jobs and economic contribution is predicated on an assumption as to the nature of future occupants. The appellant’s economic impact assessment forecasts assume an occupancy profile comprising two large company tenants (UK or multinational) with an estimated 500 staff each, eight large UK/international growth companies with an average of 200 staff each, 25 SME’s with an average of 40 staff each, and 35 start-ups.⁶³ However, not one such occupant who is committed or even has expressed interest in the development has been identified. The appellant’s employment and economic forecasts must be considered with caution.
81. In any event, SCDC does not accept that there is a need for the appeal proposal. There is a generous quantum of employment floorspace available now in the District, as well as committed and planned floorspace to meet the needs of AgriTech businesses and establishments, as well as other sectors operating in and seeking to access the Cambridge economy. In qualitative terms, as the existing distribution of AgriTech businesses demonstrates, the range of existing, committed and planned floorspace is entirely suitable for the sector. No evidence has been given to suggest that AgriTech businesses are being held back or disincentivised from establishing in the Cambridge and South Cambridgeshire area by reason of quantitative or qualitative considerations.
82. It follows that the future employment and economic benefits from any AgriTech business which wishes to establish or grow would be secured without the need for the appeal proposals. The jobs that would be generated by the proposals

⁶² ID39.

⁶³ CD2.4.3 paragraph 115.

could be achieved elsewhere if the required floorspace for AgriTech occupiers can be accommodated elsewhere. Additional AgriTech occupiers wishing to take up floorspace within the Cambridge cluster could go into the existing and planned floorspace if they wished to. Thus, if the proposals were implemented, the benefits, if any, created by AgriTech businesses occupying the appeal site would simply be displaced from other locations, and furthermore could be delivered on those alternative locations without causing the level of harm that the proposals would create. No economic or employment benefits would be foregone as a result of the dismissal of this appeal.

Other considerations

83. SCDC does not seek the dismissal of the proposals on the basis of highways grounds, subject to the section 106 agreement and the imposition of the agreed conditions. Nor does it seek dismissal on the basis of the effects on biodiversity, noise, air quality or local hydrology.

Green Belt

84. That part of the appeal proposals which involves development in the Cambridge Green Belt comprises part of the works to secure access to serve the proposed development. It includes part of a pedestrian/cycle/equestrian overbridge of some 7.5 m to deck, together with a 1.4 m parapet on both sides and associated with bridge abutments and supports; a private transport interchange, together with a vehicular access point from the A505, bus shelters, cycle racks, real-time information and associated infrastructure including signage, lighting, fencing and other security features; in all likelihood at least a barrier at A505 carriageway level; and cycle and pedestrian routes alongside the A505 and north along the A1301 to a crossing point on the edge of Sawston, together with, SCDC considers, an engineered facility to accommodate the change in level from the field edge path to the crossing at carriageway level of the A1301.
85. In terms of impact on the Green Belt, consideration should be given also to the use of the transport interchange, particularly by buses, and to the loss of hedgerow which would be necessary to introduce the new access to the interchange and its associated visibility splays.
- (a) Does the development in the Green Belt comprise local transport infrastructure?
86. Work proposed in the Green Belt is intended to provide suitable access to serve a single private development. Although the overbridge would be available for use by the public, there is no suggestion that the bridge or any part of the works in the Green Belt are intended to be delivered to address any general or local need. Thus, these are private works to meet the needs of a single private development. Enhancements to Whittlesford Parkway as a transport interchange are in any event being promoted by CCC and by the Greater Cambridge Partnership.⁶⁴ That scheme is proposed for a location further to the west, outside the Green Belt, and there has been no evidence to suggest that the appellant's proposed transport interchange is a suitable substitute for that

⁶⁴ CD10.4.

Whittlesford Parkway scheme, nor is there evidence that the appellant would make its private facility available for the same purposes.

87. The term “local transport infrastructure” is not defined in the *Framework*. The word “local” before transport infrastructure must qualify the term in a meaningful way. The term means transport infrastructure which is delivered to meet a public need within a local area, as distinct from infrastructure to serve the future needs of a new single private development. If the position were to be to the contrary, then it would follow that any form of private development would, in principle, be entitled to introduce into the Green Belt transport and access related infrastructure to serve that development. When introducing the reference to “local transport infrastructure” into the NPPF 2012, the Secretary of State, in his Impact Assessment (CD59), stated that in addition to park and ride schemes other local transport infrastructure schemes could be beneficial to communities in the Green Belt, including for example, infrastructure to support more public transport, such as opening new routes, providing bus shelters and small public transport interchanges.
88. This explanation reveals that, so far as the Secretary of State is concerned, “local transport infrastructure” is infrastructure which is “beneficial to communities” in that it would address an existing deficiency or requirement within the local community. It would not therefore include infrastructure which is to serve the future needs of a new single private development. This distinction has also been recognised by Inspectors. A private access road to serve a housing development was found not to be “local transport infrastructure” within the meaning of the 2012 NPPF.⁶⁵ Additional HGV parking at an MSA serving the M25 was “local transport infrastructure”, which served a local public purpose.⁶⁶ A private car park to serve an industrial estate was not, with the Inspector observing that there must be “public interest for local transport infrastructure”.⁶⁷ The two documents submitted for the appellant in this context are also consistent with this approach. These concerned an access road to an existing water treatment works and so performed a critical public function to the benefit of a local community.⁶⁸ The other concerned the grade separation of a junction serving the M1 motorway, which again is public infrastructure intended to benefit a wide range of users.⁶⁹
89. Given the private nature of the proposed works in the Green Belt to meet the future needs arising from its development, those works do not amount to “local transport infrastructure” for the purposes of *Framework* paragraph 146(c). As such, those works cannot amount to “not inappropriate” development in the Green Belt.

(b) Can the works demonstrate a requirement for a Green Belt location?

90. If a) above is satisfied the next issue concerns whether those works have been demonstrated to require a Green Belt location. Resolution of this issue relates directly back to the case for the principal elements of the scheme. If the

⁶⁵ ID59.

⁶⁶ ID60.

⁶⁷ LPA1.3.

⁶⁸ ID62.

⁶⁹ ID63.

AgriTech proposals are found to be unacceptable in planning terms, the associated access works required to deliver that development would not be required and would not therefore require a Green Belt location. If SCDC's case prevails therefore then the inescapable conclusion is that, for this additional reason, the works in the Green Belt are inappropriate development.

c) Do the works preserve openness?

91. The third issue arising from paragraph 146(c), if the Secretary of State gets this far, is to consider whether the development preserves the openness of the Green Belt. The principle in *Europa Oil and Gas Ltd V SSCLG* is plainly not in dispute. The effect on openness of development such as a bus shelter, a new public transport route, etc. are unlikely of themselves to give rise to an unacceptable failure to preserve openness.⁷⁰ However, the totality of what is proposed here in the form of private access arrangements to a commercial development gives rise to an unacceptable impact on openness which extends well beyond what could be considered to be the inherent effects of local transport infrastructure.
92. The Green Belt is not a designation which protects landscape or visual interests. It is a spatial designation intended to protect openness. The focus must therefore be on the effect of the development in spatial terms on the openness of that part of the Green Belt proposed to be developed. The components of those elements of the development proposed for the Green Belt would be introduced onto a site which is currently open and undeveloped land.⁷¹ The introduction of part of a 7.5 m high bridge (9.9 m with parapets) and its abutments and approaches, as well as a private transport interchange, must have a material effect, when considered in spatial terms, on the openness of a currently undeveloped parcel of the Green Belt. When considered in the context of a policy which is seeking to "preserve openness" that effect can only reasonably and rationally be adverse.
93. Impact on openness may have a visual dimension. However, in the context of Green Belt policy, the focus must be on the effect of the development in visual terms on the openness of the land proposed to be developed. What cannot logically be correct is for the impact of development on openness of land to be judged by reference to the condition of adjoining land, particularly where that adjoining land lies outside the Green Belt. The quality of openness of land in the Green Belt and the effect of development on that land cannot sensibly be diminished by the existence of development on other land, adjoining or otherwise.
94. When considering the impact of the proposed development on the openness of the Green Belt from a visual perspective, the appropriate comparison here is between an open undeveloped greenfield site where openness has not been previously diminished to any material degree at all, with the effect of development on that land comprising the north-western portion of a large bridge, a private transport interchange and other development. The proposed development would adversely affect the spatial dimension of openness, so too would it adversely affect the visual dimension of its openness. It is submitted

⁷⁰ ID59.

⁷¹ LPA3.3B photographs 1 and 2.

therefore that the proposed development fails, and fails substantially, to preserve the openness of the Green Belt. The appellant's case that there is no impact on openness of the Green Belt plainly and demonstrably lacks credibility. Given that two of the appellant's witnesses were under the misunderstanding that Whittlesford Parkway Station, McDonald's restaurant and the petrol filling station were within the Green Belt, it is necessary to treat with caution the appellant's conclusion.⁷²

(d) Conflict with Green Belt purposes

95. The introduction of the proposed development would encroach into an area of countryside which comprises one of a series of open fields to the north of the A505. It would also give rise to urban sprawl, not least by introducing new access-related works onto land north of the A505 where such works are currently absent. The development would conflict with national Green Belt purposes (a) and (c), as set out in *Framework* paragraph 134. The SCLP sets out purposes which are particular to the Cambridge Green Belt. This includes protecting a "landscape which retains a strong rural character".⁷³ The Cambridge Inner Green Belt Boundary Study 2015 identifies a purpose of the outer rural area of the Cambridge Green Belt as "providing a setting for approaches to the Connective, Supporting and Distinctive townscape and landscape".⁷⁴ To introduce substantial built development as proposed into an existing open undeveloped area of farmland on the edge of the Cambridge Green Belt would compromise these local Green Belt purposes too. The proposed development, as it affects the Green Belt, amounts to inappropriate development.

Very special circumstances (VSC)

96. The appellant has identified three considerations which give rise to VSC. The first refers to the benefits of the scheme, but for the reasons above no such benefits arise so as to outweigh Green Belt and other harm. The second and third points refer to the public benefit of the proposed access works. However, proposals to improve Whittlesford Parkway station are emerging, with the support of public authorities, in any event. So far as the suggestion of public use of the proposed bridge and pedestrian and cycle links is concerned, no actual or potential future wider public need for such links has been identified, and given the dispersal of the current residential population, from where such a need would arise is unexplained. There are no proposals for such works set out in the development plan or any other policy document. Moreover, it is difficult to see how such links could justify the extent of development proposed.
97. The harm to the significance of heritage assets, both designated and non-designated requires a separate balancing exercise, as required by *Framework* paragraphs 196 and 197. Given the absence of need or benefits which would be forgone, there are no public benefits which are capable or sufficient to displace the harm to heritage assets here.

⁷² APP5.2 paragraph 6.2.12 and APP8.2 paragraph 5.5.6.

⁷³ CD6.7A paragraph 2.31.

⁷⁴ LPA3.7 paragraphs 4.14.24-25 and Figure 11.

98. Those parts of the development proposed within the Green Belt conflict with SCLP Policy S/4 and, given the effect of the development on the rural character and openness of the Green Belt, with Policy NH/8. As inappropriate development and in the absence of VSC, the development also conflicts with *Framework* paragraphs 143 and 144, in particular.

Planning policy

99. This appeal must be determined against a recently adopted local plan, which it is common ground is up to date and is otherwise in conformity with national planning policy, set out in the current *Framework*. Moreover, the evidence base for the plan recognised that historic patterns of growth were likely to change and in particular that “recent evidence suggests that the local high-tech cluster is “maturing” and that growth in the research and development sector will be slower than in the past, and other sectors will account for high proportions of growth”.⁷⁵ The SCLP recognises that “new sectors are likely to include renewable technology, the creative ICT sectors, digital, health/bioscience, high-technology manufacturing, professional business services, tourism and leisure”. It follows therefore that the SCLP, and its economic and employment policies in particular, were formulated expressly to address and to accommodate the likelihood of new sectors developing over the plan period.⁷⁶
100. “AgriTech” as a commercial sector is not referred to expressly within the SCLP. However, the strategy is to make provision for a range of sectors to emerge and develop over the plan period.⁷⁷ The need for growth sectors, such as AgriTech, was therefore fully considered and addressed through the strategy and policies of the SCLP. The appellant places significant reliance on SCLP Policy E/9, but misconstrues and misapplies that policy. Policy E/9 provides that “development proposals in suitable locations will be permitted which support the development of employment clusters, drawing on the specialisms of the Cambridge area”. There is an issue as to what is meant by “suitable locations”. Suitability must be interpreted having regard to other policies of the plan. Properly construed, Policy E/9 requires more than that. A suitable location, for the purposes of Policy E/9 is a site which conforms, in locational terms, to the spatial strategy and allocations within the SCLP. This does not include sites, such as the appeal site, which have no development plan support whatsoever. Policy E/9 does not therefore assist the appellant at all.⁷⁸
101. The proposed development is in serious conflict with the strategy of the SCLP in terms of meeting and planning to exceed the need for new employment floorspace over the plan period, and in terms of planning for the delivery of floorspace in a flexible and forward-looking manner. The appeal site is unallocated and outside any location on which employment development is supported by the development plan. The proposed development conflicts with multiple policies of the SCLP and, as such, gives rise to a clear conflict with the development plan as a whole. As a result, and in accordance with the relevant

⁷⁵ ID20 Appendix and CD6.7A paragraph 8.4.

⁷⁶ CD6.7A paragraph 8.5.

⁷⁷ ID20.

⁷⁸ ID21.

statutory requirement, a presumption against the grant of outline planning permission arises.

102. The proposed development does not accord with an up to date development plan, so to grant outline planning permission would not amount to sustainable development for the purposes of the *Framework*, and planning permission should be refused.

Conditions and obligations

103. Conditions and a planning obligation are required in order to address matters which are necessary to make the development acceptable in planning terms. Conditions are agreed except for concerns about limiting occupiers to those within the AgriTech sector, and a review of the site wide sustainability strategy. It is common ground that that which is provided for within the obligation is necessary to make the development acceptable in planning terms, and otherwise meets regulation 122 of the Community Infrastructure Levy Regulations 2010.
104. The appellant has advanced its proposals as being necessary to meet the needs of the AgriTech sector. It seeks planning permission on that basis and, if its case in that respect is accepted, it follows that a control must be secured through the planning permission which limits future occupiers to those within the AgriTech sector. This much is common ground, but the difficulty which arises concerns how that control is to be expressed. In large measure this difficulty arises as a result of the lack of clarity on the part of the appellant as to what it means by "AgriTech" in the context of the appeal proposal and how it envisages the appeal site being populated.
105. The appellant has offered multiple definitions of "AgriTech" as it applies to the appeal proposals. In terms of conditions, three alternatives seem to be at large (Conditions 12a, b and c). None of these is sufficiently precise so as to be effective, nor indeed do they reflect the basis on which the appellant has advanced its proposals.
106. If planning permission is granted, SCDC considers that the only precise and effective means of control would be for any future occupiers to demonstrate to SCDC's satisfaction a need to locate on the appeal site, either by reason of an operational need to be located adjacent to fields in agricultural use or by reason of the need to be located together with other existing occupants. Thus, it is submitted, a condition in the form of suggested condition 12d should be imposed. Plainly, such an approach would require on-going input from SCDC. However, if (contrary to the SCDC's case) the appellant's justification of the need for the proposal is accepted, demonstrating compliance with the criteria within draft condition 12d should not be onerous. Conditions containing a substantively similar requirement for an occupier to demonstrate need have been used elsewhere by SCDC, consistent with development plan and national planning policy.⁷⁹
107. For the avoidance of doubt, it is submitted that to seek to incorporate a condition in the form of condition 12a, b or c within condition 12d would not be

⁷⁹ ID45.

appropriate given that, by doing so, the same lack of precision and enforceability referred to in respect of condition 12a, b and c alone would necessarily arise.

108. The appellant resists as unreasonable any review of the site-wide Sustainability Strategy and targets in the event of the adoption of a new development plan. The development would be built-out over a period of up to 15 years, and it is likely that development plan policies (and indeed national planning policy) concerning sustainability targets, including the reduction of CO₂ emissions, will evolve and be modified during that period. Condition 54 seeks to achieve a review of the site-wide Sustainability Strategy and targets in the event of the adoption of a new local plan. Such an approach is not unreasonable given the long implementation. It would be necessary to ensure that the proposed development achieves its stated intention to be an exemplar of sustainability.⁸⁰ Any unacceptable implication to the development as a result of new policies, e.g. to scheme viability, would be capable of being addressed through the condition, and in particular through the entitlement to offer a justification as to why a revised Strategy and targets are not intended to be introduced.

Conclusions

109. For the reasons given, the Secretary of State is invited to refuse outline planning permission and to dismiss the appeal.

The case for interested persons opposing the scheme

The following persons appeared at the Inquiry objecting to the proposed development, and a summary of their submissions is included below.

110. Professor Brown (Hinxtton Parish Council)⁸¹ reiterated the Parish Council's written objections to the proposal, highlighting that the proposed business park would cover an area much the same as that of Hinxtton village in open country fields. It would be deeply damaging to the landscape and environment of the village. Associated traffic would have a crippling impact on the economic life of the village. There is no justification for such a business park, with no relevant scientific expertise or substantial future tenants associated with its marketing aspiration of agricultural technology. The claim that alternative sites received detailed consideration is implausible. Hinxtton has no principled opposition to employment growth and supported the Wellcome Genome Campus, but the appeal scheme is misdescribed and misplaced with wholly inadequate mitigation.
111. Cllr Peter McDonald (SCDC)⁸² gave a local view with a perspective on agri-tech from working in the industry. Concerns were raised about the integration of the proposed development with key agri-tech players such as Rothamsted Research, NIAB, Ceres and large multinational companies. The companies that have indicated an interest in the proposal have limited synergy

⁸⁰ CD2.3 pp 68-68.

⁸¹ ID3.

⁸² ID25.

with others. Other areas such as the Elveden Estate between Cambridge and Norwich with proximity to the University of East Anglia and the John Innes Centre should be preferred. UK economic arguments for agri-tech are strong but this scheme has no involvement from Defra, Natural England (NE), or Cambridge University Faculty of Plant Sciences.

112. There would be no synergy with the Genome Campus, Babraham Campus or Granta Park, which focus on human health. The scheme predicts 4,000 jobs but long-established facilities such as NIAB, Rothamsted and Jon Innes only employ, respectively, about 200, 400 and 300 employees. The Genome Campus employs 1,500 scientists, is fully integrated into UK biomedical research programmes, and is managed by a Trust with full scientific governance. Whereas the appeal scheme would be managed by a commercial organisation with no scientific governance.
113. Rupert Kirby⁸³ is a local resident opposed to the scheme on highway grounds. He elaborated on his written submission concerning three main issues. The baseline data does not reflect the reality of existing traffic conditions. The main impact of the proposal would be on McDonalds roundabout. The appellant's survey of queues on a single day is a gross underestimate of the actual situation, as shown by data submitted by Hinxton Parish Council from January 2018 and May 2019. Congestion results in rat-running through local villages, which is demonstrated by Googlemaps routes. The aim to limit commuting by car to 50% of staff is over-ambitious in this rural location. Census data indicates that this is currently 79%. Notwithstanding that the appellant's assessment was modelled on "Business as Usual", public transport does not justify the proposed modal split. The Wellcome Trust staff use a number of free bus routes, and so 55% commute by car. This is markedly different to what is proposed in the appeal scheme. Even if staff of the proposed development used the shuttle from Whittlesford Parkway they would have to transfer to trains or a normal bus service. The proposed travel plan is far too ambitious for this location.
114. The modal split assumptions are allied with restricted parking provision. The proposed 0.5 spaces per employee would be equivalent to 1 space per 58 m² of floorspace, which would be very low in relation to comparative business parks. This would put the proposal at a significant disadvantage in terms of attracting tenants and finance, except for very low employment density occupiers. It would also result in 'fly parking' around the site in Hinxton, Duxford and in laybys on the A505 and A1301, with parking controls needed over a wide area.
115. Cllr Peter Topping⁸⁴ is district councillor for Whittlesford Ward and county councillor for Duxford Division. The proposal was unanimously opposed by Members of the Planning Committee. The proposal is outwith the SCLP, with wider economic interests for the area, or nationally, that would outweigh this objection. The proposal is not in the right place to support the relevant engine for growth in Cambridgeshire/Peterborough. The economic growth in and

⁸³ ID26.

⁸⁴ ID27.

around South Cambridgeshire is largely driven by knowledge-based research companies taking as their basis work done by the University in a spin-off effect.

116. Agriculturally based research is not opposed per se, but a location further to the north-east should be preferred. KWS seed development company is at Thriplow and the National Cereals Exhibition takes place at nearby Chrishall.
117. The highway improvements now agreed with CCC are welcomed, but concerns remain about the ability of the roads to cope with the possible influx of some 4,000 people, even though some may travel onwards from Whittlesford railway station by bicycle.
118. John F Williams⁸⁵ is a resident of Ickleton village who previously worked in the agricultural chemical industry and is concerned about the need for the proposal and traffic infrastructure. The normal definition of 'agri-tech' business is that which involves research or development activities associated with technical advances in agricultural production, with most involving field trials. However, other aspects of AgriTech involving research stages for new crop varieties, chemical and machinery/electronic development do not require fields. The appellant's intention is for a general business or science park and so should be rejected out of hand because it does not require agricultural land and is not an appropriate use for productive agricultural land. Agricultural land is precious and increasingly so will be needed for food production.
119. Problems of traffic congestion have been acknowledged by the appellant and improvements in infrastructure are proposed. However, congestion on the A505 has been going on for years with rat-running through villages. Improvement are sorely needed, but this does not justify the proposed development.
120. The whole of the area to the southern side of Cambridge is now subject to massive proposals for development, leading to suburbanisation of what has been an area of farmland and rural villages. The 'overheating' of the Cambridge region is very unsettling for people. The proposal should be rejected to preserve at least some of what little countryside may be left.
121. Cllr Aureole Wragg (Pampisford Parish Council)⁸⁶ opposes the proposed development on a green field site and on good agricultural land. The area is not designated for development in the SCLP and no mitigation measures would mitigate the loss of this land. An incursion into the Green Belt for the bus/cycle interchange should not have been considered. This part of South Cambridgeshire is an area of almost full employment, so 4,000 more jobs are not required.
122. Pampisford village is on higher ground and so suffers from noise from the A505. For long periods of the day there is stationary traffic through the whole parish from the A11 junction to the roundabout on the A1301, as well as from the direction of the railway station. This results in rat-running through local villages, particularly at peak times. None of the suggested road improvements

⁸⁵ ID28.

⁸⁶ ID29.

would alleviate the situation because of the increased traffic movements that would result from the appeal scheme.

123. Cllr Sian Wombwell (Ickleton Parish Council) ⁸⁷ maintained the parish council's objection because the proposal would have severe and irredeemable adverse impacts on important open countryside in the locality, lead to a loss of valuable farmland, and increase traffic rat-running primarily via Ickleton and Duxford, but also Hinxton. The site is not allocated in the SCLP and the plan operates to protect the open arable fields and valued chalk landscape. The proposed mitigation by an earth bund is flawed because the bund would not entirely screen views of the buildings, and would itself have a severe and permanent impact on the open landscape.
124. The context of the listed Hinxton Grange would be lost, as would BMV agricultural land. The land is currently used to grow high value crops. The business case for the scheme is weak. There is no nexus of expertise or track record in AgriTech, with no partnership with or actual commitment from any plausible party engaged in AgriTech in putting forward the proposals. The use classifications sought by the appellant do not indicate anything other than a general business park, with the focus on commercialisation. There is currently ample provision of office, laboratory and associated commercial space on existing developments. There is no collaboration with Cambridge University regarding the CERES project, a research initiative involving agriculture, life science and existing AgriTech industries backed by Government funding. The appeal site is geographically distant from existing AgriTech concerns in the East of England.
125. Ickleton residents are most concerned about the implication for traffic, with the village experiencing around 4,000 vehicle movements each working day, the bulk of which are not generated by the 300 homes in the settlement. Most are displaced from congestion on the A505 and A1301. Little attempt has been made to study this rat-running, and the proposed mitigation measures are not believed.
126. The Wellcome Trust entered into a legal agreement when it owned the appeal site agreeing not to develop the site unless it was included in a Local Plan, without the agreement of SCDC, or under a Development Order, or in accordance with planning permission granted by SCDC. At the time local communities believed that the land subject to the agreement had been safeguarded as agricultural land in perpetuity.
127. Tony Orgee ⁸⁸ maintained his objection to the proposal and addressed the FEI. With respect to the additional traffic modelling and revisions to the mitigation he raised two issues; the failure to deal with flows between junctions, and traffic movements at the entrance to the appeal site. The proposed mitigation would increase the capacity of a number of junctions, but in parts the A505 becomes one lane where backing up would result that would clog junctions. The mitigation includes traffic signals at certain junctions. But local examples of signalled junctions, such as the A1307, do not give cause for confidence. The appellant's assessment indicates that 1,156 cars would arrive

⁸⁷ ID30.

⁸⁸ ID31.

on site in the am peak hour, with 1,029 leaving in the pm peak hour. Backing up currently occurs at the single entrance to Granta Park, where there are only about 2,800 employees.

128. The additional viewpoints may not represent the enclosed feeling created by the bund for those walking, cycling or driving along the A1301. The restricted views would be a complete change from the present long distance views typical of this area of South Cambridgeshire. Irrespective of the ecological consequences of the proposal, the loss of high quality agricultural land, when there is an need to reduce food air miles and to live more sustainably, would be a retrograde step. The appeal site should be developed only when all other possible potential sites have been exhaustively researched and found to be less appropriate. Such a proposal should have been put forward for consideration in the local plan process, where, if a need was established, consultation could have taken place on a district-wide basis.
129. Dr Peter James (CPRE) ⁸⁹ raised eight objections to the proposal. The site is in open countryside, is unallocated in the SCLP and would be contrary to SCLP Policy S/7. The proposal should have been raised as part of the local plan process and examined in the context of the district as a whole. SCLP Policy S/11 designated Hinxton as an infill village, which would only provide for a limited number of new dwellings. This is in stark contrast to the scale of the appeal scheme.
130. CPRE normally supports provisions for public transport, but does not believe it necessary to use 7 ha of Green Belt land in this case. The scale of the proposed development would itself have a negative impact upon the nearby Green Belt. The Cambridge Green Belt is small, narrow and highly vulnerable to any adverse impact. It is gradually being eaten away by development and may soon be difficult to recognise, which by then will be too late because the surroundings and character of Cambridge will have changed forever. Cambridge is an academic jewel in the national economy, whose future is increasingly threatened by over-development due to the thriving local economy.
131. Modern farming practices can result in large areas of intensive cultivation which are low in biodiversity. But this can be countered by providing wildlife friendly features, whereas improvements to landscape and biodiversity are not going to be achieved by erecting large buildings in the countryside and adding some park-like features. The undulating rural landscape around Hinxton is worthy of protection and should not be urbanised by a large cluster of buildings. CPRE is concerned about the loss of habitat, particularly for overwintering birds. The proposed mitigation measures would not be effective compensation.
132. BMV agricultural land is a national resource and its protection is becoming more important for a nation which imports nearly 60% of its food supply. Of the 40% of food grown in this country some 60% comes from the fens, which are now at high risk of permanent flooding due to climate change. Everything possible must be done to protect BMV agricultural land that is located on higher ground.

⁸⁹ ID37.

133. Despite the laudable intention to increase the use of trains, buses and cycles, the scheme would inevitably generate many car journeys that would affect local roads. This should not be considered as incremental change in isolation from other proposed development in the locality.
134. Light emitted from the proposed buildings and car parks would add to light pollution in this rural landscape, adding to the urbanisation of the landscape on the edge of the Green Belt. This would adversely affect wildlife and appreciation of the night sky.
135. There is concern that development of this scale would further increase flood risk locally and downstream in the River Cam, where other major development is planned.
136. This is a speculative development. None of those who have written in support of the proposal has clearly identified why this site is so significant and why alternative locations, such as Chesterford Research Park, or the new innovation centre at Soham, would not fit their needs. The primary objective of the scheme is to create opportunities for further development in the future. Calling this an AgriTech park is just a convenient cover story.

The case for the appellant

The following summary of the appellant's case broadly follows its closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.⁹⁰

Introduction

137. The application is for a major development on a site that is not allocated for such development in the SCLP. But the SCLP allows for development of clusters to take place in appropriate circumstances. SCDC's refusal fails to recognise the power and importance of the policy drive to support the AgriTech sector that is clearly established at national and sub-regional levels. The SCLP does not mention the AgriTech sector. Yet it is of huge significance to the future of not only the sub-regional economy, but also to the UK's ability to compete effectively across the globe in this fast-growing sector. There are already a significant number of businesses and other organisations operating in the sector in the Cambridge area, and there is a real opportunity to build on these through the appeal development.⁹¹

The development

138. The AgriTech park would be the UK's first large-scale campus style development purpose-built to accommodate the needs of the fast-growing UK AgriTech sector.⁹² It would assist in the achievement of a number of key, high-

⁹⁰ ID1 and ID69.

⁹¹ ID32. There is agreement that "there are multiple departments at the University of Cambridge and many university related partnerships that undertake AgriTech research and other related activities".

⁹² APP8.3 Appendix K paragraph K2.1.

level policy objectives that seek to place the UK in the forefront of the advances in agricultural technology that are needed to address effectively the twin global challenges of alleviating hunger and radically improving the sustainability of agricultural practices.

139. It would not be purely a research and development campus. Research is the basic science; development is using this to do something; innovation is the process of proving that the “something” works. Commercialisation is the successful production, marketing, sale and servicing of a range of things, including for example physical products, services or computer-related or other applications. The emphasis here would be on the commercialisation process.
140. Draft Condition 10 sets out the amount of permitted floorspace within each Use Class. Draft Condition 12a sets out the appellant’s preferred version of the condition, which both parties agree would be necessary, that would restrict the use of the permitted floorspace to AgriTech purposes. This sets out the appellant’s definition of AgriTech with clarity and certainty about the purpose and nature of the development and of the businesses and other organisations that would occupy the site.

Landscape and visual impacts

141. The original ES assessed the scheme’s landscape impacts by reference to four character areas (L1–L4).⁹³ SCDC asked the appellant to consider introducing further character sub-areas, which resulted in the ES Addendum adding two character areas.⁹⁴ The landscape to the south of the A505 shares some of the characteristics to the north of the road. Viewpoint 6 in the ES Addendum shows common characteristics of the Granta Valley to both sides of the road.⁹⁵ But in any event, this is a non-point because the appellant’s conclusions have not materially changed in the light of the additional assessment.⁹⁶ The respective positions of the landscape experts, both in landscape impact and visual impact, are set out in the table at ID40.
142. SCDC failed to take into account any of the planting that would be in place on completion.⁹⁷ The key difference between the experts relates to the development’s impact in year 15. But SCDC has not in fact carried out a visual impact assessment at year 15.⁹⁸ Furthermore, SCDC wrongly increased its assessment of landscape sensitivity by reference to the fact that the application is in outline.⁹⁹ SCDC also wrongly ignored the secondary mitigation measures identified in the ES.¹⁰⁰ Taking the secondary mitigation into account in addition to the primary mitigation shown on the parameter plans does not amount to “double counting”.¹⁰¹ The methodology is entirely in accordance with

⁹³ CD2.4 paragraph 9.45 and Figure 9.10 (on which L1 is the site, L2 is the South East Clay Hills, L3 is the Chalklands, and L4 is the River Valley Landscapes. CD2.4 pp 9-14 to 9-18.

⁹⁴ ID44. CD12.1 pp 9 and 10 (L5 and L6). CD12.1 Figure 9.10A. Plan at ID40 shows L1–L6.

⁹⁵ CD2.12.

⁹⁶ CD2.12 pp 9 and 10.

⁹⁷ LPA3.3A Appendix 1 p 007 – “Day 1 – excluding proposed “soft” mitigation”.

⁹⁸ LPA3.2 paragraph 9.18.

⁹⁹ LPA3.1 8.10.

¹⁰⁰ CD2.2 p 9-28 paragraph 9.54; and APP5.2.

¹⁰¹ LPA3.1 p 55 paragraph 8.58.

GLVIA3.¹⁰² SCDC considers that 15 years of mitigation would have no material effect in terms of either the scheme's landscape impact or its visual impact.

143. The appellant's analysis is carried out on a worst-case scenario in terms of building heights – i.e. on the assumption that the land profile would be maximised across the site (this could not happen in the real world as the cut and fill balance would not be achieved).¹⁰³ It also assumes that the buildings would all be built to their maximum heights (excluding point features). The assessment is therefore extremely robust.

144. Finally, with regard to cumulative impact, it is common ground between the parties that there is no need for the cumulative impact of any as yet unconsented schemes to be taken into account. If the position changes after the close of the Inquiry, e.g. if the Wellcome application is consented, it may be necessary for the parties to make further representations on this issue.

Heritage impacts

145. The most important elements of the setting to the significance of Hinxton Grange are the garden and the parkland. These comprise its immediate setting, with the agricultural fields beyond forming its wider setting. The garden and parkland would not contain any built development and would be the subject of restoration proposals. The Tree Report identifies which existing trees are dead, dying or dangerous and which are therefore appropriate for removal.¹⁰⁴ The proposed parkland restoration would be based on the historic map from 1886.¹⁰⁵ The orientation of the house, neither as proposed nor as built, provided a view down the avenue. As originally built, there were groups of trees that would have filtered the axial, or principal designed, view from the house through the garden and parkland and across the agricultural land beyond. Views from the house to the west would not therefore have been as open and relatively uninterrupted as they are now.¹⁰⁶

146. It is also proposed to strengthen the existing hedgerow/woodland planting around the edge of the parkland, on its southern and western sides. Gaps would remain, including one for the proposed path from the south and another on the line of the axial view, beyond which it is proposed to create a square, with buildings beyond which would be orientated not across but along the axis.¹⁰⁷ The more open nature of the boundary of the parkland in its original layout would become more enclosed, significantly mitigating over time the impacts of the built elements of the development on the setting of the Grange.

147. The avenue is also part of the historic setting of the Grange and contributes to its significance. This is presently available for use by vehicles, and whilst it appears not to be much used at present this could change. Under the proposals it would be available for use (other than crossing it) by

¹⁰² CD9.4 p 57 paragraph 4.2.1. CD2.2 pp 9-11 to 9-31.

¹⁰³ LPA3.3A Appendix 2.

¹⁰⁴ ID42. CD2.13 Plan 6. LPA4.2 paragraph 7.7.

¹⁰⁵ APP6.3 Figure 5 and Figure 3 LPA4.2 Figure 9.

¹⁰⁶ APP6.3 Appendix 4 plate 2.

¹⁰⁷ APP8.3 Appendix H. CD2.3 pp 64-65 Figures 41 and 42.

pedestrians and cyclists only. The view from the western end of the avenue to the north, towards the tower of Pampisford church would be unaffected by the development because the land immediately to the north of the avenue is proposed as a wetland area. The view at the western end of the avenue to the south, towards Hinxton church tower and spire, would be interrupted by the proposed bunding and planting on top. The buildings on both sides of the avenue are proposed to be set back from it. On the south side, there would be a minimum 50 m wide buffer, with "small scale buildings aligned perpendicularly to the avenue" and "large areas of linear open space permeating through built development".¹⁰⁸

148. Such glimpses as there are of the Grange from the avenue before it reaches the parkland would not be interrupted by the proposed buildings.¹⁰⁹ The sense that the drive leads to and serves the house, rather than the development, would be retained. The proposed use of the parkland and avenue by the public would not cause any harm to heritage assets or their settings and would enhance the ability to appreciate those assets because more people would be able to see, experience and enjoy them.
149. The access to the northern cluster of development would cross the avenue in the location where a track currently crosses it, and at a point therefore where there is already a gap in the line of trees bordering the avenue. A few trees in this vicinity that are dead, dying or dangerous would be removed, and additional planting is also proposed in that vicinity. Assuming a pro rata distribution of car parking between the development clusters according to floorspace, the amount of traffic crossing into the northern cluster would be around one vehicle a minute on average in the morning and evening peaks, and about half that over a 12-hour day. It would however be possible to locate all or some of the parking that would serve that cluster to the south of the avenue, other than spaces for delivery vehicles and for disabled drivers, thus reducing the amount of traffic using the crossover.¹¹⁰
150. The significance of the Stable and Coach House lies in its relationship to the Grange, with which it has group value and to which it was designed to be subservient. The parkland and agricultural fields form part of the setting of the Stable and Coach House only in functional but not in visual terms. The building is not, and would not have been designed to be, readily discernible from outside its immediate courtyard.¹¹¹ The impact of the development would occur principally as a result of its impact on the setting of the Grange. The impact is agreed to be less than substantial, in the appellant's submission at the lower end of the range.
151. The significance of the undesignated pillbox lies in its role as part of the GHQ line that ran from the mouth of the Avon near Bristol, round London and

¹⁰⁸ CD2.3 p 79 Figure 51. However, it was clarified after the site visit at ID68 that the Landscape and open space parameter plan shows informal open space including planting extending between 33 m to 37 m to the south of the centre line of the avenue.

¹⁰⁹ APP6.3 Appendix 4 Plate 6 and LPA4.2 Figures 20 and 25 (views 3 and 8).

¹¹⁰ Suggested Condition 37 includes "A review of parking to the north of the avenue" in the Design Guide.

¹¹¹ APP6.3 Appendix 3 Figures 2 and 4; Appendix 4 plates 3 and 4.

up via the Wash to Middlesbrough.¹¹² It seems likely that, being positioned alongside the track to Hinxton Grange, which was used as a military headquarters during WWII, it was intended to assist in the defence of the Grange itself. There is no evidence of a searchlight battery having been sited adjacent to the pillbox, but if this was so the proposed development would not undermine the ability to appreciate its role as part of the GHQ line, and in particular in protecting the Grange and the activities inside it. There is no evidence to suggest that the pillbox had any significant role in terms of defence of the river or, even less, Duxford airfield, which would have had its own defences.

152. The significance of Hinxton conservation area lies principally in the fabric of its buildings and the intervening spaces.¹¹³ The village is surrounded by agricultural land and includes man-made features such as major roads and other infrastructure. The appeal site thus forms a small part of its setting. The proposed development would be visible from some places within the village, but the closest building would be around 0.5 km from the closest point of the conservation area. The harm to the significance of the conservation area as a result of the effect on its setting would be at the lower end of less than substantial.
153. The Parish Church of St Mary and St John the Evangelist lies some 800 m from the nearest of the proposed buildings. The appeal site lies within the wider setting of the Church, which in physical terms has broadly the same characteristics as the setting of the conservation area. The photograph from the top of the Church tower sheds very little light on the extent of the setting of the Church and the role that the appeal site plays in this.¹¹⁴ The photo shows only a small part of the view, which is in any event not publicly accessible. The Church tower has a landmark function the setting of which would be affected by the proposed development, but its principal significance, which lies in its historic fabric and its status, would not be affected. The impact on the significance of the Church is therefore at the lower end of less than substantial.
154. It is necessary, in EIA terms, to assess the likely impacts of the development on a worst-case basis having regard to the submitted parameter plans. But the building blocks that are shown on those plans do not represent how in fact the development would appear in reality. For this purpose, regard should be had to the illustrative masterplan, which shows buildings set in an attractive and spacious parkland context with plenty of open space and a permeable development edge.¹¹⁵
155. In the case of all of the designated assets, it is agreed that the harm that the development would cause is indirect (that is, to the settings of the assets and not to the assets themselves), and the harm to the significance of the assets would be "less than substantial" in the language of *Framework* paragraph 196. In relation to the undesignated assets, it is agreed that there

¹¹² APP6.3 Map 7.

¹¹³ APP6.2 paragraph 5.25.

¹¹⁴ LPA4.2 Figure 31 view 14.

¹¹⁵ CD2.3 p 83 Figure 53; p 80 text and Figure 52.

would be some harm to the setting of the parkland, and that there would be some direct benefits as a result of the parkland restoration proposals (though the degree of benefit is in dispute). The appellant's position is that there would be no harm to the setting of the pillbox. Historic England have no objection to the proposed development.¹¹⁶

156. If, giving particular weight to the less than substantial harm that the development would cause to the settings of the designated heritage assets, and giving weight also to the limited harm that would be caused to the setting of the parkland, it is decided that the public benefits would outweigh that harm, then there would be no conflict with *Framework* or SCLP policy, and planning permission could be granted accordingly.

Green Belt

157. The proposed works in the Green Belt would have an overall footprint of 1.865 ha. These would comprise 1.01 ha hardstanding (including the interchange), an earth bank (0.375 ha) and soft landscaping (0.48 ha).¹¹⁷ In spatial terms, therefore, they would be very limited in extent. Bus shelters and secure cycle parking would be small and very limited in their visual impact. A correct analysis of *Framework* paragraph 146 must start from the premise that the category in question can be 'appropriate' development in the Green Belt.¹¹⁸ Some degree of impact on openness and/or Green Belt purposes does not mean that it is, as a result of this, necessarily inappropriate. This is a matter of judgement for the decision-maker.¹¹⁹
158. The Green Belt works comprise transport infrastructure that would serve local needs, of both those working at and visiting the proposed development, along with local people walking/cycling in the area or who arrive at or depart from Whittlesford Parkway Station and would find it convenient to use the new facilities. The works would therefore promote sustainable transport in the local area, both to and from the development and more generally, in accordance with important objectives in *Framework* paragraphs 102(c), 108(a) and 110(a).
159. The type of works proposed are commonly encountered in the Green Belt. They would lie close to existing highways infrastructure along the A1301 to the west of the McDonalds roundabout. In the M1 junction 10A decision the Secretary of State agreed that the scheme comprised local transport infrastructure that required a Green Belt location, on the basis that the "scheme's objectives are all local and the improvements must be undertaken at and around the existing junction which lies in the Green Belt".¹²⁰ In the Cobham MSA decision, which concerned a proposal to add 79 HGV parking spaces to the existing MSA, the Inspector found that, whilst many HGVs using the MSA would be on longer than local journeys, there was nevertheless a need for HGV parking in the local area, and that this would "need to be local to the motorway". The Berry Hill decision concerned a proposal to construct a new access track and Bailey bridge to serve a sewage treatment works in the Green

¹¹⁶ APP6.3 Appendix 2.

¹¹⁷ ID54; APP7.3 Appendix F. CD12.2 Figure 9.45b indicates illustrative design for bridge.

¹¹⁸ *Europa Oil and Gas Ltd v SSCLG* [2014] 1 P&CR 3 (at paras 64 and 65).

¹¹⁹ ID72.

¹²⁰ ID63 DL10; ID60 DL8.

Belt. The parties had agreed that the development constituted “local transport infrastructure requiring a Green Belt location and involved engineering works”.¹²¹ The bridge was found to be not inappropriate development as it would not have compromised the openness or permanence of the Green Belt or any of the purposes of including land within it.¹²²

160. In the Ouchthorpe Lane decision, the Inspector found that a proposed access road in the Green Belt, designed to serve a proposed development of 68 dwellings not in the Green Belt, was found not to be local transport infrastructure as the Government’s intentions indicated by the Impact Assessment for the NPPF.¹²³ This Assessment referred to local infrastructure schemes that could be beneficial to communities in the Green Belt including for example, infrastructure to support more public transport, such as opening new routes, providing bus shelters and small public transport interchanges. This is apposite to the sustainable transport measures proposed by the appeal scheme, including those elements that would be sited in the Green Belt, since they would be beneficial to local communities and would support public transport by opening new routes.¹²⁴

161. The Waterbeach appeal decision concerned the development of a private car park to serve the appellant’s business. The Inspector thought that “local transport infrastructure” meant “those physical assets which enable people and goods to move about efficiently”, and also referred to “facilities necessary to support communities and sustainable development through the movement and circulation of people and goods by various transport modes”.¹²⁵ Again, the sustainable transport measures proposed in the Green Belt for the AgriTech scheme fully meet that Inspector’s interpretation of what local transport infrastructure comprises.

162. The Green Belt works are an essential element of the proposed sustainable transport strategy, and there is no alternative location for them outside the Green Belt. Therefore, if it is decided to grant planning permission for the AgriTech Park, it must follow that a “a requirement” for the Green Belt works to take place in “a Green Belt location” has been demonstrated.¹²⁶

163. The pedestrian/cycle/equestrian bridge, the northern end of which would lie in the Green Belt, would be provided in any event. However, it has been agreed that a contribution in lieu of the bus/cycle interchange and its access may be made in the event that the CCC requests it.¹²⁷ That eventuality would be likely to arise if a satisfactory and acceptable scheme emerges from the Whittlesford Parkway Station Masterplan Stage 2 Report, which the parties agree would also enable the objectives of the sustainable transport strategy for

¹²¹ ID62 DL10.

¹²² ID63 DL18.

¹²³ ID59 DL10.

¹²⁴ CD2.4.10 Plans 11 and 12 shuttle bus and diversion of the Citi7 service into site and also into Pampisford.

¹²⁵ LPA1.3 Appendix PJ1 DL8.

¹²⁶ ID24.

¹²⁷ S106 agreement Schedule 1 paragraph 7.

the development to be achieved.¹²⁸ The Green Belt works are compatible with a number of elements of the Station Masterplan proposals. They would also be “engineering operations” for the purposes of *Framework* paragraph 146(b).

164. The *Framework* envisages that certain types of development, for example engineering operations, local transport infrastructure, and development proposed under a Neighbourhood Development Order (NDO) of a sufficient scale to require planning permission can in principle be brought forward without harming the openness of the Green Belt. By way of example, the impact assessment for the NPPF envisaged schemes of up to 10 houses coming forward under NDOs without impacting on the openness of the Green Belt.¹²⁹ That puts the present case very much in context.

165. Individually and cumulatively the components of the Green Belt works would be small scale and low key. The bridge would be elegant, with SCDC being able to secure a high quality design through reserved matters approval.¹³⁰ The bridge would be elevated at the point where it crosses the Green Belt boundary.¹³¹ This would allow views under the bridge, before it joined the earth banking further west, with the multi-user surface then running down along the earth banking and reaching grade a little over 100 m from the interchange.¹³² The remainder of the multi-user route, connecting the interchange to the station and running north along the eastern side of the A1301, would also be at grade. There would be some built structures associated with the interchange, including bus shelters, bicycle storage/hire facilities etc. which would be no more than would be expected on any small transport interchange.¹³³

166. In assessing the impact that development would have on the openness of the Green Belt it is necessary to take into account the ‘baseline’ situation, including buildings and other structures in the vicinity, both inside and outside the Green Belt. The proposed works would be seen in the context of existing highways infrastructure (i.e. the roads, signs and lighting columns), the BP filling station and the McDonalds restaurant. The remaining (majority) part of the new bridge would also be apparent. All of this would serve to limit views of the Green Belt works from viewpoints to the south and would serve as a backdrop to the Green Belt works in views from the north. Additionally, the Green Belt works would be sited at the very extremity of the Green Belt, reducing their impact on the wider Green Belt still further. Both in spatial and visual terms the Green Belt works would not harm the openness of the Green Belt. It therefore meets the “preserve” test set out in *Framework* paragraph 146.

167. Building in the Green Belt does not necessarily result in encroachment into the countryside. The Green Belt works would be small scale and low key, with much comprising open space. They would also be seen as part of the

¹²⁸ CD10.24.

¹²⁹ ID59 p 61 paragraph (iii).

¹³⁰ CD2.3 p 60; CD12.2 Figures 9.44-9.48; APP5.3 Appendix C.

¹³¹ APP7.3 Appendix J.

¹³² APP7.3 Appendix F.

¹³³ ID59 p 61.

existing transport infrastructure. The Green Belt works would not be seen as development that encroaches into the countryside.

168. There is no evidence to suggest that the Green Belt works would undermine the delivery of any derelict or other urban land. The Green Belt works cannot be located anywhere else (and obviously not on any derelict or other urban land), so building them could not sensibly be said to undermine the prospects of any derelict or urban land being brought forward for development.
169. SCDC also contends that the scheme would conflict with a "local purpose", that is to "maintain and enhance the quality of [Cambridge's] setting".¹³⁴ This is inconsistent with SCDC's acceptance that the scheme would not offend the equivalent criterion in the *Framework* paragraph 134(d), "to preserve the setting and special character of historic towns". But the site is 8 km from the edge of the city, with no intervisibility, and no suggestion that there are any locations from where views of both the city and the site could be obtained. The Green Belt works fall within *Framework* paragraph 146(c).
170. Should it be concluded, contrary to these submissions, that the infrastructure works in the Green Belt comprise inappropriate development, then the appellant submits alternatively that VSC exist that justify the grant of planning permission.¹³⁵ The proposed Green Belt works would facilitate the development and are necessary for it. On that assumption, the VSC lie in the need for a bespoke AgriTech park in this location and the huge benefits that it would bring in terms of meeting key policy objectives and enabling the UK economy to compete effectively in this rapidly growing sector. Also relevant are the public benefits that would arise from the sustainable transport strategy and the net biodiversity gain.¹³⁶ They are, in other words, the material planning considerations that weigh strongly in favour of granting planning permission for the development.¹³⁷
171. The Green Belt works would not be inappropriate development because (a) they would comprise local transport infrastructure that can demonstrate a need for a Green Belt location, (b) they would not harm the openness of the Green Belt, and (c) they would not conflict with any of the purposes for which land is included in the Green Belt.

Transport impacts

172. All transport-related matters have been agreed between the appellant and the two highway authorities following a rigorous and thorough assessment which demonstrates that the impacts are acceptable. The wide-ranging sustainable transport strategy can be delivered comprising a number of elements, including the multi-user route from Whittlesford Parkway Station to the main site, bus service improvements, and the implementation of a

¹³⁴ LPA1.2 p 35 paragraph 7.60.

¹³⁵ CD6.3 paragraph 144.

¹³⁶ The Habitat Impact Assessment Calculator at ID41 for woodland, grassland, wetland and other habitat including the built environment records a net score of +32.15 (derived from a losses score of 171.22 and gains score 203.37) with a hedgerow impact score of +9.94.

¹³⁷ APP8.2 paragraphs 5.5.15 and 6.6.4-6.6.12.

Framework Travel Plan, a Parking Management Plan and a Monitoring Plan, along with sufficient cycle and car parking.¹³⁸

173. The target mode shares, whilst ambitious, are achievable and realistic, and consistent with what is already being achieved locally at the Wellcome site.¹³⁹ The proposed off-site highways works would accommodate, on a Business as Usual (and therefore reasonable worst-case) basis, the traffic that the development would generate, such that delays and queuing on the local and strategic road network would reduce compared to the existing situation. Using the target mode shares, there would be further improvements at these junctions compared to the existing situation. Sensitivity tests show that, with the Wellcome expansion and the North Uttlesford Garden Village (NUGV), neither of which is yet committed, the proposed highway works would still reduce delays compared to the baseline position at all the junctions assessed.¹⁴⁰
174. All the proposed measures would be secured through appropriate and agreed planning conditions and obligations.¹⁴¹ The multiuser bridge and the improvements to the McDonalds roundabout would be provided in any event, but the planning obligations allow CCC to require a financial contribution to be made in lieu of (a) the bus/cycle interchange and (b) the improvements to the Hunts Road and Moorfield Road junctions.¹⁴² If exercised, this option would provide for up to 10,000 m² of floorspace to be occupied, at which point CCC must commit either to undertaking those works or alternative works or releasing the bonds, in which event the appellant would carry them out. Thereafter, the works must be completed before any more than 25,000 m² of floorspace could be occupied.
175. The Secretary of State will need to be satisfied, on the basis of CCC's Compliance Statement, that the provisions relating to CCC's ability to choose whether to require the appellant to pay a contribution in lieu of undertaking the works identified at (a) and (b) above – meet the requirements of regulation 122 of the CIL Regulations and *Framework* paragraph 56. On this, the appellant makes no submissions either way, but if it is decided that they do not meet those requirements, the obligations make provision for all of the works to be completed before first occupation of the development.
176. Essex County Council seeks a contribution of £2.5 m to the cost of a pedestrian and cycle bridge linking the appeal site to the proposed NUGV.¹⁴³ This should be given no weight because it lacks any justification whatsoever. The NUGV is at an early stage and the link is not required in order to make the AgriTech development acceptable. No justification is provided by reference to any Essex policy or guidance relating to financial contributions that are required

¹³⁸ APP7.2 paragraph 4.4.

¹³⁹ CD2.4.10 p 54 Table 4.1: 50% vehicle driver, 10% vehicle passenger, 40% bus/rail, 7% cycle, 3% on foot APP7.2 section 6.

¹⁴⁰ APP7.2 paragraphs 6.71-6.74 (including Tables 6.16-6.21).

¹⁴¹ Grampian conditions cover the works to form the site access roundabout junction with the A1301; and the works to Junction 10 of the M11 and the A11/ A1307 junction.

¹⁴² S106 agreement Schedule 1 paragraphs 7 and 9.

¹⁴³ ID18. The 10 June request for an education contribution has not been pursued.

to be made before planning permission is granted, and the amount sought is not justified by reference to any costings or other relevant material. Nevertheless, the appellant recognises the desirability of a link between the developments should NUGV proceed, and so would enable a link to be provided from its land.¹⁴⁴

177. The expert evidence submitted addresses all transport-related issues raised by third parties.¹⁴⁵ The use of a single survey to establish baseline conditions is normal practice and has never been questioned by either of the highway authorities. The information provided by third parties about baseline traffic conditions is inconsistent and unreliable, as the basis on which it has been collected is unclear. The days appear to have been randomly selected, and it is not known whether it was decided not to record data from the days on which there was less traffic. There is journey time information for a single whole week in May 2019 which shows a consistent pattern of some, but limited, delays in the morning and evening peak hours compared to the free flow journey time.¹⁴⁶ The delays recorded on 16 January 2019 were exceptional and coincided with the closure of the M11.
178. The third party evidence fails to address the future situation with the development and its associated transport measures (including the junction improvements) in place, when assessment shows that delays would reduce at all the junctions assessed. The mode share targets are realistic and achievable, and so the development would be very unlikely to lead to increased rat-running or off-site parking in local roads.¹⁴⁷ These are matters which could, if they arose, be effectively addressed through the Monitoring Plan.¹⁴⁸ It is lack of junction, and not link, capacity that causes current congestion in peak hours. The appeal proposals would improve junction capacity. The new site access junction has been fully considered on an unrealistic worst-case basis, and it would operate entirely satisfactorily.
179. In conclusion, the *Framework* provides that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposed development would not have any adverse effect on highway safety, and the residual cumulative effects on the local road network (including the M11), far from being severe, would in fact be beneficial.

Agricultural land

180. The proposal would result in the loss of 33 ha of BMV agricultural land. SCLP Policy NH/3 provides that planning permission will not be granted for development which would lead to the irreversible loss of BMV agricultural land unless sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land. The

¹⁴⁴ S106 agreement Schedule 1 paragraph 11.

¹⁴⁵ APP7.2 section 8; APP7.4 section 4; APP/7.5.

¹⁴⁶ APP7.4 p 7 paragraph 4.16 and Table 4.1; the week is representative, not being a Bank or school holiday week APP7.5 paragraph 2.8.

¹⁴⁷ APP7.4 sections 3 and 4.

¹⁴⁸ APP7.4 paragraph 4.5.

policy does not require the development to be for the purposes of agriculture. The very focus of this development is to improve agricultural productivity and sustainability across the UK and internationally. If it achieved that purpose the development would be compliant with SCLP Policy NH/3.

Economic impacts

181. It is highly significant that the SCLP does not mention the existence of an AgriTech sector in the Cambridge area or the need to support it by making land available for development. The first recognition of the existence of AgriTech as a separate sector of the UK economy was in the Government's UK July 2013 Strategy for Agricultural Technologies.¹⁴⁹ This noted that the full economic potential of the sector was only just starting to be understood, and believed it had major value to the UK and global agriculture and that the UK's competitiveness in agriculture had been in decline for a number of years.
182. In September 2014 the Greater Cambridge Greater Peterborough Enterprise Partnership published its Strategic Economic Plan, which under the heading "Internationally Competitive/Nationally Significant" the Executive Summary included "A leader in AgriTech, underpinned by the highest concentration of best quality farmland in the UK".¹⁵⁰ The Plan also noted that innovation centres and science parks could provide supportive environments for SMEs, and had a number of characteristics, including that physical clustering of organisations made it efficient to deliver business support services in one location.¹⁵¹
183. In 2015 the London Stansted Cambridge Corridor Sector (LSCC) Profile "Agrifood" noted that Agrifood employment in the Corridor had grown by 26% over the previous 4 years, that East Anglia contained some of the most productive agricultural land in the UK, and that there were a number of world class research institutions in the area. AgriTech East was the UK's first business-led AgriTech cluster organisation, and included a summary of the UK Strategy for Agricultural Technologies.¹⁵² In July 2016, the LSCC Growth Commission published its Findings and Recommendations, which noted that London, Cambridge and the Corridor competed for international investment and jobs that would otherwise go overseas, and included the ambition that by 2036 the Corridor would be "the leading technology region in Europe" and "the prime location choice for tech and life sciences firms looking to locate in the UK".¹⁵³
184. None of these ambitions and objectives as they related to AgriTech found their way into the SCLP. Subsequent documents were not considered during the plan preparation process.¹⁵⁴ Not only are the needs of the AgriTech sector not acknowledged, provided for or considered in the SCLP, but if (as SCDC suggests) those needs can be met on existing and allocated sites, which the appellant does not accept – then that is a happy coincidence and emphatically not the result of any proper assessment of those needs and the taking of steps

¹⁴⁹ CD7.2 p 14.

¹⁵⁰ CD7.8.

¹⁵¹ CD7.8 pp 50-51.

¹⁵² CD7.9 sections 2 and 4.

¹⁵³ CD7.10 pp 3 and 28.

¹⁵⁴ ID20.

to provide land to meet them. The SCLP is therefore not out of date so far as provision for the AgriTech sector is concerned; rather, it has failed to make any provision. In those circumstances, the development control system can, and should, step in to ensure that the needs of the sector are properly met.

185. The appellant has set out a full explanation of the nature and importance of the AgriTech sector and of the nature and scale of the global hunger and sustainability challenges which it is helping to meet.¹⁵⁵ This also includes a comprehensive account of the planning and economic policies which seek to promote the AgriTech sector in the UK in order to restore the UK's competitiveness in agriculture.¹⁵⁶ The following highlights key elements of policies that bear especially on the importance of the AgriTech sector to the UK, but more specifically to Cambridgeshire.

- (i) UK Industrial Strategy: "We will put the UK at the forefront of the global move to high-efficiency agriculture".¹⁵⁷
- (ii) Technology and Innovation Future: "Convergent technologies [in food] have clear potential to improve productivity of UK farming and its contribution to the economy".¹⁵⁸
- (iii) East of England Science and Innovation Audit: four themes, of which one is Agri-Tech; "the East of England innovation ecosystem is world-leading, but it needs to continue to evolve rapidly – and it must be empowered and resourced to do so"; recognition of benefits from co-location and clustering and need to make "appropriate physical provision ... to unlock a future growth dynamic".¹⁵⁹
- (iv) CPIER Key Recommendation 3 that the Government "should adopt a 'Cambridge or overseas' mentality towards knowledge-intensive business in this area"; under "Sector in Focus: AgriTech" reference to AgriTech as "one of the four pillars for East of England for knowledge-led growth", this being a "Cambridge-based cluster" with the need to "support new production clusters close to concentrations of agricultural production"; "There is a real opportunity for the area to become an international leader in this sphere, both in innovation and application".¹⁶⁰
- (v) Cambridge and Peterborough Local Industrial Strategy: under AgriTech, "Our region is poised to become the UK capital of this industry".¹⁶¹ There is huge, untapped potential opportunities in the Fens and across the area for growing and strengthening this sector specialism, and by creating better connections with local clusters in clean growth, advanced manufacturing, artificial intelligence and machine learning. It aims to establish our position as the UK capital of AgriTech, and states that AgriTech is one of the strategic growth

¹⁵⁵ APP2.2 section 2.

¹⁵⁶ APP2.2 section 3.

¹⁵⁷ CD7.3 pp 47 and 75.

¹⁵⁸ CD7.4 p 20.

¹⁵⁹ CD7.5 pp 2, 8 and 9.

¹⁶⁰ CD7.11 pp 11 and 57.

¹⁶¹ CD7.12a March 2019 draft. CD7.12b published July 2019.

- sectors which does not yet have central agglomerations which will be a key ingredient in its future success.¹⁶²
- (vi) Partnering for Prosperity – A new deal for the Cambridge-Milton Keynes-Oxford Arc refers to knowledge-intensive firms and technology clusters which compete on the world stage to maximise the economic potential of this arc and the contribution it makes to UK output, trading accounts and tax revenues. The Government response refers to the Arc being home to world-leading technology clusters which influence and shape the innovation economy.¹⁶³ Government ambition for the Oxford-Cambridge Arc is to build upon strengths in individual parts of the Arc, especially in science, technology and high-value manufacturing, to transform the Arc as a whole into a world-leading economic area and to broaden the economic base of Cambridgeshire and Peterborough, by expanding its key industrial sector clusters and networks, and by improving the long-term capacity for growth in Greater Cambridge.¹⁶⁴
 - (vii) Growing the Bioeconomy: “Our vision is that in 2030 the UK is a global leader in developing, manufacturing, using and exporting bio-based solutions”; “The global market for agricultural biotechnology is set to grow from £22 bn in 2016 to £40 bn by 2022”.¹⁶⁵
 - (viii) Cambridgeshire and Peterborough Combined Authority’s Assurance Framework: “Agri-Tech is one of our strategic growth sectors identified by the CPIER; our ambition is to use the Local Industrial Strategy to step up our programme to ensure we are the ‘go to’ centre for UK Agri-Tech”.¹⁶⁶

186. These, taken individually and together, represent a very powerful statement, at the highest levels, of the importance to the UK economy of building on the existing AgriTech sector in the Cambridge area. The importance of taking action now to help achieve these policy aims can hardly be overestimated. Yet the SCLP manifestly fails to make any positive provision for AgriTech development. The SCLP does indicate that it “provides more flexibility than recent past policies as part of delivering the objective to support economic growth by maintaining South Cambridgeshire’s position as world leader in research and technology based industries, research, and education by continuing to support proposals that build on the successful employment clusters”.¹⁶⁷ But in the light of this it is even more surprising, and unsatisfactory, that this is not taken forward into specific provision for AgriTech.

187. There is ample evidence which demonstrates that the AgriTech sector has been experiencing high levels of growth, and that this is expected to continue, both in the UK and worldwide. Agriculture is expected to be one of the fastest growing sectors in adopting the Internet of Things, with an anticipated

¹⁶² CD7.12 pp 18-19 pp 35-36.

¹⁶³ CD7.13 p 7, CD7.14 pp 1 and 2.

¹⁶⁴ CD7.27 pp 7 and 23.

¹⁶⁵ CD7.22 pp 13 and 52.

¹⁶⁶ CD7.32 p 16 paragraph 3.3.23.

¹⁶⁷ CD6.7A paragraph 8.5.

compound annual growth rate of 22% between 2014 and 2024.¹⁶⁸ The European AgriFood Tech Investing Report for 2018 (published in 2019) shows that, since 2013, when the UK Strategy for AgriTech was published, annual global venture capital investment in AgriTech has grown by 360%, and that compared with 2017 upstream investment grew by 200%.¹⁶⁹ AgriTech is a vibrant and rapidly growing sector which is attracting substantial new commercial investment.

188. SCDC relies on BIS Research Paper No 284 "Agri-Tech Industrial Strategy: Evaluation Scoping Study and Baseline".¹⁷⁰ This was published in July 2016, based on data collected in 2013 and 2014, which makes the document somewhat dated. It does not represent Government policy, planning or otherwise. In any event, its first objective was to provide an informed view of how the sector might develop without the Strategy, so the document therefore has no value as evidence of how the AgriTech sector may grow in line with the objectives set out in the Strategy.
189. The appeal site is ideally placed to make a major contribution to meeting these aims and objectives. It falls within all four of the strategic policy designations where a very strong emphasis is placed on the need to sustain and strengthen economic growth, including in the AgriTech sector.¹⁷¹ It is easily accessible to Stansted Airport, London and Cambridge, by road and by rail. It is also geographically within the existing clusters of research/technology and business parks that exist around Cambridge, and more particularly within the southern bioscience cluster. The 'Cambridge cluster' may be taken very broadly to include an area of about 20 miles around the city, but in terms of the reality on the ground, and the commercial market, there are three distinct clusters, each with a distinct character and function.¹⁷²
190. There is clear empirical evidence of the importance of clustering to the growth and success of knowledge-based businesses. SCDC's case seems to be that AgriTech businesses have prospered in the Cambridge area in the absence of a dedicated site. But this quite misses the point. The presence of a significant number of AgriTech businesses and other organisations in the Cambridge area is the result of the strong draw of the area, which derives from a number of factors including its strategic location, the presence of Cambridge University and of the bioscience and the electronics/digital/ICT clusters, and the availability of venture capital funding and a nationally significant cluster of business support services for high growth technology companies.
191. There is powerful and convincing expert evidence about the benefits of clustering, and how this has been a key factor in achieving strong growth in other sectors of the economy. A single large bespoke site for AgriTech is what is required if policy ambitions are to be achieved. Furthermore, it cannot be inferred from the existence of a number of AgriTech businesses in the Cambridge area that they are all prospering as well as they might be had they

¹⁶⁸ APP2.2 paragraph 2.2.6.

¹⁶⁹ APP2.2 paragraphs 2.2.9-2.2.11; CD7.31.

¹⁷⁰ LPA2.5 Appendix A.

¹⁷¹ APP8.3 Appendix D. ID22. CD7.13 p 21 Figure 1.

¹⁷² APP4.2 paragraphs 4.28-4.31.

been able to enjoy the benefits of clustering on a single site. Not all of the space that is currently occupied by AgriTech businesses is particularly well-suited to use for that purpose.¹⁷³ The units that would be available in the appeal development would, by contrast, be specifically designed for such businesses. Support from existing businesses is very clear about the benefits that the development would bring to the AgriTech sector, including access to and collaboration with the AgriTech community that would establish itself there.¹⁷⁴

192. The proposed incubator units would provide ideal space for AgriTech start-up companies. These businesses would be able to grow into larger premises within the development. There is no likelihood of as much as 3,000 m² of new incubator space being developed on one site in the future, and certainly not one dedicated to AgriTech start-ups. The early provision of the incubator space would therefore be particularly important because it would enable start-up companies in the AgriTech sector to come into being and then survive the challenges of the first few years of operation. Without a critical mass of commercial space, a stand-alone incubator would not be financially viable without public sector support.

193. A key aspect of clustering is the way in which co-location allows businesses and other institutions that operate in the same sector to collaborate and draw on each other's knowledge and expertise. This is a very well-established phenomenon and is something that is recognised and encouraged by policy. Access to the best scientific talents as well as to complementary skills offered by workers in allied fields such as computer sciences and engineering is also critical. The proposed development would have all of these attributes.¹⁷⁵

194. There is no evidence that the presence of a "virtual cluster", in the form of various networking and other similar organisations, is any substitute for physical proximity.¹⁷⁶ Indeed the evidence is clear that co-location is essential if the beneficial effects of clustering are to be fully and properly realised. The creation of a pool of specialised skills and labour resources creates clear benefits for both employees and employers. Businesses benefit from the sharing of information, knowledge and material inputs such as R&D outcomes, infrastructure and specialised equipment and facilities. Close proximity of businesses speeds up this process of "creative collisions". Clustering around universities and research institutes helps to deepen and accelerate the development of new knowledge and scientific discovery. Clustering also means that the commercialisation process is likely to be more effective. Thus, the co-location of businesses and research activity in the AgriTech sector at a single site would result in the sector being more competitive and successful in the longer term compared to a dispersed model.

195. Absent a dedicated AgriTech site the future growth of AgriTech in the Cambridge area would be significantly constrained, and it is likely that much of

¹⁷³ ID32 p 2.

¹⁷⁴ CD4.1.

¹⁷⁵ ID11.

¹⁷⁶ ID33.

the AgriTech-related business activity that would otherwise have taken place in the Cambridge area would instead go to locations elsewhere in Europe, the USA or the Far East.¹⁷⁷ The AgriTech park would be able to draw on the expertise base in and around Cambridge.¹⁷⁸ AgriTech will move towards inter-disciplinary solutions which require the combination of multiple technologies. It is unsuitable for locations which only specialise in agri-science, but very suitable for Cambridge which provides a wealth of enabling technologies including engineering, ICT, data, physics, chemistry and environmental sciences as well as plant and crop science.

196. A further advantage of the appeal site is that it would enable businesses and other organisations based there to have access to agricultural land for crop and seed trials and other activities that involve the trialling of new agricultural methodologies, technologies and practices. For that purpose, at least 10 ha of land would be set aside within the appeal site.¹⁷⁹ There is also other adjacent and nearby agricultural land within the appellant's ownership that has already been used for crop trials on a substantial scale and could be used for that purpose in connection with the proposed development.¹⁸⁰

197. Much of the trialling work for new technologies and techniques, rather than "traditional" crop and seed trials, which are often undertaken on a large scale, will not require large amounts of land and would be able to take place within the appeal site. Not just on the 10 ha, but also on land that would be available between the buildings. In many cases only small areas of land are needed. But businesses along the supply chain need to work together for a cluster to work effectively and access from benchtop to field scale land is essential. For many trials (such as robotics) there is a need for the personnel to be close to the workshops, as access to the trial plots is often required a number of times each day. If parts of the AgriTech market are driven away because of lack of field trial access, the whole cluster effect would inevitably be devalued.

198. There are many examples of locations where agricultural research is undertaken on land that is adjacent, or very close to, the organisation's premises. In the UK these include; NIAB¹⁸¹, Rothamsted Research in Hertfordshire¹⁸², Peatlands Science Park in Scotland¹⁸³, and Syngenta near Bracknell¹⁸⁴. The appeal site was not suitable to accommodate NIAB's requirement for a new field trial station, but NIAB's letter of representation makes it clear that "ideally the fields used for the trials should be nearby".¹⁸⁵ The exemplar sites from abroad are also of key relevance because they

¹⁷⁷ APP3.2 paragraphs 5.41, 5.69-5.78, and 6.17-6.20.

¹⁷⁸ APP2.2 pp 48-53 section 4.4.

¹⁷⁹ CD2.3 p 36 Figure 20.

¹⁸⁰ ID16. CD2.2 (the blue land is other land within the appellant's control).

¹⁸¹ ID47 and ID57.

¹⁸² ID36.

¹⁸³ APP2.2 paragraph 2.4.5.

¹⁸⁴ APP2.2 paragraphs 2.4.6-2.4.7.

¹⁸⁵ LPA2.3 Appendix C paragraph 8.

demonstrate the success of large, inter-disciplinary clusters which draw on a wide range of new agricultural technologies.¹⁸⁶

199. There is no alternative to the appeal site if the appeal development as proposed is to be accommodated on a single site. If it is accepted that a single site dedicated to AgriTech is what is required, that is an end of the matter. The appellant undertook an alternative sites assessment which was updated for the purposes of the appeal.¹⁸⁷ SCDC has criticised the 50 ha site size criterion, but this is an appropriate basis for this exercise. In any case, SCDC has not suggested any site that might be suitable and available for the appeal development, either in South Cambridgeshire, the wider Cambridge area or the search area that was chosen for the alternative sites assessment. Elveden has been mentioned as a possible alternative location for the appeal development. However, it lacks the appropriate infrastructure and is about 30 miles from Cambridge, which is well outside the area of the Cambridge clusters.
200. SCDC considers that there is ample employment floorspace and land (including allocated sites) on which the demand from AgriTech organisations could be met. There is no substantial dispute about the quantum of available floorspace and land.¹⁸⁸ The dispute is about whether that floorspace and land is or would be suitable not merely to accommodate the demand for it, but also to provide the right type of accommodation in the right environment so that the policy ambitions for the AgriTech sector can be met.
201. Existing business parks are also unlikely to accept AgriTech occupiers on a scale that would allow the benefits of co-location and collaboration to be realised.¹⁸⁹ At Cambourne Business Park the land to the south of the access road that is now (largely) allocated for residential development has been available for commercial development for over 20 years but has not been taken up because of its poor location. What remains is unlikely to be attractive to AgriTech operators.¹⁹⁰ At North East Cambridge the AAP is not due for adoption until 2022, and there is an issue concerning the relocation of the existing sewage treatment works that is not yet resolved.
202. Savills do not have a register of AgriTech occupier requirements because they do not have a scheme to offer to the market. Nor are they aware of any such requirements for the space that they are marketing in the southern and northern clusters, either because they would not be likely to be welcome in those locations or because the space is in any case not suitable for or attractive to them. General requirements in these specialist sectors are rarely registered; more typically prospective occupiers will register interest in a specific location but only once this has planning permission.¹⁹¹
203. Future tenants are not known at this stage because there would be a 10-15 year time horizon to develop the park fully and because of the speed at which AgriTech is developing. Many of the technologies have not yet emerged

¹⁸⁶ APP2.2 paragraph 2.4.4. APP2.3 Appendix 2. ID11.

¹⁸⁷ CD2.5 section 5 Appendix D. APP8.3 Appendix J.

¹⁸⁸ APP4.2 paragraphs 5.10-5.13 and 6.3, as updated by ID38.

¹⁸⁹ APP4.2 paragraph 6.7.

¹⁹⁰ Plan attached to ID46.

¹⁹¹ APP4.2 paragraphs 6.9-6.11.

or been commercialised. This has been true of the other business parks developed in the past for the technology and life sciences sectors. Inward investment, and new start-ups and spinouts not currently active in the UK, would be attracted to the AgriTech park over time. Any attempt to base an assessment of demand only on AgriTech businesses that are already in the area is thus fundamentally flawed.

204. The quantified economic benefits of the development have not been challenged.¹⁹² This includes an assessment of displacement effects. The net employment supported by the project (after completion) at regional level is estimated at 4,887 jobs, with a GVA p.a. (at 2018 prices) of at least £278 m.¹⁹³ SCDC questions this only on the basis that the floorspace proposed in the development could be provided in a disaggregated manner across a number of sites elsewhere. The appellant fundamentally disagrees with this, and the quantified benefits are real and significant weight should be attached to them.
205. The case for the development of a dedicated AgriTech park is therefore very clear, and there is no prospect of the need being met other than on the appeal site, which, with its distinct locational and other advantages, is ideally placed to do this. The need already exists and should therefore be met as soon as possible. There is no sound reason to delay the decision on whether the site should be released until the Local Plan review. The need can be met at the appeal site consistently with the development plan and with only limited adverse impacts (on the landscape and on heritage assets). There is no preferable alternative site on which the need could be met, and delay would mean that inward investment would be lost, and the UK would fall further behind in terms of its international competitiveness in agriculture and AgriTech.¹⁹⁴

Development plan

206. The proposed development complies with the development plan. As such, the development should be permitted unless material considerations (i.e. the factors that are relevant to the determination of the appeal other than the development plan) indicate (i.e. justify) the appeal being determined other than in accordance with the plan. The appellant's position is that all the material considerations before the Inquiry lend further support to the case for planning permission to be granted.
207. If, contrary to the appellant's case, the Secretary of State was to conclude that the proposed development would not comply with the development plan, the appellant's position is that the same material considerations would strongly justify the grant of permission other than in accordance with the plan.
208. The proposed development would comply with the objective of Policy S/1 for South Cambridgeshire "to demonstrate impressive and sustainable economic growth"; the objective of S/2(a) "to support economic growth by supporting South Cambridgeshire's position as a world leader in research and

¹⁹² AAP2.2 p 44 section 4.2. APP3.2 p 35-39 section 5.4.

¹⁹³ APP3.2 p 39 Table 5.2.

¹⁹⁴ APP8.2 paragraph 6.6.12.

technology based industries, research, and education, and supporting the rural economy”; and the objective of Policy S/5 to create 22,000 additional jobs over the plan period “to support the Cambridge Cluster and provide a diverse range of local jobs”.

209. Furthermore, and importantly, the proposed development would accord with Policy E/9. This policy supports development proposals in suitable locations which “support the development of employment clusters, drawing on the specialisms of Cambridge in a range of sectors listed in the policy as well as “other locally driven clusters as they emerge”. AgriTech is not one of the named sectors in the list. The supporting text states that Policy E/9 deliberately provides flexibility by supporting the development of new locally driven clusters where they emerge. The policy has been carefully drafted to refer to “suitable locations”. SCDC is wrong to contend that “suitable locations” means “existing businesses located in the rural areas, established employment areas, allocations and within development Frameworks”.¹⁹⁵ SCLP Policy S/7 allows development outside development Frameworks “which needs to be located in the countryside”. Or, putting it another way, if SCDC’s argument was right then Policy E/9, which is the very policy in the SCLP designed to support clusters, would rule out clusters coming forward in the countryside even if they could demonstrate a need to be there.
210. The problem with SCDC’s interpretation and application of Policy E/9 in the present case is that it flies in the face of the *Framework* and of the approach that it says the SCLP takes. If SCDC’s interpretation and approach are right, then for AgriTech; (i) the SCLP would in fact have no flexibility to respond to the rapid changes that have taken place both to policy and in terms of the sector’s rate of growth; nor (ii) would the SCLP have made appropriate provision for AgriTech to emerge and develop over the plan period. Plainly, then, SCDC’s reading of Policy E/9 is wrong. In this context “suitable” simply and obviously means “suitable, taking into account all other relevant policies in the plan”. For the reasons set out in the appellant’s evidence, the appeal site is incontrovertibly a suitable location for the proposed development.
211. On this basis the proposed development would accord with Policy NH/8. But even if (contrary to the appellant’s case) the Green Belt works would be inappropriate development in the Green Belt the wider public benefits of the overall scheme (i.e. the creation of a world-class AgriTech park with all the economic, environmental and social benefits it would deliver) would clearly constitute the VSC necessary to justify the grant of planning permission. On either scenario the proposed development would therefore accord with local and national Green Belt policy.
212. Similarly, with regard to the protection of heritage assets, it is common ground that the proposed development would cause less than substantial harm to a limited number of designated heritage assets, which must be weighed against the public benefits it would deliver. Policy NH/14 does not expressly contain an equivalent provision but plainly the same approach must be taken if the policy is to be applied in a way that is consistent with national policy. The benefits that the proposed development would deliver very heavily outweigh

¹⁹⁵ APP1.2 p 26 paragraph 7.13.

the harm that it would cause to heritage assets. Harm to undesignated assets is justified here. On this basis, the proposed development would accord with both national and local policy in relation to the protection of heritage assets. With regard to landscape and visual impact, SCDC's analysis is flawed and the proposed development would comply with Policy NH/2. It is common ground that the scheme complies with the SCLP's transport Policies TI/2, TI/3 and TI/8.¹⁹⁶ The public benefits that the scheme would deliver would very heavily outweigh the loss of agricultural land in this case, so the proposal would comply with Policy NH/3, which allows BMV agricultural land to be lost where "sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land".¹⁹⁷

Conditions and planning obligations

213. The following user restriction would be sufficient to ensure that occupation was restricted to AgriTech companies:

*The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.*¹⁹⁸

214. This would provide adequate safeguards, requiring all occupiers to be engaged in AgriTech. It is precise, reasonable and enforceable, and would therefore be effective to ensure that the development was only occupied by organisations that are genuinely undertaking activities in the AgriTech sector. SCDC's complaint that the concept of AgriTech is nebulous is odd, given the Government's recognition six years ago of AgriTech as a discrete sector of the economy.

215. SCDC wants an additional level of control, namely that each occupier should have to demonstrate a need to occupy space at the AgriTech park, either by virtue of the need to be in proximity to the agricultural land available for crop and technology trials, or by virtue of the need to co-locate with other AgriTech occupiers. This is not necessary. There is no policy requirement for a needs test.¹⁹⁹

216. SCDC's submission that, absent a needs test, all of the use class B1 floorspace could be used for manufacturing is wholly unrealistic and unlikely to happen. In any event, the imposition of a needs test would overcome SCDC's objections to the way in which the AgriTech user restriction is drafted.

217. If the Secretary of State considers, contrary to the appellant's submissions, that a needs test meets the *Framework* tests then the appellant proposes the following wording:

The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of

¹⁹⁶ SoCG2 at CD1.7.

¹⁹⁷ APP8.2 at p 47 section 5.6 and ID23.

¹⁹⁸ Other options are included in the draft conditions for consideration.

¹⁹⁹ CD6.7A paragraph 8.45.

products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval. The details shall demonstrate either: a need for the prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.

218. SCDC would want the needs assessment to be submitted as part of any reserved matters application, but this is wholly unworkable and unreasonable as a committed occupier for each part of the development may not be known at that stage. The appellant could not respond flexibly to meet the needs of potential occupiers. The condition would be used to revisit the question of need at the reserved matters stage, when this would already have been established by the grant of outline planning permission. An occupation restriction would plainly be sufficient should a needs assessment be thought necessary.
219. It would not be necessary or appropriate to require the scheme to comply with as yet unknown sustainability standards in future local plans, as is suggested in Condition 54. Phased housing schemes are not required to review their affordable housing offer following a local plan review, and there is no reason why a different approach should be taken with regard to sustainability targets. In any event, the proposed condition is vague and unworkable as it is not clear when an exception to the requirement might arise. The phrase “whether by reason of viability impact or otherwise” is entirely unclear as to its intended operation. The suggested pre-commencement conditions are agreed.²⁰⁰
220. The section 106 obligations require the appellant to undertake the proposed off-site highways works to the McDonalds Roundabout and the proposed shared multi-user route.²⁰¹ The parties agree that these obligations are regulation 122 compliant. With regard to the other off-site works, CCC has requested that it should be able to require the appellant to pay CCC to do the works (or such alternative works as CCC may choose to do in their place). The appellant is content with this and has agreed the wording of additional obligations to secure it. The Secretary of State will however have to consider whether these additional obligations are regulation 122 compliant, i.e. whether they can properly be said to be necessary to allow the development to proceed. In the event that the Secretary of State was to conclude that the additional obligations are not compliant then the clauses would fall away, and the appellant would be required to undertake the works.²⁰²

²⁰⁰ ID67.

²⁰¹ S106 agreement Schedule 1 paragraphs 6.1 and 8.1.

²⁰² S106 agreement Schedule 1 paragraphs 7.8-7.10 and 9.8-9.10.

Other matters

221. The impacts of the development in terms of air quality, the water environment and noise were covered in the ES. A briefing note has also been provided to cover these matters.²⁰³
222. The Wellcome Trust Ltd entered into a section 106 obligation, dated 5 December 2002, when it was the freehold owner of the Hinxtton Estate, of which the appeal site formed part.²⁰⁴ This covenanted not to change the use of the Hinxtton Estate, or any part of it except (a) in accordance with the Local Plan, or (b) under a Development Order, or (c) in accordance with a planning permission granted by the Council. SCDC could not seek to use the obligation to prevent the proposed development coming forward in the event that the Secretary of State granted outline planning permission for the appeal scheme. Condition (c) would, as a matter of construction, likely encompass a grant of permission on appeal; further and in any event SCDC could not lawfully refuse to release the deed in the event that the Secretary of State had granted permission for the proposed development.
223. The appellant and SCDC both invite the Secretary of State to determine the appeal on the basis of the revised landscape and open space parameter plan.²⁰⁵ There is no possible prejudice to any interested party. In the event that the Secretary of State considered that there might be prejudice to an interested party there are two solutions: (i) allow the interested party/parties a further opportunity to comment on the revised plan; or (ii) determine the application on the basis of the original parameter plan, as the changes are so minor that they could in any event be carried out within the scope of Condition 6, which requires the development to be carried out in accordance with the approved plans save for minor variations.

Overall planning balance

224. The development complies with the development plan, read as a whole. There are no material considerations to indicate that planning permission should be refused. If the Secretary of State finds that the development materially conflicts with the development plan, the economic benefits of the development, and the need for it, decisively outweigh that conflict.²⁰⁶ In particular, it would bring over 4,000 new jobs to the region, result in a GVA of at least £278 m p.a., and enable the UK to fulfil key national and sub-regional policy objectives, which were not even taken into account, let alone provided for, in the SCLP, to put the UK at the forefront of the global move to high-efficiency agriculture and to establish the area as the UK capital of AgriTech. On either basis, therefore, the appeal should be allowed, and outline planning permission should be granted for this nationally important development.

²⁰³ ID53.

²⁰⁴ LPA1.3 Appendix 2.

²⁰⁵ ID50 (better copy at back of ID58).

²⁰⁶ APP8.2 section 9; NB the reference in para 9.1.8 to "the material considerations outlined in Section 6 and the benefits identified in paras 9.2.1 to 9.2.16" should read "the material considerations outlined in Section 6 and in particular the benefits summarised in para 6.2.19".

Written representations

Pre-application consultation

225. The appellant's Statement of Consultation sets out the consultation that has taken place to inform the development proposals.²⁰⁷ Representatives of the appeal scheme first attended a meeting at Hinxton Village Hall with community representatives in November 2015. Public exhibitions were held in June 2016 and May 2017. The 2016 exhibition was advertised in the local press and a postcard was sent to approximately 1,500 homes in the surrounding villages. Over the three days of the exhibition 224 people formally signed in, but a number did not complete registration. Following receipt of feedback forms an FAQ document was published on the project website.²⁰⁸ In January 2017 a meeting was held with Hinxton Parish Council and village residents, which was attended by about 40 people. Questions put at this meeting were considered in a March 2017 FAQ document.²⁰⁹

Application stage

226. SCDC received 252 written responses to the application.²¹⁰ These included 198 objections and 42 letters in support of the proposal. Observations or comments, without expressing a view, were submitted by 12 respondents. The main objections are summarised as follows:²¹¹

- Site not allocated and application premature
- No designated end user
- No need or justification for development of this scale
- Not sustainable given distance to housing and services
- Large number of science/business parks in the area
- No relationship with existing bio-tech/research parks
- Impact on heritage assets
- Loss of agricultural land and open/rural character
- Urbanisation with scale and height of buildings
- Traffic concerns for A1301 A505 A11 and M11
- Vehicle trip rates underestimated
- Traffic congestion and parking in nearby villages
- Increased flood risk and reduced aquifer recharge
- Noise and light pollution and impact on air quality health and well-being
- Bus/cycle interchange impact on the Green Belt
- Loss of wildlife habitats
- Impact on Duxford aerodrome
- Other better locations such as Norwich and near Northstowe
- Relationship concern with expansion of Genome Campus in Hinxton

227. The main issues cited by those supporting the proposal are summarised as follows:²¹²

- The need for the scheme and job creation

²⁰⁷ CD2.6.

²⁰⁸ CD2.6 Appendix F.

²⁰⁹ Appendix H of CD2.6.

²¹⁰ CD4.1.

²¹¹ CD5.1 paragraph 68.

²¹² CD5.1 paragraph 69.

- An opportunity for trials and small food business startups
- Well placed for transport access and improve pedestrian/cycle access
- Social and environmental benefits with sustainable food distribution
- A local community asset and opportunity for producers food hub
- Important for UK to have its own high tech facility and cluster research
- Deliver positive outcomes for farming
- Opportunities for collaboration with proximity of other business parks
- Location embedded in a rural/agricultural area
- A hub for businesses to support each other

Inquiry stage

228. The Planning Inspectorate received 30 written representations at the appeal stage.²¹³ These are summarised as follows.
229. District Councillor Peter McDonald provided a local view and a perspective on agri-tech as someone working in the industry. Whilst not denying the importance of AgriTech in the UK economy there are concerns about the context and integration of the proposal at Hinxton. It would not be integrated with the key UK AgriTech players, including Ceres which is the UK's primary AgriTech collaboration and has already received £4.8 m of Government funding. There has been limited discussion with local farmers about collaboration, and concerns about soil health and natural capital. Other concerns include scientific governance, employee numbers, the need for trials at Hinxton, along with measures for crop protection and pest management.
230. Specific comments addressing the Collinson Associates submission include concerns about investment in the proposal from significant players in the sector, and the focus on European crops. A large site with no infrastructure issues located mid-way between Cambridge and Norwich is already heavily involved in AgriTech. The proposal does not mention involvement by Defra, Natural England, or the Government's agri-advisory service. There is no integration with Cambridge University Faculty of Plant Sciences, the College of West Anglia or any other major research facility. Hinxton already has a well-established human biotech/gene-based R&D centre at the Wellcome Genome Campus.
231. Sir Jim Paice former Member of Parliament and Minister of Agriculture from 2010-2012 supports the proposal. The Cambridge sub-region has been the centre for agricultural research and technology for many years. The site is close to other Science Parks with many synergies. The UK agricultural industry is going through considerable change and productivity has to improve whilst reducing inputs for climatic and economic reasons. The synergies between robotics, plant breeding, specialist IT systems, plant chemistry and bio-science are considerable and the chance to work together on a single site would benefit all. The site is opposite the Genome Centre and benefits from existing transport routes, including the M11, Stansted airport and Whittlesford railway station. There is a clear need for a special AgriTech park, and this site is highly suitable for it.

²¹³ Part 1 Red folder in Appeal File.

232. James Palmer Mayor of Cambridgeshire and Peterborough supports the proposal in principle. The recent Independent Economic Review made clear that implementation of technology into the agricultural industry is vital to its future success. The link between food production and the local knowledge intensive industry is key to the future prosperity of agriculture across the globe. A link between Peterborough University's Agri-tech faculty and Hinxton Park could be forged for mutual benefit.
233. Rupert Kirby is a local resident concerned about unrealistic parking ratios and the reality of the existing highway capacity. Institutional finance will not be forthcoming for a scheme with such a restricted car parking ratio of one space per 58 m² gross floor area. Parking is essential for schemes that are not in central Cambridge. There is a risk of approving the scheme on the basis of an unachievable parking standard required to reduce the highways impact on an already overstretched network. Development of this scale should not take place until there is full access to the M11 at junction 9 and the A505 has been widened to dual-carriageway to avoid huge queues on the network and rat-running through villages. There would be severe consequences for highway safety and environmental impact from queuing and satnavs directing drivers to take much longer routes to avoid congestion.
234. John Shropshire OBE is CEO of G's Group Holdings Ltd, a grower-to-marketing organisation, and supports the proposal. World agriculture is entering a period of dramatic opportunity and change. The Cambridge region could be at the centre of the new technically-driven agricultural revolution. To do so the tech sector will need to be closely aligned with the agri part and creating a designated AgriTech cluster in proximity to academic research in Cambridge and the expertise of East Anglia farmers will be essential to achieve this goal.
235. Tim Nowak Executive Director of the World Trade Center St Louis writes in support of the proposal and sees how it would support the development of the UK AgriTech sector. The proposal is seen as a potential international partner and the certainty of planning permission is necessary to progress the interest in collaboration.
236. James Carter Director Britannia Bud Company Ltd is an international AgriTech entrepreneur considering the UK as a location for investment. The appeal site would provide an optimal location with prime positioning for national logistics and proximity to high quality staff. The certainty of planning permission is necessary to progress interest in the site.
237. D William A Burgess Chairman of Produce World Investments Limited, a business which employs c500 people and grows/markets fresh produce to major retailers, supports the proposal. The East of England is in a great position to be world leaders in this field. The proposed AgriTech park is essential to facilitate a new cluster of companies to help deliver the much-needed growth in this sector.
238. Dr Ann Limb CBE DL Chair of the London Stansted Cambridge Consortium (LSCC) supports the proposed development provided the growth is sustainable and achieved in accordance with relevant local national policies. The LSCC is a strategic partnership of local government, colleges and universities together with business organisations in the geographic area of the Innovation Corridor.

The Corridor is important as the leading cluster for life sciences and tech in the UK. The proposed development would have a beneficial impact on the agriculture and AgriTech industries locally, nationally and globally, with significant overlap with the life sciences cluster in the area. Pending planning certainty LSCC would like to explore further collaboration with the appellant and the AgriTech community which would be based at the site.

239. David Flanders PhD is CEO of Agrimetrix, a big-data AgriTech company, and supports the proposal. Agrimetrix provides, connects and analyses complex data to drive greater productivity for AgriFood businesses and deliver food sustainability. The appeal scheme would have a positive impact on the agriculture and AgriTech industries locally, nationally and globally, bringing new investment to the area. Pending planning certainty Agrimetrix would like to explore further collaboration with the appellant and the AgriTech community that would be based at the proposed site.
240. Jinzhao Li Managing Director Cambridge China Centre expressed support for the proposal. The Centre facilitates interaction and collaboration between members. The AgriTech start-up and scaleup companies in the Centre's membership would greatly benefit from the office space in an incubator building and access to an on-site AgriTech community and development at the appeal site. The Centre has had interest from China in potential investments in the AgriTech sector and would be keen to explore further collaboration with the proposal.
241. Dr Sean Butler from Cambridge AgriTech Ltd, a syndicate composed mainly of owners and directors of some of the largest food and agricultural businesses in the UK, expressed support for the proposal. The Cambridge area is already an acknowledged hub for AgriTech, and it is important that the infrastructure available in the region keeps up with demand. Start-up and scale-up companies would greatly benefit from the office space in an incubator building, and access to an on-site AgriTech community at the site. The proposal would have a beneficial impact on the agriculture and AgriTech industries locally, nationally and globally.
242. Michael Coto Co-Founding Partner Primera Impact supports the proposal. Primera Impact is a Cambridge-based investment fund which aims to catalyse game-changing startups in the health, energy, environment and AgriTech sectors. The level of innovation in Cambridge is exceptional, but many of the most promising start-ups lack the early stage support necessary to reach their full potential. The companies Primera Impact work with would greatly benefit from office space in an incubator building and access to an on-site AgriTech community and development at the appeal site. Pending planning certainty, Primera Impact would like to explore further collaboration with the appellant and the AgriTech community which would be based at the proposed site.
243. Ed Fuchs CEO and Co-Founder Folium Science supports the proposal. Folium Science leads the way in bioscience to replace antibiotics with an alternative technology for agriculture and animal husbandry. Folium Science was an AgriTech start-up founded in Cambridge, but had to initially relocate work to Bristol as there were no suitable office locations near Cambridge. With the building of an agricultural strategy a location in Cambridge is now sought. There is a need for office, lab and crop trial space at the proposed AgriTech

development. The stage has been reached where planning certainty is required in order to progress discussions.

244. Oli Hilbourne Founder/Director of Operations Outfield, an early stage agri-tech startup based in Cambridge, supports the proposal. Outfield is developing systems to help apple growers to better manage crops using drones and image recognition and has benefitted from the startup ecosystem in Cambridge. But there is little business support tailored specifically to agri-tech companies. The proposal would support Outfield's scale-up and that of other local companies, but planning certainty is required in order to progress any discussions.
245. Matt McLaren CEO Entomics Biosystem supports the proposal. Entomics Biosystem is a Cambridge-based startup looking at the up-cycling of food waste streams into high value agricultural resources, such as functional feeds for farmed salmon, using insects as the conversion engine. The appeal scheme would be a massive opportunity to develop a world-leading hub that supports growth and innovation spanning the diverse world of 'food'. East Anglia is already a leading region in terms of agricultural knowledge, research and identity. There is an opportunity to create more synergies across the entire food production chain. Dedicated resources are required to bring these disparate threads together, and this ambitious and timely project would address that need. If the project becomes a reality Entomics would be interested in becoming a key partner, potentially having some physical presence at the site in addition to forging commercial and research collaborations. However, in order to progress these discussions planning certainty is required.
246. Richard Hobson Founder and CEO Herdsy Ltd supports the proposal. Herdsy is an AgriTech start-up with offices in Cambridge and Ireland. It is set to become the world's largest livestock tracking company. Cambridge suffers from a lack of affordable office space. Cambridge helps create start-up AgriTech companies and then loses valuable jobs and tax revenue as competition from larger tech and pharma giants forces them to look elsewhere to grow. The appeal scheme would attract global talent and lay the foundations for the continued success of AgriTech in the UK, an industry that currently employs 545,000 people and is worth £14.5 billion. Herdsy would consider office space in an incubator hub at the appeal site but require planning certainty in order to progress any discussions.
247. Whittlesford Parish Council supports the surrounding Parish's objections.²¹⁴ The proximity to Hinxton and scale of the development would have a damaging impact on such a small village. The proposal does not comply with existing and emerging planning policy. No significant scientific-based activity has been identified by which the site could benefit from the purported potential to offer quality arable land for crop trials. The NIAB is developing its own crop science research facility with Cambridge University on the northern side of Cambridge. By default, the appeal scheme could become a general business and warehouse park.
248. The traffic surveys are flawed and not credible. The A1301 and A505 are very congested at peak times. The proposed modification to the roundabout

²¹⁴ ID5.

are wholly inadequate and the surrounding villages would suffer from rat runs. The environmental impact of the proposal is of concern regarding aquifer damage, air, water and light pollution and landscape harm. The traffic and environmental impact have been underestimated by the appellant.

249. Since the appeal was lodged there have been two further developments which could have considerable negative influences on the life styles of people living in Hinxton and the surrounding villages. Immediately adjacent to the southern boundary of the appeal site Wellcome Trust have applied for permission to build 1,500 new houses, a hotel, shops and bars along with the creation of 4,200 new jobs on the associated business area. On the eastern boundary of the Wellcome Trust site a proposed new garden village of 5,500 new houses in Uttlesford is under consideration by the Secretary of State. There are also proposals for the substantial increase in the number of jobs at Babraham and Granta Park in Great Abington. SCLP does not envisage this scale of development. The Parish Council would like the Secretary of State to carry out a full review of all these development proposals as one exercise, where all the infrastructure deficiencies could be evaluated, and recommendations made on remedial action and funding prior to the applications being considered further.
250. Victoria Nichols, a local resident, supports the objection by Hinxton Parish Council, with primary concerns as follows. A development of this scale would completely compromise the historic village environment within which Hinxton exists. There is no 'AgriTech' operator associated with the proposal and no scientific leadership or focus. There is already significant traffic pressure on the A1301 and the A505 both morning and evening in both directions. The appeal scheme would bring the A505 to a standstill and push more traffic through Hinxton and Ickleton. There is not the infrastructure in place to support the proposal. Environmental concerns include aquifer damage, flood risk, pollution, biodiversity and landscape harm. This is not the right location.
251. Tony Orgee, a local resident, maintains an objection to the proposal, and notes that development plans for the area have been approved, which strengthens the objection. A proposal of this magnitude needs to be considered in the context of developing a new local plan. There is a commitment to commence reviews in 2019 for a joint plan. In addition to prematurity, concern is expressed about traffic and transport infrastructure. Local roads would not be able to cope with the additional volume of traffic resulting from commuting, even with the suggested mitigation measures. Reliance on non-car transport is unrealistic and the proposed bus/cycle/rail interchange is not appropriately sited and is inappropriate in the Green Belt. A strategic plan for the whole area is required.
252. HPC's concerns about possible impact on biodiversity, aquifers and flood risk are fully shared. Unlike other development in the area the proposed development would be situated in open countryside with long distance views. Tall buildings and roadside bunds would be alien features in the Chalklands LCA resulting in harm to the landscape. Much of the grade 2 and 3 agricultural land on the site would be lost. Adverse impact on air quality and noise have not been quantified, but the ES acknowledges a substantial adverse effect from light pollution.

253. SCDC's commitment to the development of 'employment clusters' does not specifically cite 'AgriTech'. The proposal would presumably fall into Use Class B1(b) – high technology / research and development. There is concern that if the AgriTech aspirations for the site were not realised then it could simply transform into another general B1(b) use.
254. Hinxton Parish Council (HPC) endorses SCDC's nine reasons for refusal. The appeal scheme would be 300 m from the village's High Street, and with several thousand employees would have a deeply damaging impact on the village of about 150 homes. The proposal does not comply with relevant planning policy. HPC is not opposed in principle to a manageable level of commercial development, AgriTech or otherwise, and Hinxton Hall has hosted the Genome Campus for 25 years. But the appeal scheme is of a fundamentally different nature, with no evidence of any scientific leadership or focus. Nor is there any justification for its being classified for planning purposes as B1(b) and by default would become a general business and warehouse park. The NIAB intends to develop the Cambridge Centre for Crop Science with the University of Cambridge to enhance research in crop sciences and resilience if food security on the northern side of Cambridge. This accords with SCDC's aspiration to focus AgriTech industrial development in the Cambridge-Norwich corridor.
255. The traffic analysis supporting the proposal is not credible and greatly understates potential congestion. The proposed mitigation, improved roundabout and modal shift, are inadequate. The model ignores associated service traffic and possible nearby development. Environmental concerns relate to aquifer damage, increased flood risk, air/water/light pollution, biodiversity and landscape. Hinxton village is prone to flooding. Hydraulic modelling is inadequate despite the site's designation as a groundwater source protection zone of High to Intermediate vulnerability.
256. Robert Spriddell, Royston, supports the proposal as the concept of AgriTech is very important for the UK and Cambridge region economy. This is an ideal location, given the proximity of the University, Research Parks and the Genome Park. The developers are highly integrated into the agricultural community in the region and long-standing investors in the AgriTech arena.
257. Little Abington Parish Council (LAPC) considers the proposal speculative with few, if any, clear plans for the type of research and activities on the site, and the great number of matters left for the detailed applications. A development of this scale cannot be considered in isolation but must be considered within the overall strategic vision for South Cambridgeshire.
258. It is unrealistic to expect only half of the proposed 4,000 employees would drive to work. Local experience contradicts the findings of the traffic surveys and modelling. The A505 and A1301 are already over capacity with traffic jams for long periods and dangerous backups to the M11. The fixes around McDonalds roundabout are inadequate. A strategic plan and significant investment are necessary to solve the problems of an inadequate road network, which must include improvements to Stump Cross and better access to the M11. The train service to Whittlesford Parkway is full, the service unreliable and with local car parks at their capacity commuters park in the

street. Estimates of a five-minute cycle ride or 20-minute walk to the proposed development seem astonishingly optimistic.

259. Pollution from additional road traffic would impact on the environment. Strategically it would make more sense to site the proposal close to other agricultural research sites in East Anglia. There is concern about underoccupancy and decay if the proposed business model was not workable. Residents are already affected by intrusive background noise and overnight lighting from Granta Park, and there is concern about impact on the aquifer and flood risk. The intention to provide public access and community facilities would be worthless unless enshrined in law.
260. Paul Breen, local resident, considers that the AgriHub is merely an excuse for yet another industrial estate. 4,000 extra staff would add to the existing chaos on roads around Hinxton. Run-off would add to local flooding and harm extraction from the aquifer. The loss of prime agricultural land would be unacceptable, and the proposal would be inappropriate development in a beautiful location.
261. Campaign to Protect Rural England (CPRE) object to the proposed development in an area of open, rolling, Cambridgeshire countryside. BMV agricultural land is a national resource whose protection for the purpose of food production is becoming increasingly important. CPRE supports SCDC's reasons for refusal, particularly in protecting the Green Belt and landscape around Cambridge which is increasingly threatened by incremental and permanent erosion of the countryside as the local economy thrives. Other concerns raised by CPRE are that the generation of many car journeys would overwhelm the capacity of local roads, light pollution, flooding and about speculative development. None of the institutions expressing support for the proposal have said that they need space for expansion and would definitely be interested in occupying one of the buildings. The business case for the enterprise must be examined carefully to ensure that it would be worth the price of sacrificing this part of the countryside.
262. Great Abington Parish Council (GAPC) supports SCDC's refusal of this speculative proposal, which has few, if any clear plans for the type of research and activities on the site. Alignment with local development strategies is important given significant developments in progress in or near Sawston, including a trade park, along with the prospect of development in North Uttlesford. A major proposal such as the appeal scheme must be considered in the wider strategic context and the SCLP. GAPC shares the views of LAPC about traffic and transport implications, and harm to the environment.
263. Duxford Parish Council continues its rejection of the scheme, especially since the adoption of the SCLP, the application by the Wellcome Trust to expand the Hinxton Campus, and the announcement by the NAIB and Cambridge University of the development of a joint AgriTech park to the north of Cambridge. These further reduce the need for a scheme to the south of Cambridge, along with the continually increasing flows of traffic along the A505 and A1301.
264. Pampisford Parish Council feels strongly that this is not an appropriate use of good agricultural land. There are no obvious institutions interested in using the site for research, and there are other research centres in the area,

including an Agri-Tech hub at Soham supported by NIAB, some of which are expanding. 85% of Cambridge funding for research is from EU sources, so with Brexit there is a question about the expansion of such facilities. The road system cannot cope with current traffic and there are no significant plans for mitigation. The proposed flyover and urban sprawl with earth bunds and light pollution would adversely affect the open character of the landscape. The scheme would affect recharge of the aquifer and increase flood risk downstream. The loss of grade 2 agricultural land cannot be afforded at a time when all possible arable land will be required in order to improve food security. The proposed development is not included in the SCLP.

265. Sam Nichols, local resident, supports the objection by HPC, with primary concerns as follows. A development of this scale would completely compromise the historic village environment within which Hinxton exists. There is no 'AgriTech' operator associated with the proposal and no scientific leadership or focus. There is already significant traffic pressure on the A1301 and the A505 both morning and evening in both directions. The appeal scheme would bring the A505 to a standstill and push more traffic through Hinxton and Ickleton. There is not the infrastructure in place to support the proposal. Environmental concerns include aquifer damage, flood risk, pollution, biodiversity and landscape harm. This is not the right location.
266. Ickleton Parish Council (IPC) agrees with SCDC's reasons for refusal. The proposal would have a strong and irremediable adverse impact on important open countryside, result in a loss of valuable farmland for no good reason, and increase traffic rat-running via Ickleton and Duxford villages. SCLP makes no provision for a business park on this site and seeks to preserve landscape character. The proposed earth bunds would be destructive to the open rural landscape as would the concentration of buildings and car parks. The proposal would cut off views to open countryside that surrounds the grade II listed Hinxton Grange. Views of the proposed development from Hinxton would have an adverse impact upon the Hinxton conservation area and listed buildings, including the church. There is also concern about the effects on biodiversity, light pollution, aquifer damage and increased flood risk.
267. NIAB and Cambridge University with other academic entities acting together in the Ceres consortium is largely based to the north of the city. Elveden would be a more logical location free from the infrastructure issues associated with the appeal site. Cambridge University, University of East Anglia and John Innes already collaborate in the Cambridge to Norwich Tech Corridor. In the absence of a serious local academic player or private sector concern with relevant expertise IPC questions the credentials of the appellant.
268. With planned expansion of the Wellcome Genome Campus immediately to the south of the appeal site it is impossible to believe that there is sustainable capacity for two proposals of this scope in the local area. It is doubtful that Whittlesford Parkway would have sufficient capacity to facilitate both. The appellant has never understood the nature of rat-running in the area and has not considered the impact of the proposed development.
269. The consultation process and community engagement has been unsatisfactory, with selective disclosures about the true nature of the project. The AgriTech hub was portrayed as involving field trials and laboratories and

NIAB was named as an interested party. At workshops and meetings many vague references to contributions to solutions for infrastructure problems were made. But actual commitments are cosmetic, minimal in nature considering the existing problems, and do not remotely address what was outlined at the workshops and exhibitions.

Other correspondence submitted in the lead up to the Inquiry ²¹⁵

270. Cllr Peter Topping, District Councillor for the Whittlesford Ward of SCDC and County Councillor for Duxford Division of Cambridge County Council, continues to oppose the scheme principally as it is outwith the SCLP. There are no compelling reasons, such as the wider economic interests, or nationally, that would outweigh this objection. The proposal is not in the right place to support the findings of the CPIER report on the economic outlook for Cambridgeshire and Peterborough. There has been a strong agricultural research trend along the Cambridge-Norwich axis. Cllr Topping is not aware of any large agri-sector company proposed as anchor tenant for the scheme. KWS seed development is at Thriplow, and the national Cereals Exhibition is at Chrishall. More recent work on the mitigation of traffic issues is welcome, but there are still concerns about the ability of the area to cope with the influx of 4,000 people.
271. Cllr Bridget Smith, Leader South Cambridgeshire District Council, along with HPC, IPC, DPC, PPC, WPC, GAPC and LAPC expressed concerns about the propriety of the submissions in support of the proposed development by James Palmer, Mayor of Cambridgeshire and Peterborough, and his interpretation of the CPIER.
272. Hazel Technologies Inc, a US based producer of postharvest technologies for reducing produce waste, supports the proposal and is considering the UK as a location for investment and a potential R&D expansion site, with genuine interest in the appeal proposal. Cambridge has several benefits, including proximity to Kent, the key produce and logistics region in the UK, access to Stansted and London airports, and is a hub of scientific business in the UK. Hazel Technologies would benefit greatly from participating in that community. It has had an ongoing dialogue with the appellant and is now at the point where the certainty of planning permission is necessary to progress interest in the site.

Written submissions in response to FEI ²¹⁶

273. Hinxton Parish Council stated that there is nothing in the FEI that significantly alters the substantial material objections to the proposal. The appellant has had to revise its earlier traffic analysis which failed to acknowledge the severe peak congestion on the A505 and A1301. The revised modelling still does not predict the well documented long queues at peak times on the A1303 approach to the McDonalds roundabout from the south. The proposed new mitigation measures lack credibility, and do not deal with the narrowing of the A505 to single lanes, the grid-locking effect of three new sets of traffic lights, or rat-running through villages. The computer simulations and wide-angle images in the additional material confirm the extent to which the

²¹⁵ Part 1 Red folder in Appeal File.

²¹⁶ Part 2 Red folder in Appeal File.

scheme would dominate and oppress the surrounding countryside. The amendments withdraw use by local residents of the proposed mixed-use centre.

274. Great Abington Parish Council maintains its objection because of traffic issues. The A505/A1301 roundabout is beyond its capacity at peak times. The proposed additional traffic lights and limited capacity between junctions would result in traffic backing up at peak times. Roadside bunds would be intrusive and alien features in an area with an open aspect and long-distance views. Irrespective of ecological claims, high quality agricultural land should only be built on in the most extreme circumstances. The originally proposed public availability of facilities such as a gym, restaurants and creche was a potential benefit, and its removal without explanation would not be well received.
275. Tony Orgee maintains objections on highway and landscape grounds, and concerns about the loss of agricultural land. The proposed new mitigation measures concern junctions and fail to address the issue between junctions. Insufficient consideration has been given to traffic movements at the proposed entrance to the site. Bunds would give the area a much more enclosed feel creating a complete change from the existing long-distance views typical of this part of South Cambridgeshire. No explanation has been given for the appellant's change of stance on public access to facilities.
276. Pampisford Parish Council states that the additional information is not a reason for overturning the refusal. The agricultural land is not designated for commercial or research purposes in the SCLP and brownfield sites are available. With almost full employment the area does not need 4,000 more jobs. Most workers would use cars on already overloaded roads.
277. James Binney Will Trust expressed concerns about pressure on existing transport infrastructure given the scale of the proposed development, which has scant local support. The Trust concurs with the views of Pampisford Parish Council. Planning proposals for this area just beyond the Green Belt include the Babraham Institute, Granta Park Phase II, Gonville and Caius at Duxford, Huawei land acquisition at Sawston and the Wellcome Trust expansion. These all have links to intellectual exchange, research and development with the University of Cambridge. But this would not be the case for the appeal scheme, which is private and commercial. The appellant is unable to identify a single credible prospective occupier. The existing traffic problems and noise would not be solved by piecemeal mitigation. Comparison with the Wellcome Trust's Green Travel Plan is disingenuous given the way that this plan is highly organised compared with that proposed in the appeal scheme. Notwithstanding the proposed bunds and planting, the appeal scheme would produce light pollution and impair views that would harm heritage assets at Pampisford Hall and its listed arboretum. Concerns were also expressed about the effects on local archaeology and wildlife. A legal agreement inhibits development on the appeal site for any purpose other than farming. It is high quality agricultural land that has been used for seed trials, but was previously proposed by the owners as an Eco Town, before this proposal was withdrawn after consultation.²¹⁷

²¹⁷ ID64 written representation by A Binney.

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278. Michelle Irwin is concerned that the area is at great risk of being significantly overdeveloped, crippling the local road network for local people.
279. Ickleton Parish Council notes that one of the alterations to the proposals is that local residents would not have access to facilities of the mixed-use centre originally proposed, which was promoted as a benefit to local communities. The additional material fails to establish a credible business case. The failure to acknowledge severe peak congestion on the A505 and A1301 continues despite the submission of further analyses. The three new sets of traffic lights on the A505, new site entrance roundabout and pedestrian/cyclist-controlled crossings, would add to driver perception that the A1301 and A505 are slow roads subject to congestion. This would be a recipe for rat-running through local villages.
280. The CGI representations bear out submissions about the substantial damage to the landscape, with the bridge, bunds and the development itself comprising large urban intrusions into a rural landscape.
281. The proposed development would have a massive requirement for water in the driest part of the UK. With an ongoing trend towards drier weather patterns water is a finite resource and the sustainability of the proposed development is questioned.
282. The Ickleton Society refers to insufficient traffic mitigation, resulting in backing up to the M11 and rat-running through villages. The additional information and photographs continue to seriously underplay the visual impact of the proposal. The wide-angle views give a false impression of the visibility of the buildings and bund and their impact on the long open views of agricultural land. With no serious agri-tech business interest in relocating to this site there is no justification for development of a greenfield site contrary to the SCLP.
283. Andrew Walker notes that the scheme would breach the SCLP and significantly alter a particularly attractive tract of South Cambridgeshire landscape. It would also add to already unacceptable traffic congestion, without mitigation, and result in intolerable increased pressure on other infrastructure.
284. Virginia Walker supports the objections by HPC and SCDC, and in particular is concerned about the proposal not being included in the SCLP and conflicting with national policy. Hinxton is declared as an 'infill village' only. The proposal has no potential involvement with national crop trials. Current traffic levels are unsustainable with no serious mitigation proposed. The appeal site is valuable arable land and is scenically and environmentally very important. There are alternative areas in the UK crying out for employment so why force further development in an area already under unsustainable pressure for housing, employment and infrastructure.
285. Nicholas Bosc considers that the proposal would have a considerable negative impact on road traffic on the A505, the environment, and the real estate market.
286. Other submissions supported the views of HPC. Some considered that the AgriTech park was a fig leaf to cover a purely commercial venture which

would not offer any of the claimed benefits. There is no business case for the proposal and still no significant investors. Research could be done in other more suitable locations supported by major research organisations. The Wellcome Trust entered into a section 106 agreement restricting development. Major development proposals in the area include; the Wellcome Trust application, a 500-acre site purchased by Huawei at the Spicer site, the Sawston Unity Campus site, expansion at the Babraham and Welding Institutes, all of which need proximity to Cambridge University. No sensible landscape or heritage mitigation has been offered as the proposed bunds would not screen the proposed development. Northbound access to the M11 and adaptation of local roads would be necessary. The development would harm beautiful rolling open countryside, which along with the flora and fauna, deserves protection.

Written representations from other consultees

The following sets out the views of other consultees, where these are not summarised elsewhere in this report.

287. Sawston Parish Council ²¹⁸ endorses the submissions of the other parish councils. CCC recently announced a study of the A505 corridor. Piecemeal solutions such as the appeal scheme are premature, mutually exclusive and unlikely to result in satisfactory mitigation in the longer term. The site is unallocated in the SCLP. It would be a new site, with no extant established businesses, and therefore no locus or gravitational effect to attract other AgriTech companies. Demand is questionable given that at Chesterford Research Park 65% of the permitted floorspace remains unbuilt.
288. A major concern is that the proposed organisational structure does not appear to involve any overall scientific directorship of the site. It is unclear how tenants would be selected other than by their ability to meet rental or leasehold costs. Some of the interest in this site comes from companies involved primarily in distribution rather than research. In the absence of any clear commitment from bona fide research organisations, there is a risk that distribution use class B8 usage, with associated HCV movements, could eventually form a significant proportion of the activity on the site. The cumulative impact with other proposed development in the area should be taken into account.
289. Essex County Council (ECC) referred to a bridge link over the A11 to link proposed major residential development with the proposed AgriTech site. Such a bridge was estimated to cost £5 m. Given the mutual benefit that the AgriTech site and the NUGV would gain from a bridge, Essex Highway Authority requested a contribution of £2.5 m. Amendments to the obligation were requested to provide a financial contribution towards the provision and implementation of links across the A11 to be agreed with ECC as Highway Authority. The proposed provision of a 'landing zone' for a bridge was considered insufficient. ECC also initially requested a contribution of more than £2 m for childcare based on the Essex Adopted Developers Guide, but later noted that the appeal scheme was proposing 3,000 m² of mixed D1 floor space,

²¹⁸ ID4.

and that it was for the appellant to provide evidence to SCDC to judge if this provision was sufficient.²¹⁹

290. A list of consultees who made no comment on the application is included at paragraph 57 of CD5.1.²²⁰ The following includes other responses to consultation summarised in SCDC's report.
291. Cambridge Fire and Rescue recommended a condition to provide fire hydrants.
292. British Horse Society asked why access under the existing A505 bridge near the station could not be used to negate the need for the enormous bridge over the A505/A1301.
293. Cambridge Past Present and Future recommended refusal as the proposal is not plan led and should not be determined in isolation. There should be no development north of the entrance drive to the Grange as it would harm the setting and character of the historic parkland and listed building and would be a precursor to further expansion.
294. The Environment Agency (EA) has no objection in principle, subject to conditions.
295. Historic England has no objection on heritage grounds, but its comments did not consider the setting of grade II listed buildings on site.
296. The Lead Local Flood Authority required more information about drainage.
297. Natural England (NE) does not consider that the proposal would trigger its Impact Risk Zones regarding designated sites. NE supported the EA concerning hydrology and recommended a site wide biodiversity strategy. It added that the proposal should be compliant with the requirements of Policy NH/3 to protect agricultural land.
298. Great Chesterford Parish Council expressed identical concerns to that of HPC.
299. Uttlesford District Council requested that the proposal considers the North Uttlesford Garden Community in transport modelling.
300. Agri-Tech East supports the proposal.
301. The Wellcome Trust commented that its Genome Campus is recognised as being of national and international importance. It added that it is imperative that the AgriTech proposals do not fetter the ability of the campus to optimise the opportunities emanating from genomics and biodata, particularly with regards to local infrastructure capacity.

²¹⁹ ID6, ID17 and ID18.

²²⁰ CD5.1.

Conditions and obligations

Conditions

302. SCDC and the appellant largely agree about the imposition of planning conditions in the event that outline planning permission was granted, but two conditions remain in dispute.²²¹ These concern firstly controls on the occupation of the site, and secondly provisions to update sustainability standards in future. The need for, and wording of, suggested planning conditions is considered in the following Conclusions section of this report. But it is necessary to set out here the main parties' respective positions on the first dispute concerning an occupation restriction.

303. The appellant suggested three alternative conditions regarding an occupation restriction.

Condition 12a: The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.

Condition 12b: The B1 floorspace hereby approved shall only be used for any or all or the following purposes namely research into, development of, commercialisation of and production of goods, services and applications for use in agriculture, horticulture and the food chain.

Condition 12c: The B1 floor space hereby approved shall only be used for the purpose of research into and development and commercialisation and production of products, services and applications for use in agriculture, horticulture and the food chain.

304. The appellant considers that suggested Condition 12a would provide a user restriction sufficient to ensure that occupation was restricted to AgriTech companies. SCDC considers that 12a would be insufficiently precise and not supported by adopted policy. SCDC adds that the AgriTech sector definition would be too broad and uses could be unrelated to adopted Policy E/9, with no relevance to clusters drawing on the specialisms of the Cambridge area. It would also allow for large scale speculative development and lacks specific evidence of a requirement for companies locating to the site to be provided. Furthermore, ancillary uses could occupy a significant (undefined) amount of floorspace and the ancillary uses definition has no requirement for such uses to link to an AgriTech occupier on the site.²²² SCDC notes that 12b does not refer to AgriTech and considers that it is too broadly scoped to be of any useful purpose in relation to possible enforcement. The appellant submits that Condition 12a fully reflects the proposed AgriTech uses, in accordance with the definition for AgriTech as set out in APP2.1/2.2, and is therefore not imprecise, does not allow for large-scale speculative development, and is necessary and fully supported in respect to Policy E/9.

²²¹ ID49.2.

²²² LPA2.1 and LPA2.2.

305. Condition 12d was also discussed at the Inquiry. This would provide that: *Other than a reserved matters application for the incubator building pursuant to Condition 17, any reserved matters application for floorspace within the B1 use class of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, shall be accompanied by a needs assessment which sets out the nature of the prospective occupier(s) and their specific requirements for locating onto the site. The needs assessment shall demonstrate either: (a) an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or (b) need for the prospective occupier to be located adjacent to other permitted businesses on the site. Prior to the occupation of any business within the incubator building, a needs assessment demonstrating compliance with either criteria a) or b) above shall be submitted to and approved in writing by the local planning authority. Subject to any needs assessment being approved by the local planning authority, the first and subsequent occupation of any building shall be substantially in accordance with the associated needs assessment.*
306. The appellant objects to this condition because it would seek to introduce a needs assessment in respect to any reserved matters application for floorspace, which would be unnecessary, overly restrictive and unreasonable. In the event that planning permission was granted, the need for the development and principle of AgriTech use would have been satisfied and therefore there would be no further requirement for a needs assessment. The planning application and appeal would have been the forum to justify the need. In addition, the appellant argues that this condition would impact on funding and securing tenants and in this respect represents a condition that unreasonably impacts upon the deliverability of a development, placing an unjustifiable and disproportionate financial burden on the appellant, thus failing the test of reasonableness. Additionally, other Conditions 10 and 12a-c would place restrictions on use and a condition requiring the appellant to demonstrate need is unnecessary and unjustified. In the appellant's view the condition is also onerous as the requirements are loosely drafted with no agreement as to what the exact requirements are that SCDC needs to be satisfied with.
307. As an alternative the appellant suggested Condition 12e: *The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval in writing. The details shall demonstrate either: (a) a need for the prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or (b) a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.*
308. However, SCDC objected to Condition 12e arguing that the first part of the condition (compliance) suffered from the same defect as Condition 12a/b/c.

The second part of the condition (needs assessment) was not agreed because (a) there would be no requirement for a needs assessment to accompany a reserved matters application, which could lead to large scale speculative development where presently there are no confirmed prospective occupiers for any of the floorspace being sought, and (b) there is no requirement for subsequent occupation to accord with the identified need.

Obligations

309. The obligations in the section 106 agreement are summarised in Annex A to this report. The agreement includes a clause that if the Secretary of State concludes that any of the obligations are not compatible with any of the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regs) and attaches no weight to that obligation then that obligation shall cease to have any effect and there shall be no obligation to comply with it. SCDC submitted a CIL Compliance Statement, which sets out its view that the obligations are necessary, directly related to the proposed development, and fairly and reasonably relate to the proposal in terms of scale and kind.²²³ The Conclusions section of this report considers how the obligations square with policy and statutory requirements.

Conclusions

Preliminary matters

310. The following conclusions are based on the written submissions, the evidence given by those who appeared at the Inquiry, and inspections of the site and its surroundings. In this section the figures in parenthesis [] at the end of paragraphs or sections indicate source paragraphs from this report. [10]
311. The application is for outline planning permission with all matters reserved, but includes parameter plans for land use, movement and access, landscape and open space, development density and height, which would be imposed by planning conditions. I am satisfied that the ES and FEI submitted for the appeal scheme, which were available for comment during the appeal proceedings, reasonably comply with the requirements of the EIA Regulations. In considering the appeal, and in making my recommendation, I have taken into account the Environmental Information, which includes all the evidence adduced at the Inquiry. In doing so I have come to a different view about the significance of, and weight to be given to, some environmental effects from that set out in the ES and FEI. [1,2]
312. South Cambridgeshire District Council (SCDC) refused the application on 9 grounds. SCDC considered that the proposal would conflict with relevant policies concerning; (1) unsustainable development located outside of the village development Framework and within the open countryside; (2) prematurity; (3) harm to the Cambridge Green Belt; (4) an inadequate Landscape and Visual Impact Assessment (LVIA) and failure to preserve or enhance the local character of the area and unacceptable adverse impact on

²²³ ID65.

the countryside and landscape character; (5) insufficient information in the Transport Assessment; (6) a Stage 1 / 2 Road Safety Audit had not been carried out on all the submitted drawings; (7) insufficient information about parking demand and provision; (8) harm to the setting and significance of heritage assets; and (9) the loss of Best and Most Versatile (BMV) agricultural land. [3]

313. The application was determined in the context of the then adopted development plan, but these policies were superseded in September 2018 with the adoption of the South Cambridgeshire Local Plan 2018 (SCLP). Reason for refusal 2, concerning prematurity, was subsequently withdrawn in April 2019. Following the submission of further analysis, the appellant, Cambridgeshire County Council (CCC) and Highways England signed a Statement of Common Ground on Transport Planning Matters, dated 16 May 2019 (SoCG2). This enabled the main parties to agree at the Inquiry the terms of planning obligations. On this basis, SCDC withdrew reasons for refusal 5, 6 and 7. [4,6]
314. An amendment proposed by the appellant at the Inquiry would involve a minor alteration to the landscape parameter plan. The revised scheme would not be substantially different from that considered by SCDC and consideration of the amended proposal would not be prejudicial to the interests of any party or persons. It is a matter for the Secretary of State to consider, but it seems to me that it would be appropriate here to determine the appeal on the basis of the amendment proposed at the Inquiry. It would also be acceptable to amend the description of the proposed development to include reference to 'surface' water. [8,9,223]
315. The development proposed is an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works.
316. Planning conditions would limit the gross external floorspace of the permitted use classes as follows; B1a office / B1b R&D / B1c light industrial (92,000 m²), B1b laboratories (11,800 m²), A3 / A5 (2,000 m²), D1 (3,000 m²) and D2 (3,200 m²). Suggested planning conditions would require at least 10 ha of land within the site to be made available for crop/technology trials and demonstration, and for the early provision of 3,000 m² of incubator units. [12-16]
317. Late notification about the appeal was given to 12 objectors. However, there was a reasonable opportunity for objectors to appear at the Inquiry, or to submit written representations before the Inquiry closed, and so no prejudice arises from the delayed notification. [7]

Main considerations

318. The Secretary of State's reasons for recovering the appeal state that it involves proposals for significant development in the Green Belt. However, the direction did not include details about any matters about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal. The evidence indicates that the main considerations here are as follows. [5,10]

- (1) The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt.
- (2) The effects of the proposed development on the character and appearance of the area.
- (3) The effects of the proposed development on heritage assets.
- (4) The effects of the proposed development on agricultural land.
- (5) The effects of the proposed development on the local road network and the need to travel by car.
- (6) The effects of the proposed development on other matters.
- (7) The effects of the proposed development on employment and the economy, including the need for and benefits of the proposed AgriTech technology park.
- (8) The planning balance.
- (9) The extent to which the proposed development would be in accordance with the development plan for the area.
- (10) The extent to which the proposed development would be in accordance with the National Planning Policy Framework (the *Framework*) and the National Planning Practice Guidance (the *Guidance*).
- (11) Whether any permission should be subject to planning conditions or obligations and, if so, the form that these should take.

319. The remainder of this report addresses the matters outlined above, using the following approach. For each of the main considerations 1-7 above the report considers the likely effects of the proposed development. Impacts are described and significance assessed taking into account, where appropriate, necessary planning conditions and obligations. The significance of effects is a matter of judgement, and for consistency a rating scale is used for negative and positive effects (harm and benefits), increasing from negligible, minor, moderate, substantial and finally major significance. In considering the relative weight to be given to various considerations a scale is used; increasing from negligible (little or no weight), slight, moderate, substantial, and finally great weight. However, there is scope within these bands for varying degrees of fit, and reference to these categories implies no mathematical or objective basis for analysis across the range of considerations involved in this case. My recommendation is based on these findings.

(1) Green Belt

320. The part of the appeal site that lies north of the A505 is within the Green Belt, as defined in the development plan for the area. The *Framework* states that the Government attaches great importance to Green Belts. It adds that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 141 provides that in planning positively to enhance

the beneficial use of the Green Belt authorities should look for opportunities to provide access; to provide opportunities for outdoor sport/recreation, and to retain and enhance landscapes, visual amenity and biodiversity.

321. When located in the Green Belt inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSC). The *Framework* provides that substantial weight should be given to any harm to the Green Belt, and that VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
322. Paragraph 146 provides that local transport infrastructure which can demonstrate a requirement for a Green Belt location is not inappropriate development in the Green Belt provided that it preserves its openness and does not conflict with the purposes of including land within it. These purposes are; to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
323. Paragraph 146 of the *Framework* must mean that some level of local transport infrastructure which can demonstrate a requirement for a Green Belt location would preserve its openness and would not conflict with its purposes, and that beyond that level the development would become inappropriate in the Green Belt, and so the exception would no longer apply. Determining the tipping point would depend upon the particular circumstances, as a matter of fact and degree. In assessing the impact on openness the *Guidance* notes that relevant matters could include spatial (volume) as well as visual impacts, along with the degree of activity generated, including traffic generation.
324. The Movement and access parameter plan indicates that the proposed bus/cycle interchange and pedestrian/cycle connections, along with part of the proposed pedestrian/cycle/equestrian bridge, would be sited within the Green Belt. The details of these works would be considerations for reserved matters. But the appellant considers that works within the overall footprint of 1.865 ha in the Green Belt would comprise 1.01 ha hardstanding (including the interchange), an earth bank (0.375 ha) and soft landscaping (0.48 ha). The works would include bus shelters and secure cycle parking.
325. Such works in the Green Belt would be transport infrastructure that would not only serve the proposed AgriTech park, but would also provide useful pedestrian/cycle connections for general use by the public in an area where highway and traffic conditions make for hazardous pedestrian and cycle trips. I saw at my site visits how difficult it is for pedestrians and cyclists to negotiate the McDonalds roundabout. The proposed bridge over the A505/A1301 roundabout, whilst not providing for all pedestrian/cycle movements at this junction, would be particularly beneficial in this regard. This indicates to me that the works would be local transport infrastructure for the purposes of applying paragraph 146.
326. I do not agree with the appellant that a determination about whether the scheme should be approved or refused would also demonstrate whether or not

there was a requirement for a Green Belt location. Whether it is, or is not, inappropriate development in the Green Belt will affect the planning balance that applies in determining the appeal, and so is a matter that must be resolved as an intermediate step. Investigations are underway about transport improvements in the locality and connections to the railway station. But it is not clear at this stage whether the outcome of these investigations would be likely to result in a scheme which provided the works necessary to enable the appeal scheme to proceed, with all such works undertaken on land outside the Green Belt. It seems to me that it would be very difficult to achieve the necessary pedestrian/cycle connections in the vicinity of McDonalds roundabout without using Green Belt land in a way similar to that envisaged in the Movement and access parameter plan. I find, therefore, that the proposed local transport infrastructure would require a Green Belt location.

327. The area north of the A505 and located to the north-west of the McDonalds roundabout is an open field. The proposed works in the Green Belt would erode the open feel of this part of the Green Belt, both in spatial and visual terms. The part of the bridge, along with the ramp leading to it would introduce a feature with considerable volume into this open area. Any bus shelters and secure cycle parking would add visual clutter that would harm openness. The proximity of the petrol filling station/restaurant and highway infrastructure located outside the Green Belt would not diminish this loss of openness. The bus/cycle interchange would generate a degree of activity from vehicle movement. Whether this loss of openness is sufficient to exceed the paragraph 146 threshold is a matter of judgement.
328. The works would not conflict with Green Belt purposes concerning unrestricted sprawl of large built-up areas, preventing neighbouring towns merging, preserving the setting and special character of historic towns, or assisting in urban regeneration. However, the works would have an urbanising influence on this part of the open countryside. I find that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. Again, whether this conflict is sufficient to exceed the paragraph 146 threshold is a matter of judgement.
329. I have had regard to the other decisions adduced regarding local transport infrastructure in Green Belts. I have also taken into account the type of works proposed here in terms of their effects on openness and the purposes of the Green Belt. Notwithstanding the harm to openness and conflict regarding encroachment into the countryside, in my judgement the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the paragraph 146 threshold. I find that the exception for local transport infrastructure would apply, and that the proposed development would not be inappropriate development in the Green Belt.
330. If the Secretary of State agrees with this finding, then the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy. In this scenario, the planning balancing exercise would be a straightforward weighing of the benefits and the harm, having regard to relevant policy considerations.
331. However, if the Secretary of State concludes that the proposed Green Belt works are not local transport infrastructure, or that a requirement for a Green

Belt location cannot be demonstrated, or that the works would not preserve the openness of the Green Belt, or that the works would conflict with any of the purposes of including land within it, to such an extent that would exceed the threshold implicit in paragraph 146, then the exception for local transport infrastructure would not apply. The works then would be inappropriate development in the Green Belt, which is by definition harmful. In this scenario, harm to the Green Belt and any other harm must be weighed against other considerations to determine whether VSC exist. These alternative planning balances are considered in more detail in section (8) of these Conclusions.

[84-95,121,130,137,157-171,226,261]

(2) Character and appearance

332. The appeal site lies wholly within National Character Area 87, the East Anglian Chalk. In the Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape 1991, the site is located in character area 2 – Chalklands, within an area described as a broad-scale landscape of large fields, trimmed hedges and few trees over a smooth rolling chalkland landform. The site is located in character area B – Chalklands in the South Cambridgeshire District Design Guide SPD adopted March 2010. Key characteristics of this Landscape Character Area (LCA) are a distinctive landform of smooth rolling chalk hills and gently undulating chalk plateau, a mostly large-scale arable landscape of arable fields, low hedges and few trees giving it an open, spacious quality, in which small beech copses on the brows of hills, and occasional shelterbelts, are important features. It was apparent from my site visits that this LCA has mostly a strong rural character though this is disrupted immediately adjacent to the A505 and the A11. [17-21]
333. The appellant's definition of the landscape baseline subdivides the Chalklands LCA into the wooded and enclosed Granta Valley LCA, and the Chalk Hills LCA. However, it was evident from my site visits that this division is not reflected enough in the features on the ground to warrant the distinction. In any event, the revised baseline did not make any difference to the appellant's initial assessment of the significance of the landscape change that would result from the proposed development. It was apparent when visiting the area that the appeal site lies within a tract of land that is bounded by major roads, namely the A11, the A505 and A1301. This area is characterised by large arable fields with parkland features at Hinxton Grange and Pampisford Hall, along with field boundaries marked largely by gappy hedgerows. With few hedgerow trees the area has an open feel and offers long views over the gently rolling landform. The topography of the area is shown on Figure 12 of the DAS at CD2.3. The openness of this part of the countryside on the fringe of Cambridge is shown in the aerial photographs at ID16 and Figure 7 of the DAS.
334. The appeal site is not the subject of any of the designations given to landscapes whose character and appearance justifies either a statutory status or recognition of their quality in the development plan. But neither is a large part of the English countryside, which is nonetheless much appreciated for its open views and the sense of space it provides. These landscapes can be especially important as a foil to urban settlements. This applies to the appeal site insofar as it forms part of the wider countryside setting to Cambridge.

335. The parameter plans would provide for the development of the appeal site along the lines of the scheme shown in the illustrative masterplan (Figure 53 DAS). Development of this scale in this location would have an adverse effect on the landscape character of the area of substantial significance. The appellant considers that this would reduce to a slight and not significant effect after 15 years. I disagree. The Landscape and open space parameter plan provides for extensive earth bunding, up to 3.5 m high, with woodland planting. These would extend along the eastern side of the A1301 from near McDonalds roundabout to Tichbault Road (about 1.4 km) with breaks only for the avenue to Hinxton Grange and the proposed access to the AgriTech park. Another bund along the southern boundary of the appeal site would extend for about 700 m along Tichbault Road. These bunds and planting would never completely screen the proposed built form within the AgriTech park, but would transform the open landscape by closing off distant views over the undulating countryside. As planting matured the sense of enclosure would become more pronounced. This would result in a major change to the landscape resource that would not be mitigated over time.
336. Lighting would be a matter for detailed consideration at the reserved matters stage. However, for such a large-scale development it would be likely that necessary lighting would at times produce a prominent glow in the night sky. This would be out of keeping with the night time character of this unlit countryside location. Overall, the proposed development would have an adverse effect on the landscape character of the area of substantial significance.
337. Turning to visual effects, the difference in the landscape experts' judgements about significance are set out in ID40. The views from the A1301 would be affected by the proposed bund, but the development and activity within the AgriTech park would be visible through the breaks in the bund at the avenue and for the proposed site access. The part of the appeal scheme located to the north of the avenue would appear particularly intrusive in what is currently a large open field with parkland beyond. The bund would close off longer views across the open countryside. I consider that the appeal scheme would have an enduring adverse effect of moderate significance, increasing to substantial significance from some vantage points along the A1301 (DH Views 9 10 11; RB V4).
338. Notwithstanding the proposed bund, it would be likely that buildings would be prominent in views from Tichbault Road, and in this otherwise rural context would appear out of place, with an adverse impact of substantial significance (DH Views 13 14 15 16; RB V10). The elevated bridge over the A505/A1301 would dominate all approaches to this roundabout. The structure and associated highways and transport infrastructure for the bus/cycle interchange would add visual clutter that would be more prominent than the existing petrol filling station and restaurant (DH Views 1 2 3 4 5 6 7; RB V4 V5). The adverse impact on the visual amenity of the area would be moderate increasing to substantial close to the roundabout. From the northern end of Hinxton (DH Views 19 20; RB V2) built development on the appeal site would be likely to be apparent, particularly in the winter months. But given the separation distance and screening it would have an adverse visual effect of moderate significance.

339. The parameter plans indicate scope for a detailed design and layout to be devised that would not, by reason of an overbearing impact on neighbouring residential occupiers, result in unacceptable living conditions for nearby dwellings. However, properties towards the southern edge of Pampisford (RB V1) would be likely to see parts of the built development proposed to the north of the avenue in winter months. This would result in an adverse impact of moderate significance that would reduce to slight as mitigation planting matured.
340. From distant vantage points it was evident from my site visits that the proposed development, with extensive planting, would be seen to be more absorbed into the wider pattern of fields and vegetation. Built form might be apparent in some longer views, and the overall scale of the development might be apparent in its wider context. However, the separation distance and paucity of elevated vantage points in this landscape would mean that where distant views were possible, they would be of negligible or slight significance for the visual amenity of the wider area. Nevertheless, the overall visual harm I have identified from the proposed development would be of moderate/substantial significance.
341. If outline planning permission is granted for the expansion of the Wellcome Trust's Genome Campus into the fields to the south of the appeal site before determination of this appeal it would be necessary to obtain a cumulative LVIA and to provide an opportunity for the parties and interested persons to comment on it. This would need to be assessed to consider whether the cumulative assessment would alter the significance of the proposed AgriTech park on the character and appearance of the area. [144,226,268]
342. Taking all the above into account, I find that the proposed development would have an adverse effect on the character and appearance of the area of substantial significance, which is a consideration that should be given substantial weight in the planning balance. This would bring the proposal into conflict with SCLP Policy NH/2, which provides that development would only be permitted where it respects and retains, or enhances the local character and distinctiveness of the local landscape. The application is for outline planning permission with all matters reserved. However, even allowing for the scale and nature of the development, the parameter plans indicate that the scheme would conflict with the design principles set out in SCLP Policy HQ/1 concerning the preservation of the character of the rural area (1.a) and compatibility with its location (1.d).
- [17-21,32-48,123,128,131,134,141-143,226,248,250,252,255,260,261,264-266,273-275,277,280,282,283,286]

(3) Heritage assets

343. At Hinxton Grange the proposed development would lead to the loss of open farmland that formed the estate, the loss of open land adjacent to the designed parkland with built development along the park boundary and along and either side of the avenue, and the loss or closing-off of views from the house and reciprocal views, including from the A1301 (RB V3). The extent of the resultant harm on the significance of the grade II listed Hinxton Grange would be within the middle of the range of less than substantial harm. Given the group value

between the Grange, its stable and coach house, the same level of harm would apply to these listed buildings.

344. The scale and proximity of the proposed built development would significantly erode the historic significance of the non-designated parkland landscape and the avenue. The enhancements proposed for the parkland to remove damaged trees and provide public access would be of some benefit, but would not materially enhance the significance of the heritage assets. The proposed development would be set back 37 m from the centre line of the avenue towards its western end. At its eastern end development is proposed both to the north and south of the avenue, set back some 33 m from its centre. The proposed bunds along the eastern side of the A1301 would step down to the existing ground level at the entrance to the avenue, and so would not screen views into the appeal site and along the avenue from the road.
345. Notwithstanding the proposed landscaping, it would be likely that the built development and activity associated with it would be apparent from this vantage point on the A1301. The part of the proposed built development to the north of the avenue would be a particularly intrusive feature in this historic landscape. Commercial and other vehicles crossing the avenue towards its eastern end would give the impression that the avenue was to a part of the AgriTech park and not to an historic house. The level of harm caused to the parkland and avenue would be moderate to high.
346. It was apparent at my site visits that Hinxton conservation area and the grade II* Church of St Mary and St John the Evangelist have a similar setting, which would be adversely impacted by the proximity of the proposed AgriTech park. The change to the setting of these assets would diminish their historic significance, but this harm would be less than substantial and at the lower end of the range. Given the separation distance and intervening trees and woodland, along with the local topography, I do not consider that the proposed development would have an adverse effect on Pampisford Hall and its registered park and garden, which I visited on my accompanied site visit.
347. The appeal site comprises part of the setting of the non-designated WWII pillbox. There is some doubt about the reasons why the pillbox was placed in this location, but it is probable that a key consideration was the views it offered over the adjoining open fields. This open aspect makes a significant contribution to the significance of the pillbox. The proposed built form within the AgriTech park would substantially close off views to the west, and so would erode this significance. The level of harm caused to the pillbox would be moderate.
348. The proposed development would harm heritage assets. The harm to designated heritage assets would be less than substantial for the purposes of applying the *Framework*. This harm should be weighed against the public benefits of the proposal. The appeal scheme would also adversely affect non-designated heritage assets, requiring a balanced judgement having regard to the scale of this harm. Overall, I consider that the proposal would have an adverse effect of moderate significance on heritage assets, which should be given moderate weight in the planning balance.

[26,49-57,145-156,226,266,277,293,295]

(4) *Agricultural land*

349. Some 33 ha of BMV agricultural land would be permanently lost if the appeal scheme was implemented. The appellant considers that the proposed development would be compliant with relevant local and national policy if the scheme was successful in attracting development intended to improve agricultural productivity and sustainability across the UK and internationally. However, it seems to me that even if the proposal achieved these aims that would not bring it into conformity with provisions in the *Framework* about decisions contributing to and enhancing the local environment by, amongst other things, protecting soils. The 33 ha of agricultural land would no longer be available for agricultural production. That outcome would be at odds with the requirement in the *Framework* to recognise the economic and other benefits of BMV agricultural land. There would be some harm to agricultural land, which I consider would be an adverse effect of minor significance, but nonetheless should be given some slight weight in the planning balance.

[58,59,118,121,123,124,128,132,180,226,252,260,261,264,266,274,275,277,284,297]

(5) *Transport and highway safety*

350. Local concerns about the impact of the additional traffic generated by the appeal scheme are understandable given the existing congestion on the local road network. Long queues at the junction of the A505 and A1301 were evident in both am and pm peak hours whenever I visited the site. Local residents are critical of the traffic surveys on which the appellant relies, but the relevant highway authorities are satisfied that these are acceptable. There is also doubt that the scheme would be likely to achieve the modal split used in the appellant's projections. This is acknowledged to be ambitious. However, the proposed pedestrian/cycle enhancements would be particularly beneficial. With the provisions in the section 106 agreement set out in Annex A to this report, along with the suggested planning conditions, it would be a reasonable assumption that the planned modal split could be achieved by the time the scheme was fully occupied. I am satisfied that the technical evidence presented by the appellant about the existing highway network and the predicted traffic impact represents a reasonable worst-case assessment.

351. The technical evidence indicates that the proposed roundabout that would provide access to the appeal site from the A1301 would accommodate the likely traffic flows without having an unacceptable effect on the local road network. In terms of off-site highway improvements, the suggested planning conditions would secure works to junction 10 of the M11 and to the A11/A1307 junction prior to the first occupation of any building on the appeal site. The section 106 agreement would require completion of the McDonalds roundabout junction improvements prior to any occupation of the proposed development. The agreement also provides for CCC to elect for either the owners to deliver improvements to the A505/Moorfield Road junction and the A505/Hunts Road junction or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m² of floorspace on the appeal site could be occupied unless these works, or approved alternative works, had been completed.

352. The technical evidence demonstrates that these off-site improvements to the local road network would reasonably make adequate provision for the additional traffic that would be generated by the proposed AgriTech park. Local residents have concerns about constraints that might result from inadequate link capacity between the improved junctions. However, the evidence here indicates that it is the capacity of junctions which is the limiting factor on the flow of traffic on the local network. Sensitivity tests indicate that even with the proposed Wellcome expansion and the NUGV, neither of which is yet committed, the proposed highway works would still reduce delays compared to the baseline position at all the junctions assessed.
353. There is evidence that existing congestion at times results in rat-running of through traffic in nearby villages, and there is local concern that this has not been appropriately taken into account in the appellant's highway assessment. But it seems to me that if the proposed junction improvements operated in the way that is envisaged, then even with the additional traffic from the AgriTech park, drivers would be less likely to seek alternative routes through villages. Furthermore, the section 106 agreement requires a parking management monitoring plan with provision of a monitoring response bond, along with provision for measures to overcome any off-site parking or rat-running.
354. Subject to the imposition of appropriate planning conditions and the obligations set out in the section 106 agreement, I find no grounds to dismiss the appeal for highway safety reasons. The appeal scheme would comply with SCLP Policies TI/2, TI/3 and TI/8 concerning sustainable travel, parking and infrastructure provision.
355. The highway authorities are aware of the local problems on the network and there is to be a study of the A505 corridor. It is not possible at this stage to know if any measures are likely to emerge from this process that would achieve some of the highway improvements proposed by the appeal scheme. But implementation of the appeal scheme would provide certainty about achieving highway improvements that would not only be necessary to enable the proposed AgriTech park to proceed, but would also be of more general benefit to those using the local road network. If the appeal scheme secured these benefits earlier than would be so if they were delivered as part of improvements initiated by the Highway Authority, then that would be a benefit of minor significance that should be given slight weight in the planning balance.

[83,113,114,117,119,122,123,125,127,133,172-174,177-179,226,233,248,250,251,255,258,264-266,270,273-275,277-279,282,283,285-287,292,299]

(6) Other considerations

Biodiversity

356. In terms of biodiversity the existing arable fields are of limited habitat value, but the woodland, trees, hedgerows and field margins are of some nature conservation interest. The scheme proposes improved woodland management, additional tree planting and more hedgerows. With the imposition of appropriate planning conditions, the appellant's Habitat Impact Assessment Calculator for the scheme, which was not disputed at the Inquiry, records a net biodiversity gain. This takes into consideration woodland, grassland, wetland and other habitat, including the built environment, with a

net score of +32.15. This is derived from a loss score of 171.22 and a gain score of 203.37. It also records a hedgerow impact score of +9.94.

357. However, the scheme would predominantly provide urban type habitats replacing rural countryside. In the long-term rural habitats might be locally more valued for threatened wildlife because of their scarcity, whereas urban type habitats are likely to become more common with future expansion of built development in the wider Cambridge area. For these reasons, I find that the proposal would, overall, have a beneficial effect of minor significance on biodiversity, which should be given slight weight in the planning balance.

[120,130,131,134,170,226,250,252,255,265,266,277,297]

Hydrology

358. There is local concern about the effects of the proposal on ground and surface water, and the risk of flooding. Others raised issues about demand for water in an area where rainfall might be adversely affected by climate change. The evidence submitted indicates that local surface and ground water resources could be safeguarded by the imposition of appropriate planning conditions, and there is nothing to indicate that the scheme would have an unacceptable impact on water resources. There are no grounds to dismiss the appeal because of its likely impact on hydrology.

[83,135,226,248,250,252,255,259,260,264-266,281,294,296,297]

Pollution

359. There are local concerns about the effects of the proposal on the amenity of the area from air and noise pollution. These are matters that could be reasonably addressed by the imposition of appropriate planning conditions. There are no grounds to find against the proposal because of likely harm to the amenity of the area from pollution.

[83,122,221,226,259,265,277]

Other matters

360. Many objectors commented on the fact that the appeal site is not allocated for development in the recently adopted SCLP. Some considered that the proposal would result in piecemeal development in the absence of a strategic plan for the area which took into account potential other development, such as the NUGV and Wellcome Trust campus expansion. Cumulative impact was raised as an issue that should best be considered in a review of the local plan. However, the proposal falls to be determined having regard to current policy. In the circumstances, it would not be appropriate to refuse the scheme on the grounds of its prematurity pending a review of the local plan.

[205,249,251,257,262,263,268,277,287,288,293,301]

361. Some objectors suggested alternative sites or schemes. But it is only in exceptional circumstances that an alternative proposal will be relevant. This is not a case where consideration of a less harmful alternative development becomes a material planning consideration. [116,199]

362. The Inquiry was advised about a legal agreement affecting the appeal site, which was undertaken by the Wellcome Trust when it owned the land. The agreement binds successors in title. However, this is a legal matter for the parties involved, and is not a consideration which would justify dismissing the appeal. [126,222,277,286]
363. Some representations considered that consultation about the scheme was inadequate, but the proposal was given appropriate publicity with reasonable opportunities for local comment. [225,269]
364. There is local concern about the effects of the proposal on the real estate market, but this should not be an influential consideration in determining this appeal. [285]

(7) Employment and the economy

365. The SCLP does not specifically mention the AgriTech sector, but national and regional strategies and economic policies encourage and promote the sector. There is evidence that the AgriTech sector is an important sector of the regional and national economy that has the potential for considerable growth. SCDC shares the support expressed by the Government and other organisations for fostering and capitalising on the opportunities presented by this sector, but disputes that these objectives require the release of the appeal site for an AgriTech park. [61,62,74,181-187]
366. The Cambridge cluster encompasses businesses and institutions within about a 20-mile radius of the city. There is clear evidence of the benefits of clustering to the growth and success of knowledge-based businesses, which is reflected in the aims of SCLP Policy E/9. The appeal scheme would provide some agricultural land for field trials on site, with the appellant offering adjoining agricultural land if more extensive areas for crop trials were required by occupiers of the proposed AgriTech park. Some businesses may benefit from the proximity of land for trials, but there is evidence that many agricultural research establishments utilise land for trials a considerable distance from their main research premises. The proposed incubator units would be beneficial to start-up enterprises. But these benefits should be seen in a local policy context that is very supportive of new and growing businesses. [67-69,75-77,118,189-194,196-198,204,240,241,284]
367. Supporters of the scheme refer to the opportunities it would create for synergies with other science parks in the Cambridge sub-region, and that it would provide access to an on-site AgriTech community. This is considered to be especially significant as it would be located in East Anglia, which is an important agricultural area. There is evidence of considerable interest in the scheme, but no specific commitments to taking up the opportunities that the AgriTech park is perceived to provide. The representations in support of the proposal are of a general nature, which appear to have been made without the benefit of any details about how the site would be managed and operated, and particularly how occupation of the site would be controlled. Representations refer to a wide range of activities, including an opportunity for a producer's food hub, sustainable food distribution and national logistics. Representations refer to the need for planning permission to provide certainty, as a basis to explore further collaboration with the appellant and the AgriTech community, and in order to progress discussions. Even where genuine interest in the

appeal scheme is expressed, or consideration given to taking up office space in the incubator units, taking this interest further was considered by supporters of the scheme to be dependent upon the AgriTech park receiving planning permission. Nevertheless, if the scheme achieved the benefits claimed by the appellant it would gain support from national and regional strategies and economic policies to encourage and promote the AgriTech sector. [227,231,232,234,235,236-246,256,272,300]

368. A use class B1 development with 112,000 m² of employment floorspace within the Cambridge area would generate considerable economic benefits, the quantum of which was not disputed at the Inquiry. However, many submissions expressed concern about the wide breadth and scope of the appellant's definition of AgriTech, and the possibility that the scheme would in future become a general business park, with a focus on commercialisation. Some objectors question whether there is a credible business case for the scheme in the absence of any collaboration or relationship with the University of Cambridge, or with existing bio-tech research parks and establishments in the locality. With no identified anchor tenant for the scheme, objectors argue that the proposal would not be integrated with key UK AgriTech enterprises. There is also concern about the scheme lacking the scientific leadership, focus or governance, that would be necessary to mitigate against any future divergence from the AgriTech credentials of the initiative, leading to it effectively operating as a general science or business park. [27,28,79,115,124,204,226,229,230,247,250,253,254,259,260,262,265,267,270,277,279,282,286-288]

369. There is an existing cluster of AgriTech businesses in the Cambridge area operating from a number of dispersed sites and locations. There is also a generous supply of employment land in the area. Some objectors argue that with almost full employment there is no need for an additional 4,000 jobs. The appellant considers that the Cambridge cluster would be significantly enhanced if existing and future businesses had the opportunity to co-locate on a large site, which provided agricultural land for research, trials and the commercialisation of AgriTech innovations in the field, so that the sector would be more competitive and successful in the longer term compared to a dispersed model. [63-66,70-73,81,121,137,194,200,201,276]

370. Some businesses might benefit from co-location on a single AgriTech site, but others might be content to share information, skills and ideas more remotely within a dispersed AgriTech cluster within the Cambridge area. There is no convincing evidence to quantify the need for co-location on a single large site. There is nothing to demonstrate the level of likely advantage such a cluster might have over the future development of the dispersed cluster that has emerged in the Cambridge area. This is especially so as the appellant argues that many of the enterprises that would take up premises in the proposed AgriTech park do not currently exist, and that the emergence of some would be dependent upon technologies and applications which have yet to be invented. That may well be so, but it does mean that the proposal must then be put forward on a speculative basis. However, the fact that the application is in outline, and the lack of identified likely occupiers, are not considerations which weigh against the proposal. Nevertheless, the particular nature and scale of this speculative proposal means that it would be imperative that

effective controls were imposed regarding future occupation of the proposed AgriTech park. [31,80,202,203]

371. The benefits of the proposed AgriTech park, over and above those which might in any event result from future development of the existing AgriTech cluster in Cambridge utilising existing and allocated employment provision, would be significant if the economic contribution envisaged by the appellant could be achieved in practice. However, these benefits would only be realised if an effective user restriction was imposed to ensure that occupiers complied with specified AgriTech requirements, so that the development did not become a general business park. But there was no agreement at the Inquiry about what form these necessary restrictions should take. [82]
372. Suggested Condition 12a would define AgriTech as science-based and/or technology-based development of products, services and applications designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. This definition could encompass many and varied uses and activities and would be so imprecise that it would be likely to give rise to disputes about compliance and difficulties in taking effective enforcement action. The reference to 'the food chain' could potentially incorporate a wide range of activities that would fall outside the appellant's concept of AgriTech as it was advanced at the Inquiry. The appellant states that the emphasis here would be on the commercialisation process, which it considers to be the successful production, marketing, sale and servicing of a range of things, including physical products, services or computer-related or other applications. Such an expansive user restriction, combined with the appellant's emphasis on commercialisation, would be open to a wide interpretation that could result in the development operating largely as a general business park. Conditions 12b and 12c would similarly lack the necessary precision to comply with the tests for valid planning conditions. [138]
373. Condition 12d suggested by SCDC would require a needs assessment at reserved matters stage and for initial and subsequent occupation of the proposed incubator units. A needs assessment must demonstrate either an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or a need for the prospective occupier to be located adjacent to other permitted businesses on the site. But it seems to me that this might exclude occupiers who did not meet these requirements, but might otherwise accord with legitimate aspirations for the proposed AgriTech park. The first occupier would have to meet requirement a) proximity to land in agricultural use, as compliance with b) would not apply if there were no other occupiers. Furthermore, an innovative AgriTech use, which did not need to be co-located with other AgriTech occupiers on the site at that time, and required no nearby agricultural land, would fail to comply. A requirement for such a needs assessment at reserved matters stage could also unreasonably impact on the deliverability of the development where the occupier might not be known at that stage. The condition would require first and subsequent occupation of any building to be substantially in accordance with the associated need assessment. This would lack precision in setting out what was required to discharge the condition. I do not consider that Condition 12d would meet the tests for valid conditions.

374. Condition 12e incorporates the appellant's preferred definition for AgriTech (12a), and adds a requirement for approval prior to occupation with need demonstrated by either a requirement of proximity to agricultural land or for co-location with other uses on site. The incubator units would be excluded from a needs assessment. For the incubator units and after 10 years of first occupation for other users, an occupation restriction would only apply by virtue of the 12a part of the condition. However, for the reasons set out above, 12a would lack the necessary precision. I do not consider that Condition 12e would meet the tests for valid conditions.
375. The *Framework* provides that significant weight should be placed on the need to support economic growth and productivity. However, without effective controls there would be nothing to prevent the proposed AgriTech park from becoming a general business park. Given the ample existing and planned provision in the Cambridge area for employment and business development, the benefits that would result from a general business park in this countryside location would be limited. Some form of occupier restriction would be necessary to ensure that the claimed benefits of the AgriTech park would be realised. However, in my view none of the suggested conditions would meet the tests of necessity, reasonableness and precision. The absence of an appropriate mechanism to control occupation of the AgriTech park diminishes the weight that can be given to the claimed benefits of the proposal. In these circumstances, I find that the need for and benefits of the proposed development would be of minor significance, and a consideration which should attract no more than slight weight in the planning balance.
376. However, if the Secretary of State considers that any of the occupancy restriction conditions suggested by either SCDC or the appellant would be policy compliant, or that it would be possible, by going back to the parties, to devise a lawful and policy compliant means to restrict occupation, so that the scheme would achieve the benefits claimed by the appellant, then the contribution to the economy would be a matter that should be given substantial weight in the planning balance.

[78,104-107,213-218,302-308]

(8) *Planning balance*

377. The appellant's case for the AgriTech park relies on an argued need for the scheme and the benefits which would result. This is based on the view that a single large bespoke site for AgriTech is required if policy ambitions are to be achieved. For the reasons set out above, I am not convinced that the evidence indicates that this is the decisive consideration that warrants the weight attributed to it by the appellant. However, the Secretary of State may come to a different view about this, and the following balancing exercises consider alternative inputs, depending upon whether the need/benefits issue is awarded slight weight, on the basis of my findings in section (7) of this report, or should attract substantial weight reflecting the appellant's case.
378. Before doing so it is necessary to consider how the *Framework* deals with heritage assets. Considerable weight and importance should be given to the harm identified to the designated heritage assets. In my judgement, the public benefits of the scheme in terms of employment and its contribution to the economy would outweigh the harm to both designated and non-designated

heritage assets if substantial weight was given to the need for and benefits of the appeal scheme. However, this would not be the case if the need/benefits consideration was only given slight weight. In the latter case the moderate harm to heritage assets would not be outweighed by the public benefits of the proposal.

379. If the Secretary of State finds that the proposed development is inappropriate in the Green Belt, the planning balance would be whether the harm by reason of inappropriateness, and any other harm, was clearly outweighed by other considerations, so as to amount to the VSC necessary to justify the development. The harm to the Green Belt should, by definition, be given substantial weight. In addition, the proposal would have an adverse effect on the character and appearance of the area, which should be given substantial weight. Moderate weight should be given to the harm identified to heritage assets. Slight weight should be given to the loss of BMV agricultural land. If the appeal scheme brought forward highway improvements sooner than otherwise would be so, then the beneficial impact should be given slight weight. The benefits to biodiversity should also be given slight weight for the reasons set out above. In this scenario, irrespective of whether the need/benefits consideration was given slight or substantial weight, it is my judgement that the harm by reason of inappropriateness, and any other harm, would not be clearly outweighed by other considerations, and the VSC necessary to justify the development would not exist.
380. If the Secretary of State finds that the proposed development is not inappropriate development in the Green Belt the planning balance is a straight weighing of benefits against harm. If the need/benefits consideration was given slight weight, I do not consider that this, combined with the slight weight for both transport and biodiversity benefits, would be sufficient to outweigh the substantial weight to be given to the harm to the character and appearance of the area, along with the moderate weight to the harm to heritage assets and slight weight arising from the loss of BMV agricultural land. If the need/benefits consideration was given substantial weight the matter would be more finely balanced. However, in my judgement, the overall harm I have identified would still be sufficient to tip the planning balance against the proposal.
381. In scenarios for both inappropriate and 'appropriate' development in the Green Belt, and for awarding the need/benefits of the appeal scheme either slight or substantial weight, I find that the planning balance falls against the proposed development.

[96-98,170,224]

(9) Development Plan

382. The Secretary of State is required to decide this appeal having regard to the development plan, and to make the determination in accordance with it, unless material considerations indicate otherwise. The development plan includes the South Cambridgeshire Local Plan 2018 (SCLP), relevant policies of which are summarised in Annex B of this report. Irrespective of how the appeal scheme came about, and submissions about previous proposals to develop the appeal site, the current scheme should be determined on its planning merits having regard to relevant policy. The SCLP does not specifically refer to AgriTech

development. However, it was found to be sound on the basis of the policies contained within it for employment provision and economic growth.

383. The requirement in SCLP Policy HQ/1 1.a to preserve or enhance the character of the local urban and rural area is not inconsistent with the *Framework* because the application of this requirement is qualified as appropriate to the scale and nature of the development. SCLP Policy NH/14 sets out when development proposals would be supported, and so is not inconsistent with heritage policies in the *Framework*. I have had regard to the basket of policies which are most important for determining this appeal (as set out in Annex B to this report), and I am satisfied that they are, taken as a whole, consistent with the *Framework*.
384. Subject to the imposition of appropriate planning conditions and the obligations set out in the planning agreement, the appeal scheme would comply with SCLP Policies TI/2, TI/3 and TI/8 concerning sustainable travel, parking and infrastructure provision. The proposal would not gain support from Policy S/1 if the planning balance fell against it because in those circumstances it would not represent sustainable development. In terms of Policy S/2 the proposal would support economic growth, but would not protect the character of South Cambridgeshire. The scheme would gain some support from Policy S/5 because it would assist in achieving the plan's target for additional jobs. Some support would also come from Policy NH/4, which requires new development to aim to maintain or enhance biodiversity. However, the proposal would harm heritage assets and so would not gain support from Policy NH/14.
385. For the reasons set out above the proposal would conflict with Policies HQ/1 and NH/2 concerning the local landscape. It would also be at odds with Policy SC/9 because lighting would be likely to have an unacceptable adverse impact on the surrounding countryside. If the Secretary of State finds that the planning balance falls against the proposed development, then sustainability considerations and the need for the development would not be sufficient to override the need to protect the agricultural value of land. As the scheme would result in the irreversible loss of BMV agricultural land it would consequently be at odds with Policy NH/3. Policy E/9 provides for locally driven clusters as they emerge. However, if the Secretary of State finds that the planning balance falls against the proposed development the scheme would not be in a suitable location, and so would conflict with Policy E/9 concerning the promotion of clusters. Overall, the proposal would not be supported by other policies in the SCLP, and so would conflict with Policy S/7 concerning development outside development frameworks.
386. If the Secretary of State finds that the development would be inappropriate in the Green Belt and finds that VSC do not exist, then the proposed development would not accord with the objectives set out in Policy S/2, and it would also conflict with Policies S/4 and NH/8.
387. Taking all the above into account, I find that the proposal would, if the planning balance falls against the scheme, conflict with the development plan when taken as a whole.

[22,29,30,60,99-102,184-186,206-212,277]

(10) *Framework and Guidance*

388. Relevant provisions of the *Guidance* have been taken into account in assessing the appeal scheme. In terms of compliance with the *Framework* the scheme would gain some support from the need to support economic growth and productivity, and from providing net gains for biodiversity. On transport grounds the proposal would have a neutral or slight beneficial effect, not the unacceptable impact on highway safety or severe residual cumulative impacts on the road network that would justify a refusal on highway grounds.

389. However, the appeal scheme would be at odds with policy about enhancing the local environment and recognising the intrinsic character and beauty of the countryside and the economic and other benefits of BMV agricultural land. In applying policies in the *Framework* for heritage assets, I have found that the public benefits of the scheme would outweigh the harm to both designated and non-designated heritage assets if substantial weight was given to the need for and benefits of the proposal, but would not do so if the need/benefits consideration was only given slight weight. If the Secretary of State finds that the development would be inappropriate in the Green Belt and finds that VSC do not exist, then the proposed development would also conflict with national policy concerning the Green Belt. But irrespective of whether the proposal is inappropriate or 'appropriate' development in the Green Belt, and whether the appellant's need/benefits case is given slight or substantial weight, I consider that the scheme would be at odds with the policy in the *Framework*, when considered as a whole. [23-25]

(11) *Planning conditions and obligations*

Conditions

390. Suggested conditions, in the event that outline planning permission was granted, were the subject of a round-table without-prejudice discussion at the Inquiry. The written list of conditions submitted by the appellant includes pre-commencement conditions which are agreed. In the following paragraphs the Condition numbers are as they appear in the Schedule of Conditions attached to this report.

391. The standard outline conditions would be necessary which specified appropriate time periods (Conditions 1-5). Otherwise than as set out in the decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans, to ensure that it was in accordance with the scheme considered at the Inquiry (Condition 6).

392. Provision for access and highway improvements would be necessary in the interests of highway safety in accordance with SCLP Policies TI/2 and TI/8. (Conditions 7-9). Condition 10 would be necessary in order to clarify the parameters of the permission in terms of overall floorspace for uses and total number of car parking spaces. A condition would be required to ensure that agricultural land was available for AgriTech occupiers (Condition 11).

393. The parties could not agree on the wording for Condition 12 concerning an occupancy restriction. None of the suggested variations to this condition would pass the relevant policy tests. In the event that the Secretary of State is minded to grant outline planning permission it would be necessary to go back

to the parties to devise a valid occupancy condition or other appropriate means to control occupation of the proposed AgriTech park.

394. A condition would be required to ensure that the class D1 and D2 uses did not attract additional external traffic movements to the site (Condition 13). Condition 14 would be necessary to ensure that appropriate mitigation was carried out. Conditions would be required to ensure that A3 and A5 uses remained ancillary to the function of the site and did not attract external trips onto the network unrelated to the AgriTech function of the site, and a restriction of permitted development for office conversions to dwelling houses would be necessary and reasonable because of the particular needs of the proposed scheme to be located in this rural location (Condition 15).
395. Condition 16 would be necessary to clarify how the site was to be phased to assist with the determination of subsequent reserved matters applications and in order to ensure that major infrastructure provision and environmental mitigation was provided in time to cater for the needs and impacts arising out of the development in accordance with SCLP Policy TI/8. Early provision of the proposed incubator units would be necessary to achieve the benefits of the proposed development (Condition 17). Reporting on the phased delivery of infrastructure and mitigation would be necessary to identify any changes required to phasing (Condition 18).
396. Condition 19 would be necessary to ensure sufficient sewerage infrastructure capacity in accordance with SCLP Policies CC/9 and TI/8. In order to prepare the site for development a condition would be necessary regarding enabling works (Condition 20). Site-wide and detailed Construction Environmental Management Plans (CEMP) would be required to protect the amenities and environment of residents and other sensitive receptors in accordance with SCLP Policy CC/6 (Conditions 21 and 22).
397. A community liaison group would be required given the scale and wide-reaching environmental impacts of the proposal in accordance with SCLP Policy CC/6 (Condition 23). A site wide Construction Transport Management Plan (CTMP) would ensure that the construction of the development minimised its environmental impacts in accordance with SCLP Policies CC/6 and TI/2 (Condition 24). For similar reasons a site wide Construction Waste Management Plan (CWMP) would be necessary (Condition 25). Controls to avoid unnecessary noise from piling operations in accordance with SCLP Policy CC/7 and to prevent pollution would be required (Condition 26).
398. Condition 27 would ensure that no contaminated material was brought onto the site, in accordance with SCLP Policy CC/6. Odour controls would protect the amenities of users of the AgriTech park in accordance with SCLP Policy SC/14 (Condition 28). A site-wide car parking strategy would ensure that the number of car parking spaces on site did not exceed 2,000 and that parking provision was provided at appropriate levels for each permitted use, having regard to SCLP Policy TI/3 (Condition 29). Condition 30 would provide for a site wide Ecological Conservation Management Plan (ECMP) to ensure that the development of the site conserved and enhanced ecology (SCLP Policy NH/4).
399. A lighting strategy would be necessary to minimise light pollution in accordance with SCLP Policy SC/9 (Condition 31). Condition 32 would seek to

ensure that the development and subsequent reserved matters proposals adequately addressed climate change in accordance with SCLP Policies CC/1, CC/3 and CC/4. A site wide Heritage Protection and Management Plan would ensure heritage assets were afforded protection to comply with SCLP Policy NH/14 (Condition 33). Condition 34 would require a Strategic Surface Water Drainage Strategy in order to safeguard against the risk of flooding, to ensure adequate flood control, maintenance and efficient use and management of water within the site, to ensure the quality of the water entering receiving water courses was appropriate and monitored and to promote the use of sustainable urban drainage systems in accordance with SCLP Policies CC/7, CC/8, CC/9 and Adoption and Maintenance of Sustainable Drainage Systems in South Cambridgeshire (2016). To comply with SCLP Policies CC/1 and TI/8 a Refuse and Recycling Strategy would be necessary (Condition 35).

400. In the interests of the public realm a site-wide Estate Management Strategy would be required having regard to SCLP Policies HQ/1 and TI/3 (Condition 36). A Design Guide should be approved and implemented to ensure high standards of urban design consistent with SCLP Policy HQ/1 and District Design Guide: High Quality and Sustainable Development (2010) Supplementary Planning Document (Condition 37). A site-wide topographical plan with cross-sections (Condition 38) would be necessary to provide a strategic approach to land form cut and fill in the interests of the visual amenity of the area (SCLP Policies HQ/1 and NH/2). [Condition 39 was not used]
401. A Strategic Landscape and Ecological Management Plan (SLEMP) would be required in accordance with SCLP Policy HQ/1 and SCDC Landscape in New Developments (2010) SPD (Condition 40). For similar reasons measures would be necessary to protect trees (Conditions 41, 42 and 43). Details for hard and soft landscaping, along with ecological measures would need to be specified and implemented (Conditions 44, 45 and 46) to ensure that the development was consistent with SCDC's Landscape in New Developments (2010) SPD, and enhanced ecology in accordance with SCLP Policies NH/4 and HQ/1. A detailed lighting scheme for each phase would be necessary in the interests of the appearance of the area (Condition 47). Pedestrian and cycle routes for each phase (Condition 48) should be approved and implemented to ensure that appropriate connections were provided for the scheme (SCLP Policies HQ/1 and TI/2). For similar reasons details of car and cycle parking in each phase would need to be approved and implemented (Conditions 49 and 50).
402. BREEAM standards (Conditions 51 and 52) should be specified in accordance with the ES commitments and to ensure a high level of sustainable design (SCLP Policies CC/1, CC/2, CC/3 and CC/4). A Sustainability Statement (Condition 53) would be necessary in the interests of reducing carbon dioxide emissions and promoting principles of sustainable construction and efficient use of buildings (SCLP Policy CC/1).
403. There is a dispute about Condition 54 concerning the future review of the sustainability strategy and targets. SCDC considers that the condition would be necessary in the interests of reducing carbon dioxide emissions, promoting principles of sustainable construction, the efficient use of buildings, and in view of the duration of the proposed development, having regard to SCLP Policies CC/1, CC/3 and CC/4. These are laudable aims, but I am not convinced, given the wording of the suggested condition, that it would meet the policy tests. I

share the appellant's view that the condition would not provide the necessary certainty about what was required from the developer, and so in the form suggested it would be unreasonable. [108,219]

404. Conditions 55, 56 and 57 would be necessary to reduce carbon emissions and in the interests of climate change adaptation. The location and provision of fire hydrants (Condition 58) would need to be approved in order to secure appropriate firefighting infrastructure in accordance with the advice of the Cambridgeshire Fire and Rescue Service (SCLP Policy TI/8). Condition 59 requires a minimum of 20% of the car parking spaces to have electric vehicle charging points in the interests of adapting to and mitigating climate change (SCLP 2018 Policies TI/2 and CC/1).
405. A Detailed Surface Water Scheme (Condition 60) would be necessary in order to safeguard against the risk of flooding, to ensure adequate flood control, maintenance and efficient use and management of water within the site, to ensure the quality of the water entering receiving water courses is appropriate and monitored and to promote the use of sustainable urban drainage systems (SCLP Policies CC/7, CC/8, CC/9 and Adoption and Maintenance of Sustainable Drainage Systems in South Cambridgeshire (2016)). A scheme to dispose of foul water drainage would be necessary to prevent pollution (Condition 61).
406. A programme of archaeological work (Condition 62) would be necessary in order to appropriately protect and investigate the archaeological heritage of the site (SCLP Policy NH/14). Soil movement and restoration (Condition 63) would need to be controlled to accord with SCLP Policies NH/3 and NH/4.
407. Condition 64 concerning land contamination and remediation would be necessary to ensure that risks from land contamination to the future users of the land and neighbouring land were minimised in accordance with SCLP Policy SC/11.
408. It would not be necessary to impose any other conditions. Some minor changes to the wording of conditions suggested by the parties are necessary to ensure that a permitted scheme would accord with the details of the proposal that was considered at the Inquiry, and to ensure that conditions were precise and enforceable. I have omitted discretionary clauses which could result in fundamental changes to some aspects of the scheme considered at the Inquiry. References to some of the documents cited in the suggested conditions have also been updated in the Schedule of Conditions attached to this report.

Obligations

409. The obligations concerning a Public and Private Transport Service Strategy, with a Service Level Agreement and a Private Shuttle Bus Service would be necessary to ensure that appropriate bus services were provided given the rural location. Parking Management and Monitoring Plans, along with a Monitoring Response Sum Bond would be required to overcome any off-site parking or rat-running. A Shared Multi-User Route pursuant to the Highways Act, along with junction improvements to McDonalds roundabout would be required to secure necessary highway improvements. A Framework Travel Plan, along with an Annual Action Plan, with Review and Monitoring and Individual Travel Plans, together with a Travel Plan Enhancement Bond would

be necessary to minimise reliance on transport by private cars. A Strategic Public Open Space Plan would be required in the interests of the amenity of the area. These obligations would be necessary, directly related to the proposed development, and fairly and reasonably related to the proposal in terms of scale and kind.

410. The obligation provides for CCC to elect for the owners to deliver the New Bus/Cycle Interchange, the A505/Moorfield Road Works, and the A505/Hunts Road Works, or to deliver bonds which would enable the funding of alternative works. No more than 25,000 m² of floorspace could be occupied unless these works had been completed. These provisions would provide a pragmatic solution if it proved that highway constraints on the appeal scheme could be better resolved in a scheme initiated by the Highway Authority. On this basis, it seems to me that the possibility of a contribution instead of constructing the works would reasonably comply with the CIL Regulations.
411. Essex County Council seeks a contribution of £2.5 m to the cost of a pedestrian and cycle bridge linking the appeal site to the proposed NUGV. However, planning for the NUGV is at an early stage and the link would not be necessary in order to make the AgriTech development acceptable in planning terms. Furthermore, no justification has been provided by reference to any Essex policy or guidance relating to such financial contributions. However, it would be necessary and reasonable for the obligation to recognise the desirability of a link between the developments should the NUGV proceed, and for the owners to use reasonable endeavours to allow implementation to permit pedestrians, cyclists or other suitable transport users to move between the appeal site and the NUGV. [11,103,175,176,220,289,302-309]

Overall conclusions

412. I have found that the planning balance would fall against the proposed development in all scenarios, irrespective of whether the scheme is, or is not, inappropriate development in the Green Belt, and whether the appellant's need/benefits case is given slight, or substantial, weight. The proposal would conflict with the development plan, taken as a whole, and would not gain support from the *Framework*. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised in evidence, I conclude that the appeal should be dismissed.
413. However, if the Secretary of State considers that substantial weight should be given to the appellant's need/benefits case for the appeal scheme, and also finds that the planning balance falls in favour of the proposed development, having regard to relevant policy, then it would be necessary to devise appropriate occupancy controls to enable a valid outline planning permission to be granted.

Recommendations

414. The appeal be determined on the basis of the amended Landscape and open space parameter plan Drawing No.235701B-LA-PP103A.
415. The description of the proposed development be amended to an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301 / A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works.
416. I recommend that the appeal should be dismissed for the reasons set out above.
417. However, if the Secretary of State is minded to allow the appeal and to grant outline planning permission, then the conditions considered necessary to be imposed, with two exceptions, are set out in the Schedule of Conditions attached to this report. It would be necessary to go back to the parties to devise controls on the future occupation of the site, by imposing an amended version of Condition 12, or by means of an appropriate planning obligation. It would not be reasonable to impose suggested Condition 54.

John Woolcock
Inspector

APPEARANCES
FOR SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL:

Douglas Edwards QC
Horatio Waller of counsel

Instructed by Richard Pitt SCDC

They called

David Huskisson Dip LA
CLMI

Principal landscape practice

Adrian Gascoyne
BA(Hons) FSA MCIFA

Head of Place Services Essex County Council

Cristina Howick
MA(Oxon) MSc(Econ)

Director Peter Brett Associates LLP

Phillipa Jarvis BSc
(Hons) DipTP MRTPI

Principal of PJPC Ltd

FOR THE APPELLANT:

Neil King QC
Robert Walton QC
They called

Instructed by Terence O'Rourke Ltd on behalf of
SmithsonHill Ltd

Andy Hill

Founder and Chief Executive Hill Group and
Director of SmithsonHill (CIOB)

Martin Collison BSc
(hons) FRSA FCIEA
FRAgS MIAgrM

Director Collison and Associates Limited

Steve Lucas BSc MSc
economics

Director Development Economics Limited

Rob Sadler BSc MRICS

Director Savills Cambridge

Richard Burton DipLA
CMLI AoU

Director Terence O'Rourke Limited

John Trehay BA MCIfA

Technical Director Terence O'Rourke Limited

Rupert Lyons MSc CMILT
MIOD

Founding Director Transport Planning Associates
Limited

Tim Hancock BA (Hons)
MPhil DMS MRTPI AoU

Managing Director Terence O'Rourke Limited

Continued -

INTERESTED PERSONS:

Prof William Brown
Cllr Peter McDonald
Rupert Kirby
Cllr Peter Topping

John F Williams
Cllr Aureole Wragg
Cllr Sian Wombwell
Tony Orgee
Dr Alan James BSc Tech PhD
MBCS CIP MIMMM CEnv

Chair Hinxton Parish Council
District Councillor SCDC
Local resident
District Councillor for the Whittlesford Ward of
SCDC and County Councillor for Duxford Division
of Cambridge County Council
Local resident
Pampisford Parish Council
Ickleton Parish Council
Local resident
Chairman CPRE Cambridgeshire & Peterborough

PROOFS OF EVIDENCE and APPENDICES

Appellant

APP1	Andy Hill 1.1 Summary 1.2 Proof of Evidence 1.3 Appendices 1-3
APP2	Martin Collison 2.1 Summary 2.2 Proof of Evidence 2.3 Appendices 1 and 2
APP3	Steve Lucas 3.1 Summary 3.2 Proof of Evidence
APP4	Rob Sadler 4.1 Summary 4.2 Proof of Evidence 4.3 Appendix 1
APP5	Richard Burton 5.1 Summary 5.2 Proof of Evidence 5.3 Figures 1-7 and Appendices A-F 5.4 Rebuttal and Figure 1 [The following submitted at the Inquiry] 5.5 Response by Mr Burton to LPA3.4 including Drawing No.235701B-LA-PP103A
APP6	John Trehy 6.1 Summary 6.2 Proof of Evidence 6.3 Appendices 1-4
APP7	Rupert Lyons 7.1 Summary 7.2 Proof of Evidence 7.3 Appendices A-O 7.4 Supplementary and Rebuttal Appendix RL-A [The following submitted at the Inquiry] 7.5 Further Rebuttal Proof
APP8	Tim Hancock 8.1 Summary 8.2 Proof of Evidence 8.3 Appendices A-S

Continued

South Cambridgeshire District Council

LPA1	Phillipa Jarvis 1.1 Summary 1.2 Proof of Evidence 1.3 Appendices PJ1 and PJ2
LPA2	Cristina Howick 2.1 & 2.2 Main Proof of Evidence 2.3 Appendices A-D 2.4 Rebuttal 2.5 Rebuttal Appendices A and B
LPA3	David Huskisson 3.1 Summary 3.2 Proof of Evidence 3.3A Appendices 1-4 3.3B Plans and Photographs 3.4 Response of SCDC to FEI landscape and visual matters [The following submitted at the Inquiry] 3.5 Updated table of effects Day 1 Winter 3.6 Errata 3.7 DH1 DH2 and DH3 3.8 Extract with plans Cambridge Green Belt Study CD9.3
LPA4	Adrian Gascoyne 4.1 Summary 4.2 Proof of Evidence & Figures 1-34 4.3 Appendices A-G

SCHEDULE OF PLANS AND DRAWINGS

Application plans and drawings

Site location plan Drawing No.235701B-LA-001 A3
 Existing site plan Drawing No.235701B-LA-002
 Land use parameter plan Drawing No.235701B-LA-PP101 rev A
 Movement and access parameter plan Drawing No.235701B-LA-PP102
 Landscape and open space parameter plan Drawing No.235701B-LA-PP103
 Development density parameter plan Drawing No.235701B-LA-PP104
 Height parameter plan Drawing No.235701B-LA-PP105

Amended plan submitted at the Inquiry

Landscape and open space parameter plan Drawing No.235701B-LA-PP103A

ANNEX A

Summary of obligations in section 106 agreement dated 31 July 2019

Schedule 1

Requires the owners of the site to submit a Public and Private Transport Service Strategy for approval prior to commencement. Prior to occupation a Service Level Agreement would ensure that a bus service is provided in accordance with the approved Public and Private Transport Service Strategy for a period of 5 years or until the service is commercially viable and self-sufficient.

Requires the owners of the site to provide a Private Shuttle Bus Service in accordance with the approved Public and Private Transport Service Strategy for the lifetime of the development.

Requires the site owners to submit for approval a Parking Management Plan prior to occupation and thereafter implement it for the duration of the development.

Requires the site owners to submit for approval a Parking Management Monitoring Plan prior to occupation and thereafter implement it with provision of a Monitoring Response Sum Bond, and provision for measures to overcome any offsite parking or rat running.

A Shared Multi-User Route pursuant to the Highways Act would be required.

The obligation provides for CCC to elect for the owners to deliver the New Bus/Cycle Interchange or to deliver a bond which would enable the funding of alternative works for the New Bus/Cycle Interchange. No more than 25,000 m² of floorspace could be occupied unless the Interchange or approved alternative works had been completed.

Requires the owners to complete the McDonalds Roundabout junction improvements prior to occupation.

The obligation provides for CCC to elect for the owners to deliver the A505/Moorfield Road Works or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m² of floorspace could be occupied unless the A505/Moorfield Road Works or approved alternative works had been completed.

The obligation provides for CCC to elect for the owners to deliver the A505/Hunts Road Works or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m² of floorspace could be occupied unless the A505/Hunts Road Works or approved alternative works had been completed.

In the event that the North Uttlesford Garden Village (NUGV) is allocated for housing and planning permission granted within 7 years which provides links across the A11 the owners shall use reasonable endeavours to allow

implementation to permit pedestrians, cyclists or other suitable transport users to move between the appeal site and the NUGV.

Requires submission for approval of a Framework Travel Plan, along with an Annual Action Plan, with Review and Monitoring and Individual Travel Plans. It also provides for a Travel Plan Enhancement Bond.

Requires the owners to submit for approval a Strategic Public Open Space Plan.

Schedule 2 sets out CCC's obligations

ANNEX B

Summary of relevant policies of the South Cambridgeshire Local Plan 2018 (SCLP)

S/1 The vision provides for sustainable economic growth with residents having a superb quality of life in an exceptionally beautiful, rural and green environment.

S/2 Sets out 6 key objectives; a. to support economic growth and South Cambridgeshire's (SC) position as a world leader in research and technology based industries, research, and education, and supporting the rural economy; b. to protect the character of SC, including built and natural heritage, protecting the GB, new development should enhance the area, and protect and enhance biodiversity; c. To provide land for housing; d. to deliver high quality well-designed development; e. to ensure new development provides or has access to a range of services and facilities that support healthy lifestyles and well-being; and f. to maximise potential for journeys to be undertaken by sustainable modes.

S/3 Accords with the presumption in favour of sustainable development as set out in the 2012 NPPF.

S/4 Defines the Cambridge Green Belt and states that new development in the Green Belt would only be permitted in accordance with national Green Belt policy.

S/5 Development will meet the needs for 22,000 additional jobs to support the Cambridge Cluster and provide a diverse range of local jobs.

S/6 Sets out a development strategy for jobs in the following order of preference: on the edge of Cambridge, at new settlements, in the rural area at rural centres and minor rural centres.

S/7 Provides that outside development Frameworks only development for, amongst other things, uses which need to be located in the countryside or where supported by other policies in the plan would be permitted.

S/13 Provides for a review of the SCLP to commence before the end of 2019.

CC/1 Concerns mitigation and adaptation to climate change.

CC/2 and CC/3 Deal with renewable and low carbon energy generation.

CC/4 Concerns water efficiency.

CC/6 Concerns construction methods.

CC/7 Concerns water quality.

CC/8 Concerns sustainable drainage.

CC/9 Concerns flood risk.

HQ/1 Requires high quality design. As appropriate to the scale and nature of the development, proposals must, amongst other things, 1.a preserve or enhance the

character of the local rural area and respond to its context in the wider landscape, 1.b conserve or enhance important natural and historic assets and their setting, and 1.d be compatible with its location and appropriate in terms of scale, density, mass, form, siting, design, proportion, materials, texture and colour in relation to the surrounding area.

NH/2 Permits development where it respects and retains, or enhances the local character and distinctiveness of the local landscape and of the individual National Character Area in which it is located.

NH/3 Provides that planning permission would not be granted for development which would lead to the irreversible loss of Grades 1,2 or 3a agricultural land unless 1. The land is allocated for development, 2. Sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land.

NH/4 States that new development must aim to maintain, enhance, restore or add to biodiversity.

NH/8 States that any development in the Green Belt must be located and designed so that it would not have an adverse effect on the rural character and openness of the Green Belt.

NH/14 Supports development proposals when they sustain and enhance the special character and distinctiveness of the SCDC's historic environment.

E/1 Supports employment development on Cambridge Science Park where they enable the continued development of the Cambridge Cluster of high technology research and development companies.

E/9 States, amongst other things, that development proposals in suitable locations will be permitted which support the development of employment clusters, drawing on the specialisms of the Cambridge area in certain specified sectors, along with other locally driven clusters as they emerge.

E/15 Concerns established employment areas

SC/9 Permits development which includes new external lighting only where it can be demonstrated that lighting and levels are the minimum required for reasons of public safety and security, and there is no unacceptable adverse impact on the local amenity of nearby properties, or on the surrounding countryside.

SC/11 Concerns contaminated land.

SC/12 and SC/14 concern emissions to air.

TI/2 States that development must be located and designed to reduce the need to travel, particularly by car, and promote sustainable travel appropriate to its location. Planning permission for development likely to give rise to increased traffic demands will only be granted where the site has or will attain sufficient integration and accessibility by walking, cycling or public and community transport. Larger

developments (over 1 ha) are required to demonstrate that they have maximised opportunities for sustainable travel.

TI/3 Sets out indicative parking standards

TI/8 Concerns infrastructure provision to make schemes acceptable in planning terms.

The Glossary defines 'Clusters' as groups of companies in related activities, often sharing similar skills and infrastructure, within a specific area – The Cambridge Clusters are related to high tech clusters (including high tech firms, Cambridge University and the research institutes and related specialist services e.g biotech and medical uses at Granta Park.

SCHEDULE OF PLANNING CONDITIONS (Conditions 1-64)

If outline planning permission is granted for an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301 / A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works at Land to the east of the A1301, south of the A505 near Hinxton, and west of the A1301, north of the A505 near Whittlesford in accordance with the terms of the application Ref.S/4099/17/OL, dated 20 November 2017, as amended [if amendment accepted], it is recommended that the permission be subject to the following conditions:

- 1) No development of any individual development Phase, Parcel or part thereof shall commence until approval of the details of the means of access, appearance, landscaping, layout and scale (hereinafter called the 'reserved matters') within that Phase, Parcel or part thereof has been obtained from the local planning authority in writing. The development shall be carried out as approved.
- 2) The application for approval of the first reserved matters shall be made to the local planning authority no later than three years from the date of this permission.
- 3) The application for the approval of the last reserved matters shall be made to the local planning authority no later than 12 years from the date of this permission.
- 4) Details of reserved matters of any development Phase, Parcel or part thereof shall be submitted to and approved in writing by the local planning authority before development is commenced on that particular Phase, Parcel or part thereof save for any Enabling Works. The development shall be carried out in accordance with the approved details.
- 5) The development hereby permitted shall begin either not later than the expiration of 5 years from the date of this permission, or not later than the expiration of 2 years from approval of the first reserved matters to be approved, whichever is later.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans save for only minor variations where such variations do not deviate from this permission nor have any additional or materially different likely significant environmental effects to those assessed in the Environmental Statement accompanying the application and February 2018 and May 2019 addendums:
235701B-LA-001 A0 – Site Location Plan
235701B-LA-PP101 rev A - Land Use Parameter Plan
235701B-LA-PP102 – Movement and Access Parameter Plan
235701B-LA-PP103 rev A – Landscape and Open Space Parameter Plan
[or 235701B-LA-PP103 if amendment not accepted]
235701B-LA-PP104 – Development Density Parameter Plan
235701B-LA-PP105 – Height Parameter Plan

- 7) No building shall be occupied until the new site access roundabout junction illustrated indicatively in TPA's proposed site access (Junction 11) drawing (No.180-72-PL 05, revision B, August 2018) has been substantially completed in accordance with the final approved plans pursuant to Condition 8.
- 8) No development apart from Enabling Works shall commence on site until details of the proposed access point to the site from the A1301 have been submitted to and approved in writing by the local planning authority. The access shall be designed to accommodate the predicted transport (all modes) that the site may generate and will have been developed to such a point that a Stage Two Safety Audit has been completed and any outstanding issues identified within the Stage Two Audit having been resolved in accordance with the written approval of the local planning authority. The design of the access point shall include a detailed engineering scheme/plan showing cross sections (existing/proposed), levels changes, including large scale cross-sections of the kerb and associated shared use pathway/cycleway, foundation design and construction and all associated improvements and links to existing pathways/cycleways within the vicinity of the junction. The scheme shall be carried out in accordance with the approved details.
- 9) No development apart from Enabling Works shall commence on site until details of the works proposed to be carried out to the M11/Junction 10 and the A11/A1307 junction have been submitted to and approved in writing by the local planning authority. The design of the improvements shall be to the standards set out in the Design Manual for Roads and Bridges. The M11/Junction 10 works scheme shall include the widening of the southbound off-slip road at Junction 10 of the M11 Motorway and the provision of associated works to provide traffic signal control of the southbound off-slip road and circulatory carriageway as shown indicatively on drawing number PL01C titled 'Proposed Mitigation at Junction 1: M11 Junction 10', TPA - Transport Planning Associates, 29 April 2019. The A11/A1307 scheme works shall include amendments to the white lining on the southbound off-slip road approach to the grade separated junction of the A1307 with the A11 as shown indicatively on drawing number SK01A titled 'Sketch of Possible Mitigation at Junction 9: A11/A1307 Junction', TPA - Transport Planning Associates, 24 April 2019. The schemes' works shall be completed in accordance with the approved details prior to the first occupation of any building.
- 10) The gross external floorspace of the following use classes hereby permitted shall not exceed:
 - B1a office / B1b R&D / B1c light industrial - 92,000 m²
 - B1b laboratories - 11,800 m²
 - A3 / A5 - 2,000 m²
 - D1 - 3,000 m²
 - D2 - 3,200 m²The total number of car parking spaces on the site shall not exceed 2,000 spaces.

- 11) As from the date of first occupation, at least 10 ha of land within the site shall be made available at all times for crop/technology trials and demonstration.
- 12) [the parties disagreed about suggested conditions to control occupation of the site and put forward options for consideration]
 - 12a The use class B1 floorspace hereby approved shall be used for no purpose other than AgriTech; namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.
or
 - 12b The use class B1 floorspace hereby approved shall only be used for any or all or the following purposes; namely research into, development of, commercialisation of, and production of, goods, services and applications for use in agriculture, horticulture and the food chain.
or
 - 12c The use class B1 floor space hereby approved shall only be used for the purpose of research into and development and commercialisation and production of products, services and applications for use in agriculture, horticulture and the food chain.
 - 12d Other than a reserved matters application for the incubator building pursuant to Condition 17, any reserved matters application for floorspace within the B1 use class of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, shall be accompanied by a needs assessment which sets out the nature of the prospective occupier(s) and their specific requirements for locating onto the site. The needs assessment shall demonstrate either: (a) an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or (b) need for the prospective occupier to be located adjacent to other permitted businesses on the site. Prior to the occupation of any business within the incubator building, a needs assessment demonstrating compliance with either criteria a) or b) above shall be submitted to and approved in writing by the local planning authority. Subject to any needs assessment being approved by the local planning authority, the first and subsequent occupation of any building shall be substantially in accordance with the associated needs assessment.
 - 12e The use class B1 floorspace hereby approved shall be used for no purpose other than AgriTech; namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval in writing. The details shall demonstrate either: (a) a need for the

prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or (b) a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.

[For the reasons set out above, if the Secretary of State is minded to allow the appeal and to grant outline planning permission it would be necessary to go back to the parties to devise an appropriate condition or other means to control future occupation of the site.]

- 13) Any buildings within use classes D1 and D2 shall be used only for the benefit of the occupiers and users of the site.
- 14) The development shall be carried out in accordance with the mitigation measures as set out in Chapter 2 of the Environmental Statement, dated September 2017, as amended by the Addendums of February 2018 and May 2019.
- 15) Individual planning units within use classes A3 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification shall not exceed 650 m² and 50 m² gross external floor space respectively.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Class O of Part 3 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the local planning authority in that behalf.

- 16) Prior to or concurrently with the submission of the first reserved matters application(s) for development for the site, a site wide phasing plan (SWPP) shall be submitted to the local planning authority for approval in writing. The SWPP shall be based on the indicative phasing plan (Figure 2.7) in the submitted Environmental Statement accompanying the application. It shall include information in relation to the proposed sequence of development across the entire site and timing information by reference to the commencement or completion of development of any Phase or the provision of any other element or to any other applicable trigger point. The SWPP shall include:
 - (a) Major infrastructure including all accesses, roads, footpaths and cycleways, the proposed transport interchange and bridge link as shown on PP102.
 - (b) Landscaping provisions including strategic woodland and planting areas, parkland restoration zone, bunding and re-grading areas as shown on PP103A [or PP103 if amendment not accepted].
 - (c) Informal open space and the natural open water/swimming lake as shown on PP103A [or PP103 if amendment not accepted].
 - (d) Strategic SUDS and surface water drainage features, such as balancing ponds and the wetland infiltration area as shown on PP103A [or PP103 if amendment not accepted].
 - (e) Strategic potable water main provisions.
 - (f) Strategic on-site foul water drainage and pollution control features.

- (g) Electricity and telecommunications networks.
- (h) Environmental mitigation measures specified in the Environmental Statement and February 2018 and May 2018 addendums.

No development shall commence apart from Enabling Works approved in writing by the local planning authority until such time as the SWPP has been approved in writing by the local planning authority. The development shall be carried out in accordance with the approved SWPP and any subsequent approved revisions to it pursuant to Condition 18.

- 17) Prior to or concurrently with the submission of the first reserved matters application(s) for development of the site, a reserved matters application for the 3,000 m² of incubator units as part of Phase one shall be submitted to the local planning authority for approval in writing. The reserved matters shall include a statement which sets out the range of facilities and the internal floorspace configuration to be provided in the form of the incubator units based upon the identified and anticipated needs of start-up firms, small and medium enterprises (SMEs) and new business ventures, and shall include, but not be limited to, the consideration of need for a range of office sizes from 25 m² (with fit out options), meeting rooms (shared or individually rented), shared workspaces and business support services. Prior to first occupation of any use class B1 development on the site, the 3,000 m² of incubator units shall be completed in accordance with the approved reserved matters.
- 18) From the date of approval of the SWPP and for a period of no less than 12 years thereafter, an annual written statement detailing the delivery of the approved phasing provisions pursuant to Condition 16 shall be submitted to the local planning authority. It shall report on the progress and delivery of all of elements (a)-(h) submitted as part of the SWPP. Any revisions to the phased delivery of infrastructure shall be approved in writing by the local planning authority and shall be delivered in accordance with Condition 16.
- 19) No development of a Phase, apart from Enabling Works, shall be commenced until a scheme for the disposal of foul water for that Phase has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation plan to ensure that sufficient foul capacity will be available to accommodate each Phase of the development. The scheme shall be implemented in accordance with the approved details.
- 20) An Initial Earthworks and Archaeology and Enabling Works Strategy (IEAEWS) shall be submitted to the local planning authority for approval prior to the commencement of any Enabling Works. No development or Enabling Works shall commence until the IEAEWS has been approved in writing. The IEAEWS shall set out how the Enabling Works are to be implemented in order to gain access into the site and prepare the site for development. The Enabling Works shall be carried out in accordance with the approved IEAEWS.
- 21) Prior to the commencement of any development a site wide Construction Environmental Management Plan (CEMP) shall be submitted to and

approved in writing by the local planning authority. The site wide CEMP shall include details of:

- (a) Hours of construction and hours of deliveries.
- (b) Proposed earthworks including a method statement for the stripping of topsoil for reuse, the raising of land levels (if required) and arrangements for the temporary topsoil storage to BS3882:2015.
- (c) Archaeological protection and mitigation measures to be implemented during the construction process.
- (d) Measures to ensure that any soils brought to the site are free of the seeds / root / stem of any invasive plant covered under the Wildlife and Countryside Act 1981.
- (e) Contractor's access and parking arrangements for vehicles, plant and personnel including the location of construction traffic routes to and from the site, details of their signing, monitoring and enforcement measures.
- (f) Haul routes.
- (g) Avoidance and mitigation measures for protected and notable species including, but not limited to, badger and nesting birds, to be implemented during construction works.
- (h) A plan specifying the area and siting of land to be provided for parking, turning, loading and unloading of all vehicles visiting the relevant parts of the site and siting of contractors' compound(s) and details of any temporary buildings during the construction period to be approved on a phased basis.
- (i) Noise and vibration (including piling) impact / prediction assessment, monitoring and recording protocols / statements and consideration of mitigation measures in accordance with the provisions of BS5228-1:2009+A1:2014: Code of practice for noise and vibration control on construction and open sites.
- (j) Results of a noise assessment of the potential impact of construction noise on any significantly affected residential properties and details of suitable mitigation measures.
- (k) Measures to be applied to prevent contamination of the water environment during construction; including a scheme to treat and remove suspended solids from surface water run-off during construction.
- (l) Dust monitoring, assessment and mitigation.
- (m) Measures for soil handling.
- (n) Concrete crusher and/or batching plant if required or alternative procedure.
- (o) Waste sorting and dispatch facilities.
- (p) Odour control systems including maintenance and manufacture specifications.
- (q) Maximum noise levels and required mitigation for construction equipment, plant and vehicles.
- (r) Site lighting for the relevant part of the site, including for cranes.
- (s) Screening and hoarding details.
- (t) Access and protection arrangements around the site for pedestrians, cyclists and other road users during construction and on completion of the development.
- (u) Procedures for interference with public highways.

- (v) External safety and information signing notices.
- (w) Liaison, consultation and publicity arrangements, including dedicated points of contact.
- (x) Complaints procedures, including complaints response procedures.
- (y) Membership of the considerate contractors' scheme.
- (z) The loading and unloading and storage of plant and materials used in constructing the development, with particular attention on the unloading and storage of oil, chemicals and other hazardous material.

The development shall be carried out in accordance with the approved site wide CEMP.

- 22) Prior to the commencement of development of any approved reserved matters, a detailed CEMP relating to the approved reserved matters shall be submitted to and approved in writing by the local planning authority. The detailed CEMP shall include reference and further detail as appropriate to each of the items referred to in Condition 21 above in relation to the site wide CEMP. The construction shall be carried out in accordance with the detailed CEMP as approved in writing by the local planning authority.
- 23) Prior to any Enabling Works, a Community Liaison Group (CLG) shall be established to engage nearby residents on impacts associated with the construction of the site. The CLG shall be organised and administered by the developer and its detail of operation shall include a regular meeting place, contact information, publicity and draft terms of reference, which shall be submitted to and approved in writing by the local planning authority prior to the first Enabling Works.
- 24) No development shall be commenced until a site wide Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The objectives of the CTMP shall be to:
- (a) Identify clear controls on routes for large goods vehicles and vehicle types.
 - (b) Identify temporary highway works required to accommodate construction traffic.
 - (c) Minimise the number of private car trips to and from the site (both workforce and visitors) by encouraging alternative modes of transport and identifying control mechanisms for car use and parking.
 - (d) Assess the need for improvements to the public transport network to accommodate the additional number of trips associated with construction site activity.

The site wide CTMP shall include as a minimum the following information:

- (a) The arrangements for liaison with the relevant highway authorities and emergency services.
- (b) Road closures implementation and management.
- (c) Direction signing to worksites.
- (d) Workforce distribution, mode share and assignment, to include proposals for transport provision for movement of construction workforce.

- (e) Rail station servicing to support workforce travel arrangements by rail.
- (f) How any off-site parking overflow issues are to be dealt with.
- (g) Parking provision for and management of construction workers' motor cars and vans used to travel to the site.
- (h) Provisions for walking and cycling.
- (i) Lorry holding areas.
- (j) Driver standards and enforcement within the construction sites.
- (k) Complaints procedures.
- (l) Monitoring and review provisions to ensure the effective implementation of the Construction Transport Management Plan.

The development shall be carried out in accordance with the site wide CTMP as approved in writing by the local planning authority.

- 25) The development shall not be commenced until a site wide Construction Waste Management Plan (CWMP) has been submitted to and approved in writing by the local planning authority. The objectives of the CWMP shall be to ensure that all waste arising from the construction works is managed in a sustainable manner, maximising the opportunities to reduce, reuse and recycle waste materials. The CWMP shall also detail the compliance and assurance requirements to be maintained on the site during all phases of construction. The CWMP shall include as a minimum the following information:
- (a) Classification of all waste, including hazardous waste, according to current legislative provisions.
 - (b) Performance measurement and target setting against estimated waste forecasts.
 - (c) Reporting of project performance on quantities and options utilised.
 - (d) Measures to minimise waste generation.
 - (e) Opportunities for re-use or recycling targets.
 - (f) Provision for the segregation of waste streams on the site that are clearly labelled.
 - (g) Licensing requirements for disposal sites.
 - (h) An audit trail encompassing waste disposal activities and waste consignment notes.
 - (i) Returns policies for unwanted materials.
 - (j) Measures to provide adequate training and awareness through toolbox talks.

The development shall be carried out in accordance with the site wide CWMP as approved in writing by the local planning authority.

- 26) Piling, including impact piling, or any other foundation designs and investigation boreholes using penetrative methods shall not be permitted other than with the express written consent of the local planning authority. Consent for piling works may be given for those parts of the site where it has been demonstrated via a piling risk assessment submitted to the local planning authority that there is no resultant unacceptable risk to groundwater and where it has been demonstrated that impact piling would not give rise to unacceptable amenity impacts. The development shall be carried out in accordance with the approved details.

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- 27) No soils or infill materials (including silt dredged from watercourses), shall be imported onto the site until written consent has been obtained from the local planning authority that they present no risk to human health, planting and the environment. Documentary evidence to confirm the origin of all imported soils and infill materials, supported by appropriate chemical analysis test results, shall be submitted to and approved in writing by the local planning authority prior to that import.
- 28) The air conditioning, extraction system(s) and any other plant generating external noise installed within those parts of the development falling within use classes A3 and A5 shall be maintained for the lifetime of the development in accordance with details previously approved in writing by the local planning authority.
- 29) Prior to or concurrently with the submission of the first of the reserved matters application(s) a site wide Car Parking Strategy (CPS) shall be submitted to the local planning authority for approval in writing. The CPS shall accord with and give effect to the principles for such a plan proposed in the Environmental Statement Technical Appendix J Traffic and Transport dated February 2018 submitted with the application. The CPS shall set out the maximum level of parking to be provided for each of the use classes permitted, identify parking levels for employees and visitors and parking levels for people with mobility impairments. The subsequent provision of car parking across the site shall accord with the CPS approved in writing by the local planning authority.
- 30) Prior to or concurrently with the submission of the first of the reserved matters application(s), a site wide Ecological Conservation Management Plan (ECMP) shall be submitted to the local planning authority for approval in writing. The ECMP shall accord with and give effect to the principles for such a plan proposed in paragraphs 10.156 to 10.177 of the Environmental Statement submitted with the application. As a matter of principle, the ECMP shall set out an objective of enhancing the net biodiversity of the site as a result of development and shall include:
- (a) Contractor responsibilities, procedures and requirements.
 - (b) Full details of appropriate habitat and species surveys (pre and post-construction), and reviews where necessary, to identify areas of importance to biodiversity.
 - (c) Details of measures to ensure protection and suitable mitigation to all legally protected species and those habitats and species identified as being of importance to biodiversity both during construction and post-development, including consideration and avoidance of sensitive stages of species life cycles, such as the bird breeding season, protective fencing and phasing of works to ensure the provision of advanced habitat areas and minimise disturbance of existing features.
 - (d) Identification of habitats and species worthy of management and enhancement together with the setting of appropriate conservation objectives for the site. Prescriptions shall be provided to detail how habitat and species management and enhancement shall be provided alongside measures to provide habitat restoration.

- (e) A summary work schedule table, confirming the relevant dates and/or periods that the prescriptions and protection measures shall be implemented or undertaken by within.
- (f) A programme for Monitoring/Environmental Audits to be carried out four times annually during the construction phase.
- (g) Confirmation of suitably qualified ecologist responsible for overseeing implementation of the ECMP commitments.
- (h) A programme for long-term maintenance, management and monitoring responsibilities for a period of 25 years to ensure an effective implementation of the ECMP ensuring periodic review of the objectives and prescriptions and reporting measures regarding biodiversity gain.

No development shall commence until such time as the ECMP has been approved in writing by the local planning authority. All species and habitat protection, enhancement, restoration and creation measures shall be carried out in accordance with the approved ECMP.

- 31) Prior to or concurrently with the submission of the first reserved matters application, a site wide Lighting Strategy shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the site wide Lighting Strategy has been approved in writing. The site wide Lighting Strategy shall set out how the development will provide external lighting across the site. All reserved matters applications shall accord with the details of the approved site wide Lighting Strategy and shall include the specified detail pursuant to Condition 47.
- 32) Prior to or concurrently with the submission of the first reserved matters application, a Site Wide Sustainability Strategy that accords with section 4 of the Design and Access Statement shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the Site Wide Sustainability Strategy has been approved in writing. The Site Wide Sustainability Strategy shall set out: (a) how the development will secure carbon dioxide emission reductions of 10% against the 2013 Building Regulations; and (b) how the development of the site will address mitigation and adaptation to climate change and include water efficiency targets. It will promote principles of sustainable construction and efficient use of buildings across the site. All reserved matter applications shall accord with the provisions of Condition 53 in terms of the submission of a Sustainability Statement which demonstrates compliance with the details of the approved Site Wide Sustainability Strategy.
- 33) Prior to or concurrently with the submission of the first reserved matters application, a Site Wide Heritage Protection and Management Plan that accords with section 5 of the Design and Access Statement shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the Site Wide Heritage Protection and Management Plan has been approved in writing. The Site Wide Heritage Protection and Management Plan shall set out how the development shall secure the heritage protection and enhancement measures and mitigation set out in the submitted Environmental Statement accompanying the application. All reserved matters

applications shall provide a statement which sets out how the proposal accords with the details of the approved Site Wide Heritage Protection and Management Plan.

- 34) Prior to or concurrently with the submission of the first reserved matters application involving buildings, roads or other impermeable surfaces, a Strategic Surface Water Drainage Strategy (SSWDS) for the site shall be submitted to the local planning authority for approval in writing. The SSWDS shall include phasing arrangements, details of primary infrastructure for each Phase and plans for drainage asset operation, maintenance and contingency. The SSWDS shall set out what information, design parameters and design details will need to be submitted at the reserved matters stage for each Phase of the development. The development shall subsequently be implemented in accordance with the approved SSWDS.
- 35) Prior to or concurrently with the submission of the first reserved matters application for any occupied building, a site wide Refuse and Recycling Strategy (RRS) shall be submitted to the local planning authority. No development shall be occupied until the site wide RRS has been approved in writing by the local planning authority. All reserved matters applications shall include a recycling and waste reduction statement demonstrating compliance with the approved RRS. The development shall be carried out in accordance with the approved RRS.
- 36) Prior to the first occupation of an approved permanent building, a site wide Estate Management Strategy shall be submitted to and approved in writing by the local planning authority. It shall incorporate key principles for the management and maintenance of the public realm open to staff and visitors to the site and include the following; (a) details of the operational estate management structure; and (b) management and maintenance principles. The management of the estate shall be carried out in accordance with the approved details.
- 37) Prior to or concurrently with the submission of the first reserved matters application a Design Guide for the site that accords with the principles set out in sections 4 and 5 of the Design and Access Statement shall be submitted to the local planning authority for approval in writing. The Design Guide shall include the following elements:
 - (a) The layout of blocks and the structure of public spaces and nodes for key transport interchanges.
 - (b) The street hierarchy, typical street cross-sections including street trees.
 - (c) Design principles for different building typologies, with reference to the treatment of: point features as per approved plan PP105; frontages; access; and threshold definition with particular reference to blocks adjacent to the proposed parkland restoration zone.
 - (d) The public realm (roads, paths, open spaces) including guidance for the character and design of key areas of public realm within the site.
 - (e) The strategic approach to lighting, signage, utilities, CCTV and any other street furniture.

- (f) Cycle parking provision and types, including the distribution of occupier /visitor parking, charging points and location in the development of a rental hub(s).
- (g) The approach to the location and layout of car club spaces, electric vehicle charging points/hubs in relation to particular buildings and the location and design of car parking structures.
- (h) The design of SUD's features.
- (i) A materials reference palette for buildings and the public realm.
- (j) The needs of mobility and visually impaired users.
- (k) A wayfinding strategy.
- (l) A review of parking to the north of the Hinxtton Grange avenue to minimise the need for cars crossing the avenue.

No development apart from Enabling Works shall commence until such time as the Design Guide has been approved in writing by the local planning authority. The development shall be implemented in accordance with the approved Design Guide and subsequent reserved matters applications shall include a Design Guide Statement of Compliance.

- 38) Prior to the commencement of development apart from Enabling Works, a proposed site wide topographical plan for the site shall be submitted to and approved in writing by the local planning authority. It shall be accompanied by proposed cross-sections of any proposed bunding and plateaux at an approved scale. Subsequent reserved matters applications shall have regard to, and be in substantial accordance with, the approved site-wide topographical plan and shall include AOD levels information as appropriate to the design of the building(s) being proposed.
- 39) NOT USED
- 40) A Strategic Landscape and Ecological Management Plan (SLEMP), including long term design objectives for a period of 25 years, shall be submitted to and approved in writing by the local planning authority prior to or concurrently with any reserved matters application for landscaping approval. The SLEMP shall encompass all publicly accessible spaces, areas of structural edge planting, bunding, woodland and all retained and proposed vegetation to be delivered/managed and include:
 - (a) Description and evaluation of the features to be managed.
 - (b) Aims and objectives of the management.
 - (c) Prescriptions for management actions.
 - (d) Maintenance schedules for all landscape areas, including an annual work plan.
 - (e) Details of the body or organisation responsible for the implementation of the plan.
 - (f) On-going monitoring and remedial measures.

The SLEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved SLEMP will be implemented in accordance with the approved details.

- 41) Within any reserved matters application for landscaping details pursuant to this approval, the details required by Condition 1 shall include a tree and hedge survey, arboriculture method assessment and tree protection strategy, applicable to the associated Phase. The surveys shall include:
- (a) Plans showing the location of all trees, shrub masses and hedges, categorizing the trees or groups of trees for their quality and value.
 - (b) Plans showing trees to be removed identified by number.
 - (c) Plans showing trees to be retained identified by number, with canopies accurately plotted.
 - (d) A tree constraints plan that identifies root protection areas of retained trees within, adjacent to, or which overhang the development site.
 - (e) The precise location and design details for the erection of protective tree barriers and any other physical protection measures.
 - (f) The location of streams, buildings and other structures, boundary features and services.
 - (g) Spot heights of ground level throughout the site.
 - (h) A method statement in relation to construction.
- 42) Details of the specification and position of fencing, or any other measures to be taken for the protection of any trees from damage during the course of development approved pursuant to Condition 41, shall be implemented in accordance with that approval before any equipment, machinery or materials are brought onto the site for the purpose of development (including demolition). The approved means of protection shall be retained on site until all equipment, and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with this condition, and the ground levels within those areas shall not be altered nor shall any excavation be made without the prior written approval of the local planning authority.
- 43) Prior to the installation of any service which passes through the root protection zone of any tree within the "Existing vegetation retained" zone shown on PP103A [PP103 if amendment not accepted], full details of the position and proposed depth of excavation trenches for those services (including cables, pipes, surface water drains, foul water drains and public utilities) and their means of installation, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 44) Within any reserved matters application for landscaping details pursuant to this approval the details required by Condition 1 shall include detailed landscape designs and specifications for the associated reserved matters site. The details shall be accompanied by a design statement that demonstrates how the landscaping scheme accords with any emerging or approved details sought as part of the Design Guide for the site and shall include the following:

Soft Landscaping

- (a) Full details of planting plans and written specifications, including cultivation proposals for maintenance and management associated with plant and grass establishment, details of the mix, size, distribution, density and levels of all trees/hedges/shrubs to be planted, proposals for irrigation (of no less than 3 years) and the proposed time of planting. The planting plan shall use botanic names to avoid misinterpretation. The plans should include a full schedule of plants.
- (b) 1:100 plans (or at a scale otherwise approved) with cross-sections of mounding, ponds, ditches and swales and proposed treatment of the edges and perimeters of the site.
- (c) The landscape treatment of roads (primary, secondary, tertiary and green corridors) through the development.
- (d) A specification for the establishment of trees within hard landscaped areas including details of space standards (distances from buildings etc.), tree pit details, 3D cellular confinement systems or structural soils, specification/cross section of tree pits/trenches.
- (e) The planting and establishment of all key landscape typologies.
- (f) Full details of any proposed alterations to existing watercourses/drainage channels.
- (g) Details and specification of proposed earth modelling, mounding, re-grading and/or embankment areas or changes of level across the reserved matters site to be carried out including soil quantities, topsoil storage to BS 3882:2007, haul routes, proposed levels and contours to be formed, sections through construction to show make-up, and timing of works. The topographical plan shall be in compliance with the site wide approved topography plan pursuant to condition 38.

Hard Landscaping

- (a) Full details, including cross-sections, of all bridges and culverts.
- (b) The location and specification of minor artefacts and structures, including furniture, refuse or other storage units, signs and lighting columns/brackets.
- (c) 1:200 plans (or at a scale otherwise approved) including cross-sections, of roads, paths and cycleways.
- (d) Details of all hard surfacing materials (size, type and colour).

The landscaping within the application site areas shall be implemented in accordance with the approved plans for implementation and replacement of landscaping.

- 45) If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub, or any tree or shrub planted as a replacement for it, is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall

be planted at the same place, unless the local planning authority gives written consent to any variation to any re-planting provision.

- 46) Each reserved matters application shall include a detailed Ecological Measures Implementation Plan (EMIP) that demonstrates how it accords with the aims and objectives of the Site Wide Ecological Conservation Management Plan submitted and approved pursuant to Condition 40. It shall detail which specific ecological measures are proposed and the timing for their delivery. No development above slab level shall commence within the part of the site (defined by plan) for which reserved matters approval is being sought until such time as the EMIP has been approved in writing by the local planning authority. The ecological measures shall be carried out in accordance with the approved EMIP. The EMIP shall include (but not be limited to) the following elements:
- (a) Updated ecological survey reports.
 - (b) An explanation of how the habitats and species on the site will be protected from any adverse effects of the development both during the construction phase and once the development is complete.
 - (c) Mitigation measures and ecological enhancements.
 - (d) What buffer strips are in place to protect the river and any other watercourses.
 - (e) How existing ecological features on the site such as hedgerows or waterbodies are to be protected and enhanced.
 - (f) How wildlife corridors linking habitats to the wider countryside are to be maintained and enhanced.

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

- 47) Each reserved matters application for a Phase which includes any form of illumination or artificial lighting shall include a detailed artificial lighting scheme which demonstrates accordance with the Site Wide Lighting Strategy. Each reserved matters application shall include details of any external lighting on that Phase such as street, floodlighting, security lighting and a programme for their delivery, as well as an assessment of impact on any sensitive receptors on and off site. No lighting shall be installed until the detailed artificial lighting scheme for that part of the development has been approved in writing by the local planning authority. The artificial lighting for a Phase shall be installed, maintained and operated in accordance with the approved artificial lighting scheme.
- 48) Each reserved matters application for a Phase that has a building or public open space shall include details of the pedestrian and cycle routes for that Phase. No building shall be occupied or activity brought into use within the relevant Phase until the approved pedestrian and cycle routes relating to that building or activity (as appropriate) have been carried out.
- 49) Each reserved matters application shall include details of how it accords with the site wide Car Parking Strategy submitted and approved pursuant to Condition 29. No building shall be occupied until the approved

vehicular parking provision relating to that building has been fully laid out and completed in accordance with the Car Parking Strategy.

- 50) Any reserved matters application that includes a building or public open space shall include details of facilities for the parking of bicycles. Cycle parking provision for employment space shall be covered and provided within main building footprints or within close proximity to main entrances. Building designs shall accommodate locker, shower and drying facilities together with CCTV coverage of cycle parking entrances/exits and secure access arrangements. Cycle parking provision for individual buildings shall be in accordance with the adopted standards referred to in Policy TI/3 (figure 11) of the SCLP 2018.
- 51) All buildings, except for those exempt from BREEAM standards, shall achieve BREEAM 'Very Good'. In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level of measure shall be applicable to the proposed development. Unless otherwise approved by the local planning authority, each reserved matters application containing a building which is not exempt from BREEAM standards will be accompanied by a pre-assessment statement setting out how the standard will be met.
- 52) Within 6 months of first occupation of any building that requires a BREEAM assessment a post-construction review shall be undertaken by an approved BREEAM Assessor. It shall be submitted to the local planning authority, indicating that the relevant BREEAM rating has been met in respect of that building or, where the certificate shows a shortfall in credits for the required BREEAM rating, a statement shall be submitted identifying how and when the shortfall will be addressed. Any retrospective works to help meet the shortfall shall be carried out in accordance with the BREEAM review.
- 53) All future reserved matters applications for permanent employment buildings shall be accompanied by a Sustainability Statement setting out how the proposals meet the commitments and targets set out in the approved site-wide Sustainability Strategy. These measures include, but are not limited to:
 - (a) Not less than 20% of construction materials, by value, used in the development shall be from a re-used, recycled source or certified/accredited sustainable source.
 - (b) Not less than 25% of aggregate, by weight, used in the permanent works forming part of the development shall be from a recycled source.
 - (c) The development of a sustainable procurement plan to reduce the environmental impact of materials.
 - (d) The provision of smart meters for all non-residential units enabling building occupiers to monitor their energy usage by way of a digital display showing total power consumption and figures for cost and CO₂ emissions and comparison of energy use on a daily, weekly or monthly basis.

The measures outlined in the Sustainability Statement shall be implemented prior to occupation, unless otherwise approved in writing by the local planning authority.

- 54) [There is a dispute about the imposition of Condition 54]

Prior to the submission of any application for the approval of reserved matters following the adoption of any new or revised local plan, there shall be submitted to the local planning authority for approval a review of the approved site-wide Sustainability Strategy and the targets therein which shall set out a revised strategy and targets to reflect the terms of the new or revised local plan together with a justification where no revised strategy or target is proposed, whether by reason of viability impact or otherwise. No application for approval of reserved matters shall be made until such time as the review of the approved site-wide Sustainability Strategy and targets has been approved in writing by the local planning authority. Any reserved matters application shall thereafter be submitted in accordance with the approved review.

[For the reasons set out above it is not considered that this would be a reasonable condition to impose]

- 55) Within one year following practical completion of an occupied employment building, a Post Occupancy Sustainability Review shall be carried out and submitted to the local planning authority for approval in writing. It shall include the results of monitoring of key performance metrics including energy, overheating, carbon emissions and water use and compare actual achieved performance levels with those measures originally set out as part of the Sustainability Statement submitted as part of the original relevant reserved matters application. The results of these reviews will be used to inform the preparation of future phases of development and be referenced as part of Sustainability Statements for similar reserved matters applications for buildings/uses put forward for approval.
- 56) All future reserved matters applications for permanent buildings shall be accompanied by a carbon reduction statement, which demonstrates how the proposal meets the proposed energy strategy for the site as outlined in the site-wide Sustainability Strategy. This shall include details to demonstrate at least a 10% carbon against the 2013 Building Regulations reduction of the development's total predicted energy requirements. The carbon reduction statement shall include the following details:
- (a) The carbon emissions of the proposal set out in Kg/CO₂/annum.
 - (b) A schedule of proposed on-site renewable/low carbon energy technologies, their respective carbon reduction contributions, location, design and a maintenance programme.

The proposed renewable/low carbon energy technologies shall be fully installed and operational prior to the occupation of any approved buildings.

- 57) The development shall be designed to ensure adequate adaptive capacity for future climate change using UKCP18 (or successor versions) future weather years data based on at least a medium emission scenario, moderate percentile (50%), for the 2030s rather than current weather

data, including overheating analysis undertaken to the latest CIBSE guidelines. Each application for the approval of reserved matters shall be accompanied by a statement for the approval in writing by the local planning authority setting out how this condition has been complied with including (but not limited to) how the following measures have been considered as part of the design:

- (a) Maximising the design of green and blue spaces to provide cool, shaded outdoor spaces for public use.
 - (b) Water sensitive design including permeable paving and rainwater gardens to reduce the risk of surface water flooding.
 - (c) Large canopy deciduous trees along streets and in the public realm to provide shade and evaporative transpiration, with occasional use of evergreens to provide improved shelter from winter wind.
 - (d) Inclusion of green roofs, to provide additional evaporative transpiration and reduce heat absorption while offering additional biodiversity benefits.
 - (e) Permeable paving and rain gardens.
 - (f) Where possible promoting narrow plan, double aspect buildings oriented and shaded to minimise overheating.
 - (g) The use of lighter coloured materials with increased albedo (reflection coefficient) to reduce heat absorption and its impact on the urban heat island effect. This applies in particular to exterior building materials (e.g. light-coloured brick), as well as materials used for pathways and principal areas of hard landscaping.
 - (h) Building design, including orientation, ventilation, shading, thermal mass, materials and cooling.
- 58) No building within any Phase shall be occupied until (a) a scheme for the provision and location of fire hydrants to serve that Phase and (b) access and facilities for the Fire Service has been submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented in accordance with the phasing and delivery programme contained therein.
- 59) A minimum of 20% of car parking spaces shall have Electric Vehicle (EV) charge points with the provision of infrastructure to facilitate the future installation of an additional 20% of EV charge points. Prior to the occupation of each building, evidence of the implemented charging points shall be submitted to the local planning authority.
- 60) Any reserved matters application shall include a Detailed Surface Water Scheme pursuant to the reserved matters site for which approval is sought. The scheme shall demonstrate how the management of water within the reserved matters application site for which approval is sought accords with the approved details of the Strategic Surface Water Drainage Strategy. The scheme shall be based upon a SuDS hierarchy, including an assessment of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual CIRIA C753, the NPPF and the NPPG. The results of the assessment shall be provided in writing to the local

planning authority. The system should be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 40% allowance for climate change. Infiltration systems shall only be used where it can be demonstrated that they will not pose a risk to groundwater quality. The submitted details shall include:

- (a) Information about the design storm period and intensity, the method employed to delay and control the surface water discharge rate and volume from the site and the two treatment stages used to prevent pollution of the receiving groundwater and/or surface waters.
- (b) Details of infiltration testing to BRE 365 in locations where infiltration is proposed.
- (c) A plan indicating flood exceedance routes, both on and off site in the event of a blockage or rainfall event that exceeds the designed capacity of the system.
- (d) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, including details of land ownership, maintenance responsibilities, a description of the system the identification of individual assets/services and access requirements, and details of routine and periodic maintenance activities.
- (e) Details of phasing during drainage operations and construction.

The approved drainage works shall be carried out in their entirety, fully in accordance with the approved details, prior to the occupation of any building or in accordance with phased drainage operations approved in writing by the local planning authority. The surface water drainage scheme shall be managed and maintained thereafter in accordance with the approved management and maintenance plan for the lifetime of the development.

- 61) No building generating a foul water discharge shall be commenced until such time as a scheme to dispose of foul water drainage for that building, including trade effluent, has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.
- 62) No development shall take place within an area of archaeological interest until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority. This written scheme shall include the following components, completion of each of which will trigger the phased discharging of the condition:
 - (a) Fieldwork in accordance with the agreed Written Scheme of Investigation.

- (b) Completion of a Post-Excavation Assessment report (PXA) and approval of an approved Updated Project Design, to be submitted within six months of the completion of fieldwork, unless otherwise approved in advance by the local planning authority.
 - (c) Completion of the programme of analysis and submission of a publication report to be completed within two years of the completion of fieldwork, unless otherwise approved in advance by the local planning authority.
 - (d) Production of an archive report and the preparation of site archive for deposition at the Cambridgeshire Archive facility, or another appropriate store approved in writing by the local planning authority.
- 63) Any soil movement and restoration shall be carried out in accordance with the details set out in the Land Use and Soils Chapter of the Environmental Statement.
- 64) No development of a Phase or Parcel shall be commenced until:
- (a) The application site has been subject to a detailed desk study, including site walkover and preliminary Conceptual Site Model, to be submitted to and approved in writing by the local planning authority.
 - (b) The application site has been subject to a further detailed scheme for the investigation and recording of contamination and remediation objectives have been determined through risk assessment and approved in writing by the local planning authority.
 - (c) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the local planning authority.
 - (d) The works specified in the Remediation method statement have been completed, and a Verification report submitted to and approved in writing by the local planning authority, in accordance with the approved scheme.

If, during remediation and/or construction works, any contamination is identified that has not been considered in the Remediation method statement, then remediation proposals for this material should be approved in writing by the local planning authority.

Definitions

Block: An individual building(s) within a Parcel

Enabling Works: All works necessary to prepare the site for construction of the development hereby permitted. Such works could include; site or ground clearance, initial earthworks, construction of temporary accesses and/or highway works to facilitate the carrying out of the development, archaeology, ecological surveys, investigations or assessments, site preparation, construction of boundary fencing or hoardings including for site security, erection of temporary facilities for security personnel, the

erection of security cameras, excavation, interim landscaping works, construction of temporary internal roads, provision of underground drainage and sewers and the laying and diversion of other services and service mediums, erection of temporary buildings, building access routes, temporary use of land for car parking, or other works or operations to enable any of these works to take place.

Parcel: An area of land within a Phase

Phase: One of four phases as indicatively shown in the Development Phases plan in the Environment Statement

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

ID1	Opening statement on behalf of the appellant
ID2	Opening submissions on behalf of the local planning authority South Cambridgeshire District Council
ID3.1	Hinxton Parish Council's confirmation of objections presented by Prof Brown
ID3.2	Emails and minutes from Parish Council meetings
ID4	Written response from Sawston Parish Council
ID5	Written response from Whittlesford Parish Council
ID6	Email dated 10 June 2019 from Essex County Council raising transport and infrastructure considerations
ID7	Letters dated 10 June 2019 from SCDC to 12 objectors giving notice about the appeal/Inquiry
ID8	SCDC email to appellant concerning draft unilateral undertaking
ID9	Thornbury appeal decision 1 May 2019 APP/P0119/W/17/3189592
ID10	Supporting note and map showing AgriTech businesses/institutions in the Cambridge area [replaced by ID32]
ID11	Note by Mr Collinson on Wageningen, Agroparc Avignon and 39 North St Louis in response to rebuttal evidence of Ms Howick
ID12	Table of further details about sites shown on ID10 [replaced by ID32]
ID13	Proposed new condition concerning incubator units
ID14	Errata sheet for evidence of Philippa Jarvis
ID15	Copy of webpages detailing Cambridge Compass Enterprise Zone
ID16	Aerial photograph of appeal site dated April 2015
ID17	Email to Essex County Council dated 12 June 2019 concerning ID6
ID18	Email from Essex County Council dated 17 June 2019 concerning contribution to bridge link
ID19	SCDC note on the progress of new settlements and other strategic allocations in the SCLP 2018
ID20	SCDC note on whether certain core documents were considered as part of the Local Plan Examination
ID21	SCDC note concerning SCLP Policy E9
ID22	Agreed plan showing main research/technology and business parks and other locations in and around Cambridge
ID23	Agricultural land clarification note
ID24	Note to Inspector re appellant's opening statement paragraph 21
ID25	Presentation by Councillor Peter McDonald
ID26.1	Statement by Rupert Kirby
ID26.2	Emails dated 28 June and 2 July by Rupert Kirby commenting on current traffic levels and clarifying queue data for McDonalds/BP roundabout
ID27	Statement by Councillor Peter Topping

ID28	Statement by John F Williams
ID29.1	Statement by Cllr Aureole Wragg on behalf of Pampisford Parish Council
ID29.2	Draft Minutes 13 June 2019 Pampisford Parish Council
ID30.1	Statement by Cllr Sian Wombwell on behalf of Ickleton Parish Council including correspondence dated September 2002 concerning The Welcome Trust
ID30.2	Comments on Further Rebutall Proof of Rupert Lyons dated 3 July 2019
ID31	Statement by Tony Orgee
ID32	Map showing AgriTech businesses/institutions in the Cambridge area and supporting note [replacement for ID10 and ID12]
ID33	SCDC note on Cambridge networking organisations with appendix pages 1-9
ID34	List of companies in Cambourne Business Park, Granta Park, Science Park and St John's Innovation Park
ID35	Extracts from Cambridge Ahead's webside Cluster Maps
ID36	Extract from brochure about Rothamsted Farms
ID37.1	Statement by CPRE
ID37.2	Chesterford – Current Availability
ID37.3	Chesterford – Build to Suit
ID37.4	Chesterford – Meet the occupiers
ID37.5	NIAB -News: New agricultural innovation centre for East
ID37.6	Extract from Branch Committee Meeting 4 June 2019
ID37.7	Email from CPRE dated 19 June clarifying ground level map
ID38	Update to Mr Sadler's Proof of Evidence
ID39	Properties to rent Cambridge Science Park
ID40	Comparison Tables – Landscape and visual effects 18 June 2019
ID41	Biodiversity Offsetting Calculations revision 13 June 2019
ID42	Aboricultural Impact Assessment – update June 2019
ID43	Errata sheet for APP5.2 and CD2.3
ID44	Extract from Cambridge Inner Green Belt Boundary Study
ID45	SCDC note on selective management of economy controls
ID46	Note on Cambourne West and Cambourne Business Park
ID47	SCDC note on Mr Collison's evidence concerning an agricultural bridge crossing the A14 and the NIAB facility on Huntingdon Road
ID48	Note concerning references to "Innovation Launchpad Facilities" within CD7.12 (Draft Cambridgeshire and Peterborough Local Industrial Strategy"
ID49.1	Note on Draft Conditions 1 July 2019 including revised wording for Conditions 16 and 51
ID49.2	Final version of suggested conditions
ID50	SoCG3 in relation to a revision to the landscape and open space parameter plan
ID51	Rob Sadler response to ID39
ID52	Errata sheet for Proof of Evidence of Tim Hancock
ID53	Appellant's Briefing Note on air quality, hydrology and noise
ID54	Plan showing extent of hardstanding, earth bank and soft landscape in the Green Belt

ID55	Hinxton Hall and parkland within Wellcome Genome Campus
ID56	Babraham Hall within the Babraham Institute Campus
ID57	Appellant's note in response to LPA note on Mr Collison's evidence concerning an agricultural bridge crossing the A14 and the NIAB facility on Huntingdon Road
ID58.1	Position statement on section 106 agreement as of 1 July 2019
ID58.2	Section 106 agreement dated 31 July 2019
ID59	Fieldhead appeal decision 14 January 2016 Appeal Ref:APP/X4725/W/14/3001702
ID60	Cobham Motorway Service Area appeal decision Appeal Ref:APP/K3605/W/17/3187505
ID61	Extract from Wellcome Genome Campus concerning its conference centre
ID62	Throop appeal decision Appeal Ref:APP/C1245/A/14/221524
ID63	Grade separation M1 junction 10A application Ref:TWA 8/1/5
ID64	Statement by A Binney with Appendix 1 South East Cambridgeshire Planning Proposals and SCDC Report concerning Eco-towns dated 12 June 2008
ID65	CIL Compliance Statement by SCDC
ID66	Closing submissions on behalf of SCDC
ID67	Appellant's statement in relation to pre-commencement conditions
ID68	Appellant's note and annotated extract from Landscape and Open Space Parameter Plan concerning the avenue
ID69	Closing submissions on behalf of the appellant
ID70	Itinerary and plan for accompanied site visit
ID71	SCDC comments dated 2 and 15 August 2019 on the revised <i>Guidance</i>
ID72	Appellant's supplemental note and email dated 12 August 2019 on the revised <i>Guidance</i>

JUDGMENTS

R (on the application of Shimbles) v City of Bradford MDC [2018] EWHC 195 (Admin)
Europa Oil and Gas Ltd v SSCLG [2013] EWHC 2643 (Admin)

CORE DOCUMENTS

CD1.1	Appeal application forms	August 2018
CD1.2	Grounds of appeal	August 2018
CD1.3	Decision notice	March 2018
CD1.4	List of drawings and supporting documents	August 2018
CD1.5	SCDC Statement of Case	Nov 2018
CD1.6	Statement of Common Ground and SCDC clarification letter SoCG1	15 & 24 April 2019
CD1.7	Transport SoCG2	May 2019
CD2.1	Planning application cover letters and forms	Nov 2017
CD2.2	Planning application drawings	Nov 2017
CD2.3	Design and access statement	Nov 2017
CD2.4	Environmental statement	Nov 2017
CD2.4.1	ES Technical Appendix A EIA Scoping	Nov 2017
CD2.4.2	ES Technical Appendix B Air Quality	Nov 2017
CD2.4.3	ES Technical Appendix C Community and Social Effects	Nov 2017
CD2.4.4	ES Technical Appendix D Cultural Heritage	Nov 2017
CD2.4.5	ES Technical Appendix E Ground Conditions and the Water Environment	Nov 2017
CD2.4.6	ES Technical Appendix F Land Use and Agriculture	Nov 2017
CD2.4.7	ES Technical Appendix G Landscape and Visual Effects	Nov 2017
CD2.4.8	ES Technical Appendix H Natural Heritage	Nov 2017
CD2.4.9	ES Technical Appendix I Noise and Vibration	Nov 2017
CD2.4.10	ES Technical Appendix J Traffic and Transport Assessment	Nov 2017
CD2.4.11	ES Technical Appendix K Waste	Nov 2017
CD2.5	Planning statement including alternative sites assessment	Nov 2017
CD2.6	Statement of consultation	Nov 2017
CD2.7	Utility statement	Nov 2017
CD2.8	Health impact assessment	Nov 2017
CD2.9	Sustainability statement	Nov 2017
CD2.10	Energy and carbon reduction statement	Nov 2017
CD2.11	Water conservation statement	Nov 2017
CD2.12	Earthworks strategy	Nov 2017
CD2.13	Arboricultural impact assessment including tree survey	Nov 2017
CD2.14	EIA scoping opinion	April 2017
CD3.1	Letter dated 13 February to South Cambridgeshire District Council	Feb 2018
CD3.2	ABA designer response	Feb 2018

CD3.3	Environmental Statement Addendum <ul style="list-style-type: none"> Updated section 8 and appendix G of the Flood Risk Assessment and Drainage Strategy (including foul drainage assessment), replacing section 8 and appendix G of Technical Appendix E2 of the ES Replacement Technical appendix J (Transport Assessment, February 2018) of the ES 	Feb 2018
CD4.1	Third party consultation responses referenced in the appellant's and local planning authorities' proofs of evidence (included in appeal questionnaire)	Nov 2018
CD5.1	South Cambridgeshire planning committee report	March 2018
CD5.2	South Cambridgeshire planning committee report update	March 2018
CD5.3	Pre-application response	July 2017
CD5.4	EIA screening opinion & scoping opinion	April 2017
CD5.5	South Cambridgeshire planning committee update report	April 2019
CD5.6	Inspectors Report – South Cambridgeshire Local Plan	29 Aug 2018
CD5.7	South Cambridgeshire planning committee report minutes	March 2018
CD6.1	Town and Country Planning Act 1990 (as amended)	Internet resource
CD6.2	Planning and Compulsory Purchase Act 2004 (as amended)	Internet resource
CD6.3	National Planning Policy Framework, Ministry of Housing, Communities and Local Government	Feb 2019
CD6.4	National Planning Practice Guidance, Ministry of Housing, Communities and Local Government	Internet resource
CD6.5	South Cambridgeshire Core Strategy, South Cambridgeshire District Council	Jan 2007
CD6.6	South Cambridgeshire Development Control Policies Development Plan Document, South Cambridgeshire District Council	July 2007
CD6.7 (A & B)	South Cambridgeshire Local Plan, South Cambridgeshire District Council (A), SCLP 2018 Adopted Policies Map (B)	Sept 2018
CD6.8	Cambridgeshire and Peterborough Non-Statutory Strategic Spatial Framework	2018
CD6.9	South Cambridgeshire District Council Design Guide SPD	March 2010
CD6.10	Planning (listed building and conservation area) Act 1990	Internet resource
CD6.11	Cambridge City and South Cambridgeshire - Employment Land Review	July 2008

CD6.12	Employment Land Review Update and Review of Selective Management of Employment Policies	July 2012
CD7.1	Beddington, Professor Sir John, Government Office for Science	2011
CD7.2	UK Strategy for Agricultural Technologies, HM Government	2013
CD7.3	Industrial Strategy – Building a Britain fit for the future, HM Government	Nov 2017
CD7.4	Technology and Innovation Futures 2017, Government Office for Science	2017
CD7.5	East of England Science and Innovation Audit sponsored by the Department for Business, Energy and Industrial Strategy	Sept 2017
CD7.6	Health and Harmony: the future for food, farming and the environment in a Green Brexit, Department for Environment Food and Rural Affairs	Feb 2018
CD7.7	The Clean Growth Strategy, HM Government	Oct 2017
CD7.8	Strategic Economic Plan, Greater Cambridge Greater Peterborough Local Enterprise Partnership	Sept 2014
CD7.9	London Stansted Cambridge Consortium Sector profile on agrifood	2015
CD7.10	Findings and recommendations of the London Stansted Cambridge Corridor Growth Commission – The next global knowledge region: setting the ambitions and delivering the vision	July 2016
CD7.11	Cambridgeshire and Peterborough Independent Economic Review	Sept 2018
CD7.12a	Emerging Cambridgeshire and Peterborough Local Industrial Strategy	March 2019
CD7.12b	Cambridgeshire and Peterborough Local Industrial Strategy	19 July 2019
CD7.13	'Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc', National Infrastructure Commission (NIC)	Nov 2017
CD7.14	Government response to 'Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc'	Oct 2018
CD7.15	Cambridge high tech cluster growth, Opportunities to the south of Cambridge SQW	April 2014
CD7.16	[not used]	
CD7.17	[not used]	
CD7.18	The Cambridge Cluster at 50 - the Cambridge economy, retrospect and prospect	March 2011
CD7.19	UK Agriculture Bill (HC Bill 266)	Sept 2018
CD7.20	Reference not used	
CD7.21	A green future: Our 25 year plan to improve the environment	Jan 2018
CD7.22	Bio-economy Strategy	Oct 2018

CD7.23	Made Smarter Review (food strand)	Oct 2017
CD7.24	[not used]	
CD7.25	Living Planet Index	2018
CD7.26	[not used]	
CD7.27	The Oxford-Cambridge Arc Government ambition and joint declaration between Government and local partners	March 2019
CD7.28	Employment Land Review Update and Review of Selective Management of Employment Policies - Report to South Cambridgeshire District Council and Cambridge City Council	July 2012
CD7.29	[not used]	
CD7.30	Declaration: A smart and sustainable digital future for European Agriculture and rural areas	2019
CD7.31	European AgriFood Tech Investing Report 2018 Year in Review	May 2019
CD7.32	Cambridgeshire & Peterborough Combined Authority Annual Council Agenda Pack	29 May 2019

CD8.1	Conservation Principles for the sustainable management of the historic environment Consultation draft	Nov 2017
CD8.2	Barker, Dr N 2015 'Heritage assets and their setting: Views from a practitioner' Joint planning law conference Oxford	2015
CD8.3	Historic England 2017 'Historic environment Good Practice Advice in Planning 3: The setting of heritage assets'	Dec 2017
CD8.4	<i>East Northamptonshire District Council, English Heritage and the National Trust v Secretary of State for Communities and Local Government and Barnwell Manor Wind Energy Ltd</i> (Case CO/4231/2012; Appeal Case No. C1/2013/0843)	2013
CD8.5	<i>The Forge Field Society & Ors, R (on the application of) v Sevenoaks District Council</i> [2014] EWHC 189 (Case CO/16932/2013)	2014
CD8.6	<i>Palmer v Herefordshire Council & Anr</i> Case No: C1/2015/3383 Court of Appeal (Civil Division) [2016] EWCA Civ 1061 WL 06476219	2016
CD8.7	<i>R (Hayes) v City of York Council and English Heritage Trust Ltd</i> [2017] EWHC1374	2017
CD8.8	<i>Forest of Dean District Council v SoSCLG & Gladman</i> Case No. CO/4852/2015 EWHC421	2015
CD8.9	<i>R DCLG and Nuon UK Ltd v Bedford Borough Council</i> EWHC 2847	2013
CD8.10	British Standard 7913: Guide to the Conservation of Historic Buildings	2013

CD9.1	Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape, Cambridgeshire County Council	1991
CD9.2	Essex Landscape Character Assessment Final Report, Essex & Southend-on-Sea Replacement Structure Plan Review, Chris Blandford Associates	2003
CD9.3	Cambridge Inner Green Belt Boundary Study, Landscape Design Associates for South Cambridgeshire District Council	2015
CD9.4	Guidelines for Landscape and Visual Assessment (3 rd Edition), Landscape Institute and Institute of Environmental Management and Assessment	2013
CD9.5	National Character Area Profiles 87 East Anglian Chalk, Natural England website www.naturalengland.org.uk	2018
CD9.6	An Approach to Landscape Character Assessment, Natural England	2014
CD9.7	Cambridge Green Belt Study A Vision of the Future for Cambridge in its Green Belt Setting	2002
CD9.8	Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Assessments, Chris Blandford Associates	2006
CD10.1	Design Manual for Roads and Bridges, Highways England	2018
CD10.2	[not used]	
CD10.3	Guidelines for Planning for Public Transport in Developments, The Institution of Highways and Transportation	1999
CD10.4	Guidelines for Providing for Journeys on Foot, The Institution of Highways and Transportation	2000
CD10.5	Junctions 9 User Guide, TRL Limited	2017
CD10.6	LinSig 3.2 User Guide, JCT Consultancy Ltd	2014
CD10.7	Manual for Streets, Thomas Telford Publishing	2007
CD10.8	Manual for Streets 2, Wider Application of the Principles, Chartered Institution of Highways and Transportation	2010
CD10.9	The Traffic Signs Regulations and General Directions 2016, Statutory Instruments 2016 No.362	2016
CD10.10	Traffic Advisory Leaflets, Department for Transport	
CD10.11	Traffic Modelling Guidelines, TfL Traffic Manager and Network Performance Best Practice Version 3.0, Transport for London	2010
CD10.12	[not used]	
CD10.13	Cambridgeshire Local Transport Plan 2011-2031, Cambridgeshire County Council	July 2015
CD10.14	Cambridge City and South Cambridgeshire Transport Strategy: Cambridge City Transport Plan	

CD10.15	Cambridge City and South Cambridgeshire Transport Strategy: Transport Strategy for Cambridge and South Cambridgeshire: TSCSC Transport Strategy and High Level Programme, Cambridge County Council	March 2014
CD10.16	Cambridge City and South Cambridgeshire Transport Strategy: TSCSC Consultation Report, 22 July – 14 October 2013, Cambridgeshire County Council	Oct 2013
CD10.17	CSRM Modelling Summary Report for Cambridge and South Cambridgeshire Local Plans, Cambridgeshire County Council	July 2013
CD10.18	Cambridgeshire Transport Investment Plan, Cambridgeshire County Council	Dec 2017
CD10.19	Uttlesford Local Plan Transport Study Addendum Report, WYG Environment Planning Transport	May 2018
CD10.20	A505 Corridor Improvement, Feasibility Study: A10 to the A11, Uttlesford District Council	Jan 2018
CD10.21	Uttlesford Local Plan, Cambridgeshire County Council Comments Position Statement, Cambridgeshire County Council	June 2018
CD10.22	Cambridge South East Transport Study (CSETS) Summary Report of Consultation Findings, Cambridgeshire County Council	May 2018
CD10.23	TPA Traffic Modelling Report	August 2018
CD10.24	Whittlesford Parkway Station Transport Masterplan Stage 2 Report: Plans and Proposals	Nov 2018
CD10.25	Whittlesford Parkway Station Transport Masterplan Stage One Report: Baseline Conditions and Initial Options	Nov 2018
CD11.1	Application Form and Ownership Certificate, Quod	Dec 2018
CD11.2	Application drawings, Various	Dec 2018 April 2019
CD11.3	Case for Growth, Quod	Dec 2018
CD11.4	Planning Statement	Dec 2018
CD11.5	Transport Assessment	Dec 2018
CD11.6	Travel Plan	Dec 2018
CD12.1	Further addendum to the ES, including additional landscape and visual impact assessment, revisions to traffic and transport assessment, lighting assessment, and ecological walkover survey update	May 2019
CD12.2	Landscape and visual assessment replacement and additional figures [Figures 9.29, 9.39, 9.40, 9.41, 9.42 and 9.43 submitted at Inquiry]	May 2019
CD12.3	Technical appendix J2: Technical Note 01	May 2019
CD12.4	Technical appendix J3: Technical Note 04	May 2019



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

**BG2.3d Land North East of Junction 37 of the A1(M) Motorway,
Marr Roundabout, Doncaster (July 2019)**



Ministry of Housing,
Communities &
Local Government

Tony Collins
Collins & Coward

Our ref: APP/F4410/W/18/3197290
Your ref: 17/00301/FULM

Tony.collins@collinscoward.co.uk

8 July 2019

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MOTO HOSPITALITY LIMITED
LAND NORTH EAST OF JUNCTION 37 OF THE A1(M) MOTORWAY, MARR
ROUNDAABOUT, DONCASTER, DN5 7AS
APPLICATION REF: 17/00301/FULM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of B M Campbell BA(Hons) MRTPI who held a public local inquiry on 11–14 and 18 December 2018 into your client's appeal against the decision of Doncaster Metropolitan Borough Council to refuse your client's application for planning permission for the construction of a new Motorway Service Area (MSA) to comprise Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network, provision of landscaping, signage, infrastructure and ancillary works, in accordance with application ref: 17/00301/FULM dated 5 February 2017.
2. On 5 April 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that that the appeal be dismissed and planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with the recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Maria Stasiak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1624
Email: PCC@communities.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR3, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes that parties have agreed which drawings should be formally determined (IR4) and has proceeded on that basis.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the Doncaster Core Strategy (2012) and saved policies from the Doncaster Unitary Development Plan 1998. The Secretary of State considers that relevant development plan policies include those set out at IR18-26.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Department for Transport Circular 02/2013. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Emerging plan

10. The emerging plan comprises the Draft Local Plan which has been published for consultation, concluding in October 2018. The Secretary of State considers that the emerging policies of most relevance to this case include Policy 13 Strategic Transport Network which refers to the provision of secure lorry parking facilities and road side service areas along the strategic road network to meet future demand where appropriate.
11. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the draft Local Plan is still at an early stage and has not yet been submitted for examination, objections are not yet fully resolved and the policies may be subject to change, the Secretary of State considers that the draft plan carries limited weight.

Main issues

Green Belt

12. The Secretary of State agrees with the Inspector's approach to the application of policy set out in IR179-181. He has considered whether the proposal amounts to inappropriate development in the Green Belt. For the reasons given at IR182, he agrees with the Inspector that it does not fall within any of the exceptions in paragraph 145 of the Framework. He has considered whether the proposal falls within the exception set out at paragraph 146(c) of the Framework. For the reasons set out at IR187-190, he agrees with the Inspector's conclusion that MSAs are aimed at providing services for drivers on the strategic road network and are not aimed at catering for the needs of drivers on the local highway network (IR188). He further agrees that while there is an identified need for additional HGV parking in the area, this need does not call for an operation of the size proposed to be built (IR189). Overall he agrees with the Inspector's conclusion at IR190 that the proposal does not comprise local transport infrastructure, and therefore considers that the proposal does not fall within the exception set out at paragraph 146(c) of the Framework. The proposal therefore represents inappropriate development in the Green Belt and should not be approved except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt.
13. The Secretary of State has gone on to consider whether the proposal preserves the openness of the Green Belt and whether it conflicts with the purposes of including land in the Green Belt. For the reasons given in IR193-200, the Secretary of State agrees with the Inspector at IR200 that the proposal would not preserve the openness of the Green Belt. For the reasons given at IR201-205, he also agrees with the Inspector at IR203 that the development would result in a substantial spread of the built environment beyond the well-defined line of the motorway and over an area almost devoid of development, and that this significant material encroachment into the countryside would be in conflict with the purposes of keeping land within the Green Belt, specifically, safeguarding the countryside from encroachment.
14. Overall the Secretary of State agrees with the Inspector in IR230 that as well as the harm from inappropriateness, the development would result in significant harm to the Green Belt from the effect on openness and conflict with the purposes of including land within the Green Belt. He further agrees that the harm to the Green Belt attracts substantial weight against the proposal (IR230), and that the development is in conflict with policy CS3 of the Core Strategy (IR208).

Landscape, loss of countryside and visual amenity

15. For the reasons given at IR209-210, the Secretary of State agrees with the Inspector's conclusion at IR231 that the harm is not insignificant given that minor adverse impacts in landscape and visual amenity terms would remain at year 15 and that no matter how well it is designed, landscaped and screened, the provision of an MSA on the appeal site would result in the permanent loss of a large expanse of open land in the countryside given over to an urbanising form of development. The Secretary of State agrees that significant weight should be attributed to these matters, and that there is conflict with the requirement of policy CS3 to protect and enhance the countryside (IR210).

Loss of agricultural land

16. The Secretary of State has taken account of the Inspector's analysis (IR211-214 and IR232) regarding the agricultural land that would be lost to the development, and notes that some 36% of the appeal site comprises best and most versatile agricultural land. He notes that concerns have been raised regarding the accuracy of the Agricultural Land Classification assessment but agrees with the Inspector at IR213 that no technical evidence has been presented to challenge the most recent report. For the reasons given in these paragraphs, the Secretary of State agrees with the Inspector that the loss of agricultural land, including best and most versatile land, carries moderate weight against the proposal (IR232) and is in conflict with policy CS18 (IR214).

The need for an MSA

17. The Secretary of State has considered the Inspector's analysis at IR220-228 and IR233 of the need for an MSA. While the distance between existing MSAs exceeds the recommended minimum as set out in C2/2013, he agrees with the Inspector's view that the distance between MSAs is recommended rather than mandatory, and that a distance of an additional 1 to 3 miles would be unlikely to add significantly to the drive time between MSAs (IR222). The Secretary of State also notes that each of the identified excessive distances include stretches of trunk road that include signed services, and agrees with the Inspector that while the signed services do not provide all the services required for an MSA, they do make a positive contribution to the safety and well-being of the travelling public (IR223). Overall the Secretary of State agrees with the Inspector's conclusion at IR228 that there is no pressing need to provide an additional MSA on the appeal site. He also agrees with the Inspector that while there is a specific need for additional HGV parking in the area, providing for that specific need does not, of itself, justify the provision of a new, full scale MSA. The Secretary of State agrees with the Inspector at IR233 that the need for an MSA at the appeal site carries limited weight in favour of the proposal.

Other matters

18. The Secretary of State agrees with the Inspector's analysis at IR229 and IR234 that the provision of jobs would be of benefit to the local economy, but that as the proposal is located in the Green Belt and not in an identified employment area, this benefit attracts only very limited weight in favour of the proposals.

19. For the reasons given at IR215-219, the Secretary of State agrees with the Inspector that there is no material harm to weigh in the balance in respect of highway conditions, air quality, heritage assets, noise and light pollution, litter or other matters raised by the JRP or other interested persons.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR171-175, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

21. Having had regard to the Inspector's analysis at IR176-177, the planning obligation dated 12 December 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

22. For the reasons given above, the Secretary of State considers that the scheme is in conflict with Policies CS3 and CS18, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
23. The Secretary of State considers that the need for an MSA attracts limited weight in favour of the proposal, and that the economic benefits attract very limited weight in favour.
24. The Secretary of State considers that the harm to the Green Belt attracts substantial weight against the proposal, that the harm to the landscape, loss of countryside and visual amenity together attract significant weight against the proposal and that the loss of BMV agricultural land also attracts moderate weight against the proposal.
25. The Secretary of State considers that the proposal is inappropriate development in the Green Belt, which should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt and any other harm from the proposal are clearly outweighed by other considerations. He considers that there is nothing that individually or cumulatively clearly outweighs the harm identified so as to amount to very special circumstances.
26. The Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a new Motorway Service Area (MSA) to comprise Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network, provision of landscaping, signage, infrastructure and ancillary works.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
29. A copy of this letter has been sent to Doncaster Metropolitan Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Housing, Communities and Local Government

by **B M Campbell BA(Hons) MRTPI**
an Inspector appointed by the Secretary of State

Date: 9 April 2019

TOWN AND COUNTRY PLANNING ACT 1990

DONCASTER METROPOLITAN BOROUGH COUNCIL

Appeal made by

MOTO HOSPITALITY LIMITED

Inquiry Held on 11 – 14 & 18 December 2018

Accompanied site visit undertaken on 19 December 2018

Land north east of Junction 37 of the A1(M) Motorway, Marr Roundabout, Doncaster DN5 7AS

File Ref: APP/F4410/W/18/3197290

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ABBREVIATIONS LIST**Term**

Air Quality Management Area
All Purpose Trunk Road
Area of Special Landscape Value
Community Infrastructure Levy
Green Belt sub-area – Adwick Le Street 5
Department for Transport Circular 02/2013
Design Manual for Roads and Bridges
Doncaster Core Strategy 2012
Doncaster Unitary Development Plan 1998
Environmental Statement
Highways England
Joint Rural Parishes
Landscape Character Area
Landscape and Visual Impact Assessment
Local Road Network
Motorway Service Area
National Planning Policy Framework
Planning Practice Guidance
Regeneration Priority Area
Statement of Common Ground
Strategic Road Network
Tree Preservation Order

Acronym

AQMA
APTR
ASLV
CIL
ALS5
C2/2013
DMRB
CS
UDP
ES
HE
JRP
LCA
LVIA
LRN
MSA
NPPF
PPG
RPA
SoCG
SRN
TPO

CASE DETAILS

File Ref: APP/F4410/W/18/3197290**Land north east of Junction 37 of the A1(M) Motorway, Marr Roundabout, Doncaster DN5 7AS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Moto Hospitality Limited against the decision of Doncaster Metropolitan Borough Council.
- The application Ref 17/00301/FULM, dated 5 February 2017, was refused by notice dated 18 December 2017.
- The development proposed is construction of a new Motorway Service Area (MSA) to comprise: Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a Fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network. Provision of landscaping, signage, infrastructure and ancillary works.

Summary of Recommendation: The appeal be dismissed

PRELIMINARY MATTERS

1. By letter dated 5 April 2018 the Secretary of State issued a direction recovering the appeal for his own determination. The reason given is that the appeal involves proposals for significant development in the Green Belt.¹
2. When the appeal was submitted, matters relating to impact on the Strategic Road Network (SRN) remained outstanding such that Highways England (HE) was granted Rule 6 status. However, by letter dated 2 October 2018 HE withdrew from the inquiry having reached a satisfactory outcome with the Appellant.² Two Statements of Common Ground between HE and the Appellant can be found at document CD93.
3. The application, the subject of this appeal, was accompanied by an Environmental Statement (ES). The ES has been reviewed in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and has been found to be satisfactory in terms of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011. None of the statutory or other consultees has suggested that the ES is in any way inadequate.
4. The proposal has not been altered since the application was determined by the Council. Nonetheless, during the course of the inquiry, the main parties sought to clarify which of the many drawings submitted should be formally determined. Those agreed upon are listed in condition 2 of the proposed conditions (**Appendix 3**) and a short comment on their inclusion or exclusion is provided in the list of core documents (**Appendix 2**). An additional drawing was added at document CD100 – illustrating tree pit details.
5. An executed planning obligation under section 106 of the Town and Country Planning Act 1990 was submitted during the course of the inquiry and can be

¹ Letter on appeal file APP/F4410/W/18/3197290

² Ibid

found at document CD97. A Community Infrastructure Levy (CIL) Compliance Statement is to be found at document INQ1.

6. I undertook an unaccompanied site visit of the general area (including signed services and Ferrybridge Services to the north) on 10 December during the afternoon peak period before opening the inquiry the following day. An accompanied visit took place on 19 December following the close of the inquiry. In addition to inspecting the site itself and the A635, we walked from a residential property along Green Lane through Long Plantation towards the northern edge of the site and went to viewpoints 1-4 as identified in the Appellant's landscape evidence (Document APP8, fig 14A & 14B). Following that accompanied visit I re-visited the signed services to the north and Ferrybridge Services on my own as agreed with the parties.

THE SITE AND SURROUNDINGS

7. The appeal site comprises some 15.1 hectares of agricultural land in the north east quadrant of the Marr roundabout at junction 37 of the A1(M). Formed from a portion of two adjoining fields, it is divided internally by the Mellinder Dike drain running north-south. Existing hedgerows mark the line of the drain which continues to the north beyond the site boundary. Overhead cables currently cross the site.
8. The site has a short boundary with the slip road leading off the southbound carriageway of the motorway and the boundary continues around the roundabout and in an easterly direction along the north side of the A635 leading to Doncaster. The boundary with the A635 is defined by a tree and hedgerow line to the rear of a large layby between the site and the road and includes a telecommunications mast. On the southern side of the A635 is a dense tree belt known as Ducker Holt.
9. The eastern boundary of the site is defined by a substantial linear belt of woodland known as Long Plantation (protected by a tree preservation order (TPO)) which stretches between the A635 and Green Lane to the north. The northern boundary cuts through the existing fields with more farmland extending north to Green Lane but including two further woodland areas, Stane Hill Plantation and Stane Hole Plantation (also protected by a TPO).
10. The eastern field slopes down from approximately 45m AOD to 35m AOD in an east-west direction towards the Dike, whilst the western field slopes more gently with higher ground on the western side varying from 37m AOD to 38m AOD. There are a few free-standing trees within the site and the location of a small former plaster pit.
11. There are some useful photographs of the appeal site in section 4 of document CD74.
12. The site lies within designated Green Belt, just off the north-west fringe of Doncaster. The nearest urban settlement is Scawsby, approximately 1km to the east. The village of Marr lies some 1.3km to the west of junction 37 and Brodsworth village, also on the other side of the motorway, is some 1.8km to the north west of the site.

13. The nearest residential properties to the appeal site are located along Green Lane and Town View Avenue to the north west and on the far side of Long Plantation. Scawsby Hall and Stone Hill School lie some 900m to the east and Marr Grange Cottage 730m to the south west.
14. To the north of the site at junction 38 the A1(M) changes status from motorway to a trunk road, the A1, and continues for that stretch extending from junction 38 to just south of the junction with the M62 where it reverts once again to A1(M) motorway. There are two signed services on each side of this stretch of trunk road – Carcroft and Barnsdale Bar North on the northbound side and Darrington and Barnsdale Bar South on the southbound side. Facilities available at these signed services are set out in a table attached to the Statement of Common Ground (SoCG) at document CD92. These and MSAs on the wider motorway network are depicted on a map at Document LPA2, fig.5.2. (see also document APP12 appendix 9)
15. Figure 1 in document APP8 and the aerial photograph at document INQ10 give an appreciation of the site in its context.

RELEVANT PLANNING POLICY

16. The Development Plan for the area includes the Doncaster Core Strategy (2012) (CS) and the saved policies of the Doncaster Unitary Development Plan 1998 (UDP). In addition, there is a draft Local Plan published for consultation with the consultation period concluded on 26 October 2018. The policies which the main parties agree as relevant to this proposal are listed in the SoCG. (Document CD92)
17. Whilst I have taken all relevant policies into account, I have set out below those most pertinent to the case.

Doncaster Core Strategy (Document CD84)

18. **Policy CS1** *Quality of Life* supports proposals which contribute to Core Strategy objectives including: providing employment opportunities; strengthening communities; are place specific in design, work with their surroundings and enhance the built and natural environment; are accessible by a range of transport modes; and which protect amenity and are well designed.
19. **Policy CS2** *Growth and Regeneration Strategy* seeks to distribute growth and regeneration so as to support prosperous and sustainable communities by improving the economic performance of towns, promoting regeneration and tackling deprivation
20. **Policy CS3** *Countryside* seeks to protect and enhance the countryside. National Green Belt policy is to be applied, including a presumption against inappropriate development other than in very special circumstances.
21. **Policy CS7** *Retail and Town Centres* requires town centre uses to be located according to the Retail Hierarchy as set out.
22. **Policy CS9** *Providing Travel Choice* supports proposals which make an overall contribution to the improvement of travel choice and the transport network. CS9 (D) 1. Supports facilities for lorry parking and roadside service areas where appropriate.

23. **Policy CS14** *Design and Sustainable Construction* seeks high quality design, contributing to local distinctiveness, reinforcing the character of local landscapes and building traditions, responding positively to existing site features and integrating well with its immediate surrounding area. CS14 (C) requires design and layout to adapt to a changing climate and to use energy, water and materials in the most efficient way possible.
24. **Policy CS18** *Air, Water and Agricultural Land* aims to conserve, protect and enhance air, water and land resources both in terms of quantity and quality.

Saved policies of the Doncaster Unitary Development Plan (Document CD85)

25. **Policy ENV1** sets out the general extent and purposes of including land in the Doncaster Green Belt reflecting four of the five purposes as set out in more recent national policy guidance (preserving the setting and special character of historic towns is not included).
26. **Policy ENV3** states that development within the Green Belt other than for purposes as specified within the policy will not be permitted except in very special circumstances – reflecting Government policy that was in force at the time, but which has since been superseded.³

Draft Doncaster Local Plan (Document CD86)

27. **Policy 13** *Strategic Transport Network* includes at (D) 4. the provision of secure lorry parking facilities and road side service areas along the SRN (including overnight stay accommodation and toilet facilities, where possible) to meet future demand, where appropriate.

National Policy

28. The **National Planning Policy Framework** (NPPF) contains up to date Green Belt policy to which Core Strategy policy CS3 refers. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Substantial weight is to be given to any harm to the Green Belt. (paras.143 & 144) The construction of new buildings is inappropriate other than for specified exceptions, none of which embrace buildings at an MSA. (para.145) Certain other forms of development, which include local transport infrastructure which can demonstrate a requirement for a Green Belt location, are not inappropriate provided they preserve openness and do not conflict with the purposes of including land in the Green Belt. (para.146)
29. **Department for Transport Circular 02/2013** *The Strategic Road Network and the Delivery of Sustainable Development* (C2/2013) sets out Government policy relating to motorways and trunk roads. Annex B addresses roadside facilities for road users on motorways and all-purpose trunk roads (APTR). The Circular is consistent with the NPPF in identifying the primary function of roadside facilities as supporting the safety and welfare of the road user.

³ PPG 2 Green Belts

30. Government advice is that motorists should stop and take a break of at least 15 minutes every two hours. The network of service areas on the SRN has been developed on the premise that opportunities to stop are provided at intervals of about half an hour. However, timing is not prescriptive as travel may take longer on congested parts of the network. Thus, the recommendation is that the maximum distance between motorway service areas should be no more than 28 miles. Further, given that speed limits vary on the SRN, the recommended maximum distance between signed services on trunk roads should be the equivalent of 30 minutes driving time. The distances are considered appropriate regardless of traffic flows or route choice. (paras.B4-B8)

THE PROPOSAL

31. The new MSA would provide an amenity building (3,959 sqm), a 103-bedroom lodge (2,865 sqm), a fuel filling station (261 sqm) together with a canopy over the fuel pumps, and a drive through coffee unit (205 sqm). The main car park would provide 492 spaces shared between the amenity building and lodge, including 6 electric charging points (with pre-installed underground ducting to facilitate future increased demand) and 22 spaces for the disabled with another 14 bays for motorcycles. Other separate parking areas would be provided to accommodate 96 HGV spaces, 1 abnormal load bay, 12 caravan spaces, 19 spaces for coaches, 36 spaces at the drive through (two of which would be accessible), 8 spaces at the fuel filling station and 26 spaces for staff parking (two of which would be accessible).
32. Vehicular access to and from the MSA would be gained from a new arm on the roundabout between the exit slip road from the southbound carriageway of the A1(M) and the A635 to Doncaster. Direct access to the MSA from a dedicated slip lane for vehicles travelling southbound on the A1(M) was deleted from the proposal on the advice of HE. Within the site, as is usual for MSAs, signage would separate the traffic, directing it to the appropriate parking area or required facility. New bus stops are proposed outside the site on the A635 and 20 cycle parking spaces in the service yard to encourage staff to travel other than by car.
33. The main buildings – that is the amenity building and lodge – would be located in the opposite corner of the site to the access, in front of a planted mound right in the far north east corner. In front of the amenity building would be outdoor seating areas and space for a number of external concessions with a picnic area to the south. Within the building the normal facilities found at MSAs such as toilets, showers, hot food outlets and shops would be provided.
34. The main car park would extend in a westerly direction from the front of the lodge and amenity building. To the south of this would be the drive through, coach and caravan parks and the one space for an abnormal load. The lorry park would be situated in the south east corner with the fuel filling station to the west of it towards the access into the site. Land within the site close to the access would be left open, landscaped and planted and would accommodate a flood water channel and attenuation basins.
35. The site would be landscaped throughout with heavily planted edges. Most notably a new 10–15m wide woodland buffer along the eastern boundary (parallel to Long Plantation) and a 15-20m wide woodland buffer along the

currently open north western boundary would meet at a tree planted mound in the north east corner behind the main buildings.

36. The main entrance façade to the amenity building would have a faceted arrangement with fin walls defining directional change between large glazed screens. Other elevations would, in the main, be treated with blockwork at low level and horizontal format cladding above. The main roof would be a mix of flat roofed areas and one large shallow roof plane. Roof lines would over-sail the principal glazed façade with V shaped columns supporting the roof in a colonnade-like arrangement. A lower canopy to the southern end would be similarly supported.
37. The lodge building would have a simple L shaped plan form. Although of two storeys, it would be similar in height to the amenity building. Roof forms would be a mix of flat and shallow sloping mono-pitches and the entrance would incorporate glazed features and a projecting canopy, once again supported on V shaped columns.
38. Further detailed descriptions of the proposal are included in documents CD65 section 5, CD74 section 7, CD76 section 4 and APP10 section 4. There is a wealth of drawings detailing the proposed layout of the site, the design and external appearance of the buildings and landscaping (Documents CD1 – CD63). These include computer generated views of the buildings and aerial views of the site. A useful booklet of the drawings at A3 size is to be found at Document INQ2.

MATTERS NOT IN DISPUTE BETWEEN THE COUNCIL AND MOTO HOSPITALITY LIMITED

Green Belt

39. Whilst there is disagreement on whether the proposal would amount to inappropriate development in the Green Belt, the effect on openness, and whether there would be conflict with two of the five purposes of including land in the Green Belt; it is agreed that there would be no conflict with the following three purposes:

Purpose (a) to check the unrestricted sprawl of large built up areas;

Purpose (b) to prevent neighbouring towns merging into one another; and

Purpose (d) to preserve the setting and special character of historic towns.

Gaps between MSAs

40. Relevant gaps between existing MSAs that exceed the recommended distances in C2/2013 are: (see Document LPA2, fig.5.2)

- between Ferrybridge (M62) and Woodall (M1) – 31 miles
- between Doncaster North and Ferrybridge (via the A1 and A1(M)) – 29 miles

Alternative sites (Documents CD66, APP2 section 3.5, APP10 paras.9.1.26-9.1.50, INQ16 paras.32-54)

41. Despite a suggestion to the contrary in the Council's Statement of Case and evidence, it is now agreed that if the need for an MSA is accepted (the need is disputed by the Council), then there are no suitable alternatives to be preferred to the appeal site. Sites around junction 35 are unsuitable being located too

close to Blyth MSA to the south. In addition, potential sites did not perform as well as the appeal site in relation to Green Belt considerations, loss of agricultural land, flooding and on highway grounds. There is insufficient distance between junctions 35 and 36 for an on-line site. No site is available at junction 36 because all four quadrants have been developed. Again, the distances between junctions 36 and 37 and between 37 and 38 are insufficient for an on-line site. Land at junction 38 is too close to Ferrybridge, is considered unsuitable for highway reasons, is in Green Belt and comprises grade 2 agricultural land.

42. Potential sites along the M18 are discounted as not bridging the gaps identified or performing less well than the appeal site.
43. At A1(M) junction 37, an MSA on the south-west and north-west quadrants would have a greater impact on the Green Belt and affect a designated Area of Special Landscape Value (ASLV) and the south-east quadrant comprises the Ducker Holt woodland. The north-east quadrant is agreed as being most suitable.

Highway matters

44. Two SoCG have been agreed with HE and can be found at document CD93. The first sets out highways and transport matters associated with the SRN that are agreed and concludes that the appeal should not be dismissed on highway grounds insofar as it relates to the SRN. The second relates to the level of parking provision and confirms no objection to the full future year parking requirement (year 2027) being provided at the outset.
45. A further highways SoCG has been agreed with the Council. The document sets out agreed highways and transport matters associated with the Local Road Network (LRN) and concludes that the appeal should not be dismissed on grounds of impact on the LRN.

Landscape

46. The findings of the Landscape and Visual Impact Assessment (LVIA) submitted with the planning application are accepted. It is common ground that once the development and landscaping has matured, there would be no impacts greater than minor adverse in landscape and visual amenity terms.⁴ (Document CD76 section 10 and Table 10.11 in particular)

Design

47. During the inquiry, the Council changed its stance in relation to design considerations, confirming that it took no issue with the design of the scheme and that there would be no conflict with policy CS14 which requires high quality design.

Other matters

48. There are no issues on **ecological grounds, drainage or flood risk**. **Archaeological concerns** can be addressed by the imposition of a suitable condition if planning permission was to be granted and there is no impact on any above ground **heritage assets**.

⁴ The LVIA Table 10.11 contains a typographical error as noted in document CD92 – there is no “moderate adverse” effect in year 15

THE CASE FOR DONCASTER METROPOLITAN BOROUGH COUNCIL

As noted above, the Council made a number of concessions during the inquiry, but its final case is as summarised in its opening and closing submissions (Documents INQ4 and INQ14)

The main points are:

Whether the proposal amounts to inappropriate development in the Green Belt

49. The Appellant's stance that the development is not inappropriate because it falls within NPPF paragraph 146(c) *local transport infrastructure which can demonstrate a requirement for a Green Belt location* is not made out.
50. Paragraph 145 of the current NPPF, formerly paragraph 89 of the NPPF 2012, says the construction of new buildings in the Green Belt are to be regarded as inappropriate other than for specified exceptions, none of which apply to the appeal proposal. As new buildings are included as part of the appeal proposal, paragraph 145 applies and the development is thus inappropriate. Paragraph 146 covers "other forms of development" and thus must be addressing forms other than the construction of new buildings. It does not therefore apply to the appeal proposal. The Appellant accepted in cross examination that if that is a correct interpretation of paragraphs 145 and 146 then the development must be inappropriate.
51. This interpretation is entirely consistent with the judgement in *R(oao Mrs Jean Timmins) v Gedling Borough Council* [2015] EWCA Civ10 wherein the Court of Appeal held that paragraph 89 (now 145) was "exclusively" the way in which the construction of new buildings could be not inappropriate. The Appellant's interpretation, namely that paragraph 146 can also provide for other types of new buildings in Green Belt is contrary to this judgement as it would mean that paragraph 145 (89 as it was then) is not a closed list of exclusive exceptions.
(Document INQ14 attached judgement)
52. The fact that paragraph 146(f) includes as not inappropriate "development brought forward under a Community Right to Build Order or Neighbourhood Development Order" does not lead to the conclusion that it embraces new buildings. There are a number of other types of development that can be brought forward pursuant to such Orders⁵ and it is these to which paragraph 146(f) refers – not new buildings which remain to be considered under paragraph 145. Accordingly, simply as a matter of legal interpretation, the development cannot be not inappropriate, because it involves the construction of new buildings in the Green Belt.
53. In addition, the proposed MSA does not constitute "local infrastructure" provided for by paragraph 146(c). An MSA is not "local" given that it serves a national need and will only be afforded limited use by local trips. The MSA would be located on the SRN operated by HE which, by definition, comprises nationally significant infrastructure. Indeed, the Appellant's own surveys included within the Transport Assessment demonstrated that only 3.8% of interviewees using

⁵ See Planning Practice Guidance Paragraph: 010 Reference ID: 41-010-20140306 through to Paragraph: 013 Reference ID: 41-013-20140306

MSAs were doing local trips. (Document CD67 para.6.54) The second limb of paragraph 146(c) is that the development can demonstrate a requirement for a Green Belt location. This ties in with the need for an MSA in this location which the Council does not accept and so a requirement for a Green Belt location is not demonstrated.

54. Even if the proposal did fall within paragraph 146(c), such development is only not inappropriate provided it preserves Green Belt openness and does not conflict with the purposes of including land in it. The stance of the Appellant's planning witness was not that there would be no harm or conflict but rather that the extent of harm/conflict would be acceptable. He argued that paragraph 146 must be interpreted as allowing for some acceptable degree of harm to openness/the purposes. Such an argument is contrary to case law. See in particular in *R.(oao Amanda Boot) v Elmbridge BC* [2017] EWHC 12 (Admin) where, having reviewed the authorities, it was held that where there was a finding of harm to the openness of the Green Belt, it followed that the openness would not be preserved. (Document INQ14 attached judgement paras.17-40)
55. There can be no degree of acceptable harm to openness and, by the same token, the same must also be true of conflict with the purposes of including land in the Green Belt – any degree of conflict must contradict paragraph 146. The Court of Appeal judgment in *Samuel Smith Old Brewery v North Yorkshire County Council* [2018] EWCA Civ 489 does not change this position. In that judgment the Court of Appeal established that whilst there could be an impact on openness, this impact could be either harmful or benign. (Document INQ14 attached judgement, para.38)
56. The starting point, in any event, must be the policies in the Development Plan and in the instance UDP policy ENV3 is the relevant policy for determining applications in the Green Belt. It includes no exception for local transport infrastructure. (Document CD 85 page 62).
57. The proposal constitutes inappropriate development in the Green Belt.

Effect on the openness of the Green Belt and the purposes of including land within it

Spatial dimension - openness

58. The proposed development would result in the loss of 15.1 hectares of currently open, undeveloped countryside in the Green Belt. This would result in significant harm. It is hard to see how any other conclusion could be reached. Indeed, the Appellant's planning witness conceded that he was unaware of any decision relating to the Green Belt where a development of such scale had not been found to harm the spatial role of openness. The reality remains that a significant three-dimensional space of entirely open undisturbed land would be permanently removed from the Green Belt. This can only result in significant harm. Landscape mitigation to screen the development has no bearing on the spatial dimension.

Visual dimension - openness

59. There is an obvious overlap with landscape and visual amenity issues under this section. The Council did not call its own evidence on these matters as it accepts the findings of the LVIA as confirmed in the SoCG. The LVIA, in accordance with industry standards, correctly identifies the potential environmental effects at three points: during construction, on completion and after 15 years so as to

enable effects to be understood and considered throughout the life cycle of the development. The LVIA concludes that there would be minor adverse impacts in landscape and visual amenity terms. This clearly contravenes the openness of the Green Belt and should be afforded substantial weight.

Purposes of including land in the Green Belt

Purpose (c) – safeguarding the countryside from encroachment

60. For the purposes of review in 2016, the Green Belt in the Borough was divided into 64 general areas that were assessed against how well the 5 purposes were being fulfilled. The Appeal site lies in the south western corner of Adwick Le Street 5 (ALS5). Although in relation to purpose (c), the area did not score highly, the appeal site is significantly more sensitive to encroachment than ALS5 as a whole which accommodates a degree of built development. In contrast, the appeal site, whilst adjacent to the A1(M) and the A635, comprises open fields with a cluster of deciduous plantations in the area immediately surrounding the site. The Long Plantation in particular separates the site visually and spatially from Scawsby. The site has a strong rural character and a moderate-high sensitivity to encroachment. As such it performs well in terms of its contribution to purpose (c) and significantly better than ALS5 as a whole. The scale of the appeal proposal would be a significant encroachment into the countryside in conflict with purpose (c) and would cause significant harm to the Green Belt.

(Documents CD87 page 67 & LPA2 paras.4.3.30-4.3.35 and 5.3.19-5.3.24)

Purpose (e) – assist urban regeneration, by encouraging recycling of derelict and other urban land

61. Area ALS5 scored highly in relation to this purpose being one of 20 of the general areas contiguous with the Borough's defined Regeneration Priority Areas (RPA). The protection of the entirely greenfield appeal site assists in directing development towards brownfield land within development limits, albeit that it is further from the RPA than ALS5 as a whole. Facilities provided at the MSA such as the hotel, or café/restaurants where business meetings could be held, could result in the site becoming a destination in its own right rather than simply providing roadside facilities for users of the A1(M). This could affect the viability of providing facilities within the RPA and discourage visitors from entering and using other facilities in Doncaster. (Document LPA2 paras.5.3.27-5.3.31)

Other harm

Landscape and visual amenity

62. Policy CS3 of the CS states that proposals which are outside development allocations will only be supported where they, '*protect and enhance the countryside*'. As with the discussion of Green Belt policy above, this policy does not envisage an acceptable degree of harm to the countryside. Rather, where a proposal fails to protect and enhance the countryside, it is contrary to the policy. Here, the proposal would result in minor adverse impacts on the countryside in landscape and visual amenity terms and result in the loss of 15.1 hectares of countryside. On any view, this does not protect or enhance the countryside and thus the proposal must be contrary to Policy CS3. Similarly, it must also be contrary to paragraph 170(b) of the NPPF, which seeks to recognise the intrinsic character and beauty of the countryside. (Document CD84 policy CS3)

Agricultural land

63. The Council does not dispute the Appellant's figures on the loss of agricultural land but the development would still lead to the loss of a substantial amount of high quality agricultural land. Policy CS18 of the CS accepts the loss of such land only where it conforms with the Growth and Regeneration Strategy. This strategy is reliant on the settlement hierarchy which, unsurprisingly, envisages that the Green Belt will not be developed except for appropriate development. Nowhere within the policy is it suggested that Green Belt development of this nature is consistent with the Strategy. Accordingly, the loss of agricultural land is contrary to policy CS18. (Document CD84 policy CS2)

Need for an MSA

64. Whether there is a need for an MSA is resolved through applying C2/2013 and is reliant on whether the maximum spacing distances identified in it are exceeded.
65. The Circular makes clear that "*In determining applications for new or improved sites, local planning authorities should not need to consider the merits of the spacing of sites beyond conformity with the maximum and minimum spacing criteria established for safety reasons*" (Paragraph B8). This can only mean that if the maximum distance is not exceeded, the spacing between MSAs is not a relevant consideration and thus it cannot be said that there is a need for an MSA to 'plug a gap'. Moreover, C2/2013 "*recommends*" the maximum distance of 28 miles between MSAs which denotes a less onerous requirement than other aspects of the Circular which set out "*mandatory*" provisions and "*minimum*" requirements.
66. The Council does not suggest that there is anything inherently objectionable with going below the maximum distances identified in the Circular. However, where this would require the development to be situated in the Green Belt, the Council makes the obvious point that if the maximum distances are not exceeded, it cannot be said that there is a need for an MSA.

Are the maximum distances exceeded?

67. As a matter of fact there is a gap in excess of 28 miles between MSAs. However, to simply rely on this represents an incorrect interpretation of the Circular. The gap that the Appellant seeks to address is comprised of travelling along both trunk road and motorways. Applying the Circular correctly, this cannot give rise to a gap that justifies a need for an MSA. There is no existing gap of 28 miles between MSAs travelling only on motorway that the proposal would address (thus paragraph B6 is satisfied); and one cannot travel more than 30 minutes between signed services on the trunk road (thus paragraph B7 is satisfied).
68. MSAs, by definition, cannot be provided on trunk roads. It would be perverse to interpret paragraph B6 as requiring a maximum distance between MSAs of 28 miles notwithstanding the fact that the relevant 28 mile gap is comprised of roads where an MSA could not possibly be provided. It would be an error in interpretation of the Circular to conclude that there is a need for an MSA here, given that the maximum distances in paragraphs B4 – B7 of the Circular are not exceeded.
69. Even on the Appellant's best case, these maximum distances are, '*only slightly exceeded*' and within those gaps between MSAs there are signed services that

contribute to safety and welfare (Document CD67 para.2.10). On the Appellant's best case the need is not sufficient to justify this development in the Green Belt.

Existing trunk road service stations

70. There is no justification for disregarding contributions made by the signed services on the A1 on highway safety grounds. Insufficient assessment has been made to establish that any has a poor safety record, or that the merge and diverge tapers from Design Manual for Roads and Bridges (DMRB) TD41/95 should be applied. Furthermore, HE has taken no action in relation to these services nor is there any evidence to suggest that it considers them to be dangerous. (Documents INQ7 & INQ14 paras.5.4.2-5.4.5)
71. It would be wrong to discount the signed services on grounds of not meeting the minimum parking requirements set out in C2/2013. That would rely on an incorrect application of the Circular. Paragraph B26 is plain that "*Where a site is subject to a pre-existing sealed agreement which specifies the levels of parking provision, this shall continue to apply until such time as the scale and/or scope of on-site activities is extended*". Accordingly, since the existing services are all subject to sealed agreements (as they must be), the requirements they are expected to meet are those set out in those agreements and not what the Circular now requires. Moreover, paragraph B28 makes clear that levels of parking provision may be adjusted to reflect local conditions through a process of site-specific negotiation. No evidence has been submitted to suggest that the parking provision at any of the signed services is insufficient for the needs of motorists when considered individually or together.
72. The minimum requirements for signed services are substantially met through the existing A1 roadside facilities, save for in respect of free parking (which was met in part) and access to a cash operated telephone. But in any event, these minimum requirements apply to "*various types of roadside facility that may be eligible for signing from the strategic road network*" (paragraph B17) – all of the A1 roadside facilities are already signed.
73. The contribution made by existing services cannot be discounted simply by applying current standards retrospectively. Furthermore, less harm to the Green Belt would result from bringing these existing services up to standard than in constructing the new MSA. In addition, it is pure speculation to suggest that these services will be wiped out if the trunk road is upgraded to motorway and there is nothing to say when or if this upgrade will proceed.

Conclusion on need

74. There is no need for an MSA in this location but even if a need for roadside facilities was identified, this should involve the minimum interference with the Green Belt to meet that need. The proposed MSA goes substantially in excess of what would be required. The mere fact that there are other MSAs in the Green Belt is no justification for this proposal.

Is the harm clearly outweighed by other considerations?

75. If C2/2013 is correctly applied, then there is no need for an MSA and thus no other considerations to weigh in the balance. In the alternative, need only arises from the maximum distances in the Circular being slightly exceeded and given that these distances are "recommended" rather than mandatory that is

insufficient to override Green Belt policy. The harm to the Green Belt is to be afforded substantial weight and there are a number of additional harms as well as conflict with the Development Plan as a whole.

76. The benefits of the proposal do not clearly outweigh the harm and thus very special circumstances necessary to justify the development do not exist.

Accordance with the Development Plan?

77. There is nothing in CS policy CS9 on which the Appellant relies to support a proposal of this nature in the Green Belt.

78. For the reasons given the proposal does not conform with the Development Plan as a whole. That being the case, the presumption in favour of sustainable development does not apply. There is no reason to depart from the default position that proposals contrary to the development plan should be refused.

THE CASE FOR THE JOINT RURAL PARISHES (JRP)

At the inquiry, the JRP addressed a written statement (Document INQ6v2) which was submitted along with attached appendices A-Q. Its case is summarised in its closing submissions (Document INQ15)

The main points are:

Loss of Agricultural Land

79. The initial agricultural land assessment undertaken for the project by Savills in January 2016 characterised the appeal site as grade 2, best and most versatile and that is the best land available in the Borough. (Document CD73) Permanently removing prime agricultural land out of Green Belt is not sustainable.
80. The second report written in October 2018 by Tim O'Hare Associates, contradicts the findings of the earlier report but contains a number of inconsistencies and errors including within the Legal disclaimer. Whilst a further document responding to the JRP criticisms was submitted to the inquiry, the errors made call into question the validity of the entire report and whether any reliance should be placed on it. It is hard to understand how such fundamental errors could go unnoticed and be presented as written evidence. For these reasons the initial 2016 assessment report is to be preferred. (Documents APP9 appendix 16 & INQ11)

Traffic Congestion

81. The initial traffic counts submitted and used as evidence by the Appellant are 3 years out of date. They do not reflect the current traffic volumes, congestion or queuing experienced by drivers using the A635 or the A1(M) slip roads at the Marr roundabout or indeed the standing traffic this creates on the A1(M) itself at this junction. Further traffic counts to assess whether projected traffic volumes correlate with actual current traffic volumes have not been undertaken.
82. Air quality in Marr is a major concern (already designated an Air Quality Management Area (AQMA) with NO_x levels along the A635 twice the legal limit) owing to traffic volume and congestion and tailbacks along the A635 from the junction roundabout towards Marr. The traffic queues observed now of over 30

- vehicles in peak times (4.30pm to 5.30pm) do not appear to correlate with the modelled current maximum queue length of two.
83. The explanation given is that the stated maximum queue lengths are not actually maxima as described, but “mean maxima”. The Appellant accepted that actual queues of over 30 vehicles, as currently observed, are entirely possible. This brings into question what a mean maxima of 6 as predicted in 2027 if the development went ahead would look like; and what the A1(M) south arm with its 15 “mean maxima” would look like in 2027, particularly since the roundabout is predicted to be operating at full capacity by then. (Document CD67 paras.6.62-6.69)
84. No account has been taken of the added contribution to congestion from Barnsley Council’s ongoing large scale employment and housing development along a continuous 5 mile stretch of the A635, west of Hickleton. This would take the Marr roundabout above capacity with severe implications for the A635 and for the SRN.
85. The proposed HS2 project which anticipates a substantial increase in vehicle movements each day during construction will further increase traffic congestion on the A1(M) and A635 and negatively impact air quality. (Document INQ6 appendix Q)
86. Current high levels of congestion are supported by photographic evidence and by well-documented statements from Doncaster and Barnsley Councils as well as from the Sheffield City Region and Transport for the North. Their consistent and aligned view is that the A635 is heavily congested with road safety concerns in Marr and Hickleton (Document INQ6 appendices A, B, I & J). This has led to an identified need for a bypass for Hickleton and Marr.
87. The Appellant’s Transport Assessment evidence is 3 years out of date and takes no account of Barnsley’s large scale continuing development along the A635. This brings into question the Appellant’s projections of congestion and tailbacks at Marr roundabout. It cannot be relied upon to determine future traffic impacts associated with an MSA at this location.

Air Quality

88. The pollution levels from traffic using the A635 have increased to such an extent that both Marr and Hickleton are now in a designated Air Quality Management Area (AQMA). Both Doncaster and Barnsley Councils acknowledge that the heavy increase in traffic levels as well as increased HGV numbers along the A635 are the cause of the increased NOx pollutants. (Document INQ6 appendices F, H, J, K, L)
89. The effect that air pollution and particulates have on health has been well documented. In this appeal, no account has been taken of increased traffic volumes and congestion and the impact that this would have on the health and well-being of local residents due to increased air pollution in a designated AQMA.

Potential Speed Limit Reductions along the A635 approaches to the Marr Roundabout

90. The crossing of the A635 by people using the proposed new bus stops would not be safe. It is an extremely busy road in both directions. The drawing at document CD43 suggests a speed limit reduction along the A635 approaches and circulating carriageway of the roundabout. This might improve road safety for pedestrians but would, as a consequence, reduce the efficiency of the A635. It

would be likely to increase queue lengths and make congestion matters worse at this junction.

The need for an MSA and Safety

91. It is predicted that personal accident injuries at the A1(M)/A635 junction roundabout would increase by 50% from 2 to 3 per year, following the proposed development. There is no evidence put forward to show that the small number of personal injury accidents at the four signed service areas would reduce (on average one accident at each, per year, over the last 5 years) by the provision of an MSA as an alternative stopping facility. The Appellant has shown in its projections that an MSA at this location would increase accident numbers overall. (Document APP2 paras 3.4.11-3.4.17 & 6.1.3-6.1.7)
92. In considering the need for the MSA the existing 10 mile stretch of trunk road and its four signed services (and a number of other easily accessible non-signed services) cannot be ignored when assessing the gap. In terms of supporting the safety and welfare of drivers, these APTR facilities play a major role, as they do on any other trunk road on the SRN, whether or not they connect two motorways. The four signed services have recently been re-furbished at some significant expense.
93. Further south on the A1 there are long stretches of non-motorway trunk road which have similar traffic flows to their connected sections of the A1(M) but, these rely solely on the APTR services (for example the stretch from Blyth MSA to Peterborough MSA).
94. The need for an MSA is very weak with the two identified gaps only slightly above the recommended maximum (one via a longer alternative route), and both served by the trunk road signed services.
95. If there is a case for more lorry parking in the area, C2/2013 makes clear that truck stops can be built up to two miles distant from the SRN. This could avoid the need to use Green Belt or prime agricultural land and potentially make use of brown field sites. The existing signed service at Barnsdale Bar South might be expanded and developed into a larger formal truck stop, making full use of the current unused derelict land and buildings. The Appellant does not appear to have explored this or other possibilities for truck stops.

Report to Planning Committee 12th December 2017 (Document CD83)

96. The written report to the Planning Committee recommending that permission be granted did not make clear that the identified gaps exceeding 28 miles between MSAs included a 10 mile stretch of non-motorway trunk road.

Green Belt

97. A new MSA supporting the SRN, regulated by HE, cannot be described as local transport infrastructure and it is, therefore, inappropriate development in the Green Belt. The expansion of the MSA at Cobham is not comparable as the need seems to have arisen from an increased need for HGV parking in the local area and the Inspector was not considering a brand new MSA. The case of the Rugby MSA was again quite a different proposal as it was a brownfield site and not in the Green Belt. (Documents APP12 appendix 3 & 5)

98. As inappropriate development in the Green Belt, the proposal is, by definition, harmful. In addition there are other harms, the key ones being: adverse impact on openness, visual impact, damage to the landscape, loss of prime agricultural land, environmental impacts on health and well-being of local residents, driver safety on the Marr roundabout and increased congestion at the roundabout, on the A1(M) slip roads, the SRN and the A635.
99. The Appellant has failed to demonstrate very special circumstances in terms of 'need' in the interest of driver safety and welfare.

Other matters

100. It is not understood why Historic England was not consulted given that the appeal site is visible from the grounds of the Grade 1 Brodsworth Hall. In addition, the setting of Marr, a conservation area, would be adversely affected. These findings were made in the Golders Landscape Character and Capacity Study when considering the potential for development. (Document CD89 pages28-30) Visitors to the Hall, in particular those in coaches would have a view of the site when arriving and leaving.
101. As a facility intended to be open 24 hours a day, there would be intrusion at unsocial hours from lighting, including on signage, and from constant activity.

OTHER ORAL AND WRITTEN REPRESENTATIONS

Oral representation

102. Mrs Mitcheson addressed the inquiry as a resident of Green Lane and owner of Long Plantation (protected by a blanket TPO). (Document INQ9) She is concerned about disturbance from noise, light pollution and litter. In addition, reliance should not be placed on Long Plantation to screen the development, nor should it be seen as an integral part of the scheme since it is not owned by the Appellant. The monetary, educational and ecological value of the woodland would be compromised should the development go ahead.
103. Long Plantation is a privately owned piece of land some 56-65m in width, rather than 70-90m as claimed, and since it is wholly deciduous the canopy is not closed for 6 months of the year.

Written responses to the notification of the appeal (red folder in appeal file)

104. Nine representations were received including from a Ward Councillor, the Clerk to Brodsworth Parish Council, from the Chair of the JRP and from the Chair of Scawsby Green Lane, Town View and Pickburn Neighbourhood Watch.
105. Two individuals have written **in support** of the development commenting that it would provide local employment and provide a needed facility to serve the motorway.
106. The remaining representations **oppose** the scheme primarily on grounds of:
- Green Belt harm
 - Lack of need
 - Air pollution
 - Loss of agricultural land
 - Traffic congestion

Written representations received in response to the planning application

107. Representations received in response to the planning application are summarised in the officer's report to the Planning Committee at sections 4, 5 and 6 of document CD83. They included 53 letters of objection and six letters of support and representations from Councillors, Parish Councils and the Campaign to Protect Rural England.

THE CASE FOR MOTO HOSPITALITY LIMITED

The case for the Appellant is summarised in its opening and closing submissions

(Documents INQ3 and INQ16)

The main points are:

108. The appeal proposal would meet a need for MSA provision in this area and is therefore entirely consistent with the principles of sustainable development. The proposal is appropriate development within the Green Belt, but even if that is not accepted very special circumstances have been demonstrated, and the benefits would clearly outweigh any harm to the Green Belt and any other harm.

The need for an MSA***The policy approach***

109. Circular 02/2013 says MSAs perform an important road safety function by providing opportunities for the travelling public to stop and take a break in the course of their journey. Road safety is at the heart of the Government's advice on the spacing of MSAs and other roadside facilities. The safety benefits to motorists of being able to stop and break their journey is set out in numerous documents from the Government and bodies such as the Automobile Association (Document APP10 para.9.2.1-9.2.8).

110. The maximum distance between MSAs should be no more than 28 miles. The distance can be shorter, but to protect the safety and operation of the network, access and egress must comply with the requirements of the DMRB. The distances referred to in the guidance are regardless of route choice and the merits of the spacing of sites beyond conformity with the maximum and minimum spacing criteria established for safety reasons need not be considered. (Document CD98 para.B8)

111. The existence of a gap of more than 28 miles should be given very substantial weight. Whilst within that gap there is a section of trunk road, the A1, linking two sections of motorway, the facilities on that road do not fill the gap between MSAs. Many thousands of vehicles each day have to use this stretch of trunk road to pass from one part of the A1(M) to the other, as part of their motorway journey. The safety and rest needs of the drivers of those vehicles do not reduce or change when they are travelling along the relatively short length of trunk road. The policy refers to a gap between MSAs of no more than 28 miles and that cannot be satisfied by roadside facilities which fall short of the requirements for MSAs.

The need in this case

112. Between Woodall and Ferrybridge services, the gap is 31 miles and between Ferrybridge and Doncaster North (taking the longer route) the distance is 29 miles. The Council's argument that the latter only "marginally exceeds" the 28 mile gap ignores the fact that 28 miles is a maximum – not a minimum or average. If 28 miles is exceeded, then further MSA provision is required.
113. The distance between Ferrybridge and Blyth, the nearest services on the A1(M) to the south, is 24 miles which is still substantial having regard to the Circular's aim to secure the safety of motorway users. The safety and welfare benefits of MSA provision are present even where the gap between facilities is less than 28 miles, although there is a particular need once the gap is greater than 28 miles, as here.
114. It is also relevant to consider the distances from Wetherby, even though Ferrybridge lies further south. That is because for those travelling on the A1(M) a diversion is required in order to access Ferrybridge. The distances between Wetherby and Blyth, Woodall and Doncaster North (by whichever route) are substantially greater than 28 miles (43 and 50 miles respectively).
115. In addition to the need for an MSA, there is a specific need in this area for facilities for HGVs. The 2017 National Survey of Lorry Parking shows that the total number of HGVs parked in the Yorkshire and Humberside region exceeds the lorry park capacity, with utilisation over-capacity at Ferrybridge and Woodall services. This lack of capacity at services to the north and south of the site helps explain the prevalence of off-site lorry parking in this area and supports the need for the proposal. (Documents APP12 appendix 16 & APP10 para.9.2.12)
116. There is a clear need for an MSA in the area.

Do the facilities on the A1 meet the need?

117. The services on the A1 do not detract from the need that has been identified and cannot substitute for a new MSA. The facilities available at the services are agreed in the Statement of Common Ground (Document CD92). The A1 services do not provide the mandatory facilities that are required for an MSA which have been identified by the Government as what is required in order to cater for the safety and welfare of drivers.
118. The parking at these services does not even meet the C2/2013 requirements for trunk roads; informal parking areas cannot be relied on. None offers 24 hour hot food and drink for consumption on the premises. None has shower facilities for HGV drivers except Barnsdale Bar South, and those facilities are available only during the opening hours of the diner. None has a cash operated telephone. None of the services has access and egress compliant with DMRB requirements and accident records suggest correlation with deficient access and egress provision (Document APP2 section 3.4). Use of these facilities to meet the identified need should not be encouraged and they cannot be regarded as a substitute for proper MSA provision in accordance with the Circular.
119. It is right to assess the access and egress to the A1 facilities by reference to the tapers recommended for petrol filling stations in Table 2/2 of DMRB TD 41/95. No other tapers are recommended for petrol filling stations and each of the A1 facilities provides other services beyond petrol, so turning traffic

movements greater than for a filling station only would be expected. The motorway traffic using the A1 stretch is well over 30,000 vehicles per day. It cannot seriously be suggested that facilities whose access and egress are inappropriate for turning traffic of more than 450 vehicles per day are sufficiently safe to be an acceptable alternative for the appeal proposal. (Documents APP2 paras. 3.4.7 – 3.4.17 & INQ7 pages 2/6, 2/7, 2/14, 2/15).

120. The final reason why the A1 facilities cannot be relied on to meet the identified need is that they are all likely to cease to exist when the A1 is upgraded to motorway status as intended by the Government. An MSA could not be provided on the newly upgraded motorway because all of it would be too close to Ferrybridge. Operators require a 10 mile minimum distance between MSAs.

(Document APP10 paras. 9.1.23, 9.1.25, 9.1.28)

121. Any scope for improving the A1 facilities is limited since they are all in the Green Belt. All fall within grade 2 agricultural land on the Council's plan save Carcroft which is shown as being in a grade 3 area. However, the plan does not differentiate between grade 3a and grade 3b, so the area surrounding Carcroft could be best and most versatile land (Document LPA2 Fig.5.1).

122. Non-signed facilities off the A1 and M18 suggested by the JRP do not offer an attractive alternative. None provide the mandatory MSA facilities and it is undesirable to have motorists leaving the motorway and using the local road network to access facilities. Furthermore, the JRP identified junctions along the A1 as dangerous.

Are there alternative sites for an MSA?

123. It is agreed with the Council that if an MSA is required, there is no better site than the appeal site.

Is the development inappropriate in the Green Belt?

124. The development is not inappropriate as it comprises local transport infrastructure which can demonstrate a requirement for a Green Belt location; it preserves openness and does not conflict with the purposes of including land in the Green Belt. It is thus one of the exceptions provided for by paragraph 146 of the NPPF.

125. The Council's contention that paragraph 146 does not apply to the construction of new buildings in the Green Belt is wrong for the following reasons:

- The observation of Richards LJ in *Timmins* (para.31) that paragraph 89 of the 2012 NPPF (now paragraph 145) "*sets out the only exceptions*" to the general rule that the construction of new buildings is inappropriate development is obiter. The Court of Appeal in that case had to decide whether material change use of land to use as a cemetery fell within paragraph 89 or paragraph 90 (now paragraph 146). The Court did not have to decide whether paragraph 90 could apply to development falling within one of the exceptions listed in that paragraph where built development was involved. *Timmins* is not, therefore, binding upon the Secretary of State in determining this appeal.
- The proper approach to paragraphs 145 and 146 is that paragraph 145 exempts only the construction of new buildings in the Green Belt as listed in

that paragraph, and not material changes of use or other built development. Paragraph 146, conversely, exempts "Certain other forms of development" but plainly those other forms of development may include the construction of new buildings.

126. To interpret paragraph 146 as excluding "other forms of development" that include (as part of the development) the construction of one or more new buildings would be to denude paragraph 146 of much of its effect. Mineral extraction, for example, will often require the construction of new buildings;⁶ so will the provision of local transport infrastructure. Most obviously, the Government's Planning Practice Guidance (PPG) makes clear that Neighbourhood Development Orders and Community Right to Build Orders can be used to approve the building of (inter alia) homes, shops, businesses and affordable housing for rent or sale.⁷ Indeed, the relevant legislation expressly contemplates that housing will be developed using a Community Right to Build Order (and then retained as housing that is affordable in perpetuity). It would be contradictory to permit the forms of development listed in paragraph 146 as "not inappropriate" only then to require very special circumstances to be shown in respect of the construction of any new building included within the development proposal.
127. In summary, paragraph 146 can in principle apply where a development within one of the categories set out in the paragraph includes buildings.

Local transport infrastructure?

128. There is no definition of this phrase in the NPPF but the proposed MSA is local transport infrastructure. The 2018 Cobham appeal decision supports this. The inspector decided additional HGV parking in an existing MSA would be local transport infrastructure. The basis of this conclusion was that the HGV parking was needed "in the local area". She was not deterred from this conclusion by the fact that the journeys made by the HGVs using the facility would be long trips and not local ones. (Document APP12 appendix 3)
129. The same reasoning applies to the present case. This is transport infrastructure and there is a need for it in this local area, even though clearly many or most of those using it would be on journeys that might reasonably be considered greater than local in length. There will be other infrastructure projects, for example projects of national significance, which do not require to be located in a specific area. This project does have specific locational requirements; it is truly local transport infrastructure.

Green Belt location required?

130. It has been demonstrated that this is a proposal which requires a Green Belt location; there is nowhere else that is suitable. It is common ground that if there is a requirement for an MSA in the vicinity, it is likely that it would have to be located in the Green Belt because the majority of the strategic highway runs through the Green Belt.

⁶ that is particularly the case if regard is had to the very wide definition of "building" in s. 336 of the Town and Country Planning Act 1990

⁷ See Planning Practice Guidance Paragraph: 010 Reference ID: 41-012-20140306

Openness

131. Any correct analysis in relation to openness has to start from the premise that some development falling within the categories set out within paragraph 146 of the NPPF can be appropriate, otherwise the proviso about openness would make paragraph 146 pointless; see *Samuel Smith* paragraph 16.
132. The question of preservation of openness, therefore, has to be considered in the context of the fact that paragraph 146 plainly contemplates development which has a significant physical impact. For example, quarrying and mineral working could have such an impact. Then again, there is development under a Community Right to Build Order or a Neighbourhood Development Order (which in the latter case can include development which it is decided would have significant environmental effects and therefore requires environmental impact assessment). Similar considerations apply with respect to local transport infrastructure. As an example, the additional HGV parking proposed in the 2018 Cobham decision involved hardstanding and HGV parking on an area that was previously a grass slope.
133. The question is whether, having regard to that context, there would be any material effect on the openness of the Green Belt as a result of the development. It is common ground that spatial and visual matters are to be examined.
134. In relation to the spatial aspect, there would be physical development, but in the context of paragraph 146 it would not be material. Buildings would occupy only 4% of the site, hardstanding (parking, roads, pedestrian provision) 40% and 56% of the site would be landscaping. (Document APP8 Figure.3)
135. In relation to the visual aspect, the Council's concern is with the effect on openness arising from the planting proposals. However, the existence of substantial planting is a characteristic of the area around the appeal site, for example Long Plantation, Duckers Holt and the Stane Hill Plantation. That characteristic of the surrounding area is also recognised in the landscape analyses prepared for the Council by Ecus and Golder Associates. (Documents 88 pages 55-65 & 89 pages 28-30)
136. The main view reduction across the site would be from the A1(M). Those views are inevitably fleeting and of relatively low importance in any planning judgement. Moreover, the findings of the LVIA submitted with the application are agreed. That assessment concludes that there would be no more than minor adverse visual and landscape effects once the scheme matures and that the motorway corridor is of low sensitivity in both landscape and visual terms. (Document CD76 paras.534, 543 & pages 168-171)
137. Openness from Green Lane would not be reduced by the appeal proposal. The site is on lower ground and at some distance from the viewpoint and there would be no breach of the skyline. Therefore, whilst the open land that was currently visible would be replaced in the view by trees and landscaping, there would not be any reduction in openness.
138. Overall, given that paragraph 146 contemplates significant development and that the landscape and visual impact of the proposal would not be significant once planting has matured, it is concluded this proposal would preserve the openness of the Green Belt.

Purposes of including land in the Green Belt

Purpose (c) –safeguarding the countryside from encroachment

139. The only Green Belt purpose with which the proposal could be said to conflict is encroachment on the countryside. However, the test of lack of conflict with the purposes of including land in the Green Belt within paragraph 146 has to be read in the light of the fact that the paragraph clearly contemplates development of substance, the semi-urban nature of area ALS5 as assessed in the Council's Green Belt Review, and the presence of the A1 (M) to the west of the site. In that context, there would be not be any material encroachment on the countryside. (Document APP12, appendix 4 page 19)

Purpose (e) – assist urban regeneration, by encouraging recycling of derelict and other urban land

140. There is no conflict with this purpose because there are no brownfield alternative sites for the proposal, and no evidence that the development would prejudice development of any brownfield or other urban sites.
141. The Council's concern that provision of a lodge would affect the viability of hotels in the urban area and affect other facilities by discouraging people from visiting the urban area is rejected. The provision of lodges at MSAs is common, accepted and not contrary to policy. C2/2013 contemplates that they may be permitted and they continue to be permitted. Ninety six of the 116 MSAs in England have lodges and all Green Belt MSAs with sufficient space on their sites have a lodge. (Documents APP10 para.9.3.21 APP12 appendices 3, 5 & 8)
142. That MSA lodges provide overnight rest accommodation for long distance road users is confirmed by a recent survey at nearby MSAs. (Document APP12 appendix 12) The range of facilities provided at MSAs, including hotel and retail facilities, are designed to be attractive to motorway drivers rather than becoming a destination in their own right. It has been accepted that they are unlikely to have any significant adverse impact on the vitality or viability of any nearby centre.
143. Whilst acknowledging that the emerging Local Plan is at an early stage and thus has limited weight, it nonetheless shows the Council's current thinking. Emerging policy 13(d) supports "secure lorry parking facilities and roadside service areas along the SRN (including overnight stay accommodation and toilet facilities, where possible)." Whether that is addressing HGVs needs only, as argued by the Council, or is addressing overnight accommodation in general, it can be seen that the Council is clearly recognising that such accommodation is appropriate and that it is not concerned about the impact of roadside accommodation either on town centres or on investment in the urban area. (Document CD86 page 24)
144. Overall, it cannot be said that the appeal proposal is in conflict with the purpose of assisting in urban regeneration.

Conclusion on appropriateness

145. For the reasons given, the proposal is not inappropriate development in the Green Belt

If inappropriate – effect on openness and Green Belt purposes

146. If, however, it is concluded the proposal is inappropriate, paragraph 146 of the Framework does not set a context for judgements about effect on openness and the Green Belt purposes. Nonetheless, for the reasons already set out, any effect of the proposal on openness and Green Belt purposes is limited, even if material. Further, if an MSA is needed, every reasonable effort has been made to keep those effects to a minimum.

If inappropriate – what other harm***Landscape, loss of countryside and visual harm***

147. The findings of the LVIA have been accepted and it is common ground that once the development and landscaping has matured, there would be no impacts that would be more than minor in landscape and visual terms.
148. Even after one year of operation, the impacts would be modest, and even more modest than suggested by the matrix. The visual effects of the proposal have only been considered in terms of the extent to which the on-site planting would develop. The Community Woodland to the north is itself maturing and it is extremely likely that the site would not be visible from the agreed viewpoint or any other viewpoints along the Community Woodland paths within the next 5 to 6 years; with no visual effect at all by year 15. (Document APP6 para.7.3.3)
149. Whilst the site is within Landscape Character Area (LCA) C2 judged to be of high landscape value, as assessed in the Ecus Borough-wide Landscape Character and Capacity Study; there is wide variety within it. The Study distinguishes between the area to the west of the A1, which retains its distinctive rural character and the “more diverse modern influences to the east”. It also refers to the “lower landscape quality” east of the A1. Furthermore, even in relation to LCA C2 overall, the Study states that although the area is given an assessment of “high landscape value” in the light of the ASLV and the country parks in the area (the appeal site falls within none of these), the character area “as a whole” is judged to be of “moderate landscape quality”. (Documents CD88 pages 55, 56, APP6 section 8.3)
150. Although the MSA would be visible from the ASLV, such visibility is not a breach of the ASLV policy in the UDP (ENV 17), because ENV 17 does not deal with views from the ASLV, but only development within it. (Document 85)

Loss of agricultural land

151. The survey by Savills that was initially submitted suggested that there would be a significant loss of grade 2 land. However, a further more detailed agricultural land assessment has now been undertaken by Mr Askew of Tim O’Hare Associates which shows that only 36% of the site is best and most versatile land falling within grade 2 or 3a (with only 3.6 ha or 23% falling within grade 2). The majority of the land to be developed is grade 3b, and therefore not best and most versatile. Further, the loss of the site to agriculture would not adversely impact on the agricultural unit of which it now forms part. (Documents CD73, APP10 paras.8.4.1-8.4.5, APP9 appendices 16 A & B, APP12 appendix 7)
152. The differences between the reports is set out in document APP9, appendix 16B. In terms of the results, Savills determined one soil type, whereas Mr Askew

determined three types. Also, Savills determined soil wetness as the only limitation but Mr Askew also determined soil droughtiness as a limitation at some profiles. Savills decided the top soil was calcareous, but Mr Askew disagreed and gave his reasons, based on the Soil Survey Field Handbook. Finally, Savills said there was only one type of wetness, but Mr Askew identified a range of wetness on the site.

153. Given Mr Askew's high qualifications, great experience, more meticulous methodology and rigorous assessment, it is not surprising that his results are more precise than those of Savills. His assessment is clearly to be preferred. It accords with the evidence on behalf of the owners that the land is of poorer quality near the roundabout; that is where Mr Askew identifies grade 3b land.
154. The points raised at the inquiry by the JRP in their written submission in respect of the agricultural land classification of the site have been comprehensively addressed in Mr Askew's written response. (Document INQ11)
155. The relevant requirement in CS policy CS18 is that proposals "protect high quality agricultural land (grades 1, 2 and 3a) insofar as this is consistent with the Growth and Regeneration Strategy (as set out in Policy CS2)". Any conflict with policy CS18 is avoided in this case because the appeal proposal falls within policy CS2(C), which provides that "a range of transport schemes will be developed and managed to support the settlement hierarchy and improve access to jobs and opportunities across the borough". (Document CD84)
156. In summary, although there is best and most versatile land at the site, the amount is limited and less than previously thought. Further, that limited loss would not adversely affect the viability of the agricultural unit. Quite apart from the fact that there are no suitable alternative sites, loss of best and most versatile agricultural land is not a sound reason to dismiss the appeal.

If inappropriate, are there very special circumstances

157. There are very special circumstances which clearly outweigh the harm to the Green Belt and any other harm. Reliance is placed on what has already been said about the importance for safety reasons of proper MSA provision as emphasised by Government in C2/2013, on the need for an MSA in this area, and on the lack of alternatives.

Scale of the proposal (Documents APP10 paras. 9.3.10-9.3.29, APP12 appendix 5 & 9)

158. The scale of the proposal is entirely justified and is in line with the type and scale of facilities that experience elsewhere has shown motorway users value and require. The principle of lodge provision is dealt with above under Green Belt purposes and the size of it accords with those provided in other MSAs, including those in the Green Belt and recently permitted. The same can be said of the amenity building and retail provision. There is nothing unusual in the size of the amenity building or lodge proposed here.
159. The drive thru' coffee unit is an appropriate facility at an MSA, because it is a way of providing motorists with a break from their drive. The only difference from other more traditional facilities is that they do not have to leave their car.
160. The proposal is particularly economical in its land-take as compared with expectations for MSAs contained in C2/2013, because although the Circular

requires separate parking for lodges where they are provided as part of MSAs, it has been agreed with Highways England in this case that no separate parking provision is required.

161. MSAs are there to serve people travelling on the motorway network, and they need to be sufficiently attractive to provide motorists with facilities they expect and want. There is good reason for what is proposed. There is no evidence that either the lodge or retail facilities would have any detrimental impact on town centres, or investment in urban areas or derelict land. Highways England supports the proposal, so it is clearly satisfied that the facilities provided would not be a destination in their own right leading to an overall increase in trips.
162. Even if the lodge were not provided and the retail facilities reduced in scale, the effect on the Green Belt would not be materially less. The buildings would cover only 4% of the site. The parking provision would not reduce, because that is based on traffic flow and not the scale of retail facilities and in this case there would be no separate parking provision for the lodge.

Improving the transport network

163. The proposed MSA is supported by the general objective of policy CS9 to make an overall contribution to the improvement of the transport network. It does so by fulfilling a need for an MSA at this location which would in turn improve the safety and welfare of road users. Support is also to be found in CS9(D) specifically which states (**Document 84 page 53**)
- "Proposals will be supported which improve the efficiency of freight transport, and provide alternatives to roadside transport where possible, including...*
- 2. facilities for lorry parking and roadside service areas, where appropriate..."*

164. As with emerging policy 13(D) the Appellant does not concur with the Council that this is addressing freight transport only but rather that "roadside service areas" is a general term, and providing for them ensures the Council is complying with the Government guidance in NPPF. (**para.104(e) and fn42**)

Economy and employment

165. The employment benefits of the appeal proposal would be significant. Some 215 jobs are likely to be created for local people. There would be a range of jobs available and a comprehensive training programme provided. This would benefit the local economy. (**Document CD70 page 19**)

Policy overview

166. In relation to national guidance, the appeal proposal is not inappropriate development in the Green Belt. Further, it comprises sustainable development in that it would deliver economic, social and environmental objectives, while providing an MSA where one is much needed, in fulfilment of the NPPF's policy on roadside services. For the reasons set out above, even if the proposal is inappropriate development in the Green Belt, very special circumstances in this case clearly outweigh any harm to the Green Belt and any other harm. (**Document APP10 para.11.2.2 and NPPF para.104 & fn 42**)
167. There is no conflict with the Development Plan read as a whole. The Council's assertions of policy conflict, in particular with policies in relation to countryside (CS3), agriculture (CS18) and the growth and regeneration strategy (CS2) have

to be considered in that context. The Core Strategy contains policy CS9, which supports the proposal insofar as it would improve the transport network, and which also contains specific provision for roadside service areas. But even if conflict were to be found, the need for the MSA provides the strongest material consideration indicating that planning permission should be granted. (Document 84)

Other matters

168. A number of issues raised by third parties, including effect on above-ground built heritage, air quality, impact on local water course, aquifer and flooding, noise, light, the degree of public consultation, health, impact on wildlife and crime are dealt with in the written evidence. None justifies refusal of planning permission. All were considered fully by the Council and relevant consultees, and no objection raised. (Documents APP10 paras.8.5.4 & section 10, & CD83)
169. In response to specific points made by the JRP not dealt with above:
- a) The ES concluded that there would be no direct or indirect impact on heritage assets that would affect their significance. Historic England (responsible for Grade 1 listed Brodsworth Hall) was not consulted about the application but nonetheless has subsequently been made aware of the proposal. There would be no views of the site from the Hall and its setting would not be affected.
 - b) Views of the site afforded to coach travellers visiting the Hall would not normally be assessed in an LVIA. In this case, for those looking out and towards the site, any effect would be influenced by intervening trees and hedgerows and primarily by the motorway in the foreground (including the elevated section at junction 37) which would, in part, screen the site. Once landscaping matured, the site would not be visible.
 - c) The Environmental Statement had scoped the Marr Conservation Area out of the area in respect of which an assessment of potential effects on archaeological and cultural heritage was required. (Document CD76 chapter 8)
 - d) Reliance placed on the findings of the Golder Landscape Character and Capacity Study that development of the appeal site should be resisted is misplaced. The site assessed was much larger in size and the development to be accommodated not comparable. Moreover, if development was to take place the report stated it should be to the east of the A1(M). (Document CD89 pages 28-30)
 - e) The occurrence of observed traffic queues at the roundabout are not disputed but December is not a representative month and the Appellant's figures are mean maximum and so would not reflect the daily variation that would occur. The Appellant's traffic survey data and methodology, using standard industry practice, has been agreed with HE who also commissioned its own independent survey to corroborate the assessment work. Both HE and the Council are satisfied that there would be no severe effect on the road network which would remain within capacity. (Documents CD93 & CD94)
 - f) The issue of air quality was fully assessed within the ES and the conclusion reached that all impacts during construction and operation would have a negligible impact on air quality. There is no evidence to the contrary. (Document CD76 section 6)
 - g) The reference to HS2 in the JRP written submission is misplaced as it is not committed development.

h) The design has incorporated a lighting scheme aimed at ensuring levels would not increase above existing levels having regard to existing levels at junction 37.

(Documents CD76 section 11 & APP6 pages 16 & 17)

Conclusion

170. The appeal should be allowed:

- An MSA is needed in this area and the scale of facilities proposed is justified;
- There are no suitable alternatives;
- The appeal proposal comprises appropriate development in the Green Belt;
- If it is inappropriate, the need for the development and its benefits comprise very special circumstances which clearly outweigh harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal; and
- There is no conflict with the Development Plan overall, and even if there is, the need for the MSA in this location comprises a material consideration which points strongly to the grant of permission.

PLANNING CONDITIONS AND PLANNING OBLIGATION

171. A list of conditions that might be necessary should planning permission be granted was discussed and refined during the course of the inquiry. The finalised set as agreed by all parties and the reasons for them are set out at Appendix 3 to this report. For those conditions which comprise pre-commencement conditions, and in accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Appellant has confirmed in writing that their inclusion and their wording is necessary and appropriate to enable the grant of planning permission. (Document INQ13)

172. **Conditions 1 and 2** are standard conditions relating to the commencement of the development and listing the approved drawings. Not all drawings have been included as, for example, some are illustrative and others demonstrate vehicle tracking. Appendix 1 to this report includes a brief comment as to their inclusion or exclusion.

173. **Conditions 3, 4 and 5** are concerned with limiting hours of construction, providing of a Construction Environmental Management Plan and limiting noise levels during construction. These are required to protect neighbouring amenity and to safeguard the environment. For the same reasons **condition 6** is intended to limit noise levels from the subsequent operation of the development. In the interests of appearance and protecting the environment, **condition 7** requiring details of external materials, **condition 12** addressing protection of retained trees, **condition 13** concerning planting and **condition 17** requiring details of lighting are promoted.

174. **Condition 8** addressing a BREEAM assessment and **condition 9** addressing CO2 emissions from the development are aimed at promoting sustainable development and minimising the effects of climate change. **Conditions 10, 11 and 16** requiring electric vehicle charging points, bus stops along the A635, and the submission of a Travel Plan are aimed at encouraging sustainable modes of travel.

175. To protect the ecological and archaeological interests of the site a Biodiversity Enhancement Master Plan is required by **condition 14** and a Written Scheme of Archaeological Investigation by **condition 15**. Finally a Construction Traffic Management Plan is required by **condition 18** to minimise any effect on neighbouring highways during construction of the development.
176. A fully executed **planning obligation made under s106 of the Act** is to be found at document CD97 wherein the development shall not be occupied until such time as the Travel Plan Transport Bond has been paid to the Council. The Bond shall only be used by the Council in the event that agreed targets in the Travel Plan are not met and then only towards the travel and transport needs which directly arise from the development. In the event that any part of the Bond is not expended within five years, the Council shall repay the money with any interest accrued. In the event that the appeal is dismissed, the deed would cease to have effect.
177. The obligation is necessary to ensure delivery of the Travel Plan targets. It is thus necessary to make the development acceptable, is directly related to the development, and is fairly and reasonably related in scale and kind. A CIL Compliance Statement from the Council which draws support from its published Supplementary Planning Document *Development Guidance and Requirements* is included at document INQ1.

INSPECTOR'S CONCLUSIONS

[Numbers in square brackets [n] denote source paragraphs]

178. The main consideration in this case is whether the proposal amounts to inappropriate development in the Green Belt having regard to Development Plan policies and the provisions of the NPPF and if so whether the potential harm by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations.

Inappropriate development?

Planning policy - application

179. Saved Doncaster Unitary Development Plan (UDP) policy ENV3 addresses proposals in the Green Belt and states that development will not be permitted except in very special circumstances other than for a number of purposes which are listed. None of those exceptions embrace the construction of a Motorway Service Area (MSA) so the proposal would comprise inappropriate development when assessed against that policy. However, the UDP was first adopted in 1998 and the accompanying text indicates that the policy was aimed at reflecting Government guidance then in force in the *Planning Policy Guidance 2 Green Belts*. That document has since be replaced by more up to date Green Belt guidance in the National Planning Policy Framework (NPPF). In these circumstances, inconsistency with NPPF Green Belt guidance is a material consideration. [26]
180. The Council's Core Strategy (CS) is a more recent document having been adopted in May 2012 after the publication of the first NPPF. Policy CS3 states that one of the key considerations for land in the Green Belt is to apply national policy, including a presumption against inappropriate development other than in

very special circumstances. The policy is, therefore, consistent in its phraseology with national policy in the current NPPF. Criterion (C) 4 of the policy goes on to say that proposals outside development locations will only be supported where they would “preserve the openness of the Green Belt (and ...) and not conflict with the purposes of including land within them”. [20]

181. Against this background, in assessing whether the proposal constitutes inappropriate development, it is therefore apt to apply current national policy. Paragraphs 145 and 146 of the NPPF provide guidance as to what development might be found to be not inappropriate.

Paragraph 145 or 146 of the NPPF?

182. Starting then with paragraph 145, this states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than for specified exceptions. Notwithstanding the small percentage of the overall site which the Appellant says would be occupied by building; the amenity building, lodge, drive through and fuel filling station are all significant and substantial elements of the proposal. There is in addition, the canopy over the fuel pumps, and ancillary structures to the rear of the amenity building such as the biomass and energy centres and fenced compounds. The construction of these buildings does not fall within any of the exceptions listed in paragraph 145 and assessed against that paragraph, therefore, the proposal comprises inappropriate development. [28, 31, 50, 134]
183. Since the follow on paragraph, paragraph 146, of the NPPF, begins by stating “Certain other forms of development are also not inappropriate ...” that must mean forms other than the construction of buildings. That would give that sentence its ordinary meaning and would indicate that the categories listed (a) to (f) in paragraph 146 were forms of development other than the construction of buildings. If that is right, paragraph 145 is a closed list addressing all circumstances where the construction of buildings is not inappropriate and, since the appeal proposal involves the construction of significant buildings, paragraph 146 would not apply. [50, 51]
184. The Appellant says the fact that buildings are included in the proposal does not disqualify it from being considered under paragraph 146. In support, attention is drawn to categories 146(a) mineral extraction and 146(f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order. These, the Appellant says, would be likely to involve the construction of buildings particularly given the definition of “building” within section 336 of the Act which includes any structure or erection and any part of a building as so defined but excludes plant or machinery comprised in a building. However, to accept that argument would be to interpret the opening sentences of paragraphs 145 and 146 in a manner other than to give them their ordinary meaning. Moreover, as was pointed out by the Council, other types of development could be brought forward under those categories in paragraph 146 without involving the construction of buildings. Examples might be an extension of a mineral extraction area, the provision of a car park or use of land as a playground. [52, 124-127]
185. I conclude from the above that the proposal does fall to be considered under paragraph 145 of the NPPF and that it comprises inappropriate development in the Green Belt.

Local transport infrastructure which requires a Green Belt location?

186. However, in the event that the Secretary of State does not agree and finds that the proposal should be considered under "Certain other forms of development" addressed under paragraph 146, I go on to consider whether the proposal would come within category (c) – local transport infrastructure which can demonstrate a requirement for a Green Belt location.
187. There is no dispute between the parties that the proposal comprises transport infrastructure and I find no reason to disagree. The disagreement is whether it can properly be described as "local". There is no definition of the term "local transport infrastructure" to assist.
188. The Department for Transport's Circular 02/2013 (C2/2013) says MSAs and other roadside facilities perform an important road safety function. The network of service areas on the Strategic Road Network (SRN) has been developed on the premise that opportunities to stop are provided at intervals of approximately half an hour. That dictates the recommended distance between MSAs. The Circular is clearly aimed at providing services for the benefit of drivers on the SRN (and providing MSAs for the benefit of drivers on the motorways in particular) and not aimed at catering for the needs of drivers on the local highway network. Indeed, caution is expressed in paragraph B11 in relation to trip mileage where there is potential for the facilities to become a destination in their own right. [30, 53, 129]
189. Whilst one element of the overall scheme would assist in addressing a shortage of HGV parking in the area, there is no other identified local need which would call for an operation of the size proposed to be built. There is no local need for a new MSA to be located on the appeal site; the need arises from the distance between existing MSAs on the motorway network which happens to suggest there may be a need in the area. That, in itself, is not sufficient to conclude that the proposal is local transport infrastructure. [115]
190. I find that the proposal does not comprise local transport infrastructure and thus does not fall within paragraph 146 of the NPPF. In reaching that view I have had regard to the appeal decision relating to the Cobham MSA on the M25 drawn to my attention by the Appellant. However, that proposal was for additional HGV parking within an existing MSA. Whilst the inspector in the circumstances of that case found the proposal to constitute a local transport infrastructure facility, it was not a proposal for a new MSA, the need for which is dictated by the distance between services on the motorway network, that was being considered. I do not find it directly comparable such that it leads me to a different conclusion. [97, 128]
191. If, contrary to my view, the Secretary of State was to find the proposal did constitute local transport infrastructure, a requirement for a Green Belt location would be necessary to satisfy paragraph 146(c). It is common ground between the parties that should a need for a new MSA be accepted on the basis of the requirement to fill a gap between existing motorway services, then there is no other suitable site to be preferred to the appeal site. The Appellant's Alternative Sites Assessment and subsequent supplementary evidence has not been challenged and I find no reason to doubt the findings. Thus, a requirement for a Green Belt location could be demonstrated. [41-43, 123, 130]

Preserves openness and does not conflict with the purposes?

192. Paragraph 146 of the NPPF makes clear that even if the proposal falls within 146(c) there are also the provisos of preserving the openness of the Green Belt and not conflicting with the purposes of including land within it.

Effect on the openness of the Green Belt

193. Paragraph 133 of the NPPF sets out the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open and identifies the essential characteristics as openness and permanence.

194. The appeal site forms part of a long swathe of open agricultural fields stretching between the A635 to the south and Green Lane to the north and between the A1(M) to the west and Long Plantation to the east. The only interruption of substance are the two woodland areas, Stane Hill and Stane Hole Plantations. The open expanse of farmland is devoid of development save for the overhead cables and the telecommunications mast at the southern extremity and is physically and visually separated from suburban development to the east and north-east by Long Plantation. In context, the main detractor from the openness of the area within which the site sits and is seen is the existing motorway and the activity along it, but this is contained within well-defined linear boundaries as it passes through the countryside. [7-11, 15]

195. Whilst the Appellant says some 56% of the site would be taken up with landscaping, that still results in almost half of the 15.1 hectare site covered by built development – that is the buildings and the hardsurfaces for parking and vehicular and pedestrian circulation. Given that the facility would be open 24 hours a day, 365 days a year, there is unlikely to be any time when there would be no activity on the site or any time when the extensive areas of parking would be empty, albeit that it would be likely to be quieter late at night and in the early hours of the morning. [31, 58, 101, 134]

196. At present, the appeal site seamlessly forms part of a much larger open area of agricultural land. In spatial terms the built development on the site would result in a substantial loss of openness on the site itself and on the open tract of arable land of which it forms part and this would be exacerbated by the presence of parked vehicles including large lorries, coaches and caravans on the extensive parking areas. Furthermore, notwithstanding that openness is already impacted by the presence of the adjoining motorway, the proposal would result in significant additional harm by the introduction of substantial development beyond the contained line of the road, where currently there is nothing of note.

197. In visual terms, I note the findings of the LVIA that after 15 years there would be no more than minor adverse visual and landscape impacts. From my consideration of the evidence and from my site visit I find no reason to conclude differently. It is clear that the landscape design has been carefully developed to assimilate the MSA into its surroundings. A significant part of that is tree planting, in particular around the site boundaries to screen the development from public viewpoints outside the site. Nonetheless, would still be some minor adverse effect at year 15, the accepted industry standard period for LVIA. Moreover, even in visual terms there would be loss of openness in that the continuous open sweep of arable farmland between the A635 and Green Lane

would be eroded by the enclosure of the appeal site even though, in time, that would have a wooded appearance. [35, 46, 59, 135-137]

198. The impact on openness resulting from the development in spatial terms would be considerable and this would not be lessened by screening the development from view albeit that the wooded effect which would in time be achieved would help to integrate the site in its setting. That substantial built development, as is proposed here, does not have any impact on openness because in time it would barely be seen from any public viewpoint is not a good argument. It could be used to justify all manner of built development in the Green Belt, which would not achieve the aim of keeping land permanently open or preserving openness.
199. I have noted the Appellant's argument that paragraph 146 of the NPPF contemplates development which has a significant physical impact. In this respect the categories of development listed under paragraph 146 plainly anticipate some change and I acknowledge that whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. It could be, for example, that an extension proposed to an existing development would have no greater impact overall on the openness of the area. It is a matter of planning judgment. [131-133]
200. For the reasons given above, in my judgement, the appeal proposal would not preserve the openness of the Green Belt.

Conflict with the purposes of including land in the Green Belt?

201. Dispute between the main parties exists only in relation to purposes (c) – safeguarding the countryside from encroachment and (e) – assisting in urban regeneration by encouraging the recycling of derelict and other urban land, as set out in paragraph 134 of the NPPF. [39]
202. Looking at purpose (c) first, the physical and visual separation of the appeal site from existing development to the east and north east, provided by Long Plantation, places the site firmly within the countryside when assessing it both in terms of its character and appearance. Whilst area Adwick Le Street 5 (ALS5) within which it sits in the Council's Green Belt Review is described as reflecting a semi-urban character, that area is far more extensive than the appeal site, accommodates a degree of built development, and in places adjoins built up areas. [60, 139]
203. The presence of the motorway on the western side of the site is an intrusion but motorways, by their very nature, cut through the countryside. The extent of the intrusion is contained by their linear form. In contrast the proposed MSA would result in a substantial spread of built development beyond the well-defined line of the motorway and over an area almost devoid of development. It would result in a significant material encroachment into the countryside and thus be in conflict with purpose (c).
204. With regard to purpose (e), should a need for an MSA be established, then it would be entirely appropriate for it to offer the range of facilities normally to be expected at such an establishment. There is nothing about the scale or range of facilities proposed that would set it apart from other MSAs or that would suggest that it would become attractive as a destination in its own right. The lodge, for example, would offer nothing but basic bedroom accommodation – there would

be no communal lounge, bars or restaurants and no conference room facilities. It is clearly aim at catering for motorway drivers on long journeys in need of a break for the night rather than attempting to attract visitors to the area who would be likely to look for hotels situated in a more inviting environment and offering a better range of facilities. [61, 158-162]

205. There would, of course, be nothing to prevent local people or visitors to the area using the facilities, but their provision on this site would be dictated by the need for an MSA. There is nothing of substance from which to conclude that the MSA would in any way materially affect urban regeneration in the area and thus there is no conflict with purpose (e).

Conclusion on whether the proposal amounts to inappropriate development

206. Since the proposal involves the construction of new buildings, it falls to be assessed under paragraph 145 of the NPPF. The list in paragraph 145 is a closed list which identifies the only exceptions where the construction of new buildings in the Green Belt are not inappropriate. The proposed MSA does not come within any of the exceptions listed and thus comprises inappropriate development.
207. If the Secretary of State disagrees and considers the proposal comes within the description of "Certain other forms of development", then it would fall to be assessed under paragraph 146. However, even if that were to be the case, in my view, the development would still be inappropriate since, for the reasons given, it would not comprise "local transport infrastructure", it would not preserve the openness of the Green Belt and it would be in conflict with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment.
208. The development is in clear conflict with policy CS3 of the Core Strategy which is consistent with national Green Belt policy in the NPPF.

Other harm

Landscape, loss of countryside and visual amenity

209. Consideration of these matters overlaps, to a degree, with the assessment already made in terms of loss of openness in visual terms and encroachment into the countryside. In this respect it is common ground between the main parties that there would be some minor adverse impacts in landscape and visual amenity terms at year 15. With those agreed findings, and notwithstanding that planting on the site would continue to mature thereafter, it cannot be argued that no harm would ensue or that there would be no conflict with the requirement of policy CS3 to protect and enhance the countryside. However, having looked from the young Community Woodland to the north, I do agree that views towards the site from that direction are likely to be obscured in the next few years as the planting in that area matures. [20, 46, 62, 147-150],
210. In addition to the landscape and visual effects, the physical loss of this undeveloped site to built development represents an unwelcome intrusion of an urban nature into the countryside. The presence of the adjoining motorway provides no justification for additional development – indeed it might be argued that there is a need for more protection given that land around the motorway junction might be attractive for development.

Loss of agricultural land

211. Policy CS18 supports proposals which protect high quality agricultural land (grades 1, 2 and 3a) insofar as it is consistent with the Growth and Regeneration Strategy as set out in policy CS2. The accompanying text indicates that where the loss of agricultural land to built development is required to deliver the Growth and Regeneration Strategy, poorer quality land should be used in preference to higher quality land to the extent that this is practicable. [24]
212. The Appellant's recent and detailed Agricultural Land Classification assessment concludes that only some 36% of the appeal site comprises best and most versatile land, the remainder being of only moderate quality. That finding is not disputed by the Council. The Joint Rural Parishes (JRP), however, argue that the initial Agricultural Land Assessment, submitted with the application, which found the whole appeal site to be grade 2 should be preferred given the errors and inconsistencies in the later document. [63, 79, 80,]
213. No technical evidence has been presented to challenge the findings of the most recent assessment and the author of that document has gone to some lengths to explain the reasons why a different conclusion has been reached when compared to the initial assessment. Whilst the errors in the document suggest a lack of care in presentation, I find this insufficient reason, in itself, to discount the findings of a what is clearly a much more detailed assessment of the quality of the agricultural land on the appeal site. [151-154]
214. Nevertheless, the proposal would result in the loss of a sizable amount of best and most versatile land (over one third of the site), albeit less than was originally envisaged and, in that respect, there is conflict with policy CS18. The Appellant's suggestion that such conflict is avoided because the proposal falls within policy CS2(C) is not accepted as the MSA is not aimed at supporting the settlement hierarchy or improving access to jobs and opportunities across the Borough. It is intended to provide for the safety and welfare of motorway users. [155]

Other potential harm raised by the JRP and interested persons

215. I can understand the concern of local people about congestion at the junction as it is clear that they have personal experience of queues at certain times of the day. However, the Transport Assessment undertaken for the Appellant has been prepared in accordance with industry standards and the findings scrutinised and agreed by the local highway authority and Highways England (HE), both of whom concur that the residual cumulative impacts of the development would not be severe and that the appeal should not be dismissed on highway grounds. Indeed, HE also commissioned its own independent survey to corroborate the assessment work. In the absence of any contradictory evidence of substance from which to reach a different conclusion I find the development would result in no material harm to existing highway conditions. [2, 44, 45, 81-87, 90, 169(e)]
216. Similarly, it is unsurprising that local people are concerned about air quality given that the Hickleton Air Quality Management Area has recently been extended to embrace Marr. Traffic levels along the A635 through these villages is high. However, that is an existing problem and the effects of the development on air quality was assessed in the Environmental Statement (ES) submitted with the application where it was concluded that there would be a negligible impact. There is no evidence from which to conclude differently. [88, 89, 106, 169(f)]

217. The heritage assets, Brodsworth Hall and the Marr Conservation Area, are both a considerable distance from the appeal site and on the opposite side of the motorway. The distances and the physical separation arising from the line of the motorway are such that there would be no impact on the setting of either. The ES found no direct or indirect impact on heritage assets that would affect their significance. I see no reason why visitors going to the Hall by coach might suffer any material harm by being able to see the MSA beyond the motorway. [100, 169(a), (b) (c)]
218. With regard to concerns raised about noise and light pollution, the MSA would be situated in an area which already suffers from motorway noise throughout the day and night and the lighting scheme design is aimed at ensuring light levels would not increase above existing levels at the junction. In addition, conditions to be attached to any permission granted are suggested to control these matters. Both matters were assessed in the ES. Increase in litter is another concern raised but, in my experience, MSAs are well provided with litter bins. Given that patrons would primarily be travellers on the motorway there is no reason to conclude that an increase in litter in the local area would result. [101, 102, 169(h), 173]
219. Having regard to all other matters raised by the JRP and other interested persons, I find no other material harm to weigh in the balance.

Other considerations

The need for an MSA

220. There is agreement that the distance between Woodall Services on the M1 to the south of the site and Ferrybridge to the north is 31 miles which exceeds the recommended maximum distance between MSAs of 28 miles. In addition, whilst the distance between Ferrybridge and Doncaster North Services is only 19 miles using the shortest route, it is 29 miles using the longer route and paragraph B7 of C2/2013 indicates that the distances set out are considered appropriate regardless of route choice. [40, 112]
221. Although the Appellant describes the distance between the Blythe and Ferrybridge Services of 24 miles as substantial, it does not exceed the recommended maximum and cannot lend support to need, notwithstanding that a lesser gap might be desirable. Furthermore, it would not be appropriate to discount the MSA at Ferrybridge. Although situated on a junction of the M62, it is well signed from the A1(M) with direct access to it and the detour would not add significantly to journey time whether travelling in a north or southbound direction along the A1(M). Ferrybridge is well used and there is nothing from which to conclude that its facilities are not used by travellers on the A1(M). [113, 114]
222. Thus in terms of need, when assessed against C2/2013, there are only two gaps with excessive distances and then only 3 miles and 1 mile greater than the maximum; and the maximum in the Circular is only "recommended". Whilst 28 miles is based on providing an opportunity to stop every half an hour, paragraph B5 of the Circular states that the network of service areas on the SRN has been developed on the premise that opportunities to stop are provided at intervals of "approximately" half an hour. The application of the policy relating to spacing and stopping intervals is thus not mandatory nor is it an exact science.

- In terms of time spent travelling along a motorway, an additional 1 to 3 miles would be unlikely to add significantly to the drive time. [30, 69]
223. In addition, in the current instance, each of the two identified excessive distances includes the stretch of some 10 miles of trunk road with two signed services along both the north and south bound carriageways. At each of my visits, at different times of the day, it seemed to me that these services were well used. In my view they make a positive contribution to the safety and well-being of the travelling public by providing opportunities to stop and access relevant facilities. Those signed services do not provide all the mandatory facilities required for an MSA but they could not be expected to do so since they are not MSAs. [67, 68]
224. It would not, therefore, be appropriate to apply the mandatory requirements for an MSA as set out in Table B1 of C2/2013. The nature of the facilities that are available at each of the signed services has been agreed by the parties and is set out in the table attached to the Statement of Common Ground (SoCG) at document CD92. When compared with the minimum requirements for signed service areas for All Purpose Trunk Roads (APTR) in Table B1 it can be seen that not all mandatory requirements are met in full – especially in relation to parking and access to a cash operated telephone. [111]
225. Notwithstanding the shortcomings identified, each of the signed services offers a selection of facilities intended to support the welfare and safety of drivers travelling along this stretch of A1 trunk road. Their positive, if in some aspects limited, contribution to these objectives should not be completely discounted. Indeed, the shortcomings have not disqualified them from continuing to qualify as signed serves, the subject of sealed agreements, and I understand that each one has recently been refurbished. [71-73, 92, 117, 118]
226. With regard to safe ingress and egress at each of the signed services, the personal injury accident records over a 5 year period indicate an average of between 1 and 1.8 accidents a year on the A1 in the vicinity of three of the services and none near the fourth. Without further information, including the number of drivers using the services, it is difficult to draw a conclusion, but the figures do not appear high given that the use of any access poses a risk and the A1 carries high volumes of traffic. The accesses fall short of the standards for entry and exits from a petrol filling station set out in Design Manual for Roads and Bridges (DMRB) TD 41/95 *Vehicular Access to All-Purpose Trunk Roads* but again there is no information regarding level of use to indicate that they should apply. Even assuming that they should, it is not unusual for existing accesses to fall short of modern standards. In this case it is relevant that HE appears to have taken no action under the provisions of highways or roads legislation in connection with the standard of the accesses, nor is there any indication that, because of the standard of the accesses, they will not continue to qualify as signed services. [70, 119]
227. Finally, it would not be appropriate to disregard the contribution made by the signed services merely because there is an intention to upgrade this stretch of trunk road to motorway when there is nothing to indicate when and if such a proposal would proceed. [73, 120]
228. Given that the two gaps identified between MSAs only exceed the recommended distances by 1 and 3 miles and given some contribution is made to

the welfare and safety of the travelling public by the existing A1 signed services, I conclude that there is no pressing need to provide an additional MSA on the appeal site. A specific need for additional lorry parking in the area has been recognised, and such provision is supported by CS9 (D)1. Providing for that specific need would be a benefit of the scheme but that need does not, of itself, justify the provision of a new, full scale, MSA. [22, 115]

Economy and employment

229. It is acknowledged that the MSA would provide some 215 jobs and that this would benefit the local economy. [165]

The balance of considerations

230. Inappropriate development is, by definition, harmful to the Green Belt. Added to that, in my assessment of the proposal in terms of its effect on openness and on the purpose of including land in the Green Belt to safeguard the countryside from encroachment, I have found significant harm would result in relation to both. Paragraph 144 of the NPPF says substantial weight is to be given to any harm to the Green Belt. Also to be weighed in the balance are the other harms identified.

231. With regard to landscape, loss of countryside and visual amenity, the harm is not insignificant given that minor adverse impacts in landscape and visual amenity terms would remain at year 15. In addition, no matter how well it is designed, landscaped and screened, the provision of an MSA on the appeal site would result in the permanent loss of a large expanse of open land in the countryside given over to an urbanising form of development. Overall, significant weight should be attributed to these matters.

232. The amount of best and most versatile land to be taken out of agricultural use by the proposal has been found to be substantially less than was initially envisaged. Nonetheless a little over a third of the site comprises such land and that would be permanently taken out of production by the construction of the MSA. The loss of this land in conflict with policy carries moderate weight in the overall assessment.

233. Turning to the matters weighing in favour of the proposal the primary consideration is whether there is a need for an additional MSA in this location. A thorough assessment of alternative sites has been undertaken and, should such a need be established, the appeal site does represent the most suitable location. In my judgement, however, the gaps between MSAs, identified as being of concern, are not great and, with the contribution from the A1 signed services factored in, there is no pressing need for an additional MSA at the appeal site. Overall the availability of facilities is not so deficient so as to materially threaten the safety or welfare of the travelling public and the benefit of addressing the specific need for additional lorry parking does not warrant a full scale MSA. Thus, in reviewing the particular circumstances appertaining to this case and with the objectives of the safety and welfare of the travelling public in mind, I have concluded that there is no pressing need for the provision of an additional MSA. I therefore afford this matter limited weight.

234. The provision of employment is a corollary of the proposal and is acknowledged as a benefit arising that would support the local economy.

However, broad locations for employment are set out in policy CS2 and do not include Green Belt land. In the circumstances, therefore, the benefit has very limited weight.

235. Taking into account all the considerations weighing in favour of the proposal, I find nothing that, either individually or cumulatively, clearly outweighs the harm identified so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.
236. In contrast to the Appellant, I find conflict with the Development Plan read as a whole. Policy CS9 does support proposals which would improve the transport network but that cannot be interpreted as support for any proposal in any location without having regard for the other policies of the plan and in particular those which seek to protect the Green Belt, countryside and best and most versatile agricultural land. Indeed, the specific support for lorry parking and roadside services areas in policy CS9(D) includes the caveat "where appropriate". I find no considerations sufficient to outweigh the conflict with the provisions of the Development Plan identified or to indicate that the proposals should be determined otherwise than in accordance with it. Development resulting in the harm identified, and in particular to the Green Belt, without overriding justification cannot be found to be sustainable.

INSPECTOR'S RECOMMENDATION

237. I recommend that the appeal be dismissed.
238. If the Secretary of State disagrees, the conditions set out at Appendix 3 should be attached to any planning permission granted.

B M Campbell

Inspector

APPENDIX 1 – APPEARANCES**For Moto Hospitality Limited:**

Mr T Corner	Queen’s Counsel and
Ms H Sargent	of Counsel, instructed by Collins & Coward Ltd

They called:

Mr T Russell	Associate, Croft Transport Solutions
Ms S Illman	Managing Director, Illman Young Landscape Design Limited
Mr A Collins	Director, Collins and Coward, planning and development consultants

For Doncaster Metropolitan Borough Council

Mr K Garvey	of Counsel, instructed by Mr S Fawcus, Assistant Director, Legal and Democratic Services
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He called:

Mrs A Leeder	Principal Planning Consultant, AECOM
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Interested Persons

Mrs R Job	Chair of the Joint Rural Parishes and Marr Parish Councillor
Mrs P Moorhouse	Secretary to the Joint Rural Parishes and Brodsworth Parish Councillor
Dr N Balliger	Member of the Joint Rural Parishes and Chair of Hampole and Skelbrooke Parish Council
Mrs A Mitcheson	Local resident

APPENDIX 2 – DOCUMENTS AND PLANS

CORE DOCUMENTS	DESCRIPTION	REFERENCE	PLAN NO.	COMMENT RE INCLUSION IN CONDITION 2
CD1	Site Location Plan	BP01	PL-001A	Added to condition 2
CD2	Existing Site Plan	BP02	PL-002A	Added to condition 2
CD3	Proposed Signage	BP03	PL-015A	Not included, as needs separate advert consent
CD4	Amenity Building – Ground Floor Plan	BP04	PL-020A	Already in condition 2
CD5	Amenity Building – First Floor Plan	BP05	PL-021A	Already in condition 2
CD6	Amenity Building – Roof Plan	BP06	PL-022A	Added to condition 2
CD7	Amenity Building – Sections Sheet 1	BP07	PL-025A	Added to condition 2
CD8	Amenity Building – Sections Sheet 2	BP08	PL-026A	Added to condition 2
CD9	Amenity Building - Elevations	BP09	PL-030A	Already in condition 2
CD10	Lodge -Ground Floor Plan	BP10	PL-040A	Already in condition 2
CD11	Lodge – First Floor and Roof Plan	BP11	PL-041A	Already in condition 2
CD12	Lodge – Sections	BP12	PL-045A	Added to condition 2
CD13	Lodge- Elevations	BP13	PL-046A	Already in condition 2
CD14	Costa – Ground Floor, Roof Plan and Sections	BP14	PL-050A	Already in condition 2
CD15	Costa - Elevations	BP15	PL-055A	Already in condition 2
CD16	Fuel Filling Station – Ground Floor Plan	BP16	PL-060A	Already in condition 2
CD17	Fuel Filling Station – Roof Plan	BP17	PL-061A	Added to condition 2
CD18	Fuel Filling Station - Sections	BP18	PL-065A	Added to condition 2
CD19	Fuel Filling Station - Elevations	BP19	PL-066A	Already in condition 2
CD20	Biomass and Energy Centre	BP20	PL-070A	Already in condition 2
CD21	Chiller, Water Tank and Substation	BP21	PL-071A	Already in condition 2
CD22	Amenity and Lodge LPG Compounds	BP22	PL-072A	Already in condition 2
CD23	Proposed Aerial Views	BP23	PL-080C	Not included - aerial view to give an impression.
CD24	Proposed Aerial Views	BP24	PL-081C	Not included - aerial view to give an impression.
CD25	Proposed Amenity Building Views	BP25	PL-082B	Not included – computer image to give impression.
CD26	Proposed Amenity Building Views	BP26	PL-083B	Not included – computer image to give impression.
CD27	Proposed Amenity Building Views	BP27	PL-084C	Not included – computer image to give impression.
CD28	Proposed Lodge View	BP28	PL-085C	Not included – computer image to give impression.

CD29	Proposed Costa Drive thru Views	BP29	PL-086B	Not included – computer image to give impression.
CD30	Proposed Fuel Filling Station Views	BP30	PL-087B	Not included – computer image to give impression.
CD31	Regional Site Location plan	BP31	PL-090A	Not included – just showing site in wider context.
CD32	Extent of Retail Area	BP32	PL-099B	Added to condition 2
CD33	Proposed Site Plan	BP33	21603/001F	Already in condition 2
CD34	Landscape Masterplan	BP34	21603/003H	Already in condition 2
CD35	Entrance Plaza	BP35	21603/004B	Already in condition 2
CD36	Parking Numbers	BP36	21603/005F	Already in condition 2
CD37	Boundary Treatment Plan	BP37	21603/008C	Already in condition 2
CD38	SuDS Schematic	BP38	21603/009D	Already in condition 2
CD39	Planting Strategy	BP39	21603/010C	Already in condition 13 and added to condition 2
CD40	Flood Route Plan	BP40	21603/011D	Already in condition 2
CD41	Sections - Sheet 1 of 2	BP41	21603/012A	Added to condition 2
CD42	Sections - Sheet 2 of 2	BP42	21603/013A	Added to condition 2
CD43	Proposed Access to MSA	BP43	1186-F09F	Already in condition 2
CD44	Potential Bus Stop Arrangement with Pedestrian Facilities	BP44	1186-F03	Added to condition 2
CD45	Storm Drainage	BP45	4576-SK004P2	Already in condition 2
CD46	Foul Drainage	BP46	4576-SK005P2	Already in condition 2
CD47	Vehicle Tracking – Cars	BP47	4576-SK007P3	Not included – purpose is to show that layout plan works for cars.
CD48	Vehicle Tracking – Caravans	BP48	4576-SK008P3	Not included – purpose is to show that layout plan works for caravans.
CD49	Vehicle Tracking – Coaches	BP49	4576-SK009P3	Not included – purpose is to show that layout plan works for coaches.
CD50	Vehicle Tracking – HGV	BP50	4576-SK010P3	Not included – purpose is to show that layout plan works for HGVs.
CD51	Vehicle Tracking – Abnormal Load	BP51	4576-SK011P3	Not included – purpose is to show that layout plan works for Abnormal loads.
CD52	Vehicle Tracking – Fire Engine	BP52	4576-SK012P2	Not included – purpose is to show that layout plan works for fire engines.

CD53	Proposed External Lighting layout	BP53	8231-PE-Z0-XX-DR-E-0102-P04	Not included – details of lighting to be secured by condition 17.
CD54	Existing External Services Plan	BP54	8231-PE-Z0-XX-DR-ME-0800-P03	Not included – not relevant to the proposal.
CD55	Proposed Incoming Services Plan	BP55	8231-PE-Z0-XX-DR-ME-0801-P03	Not included – not relevant to the proposal.
CD56	Topographical Survey Overview Plan 1	BP56	22755_T-1Rev2	Added to condition 2
CD57	Topographical Survey Overview Plan 2	BP57	22755_T-2Rev2	Added to condition 2
CD58	Topographical Survey Overview Plan 3	BP58	22755_T-3Rev2	Added to condition 2
CD59	Topographical Survey Overview Plan 4	BP59	22755_T-4Rev2	Added to condition 2
CD60	Underground Utility Survey Detail Plan 1	BP60	22755_UG-1Rev2	Not included – not relevant to the proposal.
CD61	Underground Utility Survey Detail Plan 2	BP61	22755_UG-2Rev2	Not included – not relevant to the proposal.
CD62	Underground Utility Survey Detail Plan 3	BP62	22755_UG-3Rev2	Not included – not relevant to the proposal.
CD63	Underground Utility Survey Detail Plan 4	BP63	22755_UG-4Rev2	Not included – not relevant to the proposal.
CD64	Planning Application Form	BD01		
CD65	Planning Statement	BD02		
CD66	Alternative Sites Assessment	BD03		
CD67	Transport Assessment	BD04		
CD68	Travel plan	BD05		
CD69	Sustainability Statement	BD06		
CD70	Statement of Community Engagement	BD07		
CD71	Socio-Economic Statement	DB08		
CD72	Landscaping & Public Realm Strategy	BD09		
CD73	Agricultural Land Assessment	BD10		
CD74	Design & Access Statement	BD11		
CD75	Construction Environmental Management Plan	BD12		
CD76	Environmental Impact Assessment	BD13		
CD77	EIA Non-Technical Summary	BD14		
CD78	Business Case & Vision	BD15		
CD79	Lighting Assessment	BD16		
CD80	Employment Strategy	BD17		
CD81	Response to Representations	BD18		
CD82	Decision Notice			
CD83	Committee Report			
CD84	Core Strategy 2011-2028			
CD85	Unitary Development Plan			
CD86	Emerging Local Plan			

CD87	Green Belt Review 2016			
CD88	Landscape Character and Capacity Study (ECUS) Report 2007			
CD89	Landscape Character and Capacity Study (Golders) Report 2010			
CD90	National Planning Policy Framework 2018 ("NPPF2")			
CD91	Planning Practice Guidance ("PPG")	Not used		
CD92	Statement of Common Ground ("SOCG")			
CD93	2 Statements of Common Ground – Highways England			
CD94	Statement of Common Ground – Doncaster Highways			
CD95	Appellant's Statement of Case			
CD96	Council's Statement of Case			
CD97	Appellant's Section 106 agreement			
CD98	Department for Transport Circular 02/2013			
CD99	Council Development Guidance and Requirements SPD (2015)			
CD100	Tree Pit Details		21603/14	Added to condition 2.

APPELLANT DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

- APP1 Correspondence with Doncaster Metropolitan Borough Council
- APP2 Proof of evidence – Mr T Russell
- APP3 Summary proof – Mr T Russell
- APP4 Plans 1-4 to Mr Russell's evidence
- APP5 Appendices 1-6 to Mr Russell's evidence
- APP6 Proof of evidence – Ms S Illman
- APP7 Summary proof – Ms S Illman
- APP8 Appendix 1 to Ms Illman's evidence
- APP9 Appendices 2-16 to Ms Illman's evidence
- APP10 Proof of evidence – Mr A Collins
- APP11 Summary proof – Mr A Collins
- APP12 Appendices 1-16 to Mr Collin's evidence

COUNCIL DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

- LPA1 Appeal Questionnaire and attachments
- LPA2 Proof of evidence of Mrs Leeder with appendices A & B

DOCUMENTS SUBMITTED DURING THE INQUIRY

- INQ1 Planning Obligation CIL compliance statement, Inquiry notice, letter of notification of the inquiry and list of those notified
- INQ2 Booklet of application drawings at A3 size
- INQ3 Appellant opening submissions
- INQ4 Council opening submissions
- INQ5 Suggested conditions (1st draft)
- INQ6 Submission for the Joint Rural Parishes (versions 1 & 2) with appendices A-Q
- INQ7 Highways Agency TD41/95

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- INQ8 Appellant acceptance of pre-commencement conditions (1st version)
 - INQ9 Representation from Mrs Mitcheson
 - INQ10 Aerial photograph
 - INQ11 Appellant response on agricultural land classification
 - INQ12 Suggested conditions (2nd draft)
 - INQ13 Appellant acceptance of pre-commencement conditions (final)
 - INQ14 Council closing submissions
 - INQ15 Joint Rural Parishes closing submissions
 - INQ16 Appellant closing submissions

APPENDIX 3 – CONDITIONS

1. The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.

REASON

Condition required to be imposed by Section 91(as amended) of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out and completed entirely in accordance with the terms of this permission and the details shown on the approved plans listed below:

Overall site

Drawing number PL001 Rev A (Location plan)
Drawing number PL002 Rev A (Existing site plan)
Drawing number 21603-01 Revision F (Site plan)
Drawing number 21603/03 Revision H (Landscape masterplan)
Drawing number 21603/10 Revision C (Planting strategy)
Drawing number 21603/04 Revision B (Entrance Plaza)
Drawing number 21603/005 Revision F (Parking numbers)
Drawing number PL099 Rev B (Extent of retail area)
Drawing number 21603/08 Revision C (Boundary treatment plan)
Drawing number 21603/09 Revision D (Suds schematic)
Drawing number 21603/11 Revision D (Proposed flood route alignment)
Drawing number 1186-F09 Revision F (Site access arrangements)
Drawing number 1186-F03 Revision F (Bus stop and pedestrian arrangement)
Drawing number 4576-SK-004 Revision P2 (Storm drainage)
Drawing number 4576-SK-005 Revision P2 (Foul drainage)
Drawing number 21603/12 Rev A (Sections)
Drawing number 21603/13 Rev A (Sections)
Drawing number BP56 22755_T-1 Rev 2 (Topographical Plan 1)
Drawing number BP57 22755_T-2 Rev 2 (Topographical Plan 2)
Drawing number BP58 22755_T-3 Rev 2 (Topographical Plan 3)
Drawing number BP59 22755_T-4 Rev 2 (Topographical Plan 4)
Drawing number 21603/14 (Tree Pit Details)

Amenity building

Drawing number 8231/PL020 Rev A (Ground Floor Plan)
Drawing number 8231/PL021 Rev A (First Floor Plan)
Drawing number 8231/PL022 Rev A (Roof plan)
Drawing number 8231/PL025 Rev A (Sections sheet 1)
Drawing number 8231/PL026 Rev A (Sections sheet 2)
Drawing number 8231/PL030 Rev A (Elevations)

The Lodge

Drawing number 8231/PL040 Rev A (Ground floor plan)
Drawing number 8231/PL041 Rev A (First Floor and roof plan)
Drawing number 8231/PL045 Rev A (Sections)
Drawing number 8231/PL046 Rev A (Elevations)

Costa Drive Thru

Drawing number 8231/PL055 Rev A (Elevations)
Drawing number 8231/PL050 Rev A (Ground Floor, Roof Plan and Sections)

Fuel filling station

Drawing number 8231/PL060 Rev A (Ground floor plan)

Drawing number 8231/PL061 Rev A (Roof plan)
 Drawing number 8231/PL065 Rev A (Sections)
 Drawing number 8231/PL066 Rev A (Elevations)

Ancillary buildings

Drawing number 8231/PL070 Rev A (Biomass and Energy Centre)
 Drawing number 8231/PL071 Rev A (Aircooled chiller, Water tank and Substation)
 Drawing number 8231/PL072 Rev A (LPG Compound)

REASON

To ensure that the development is carried out in accordance with the application as approved.

3. During the construction phase, operations shall be restricted to the hours of 07:00 to 18:00hrs Monday to Friday and 08:00 to 16:00hrs on Saturday. There shall be no operation on Sundays or Bank Holidays (other than special works subject to prior agreement in writing with the local planning authority).
REASON
 To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

4. No development shall take place until a Construction Environmental Management Plan (based on the draft document BD12 by Arup dated January 2017) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved plan.
REASON
 The document is only in draft form and is required prior to the commencement of development to safeguard the environment and living conditions of neighbouring residents in accordance with guidance set out in the NPPF.

5. Noise levels arising from construction of the development shall not exceed the following noise limits at the specified locations. The exact position within those locations identified below shall be agreed in writing with the local planning authority prior to the commencement of the development :

Noise sensitive receptor	Description	Daytime limit (dBL _{Aeq,T})
1	North of site; Green Lane	65
2	North-east of site; Town View Avenue	65
3	South-east of site; Sheep Walk Lane	70
4	South-west of site; Marr Grange Lane	65
5	South-west of site; Barnsley Road	75

REASON

To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

6. Noise levels arising from operation of the development shall not exceed the following noise limits at the specified locations. The exact position within those locations identified below shall be agreed in writing with the local planning authority prior to the occupation of the development:

Noise sensitive receptor	Description	Noise limit values in decibels (dB), L _{Ar,Tr}	
		Day (07:00 – 19:00)	Night (23:00 – 07:00)
1	North of site; Green Lane	27	26
2	North-east of site; Town View Avenue	25	23
3	South-east of site; Sheep Walk Lane	33	28
4	South-west of site; Marr Grange Lane	43	40
5	South-west of site; Barnsley Road	42	38

REASON

To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

7. Prior to the commencement of the relevant works, details of the proposed external materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.

REASON

To ensure that the materials are appropriate to the area, in accordance with policy CS14 of the Doncaster Core Strategy.

8. Before the development commences, a BREEAM pre-assessment, or equivalent assessment, shall be submitted for approval demonstrating how BREEAM 'Very Good' will be met. The development shall be carried out in accordance with the approved assessment.

REASON

In the interests of sustainability and to minimise the impact of the development on the effects of climate change in accordance with policy CS14 of the Core Strategy.

9. No development shall take place in implementation of this permission until a report has been submitted to the local planning authority explaining how CO₂ emissions from the development will be reduced by providing at least 10 per cent of the development's energy through on-site renewable energy equipment or improvements to the fabric efficiency of the building. The carbon savings, which result from proposed measures, will be above and beyond what is required to comply with Part L of Building Regulations. The development shall then proceed in accordance with the approved report.

REASON

In the interests of sustainability and to minimize the impact of the development on the effects of climate change in accordance with policy CS14 of the Core Strategy. This condition is required to be discharged prior to commencement as the approved detail may have an impact on the design and fabric of the building during construction or the appearance of the development.

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10. Prior to the occupation of the development, 6 electric vehicle charging points shall be installed and be operational in accordance with a scheme previously approved in writing by the local planning authority.
REASON
To contribute towards a reduction in emissions in accordance with air quality objectives and providing sustainable travel choice in accordance with policies CS9 and CS18 of the Doncaster Council Core Strategy.
11. Prior to the occupation of the development, bus stops shall be provided on Barnsley Road in accordance with a scheme previously approved in writing by the local planning authority.
REASON
To encourage sustainable modes of travel to the site in accordance with policy CS9 of the Core Strategy.
12. The erection of impact resistant barriers for the protection of any retained tree shall be undertaken in accordance with the approved Arboricultural Impact Assessment (reference 9277_AIA.001 dated January 2017) and the local planning authority notified of implementation. No works other than the installation of the barriers shall be carried out until the local planning authority has confirmed in writing that they have been properly installed. Thereafter, and throughout the period of construction, all tree protection shall be maintained in full accordance with the approved details until all equipment, machinery and surplus materials associated with the construction have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
REASON
To ensure that all trees are protected from damage during construction in accordance with core strategy policy CS16: Valuing our natural environment.
13. The planting proposals hereby approved shall be carried out no later than during the first planting season following the date when the development hereby permitted is ready for occupation and shall be in accordance with the scheme of landscaping shown on the Planting Strategy plan (ref: 21603/10 Revision C dated Jan 2017) and the Tree Pit Details plan (ref: 21603/14 dated March 2017). All planted materials shall be maintained for five years and any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with others of similar size and species to those originally required to be planted.
REASON
In the interests of environmental quality and core strategy policy CS16: Valuing our Natural Environment.
14. No development shall take place until a Biodiversity Enhancement Master Plan has been submitted to and approved in writing by the local planning authority. The content of the Plan shall include:
i) Baseline specifications for biodiversity creation and enhancement works and other ecological features specific to mitigation proposals for habitats, faunal groups and species.
ii) Provision of roosting and nesting opportunities within the site.
The development shall be carried out in accordance with the approved plan.
REASON
To ensure the ecological interests of the site are maintained in accordance with Core Strategy Policy 16.
15. Part A (pre-commencement)
No development, including any demolition or groundworks, shall take place until the applicant, or their agent, or successor in title, has submitted a Written Scheme of

Investigation (WSI) that sets out a strategy for archaeological investigation and this has been approved in writing by the Local Planning Authority. The WSI shall include:

- i) The programme and method of site investigation and recording.
- ii) The requirement to seek preservation in situ of identified features of importance.
- iii) The programme for post-investigation assessment.
- iv) The provision to be made for analysis and reporting.
- v) The provision to be made for publication and dissemination of the results.
- vi) The provision to be made for deposition of the archive created.
- vii) Nomination of a competent person/persons or organisation to undertake the works.
- viii) The timetable for completion of all site investigation and post-investigation works.

Part B (pre-occupation/use)

Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be brought into use until the Local Planning Authority has confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed.

REASON

To ensure that any archaeological remains present, whether buried or part of a standing building, are investigated and a proper understanding of their nature, date, extent and significance gained, before those remains are damaged or destroyed and that knowledge gained is then disseminated in accordance with policy CS15 of the Core Strategy.

16. A Travel Plan shall be submitted to the local planning authority within 3 months of occupation of the site. The development shall thereafter be operated in accordance with the approved Travel Plan.

REASON

To encourage sustainable modes of travel to the site in accordance with policy CS9 of the Core Strategy.

17. No lighting shall be installed on site until the details have first been approved in writing by the local planning authority. The lighting shall thereafter be installed and retained in accordance with the approved scheme.

REASON

To minimise light pollution in this countryside location in accordance with guidance set out in the NPPF.

18. The development hereby permitted shall not be commenced until a Construction Traffic Management Plan (CTMP) for the development is submitted to and subsequently approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction phase. The CTMP shall contain information relating to (but not limited to):

- i) the proposed construction traffic route to the site to be identified on a plan
- ii) the daily movement of the construction traffic shall be profiled identifying the peak level of vehicle movements for each day
- iii) HGVs shall be prohibited from accessing the site during the SRN peak operating hours
- iv) details of and agreement to traffic management proposals at Junction 37
- v) contractors method for controlling construction traffic and adherence to routes
- vi) temporary signage
- vii) measures to be taken within the curtilage of the site to prevent the deposition of mud and debris on the public highway including a wheel wash station.

REASON

This information has not been provided and is required prior to the commencement of development to ensure highway safety in accordance with the guidance set out in the NPPF.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

BG2.3e Cobham Motorway Service Station, Cobham, Elmridge (February 2016)



Appeal Decision

Site visit made on 29 January 2018

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2018.

Appeal Ref: APP/K3605/W/17/3187505

**Cobham Motorway Service Area, between J10 and J9 M25, Cobham
KT11 3DB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Banks of Extra MSA Cobham Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2016/4031, dated 6 December 2016, was refused by notice dated 24 May 2017.
 - The development proposed is an extension to existing motorway service area to include additional 79 HGV parking spaces (use class sui generis), with associated access and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for an extension to existing motorway service area to include additional 79 HGV parking spaces (use class sui generis), with associated access and landscaping at Cobham Motorway Service Area, between J10 and J9 M25, Cobham KT11 3DB in accordance with the terms of the application, Ref 2016/4031, dated 6 December 2016, and subject to the schedule of conditions to this decision.

Preliminary Matter

2. Following consideration of the appellant's statement to the appeal on Air Quality Matters by Wardell Armstrong, the Council now has no significant objection to the proposal in relation to air quality and human health and so it does not seek to pursue its second reason for refusal in the appeal. Consequently, the main issue in this appeal relates to the remaining disputed reason for refusal, concerning the Green Belt.

Main Issue

3. The main issue is whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.

Reasons

Background

4. The appeal site forms part of the motorway service area (MSA) between junctions 9 and 10 on the M25 at Cobham. There is an existing HGV parking area at the MSA with 72 spaces, which is well-used and overspill parking is common. As many as 167 HGVs have been recorded at the MSA at once,

significantly in excess of the existing designated parking provision. At the time of my site visit the existing HGV parking was very close to full and there were also significant numbers of HGVs parked in non-designated areas along the internal circulation road in the MSA as well as on the motorway slip road. These HGVs outnumbered the very few empty spaces in the HGV parking area during my visit. I saw that the ad-hoc overspill parking of HGVs has the potential to adversely affect road safety in and near the MSA, including by restricting visibility for other road users and in some cases by forcing manoeuvres that would otherwise not be necessary.

5. It is proposed to create an additional HGV parking area separated from the existing HGV parking by the fuel filling station, which includes a HGV filling area. Other than the M25 itself, the MSA is largely surrounded by fields. The additional HGV parking would be contained within the existing boundary of the MSA, in an area that currently consists of a sloping grassed bund near the edge of the MSA. The appeal site and the MSA lie entirely within the Green Belt.

Whether the proposal is inappropriate development

6. Policy DM17 of the adopted Elmbridge Development Management Plan 2015 states, among other things, that in order to uphold the fundamental aims of the Green Belt to prevent urban sprawl and to keep land within its designation permanently open, inappropriate development will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm. It also states that proposals for the limited infilling or the partial or complete redevelopment of previously developed sites will be considered in light of the size, height, type, layout and impact of existing buildings, structures and hard standing, together with the degree of dispersal throughout the site of existing and proposed development.
7. Paragraph 90 of the National Planning Policy Framework (the Framework) sets out a number of forms of development that are not inappropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. One of these forms of development is 'local transport infrastructure which can demonstrate a requirement for a Green Belt location'.
8. The Framework does not define local in this context. I consider it is likely that many HGVs using the MSA would be on journeys that might reasonably be considered greater than local in length, whether regional, national or international. However, the number of HGVs stopping at the MSA indicates that there is a need for HGV parking provision in the local area. It is also clear that provision to serve HGVs using this section of the M25 would need to be local to the motorway, and that the existing HGV parking capacity at this MSA is often insufficient to meet demand. I note that there are currently some alternative options for HGV parking near the M25. However, none are particularly nearby, some are on other routes, and there are no other MSAs within around 22 miles or around 30 minutes driving time, or longer in slower-moving traffic conditions.
9. Paragraph 31 of the Framework sets out that the primary function of roadside facilities for motorists should be to support the safety and wellbeing of the road user. Having regard to the number of HGVs seeking to use the MSA, and other factors such as the restrictions on drivers' hours, I am satisfied that there is a need in this locality for additional HGV parking spaces, including in relation to

road safety. As the demand arises principally from the M25, and needs to be addressed within a reasonable driving time, I am also satisfied that the additional parking provision needs to be in the local area. Accordingly, in the particular circumstances of this case, I consider that the proposal would constitute a local transport infrastructure facility, supporting a local geographic need, albeit that would support various journeys including many that are not local trips. Given that it would also address a potential safety issue in a publically accessible and generally heavily used facility, I consider that there are sound reasons in the wider public interest for the provision of the additional parking facility in this location.

10. The M25 lies within the Green Belt and consequently the additional HGV parking requires a Green Belt location. Its provision within the existing MSA would preserve the openness of the Green Belt, being set behind raised bunds and against the context and backdrop of the wider MSA with various buildings and expansive parking areas. I consider that this would result in a neutral effect on Green Belt openness overall, even when the parking area is fully occupied with HGVs. In this regard the proposed location would also have significantly less effect on openness than a proportionately sized additional HGV parking area situated outside the MSA would be likely to do.
11. Paragraph 80 of the Framework sets out the five Green Belt purposes. Given that the proposal would be wholly sited within the existing MSA, and be generally consistent with the height and type of existing uses around it in the MSA, none of the five purposes would be undermined. Moreover, the fundamental aim to prevent urban sprawl by keeping land permanently open would also be maintained.
12. For these reasons, I conclude that the proposal would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. It would therefore accord with the third listed form of development set out in Paragraph 90 of the Framework. Consequently, the proposal would not be inappropriate development in the Green Belt. Furthermore, the proposal would not conflict in this regard with Policy DM17 of the adopted Elmbridge Development Management Plan 2015.

Other Matters

13. I have considered the various other matters raised by interested parties, including that Green Belt very special circumstances have not been demonstrated, the scheme is commercially motivated, any benefits would be remote from the local community, the MSA has already been allowed to evolve beyond that originally approved, prices at the MSA should be increased to manage demand, the existing HGV parking is mismanaged and used as a transit camp, lorries are allowed to stand with their engines running contributing to local air pollution and associated health concerns, light spillage, flood risk, and that providing such facilities encourages unsustainable transport modes.
14. Very special circumstances are not required for development that is not inappropriate in Green Belt policy terms. The scheme would bring about benefits in the general public interest. Each case must be considered on its own planning merits, including previous proposals at the MSA. I have considered the appeal on its merits. There is no significant evidence before me that raising prices or other commercial motivations would effectively manage

demand for HGV parking in this area, or that the existing parking area is mismanaged. I also note the view that car and coach parking could be converted to HGV parking at night. There is no significant detail before me of how this would work satisfactorily, whether adequate provision could be guaranteed in this way, or whether it would be practical and safe to combine the car and HGV facilities in such a way long term.

15. I am satisfied on the basis of the technical evidence provided that the proposal would not be likely to have a significant effect on air pollution and I note the similar view of the Council's technical officers in withdrawing the related reason for refusal. Matters relating to light spillage and flood risk could be controlled by conditions. An existing need for additional HGV parking has been identified, including in relation to safety matters. There is no persuasive evidence before me that the appeal proposal would be particularly likely to encourage HGV use.
16. I conclude that none of the matters discussed in this section of my decision adds materially to the case for or against the appeal.

Conditions

17. In addition to the standard time limit conditions, a condition specifying the approved plans is necessary as this provides certainty. Conditions relating to materials, landscaping and floodlighting are necessary in the interests of the appearance of the area. Conditions relating to the availability of the parking hereby approved and a construction management plan and necessary in the interests of highway safety. Conditions 9, 10, 11, 12, 13, 14 and 15 are necessary in the interests of drainage and flood risk. A condition relating to recommended biodiversity measures is necessary in the interests of protected species. Where needed, and in the interests of clarity and precision, I have altered the suggested conditions to better reflect the relevant guidance.

Conclusion

18. For the reasons give above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: COBHGV 010; COBHGV 0012A; COBHGV 0013A; and COBHGV 001G.
- 3) The parking area shall not be constructed other than in the materials specified in the application or such other materials as have been approved in writing by the local planning authority.
- 4) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development.
- 5) All hard and soft landscaping works shall be carried out in accordance with the approved details. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development. All remaining landscaping work and new planting shall be carried out prior to the occupation of any part of the development or in accordance to the timetable agreed with the local planning authority. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species.
- 6) The development hereby permitted shall not be brought into use until an external lighting planning statement and external lighting plan including measures to reduce the light overspill along the edge of the HGV parking area has been submitted to and agreed in writing by the local planning authority. The lighting shall be carried out in accordance with the approved details and maintained as such thereafter.
- 7) The parking spaces shown on the submitted plan shall be made available at all times for the sole use of visitors to the motorway service area.
- 8) The applicant shall provide a Construction Management Plan with full details of the design, including geotechnical and drainage data, to satisfy the Highways England operations and maintenance provider. The Construction Management Plan shall be approved in writing by the local planning authority prior to commencement of any construction works.
- 9) Before the commencement of the construction of the development hereby permitted, evidence to discharge to main river and agreement of the discharge rate into the main river shall be submitted to and approved by the local planning authority.
- 10) Prior to construction of the development hereby permitted the applicant shall supply details for approval in writing by the local planning authority of available spare volume of the existing balancing pond to include the

free board, discharge point and suitability of the existing balancing pond to receive runoff. The development shall be carried out in accordance with the approved details.

- 11) Prior to construction of the development hereby permitted the following drawings shall be supplied to and approved in writing by the local planning authority:
 - a drainage layout detailing the exact location of SUDs elements, geo cellular storage crates, pipes, control devices (i.e. hydrobrake), and existing balancing pond and outfall to the main river; and
 - details of all SuDS elements and other drainage features, including long and cross sections, pipe diameters and respective levels , levels of balancing pond including the free board, and invert level of the existing outfall.

The development shall be carried out in accordance with the approved details.
- 12) Before the commencement of the construction of the development hereby permitted, details of how the Sustainable Drainage System will cater for system failure or exceedance events, both on and offsite, must be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) Before the commencement of the construction of the development hereby permitted, details of how the Sustainable Drainage System will be protected and maintained during the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) Prior to construction of the development hereby permitted, details of the proposed maintenance regimes for each of the SuDS elements shall be submitted to and approved in writing by the local planning authority. The development shall be maintained in accordance with the approved details.
- 15) Prior to first use of the development hereby permitted, a verification report carried out by a qualified drainage engineer shall be submitted to and approved by the local planning authority to demonstrate that the Sustainable Drainage System has been constructed according to the agreed scheme details.
- 16) The development hereby permitted and biodiversity measures, including relating to protected species, shall be carried out in accordance with the recommended actions outlined in Section 4 of the Preliminary Ecological Appraisal Report by Wardell Armstrong dated November 2016.

BG2.3f Ouchthorpe Lane, Fieldhead, Wakefield (January 2016)

Appeal Decision

Inquiry opened on 17 November 2015

Site visit made on 19 November 2015

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 14 January 2016

Appeal Ref: APP/X4725/W/14/3001702

Land at Ouchthorpe Lane, Fieldhead, Wakefield WF1 2PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miller Homes against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 13/02618/FUL, dated 10 September 2013, was refused by notice dated 8 August 2014.
 - The development proposed is given on the application as: *'the erection of 66 dwellings and associated works, including construction of access road from Ouchthorpe Lane with new field access, landscaping and ecological works, public open space, drainage features and pedestrian and cycle circulation'*.
-

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. I opened the Inquiry on 17 November 2015 and it sat on 3 days, closing on 19 November 2015.
 3. The description of the development proposed is given on the application as above. However, the appellant has stated that, following discussions with the Council regarding affordable housing provision, the housing mix was amended, which resulted in an increase in the dwelling numbers on-site from 66 to 68 dwellings. This change was accepted by the Council and the application was re-advertised with the description changed to reflect the change in the number of dwellings. Consequently, I have determined the appeal on this basis.
 4. At the Inquiry the appellant submitted a signed and dated Section 106 Planning Obligation by Unilateral Undertaking (UU) that the Council has examined and agreed. The UU would secure the provision of a commuted sum of £49,708 towards the improvement and maintenance of off-site public open space in the area to compensate for the lack of a reasonably sized recreational public open space within the development, in accordance with Wakefield Local Development Framework (LDF) Core Strategy, 2009 (Core Strategy) policy CS11.
 5. The UU would also secure contributions that would be required to meet the shortfall of primary and secondary school places as a result of additional demand that would be generated by the future occupants of the proposed dwellings, amounting to £236,747, in accordance with the objectives in Core
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Strategy policy CS5. In addition, it would ensure the provision of 20 affordable houses in accordance with the 30% target set in Core Strategy policy CS6(b).

6. I am satisfied that the evidence that has been provided demonstrates that the obligations in the UU meet the tests in Community Infrastructure Levy Regulations 122 and 123 and I have taken them into account in my determination of this appeal. The inclusion in the UU of a £10,000 contribution towards the Council expenses in connection with making traffic regulation orders is necessary in the interests of highway safety and to accord with Core Strategy policy CS14.

Main Issues

7. The main issues are whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and relevant development plan policies; its effect on the openness of the Green Belt and the purposes of including land in the Green Belt; its effect on the character and appearance of the surrounding area; and, if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether Inappropriate Development

8. The proposal would include the construction of 68 dwellings, 20 of which would be affordable, a drainage pond and an access road from Ouchthorpe Lane to the east. The access road would run for about 300m along the southern boundary of a field, adjacent to definitive public footpath 28 and the rear gardens of dwellings in Hatfeild View, separated behind a security fence and planting that includes a row of trees that are protected by a Tree Preservation Order.
9. The part of the site that would accommodate the access road would be about 20m wide and would be on land within the Green Belt. It would include the public footpath and landscape buffers on either side. Although the proposed drainage pond and associated works would be located on land within the Green Belt to the north of the proposed dwellings, I am satisfied that it would amount to an engineering operation under paragraph 90 of the Framework that would preserve the openness of the Green Belt and would not conflict with the purposes of including land in the Green Belt. As such, the use of the land as a drainage pond would not represent inappropriate development.
10. In terms of the Green Belt land that would be used for the proposed access road, I agree with the Council's submissions at the Inquiry that it would be an engineering operation in accordance with paragraph 90 of the Framework. The appellant has suggested that it would be local transport infrastructure which can demonstrate a requirement for a Green Belt location in accordance with this paragraph. Although this is not defined in any national or local policy documents, the evidence provided at the Inquiry leads me to the conclusion that it would not represent such a form of development, as it would be included under engineering operations and the government's intentions indicated by the Impact Assessment for the Framework do not include an access road for a

limited number of houses within the examples given of this type of development. However, this does not make any significant difference to my determination of whether or not the proposal would represent inappropriate development.

11. In both of the above circumstances, to qualify as not inappropriate development in the Green Belt, the proposed access road would also have to preserve the openness of the Green Belt and not conflict with the purposes of including land in the Green Belt. In terms of openness, this is not defined in any national planning policy documents or guidance, but the Framework states in paragraph 79 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Courts have given some indication of what needs to be considered and have indicated that the effect on openness is a matter of planning judgment for the decision-maker.
12. The proposal would not only include the construction of a 5.5m wide carriageway with an estimated maximum peak hour two way flow of 50 vehicles per hour but also an associated footway, street lighting, acoustic fencing, post and rail fencing and planting. Whilst some of these features would be associated with a rural setting, the overall impact would be to introduce an intrusion of urban development into the Green Belt countryside.
13. The acoustic fencing has been deemed to be necessary to ensure that the impact of traffic noise from vehicles using the access road would be acceptable within the rear gardens of properties in Hatfeild View. The street lighting columns, 8 of which I understand would be sited in the Green Belt, would be about 5m high and designed to minimise light pollution but would still represent structures within the Green Belt. Even though street lighting columns are a feature of other highways in the Green Belt, including along Ouchthorpe Lane where they are higher than those proposed, this does not diminish the effect that the proposed street lighting columns would have on openness. Therefore, whilst I accept that the scale of built development in the Green Belt would not be great, the presence of the proposed access road and associated structures would in my opinion be sufficient to significantly harm the openness of that part of the Green Belt.
14. With regard to the 5 purposes of the Green Belt that are given in paragraph 80 of the Framework, as the proposed access road and associated works would be adjacent to the large built up area of Wakefield, the proposal would erode the area of Green Belt that seeks to check the unrestricted sprawl of such an area. Although it would represent a relatively small part of the Green Belt that has been designated in that area, the cumulative impact of such repeated encroachments could have a significant adverse effect on this purpose.
15. At the Inquiry, arguments were put forward as to whether or not the area of Green Belt prevents neighbouring towns merging into one another, which is given as one of the purposes. In terms of Wakefield and Outwood/Stanley, these settlements already appear to me from the plans provided to be attached by built development. As such, I find it hard to believe that the proposal would cause any significant harm to this purpose. However, the proposed area of the access road would be an encroachment into the Green Belt countryside, contrary to the purpose of assisting in safeguarding the countryside from such encroachment. It would also be contrary to Core Strategy Spatial Objective 9,

in that it would seriously erode the clear distinction that the Green Belt has made in that area between the town and country.

16. The appellant has referred to an appeal decision regarding development at Throop, Bournemouth¹ in support of its contention that the proposed access road would not be inappropriate development in the Green Belt. Having considered the information provided in that decision letter and by the appellant at the Inquiry, I find that it involved significantly different circumstances from the present appeal, including the relative location of the road in the Green Belt, its use, the width of the road and the lack of any acoustic fencing or street lighting columns. Although the road in the current appeal would be shorter than that in this other appeal, which also included a raised 'Bailey Bridge', I consider that the above differences make the current appeal road inappropriate development in the Green Belt. Also, that Inspector did not address whether the track would be local transport infrastructure and accepted that traffic along it, which in that case would have been very limited, would result in some visual impact on openness. Whilst I have noted the points made, I do not consider that this other appeal is directly comparable with the current appeal, which I have determined on its own individual planning merits in the light of prevailing policies and guidance.
17. At the Inquiry, the appellant submitted a recent Council decision notice to grant planning permission for the construction of a new access road to serve an existing sports club at the west of Dudfleet Lane, Wakefield, which it had indicated had been considered by the Council to be local transport infrastructure in the Green Belt. Based on the information provided at the Inquiry, the permitted road was associated with a different use from, and at a different relative location to, the appeal proposal. As such, the Council's decision carries limited weight in support of the current appeal.
18. Based on the above, I find that the proposed access road would be an engineering operation but would represent inappropriate development in the Green Belt, as it would fail to preserve the openness of the Green Belt and would conflict with 2 of the purposes of including land in the Green Belt, contrary to the requirements given in paragraph 90 of the Framework and development plan objectives.

Character and Appearance

19. The evidence indicates that the appeal site is located within the Coalfield Landscape Character Area as defined by Natural England. The site consists of agricultural land that is adjacent to the settlement boundary of Wakefield, with the part of the site proposed for housing development within the urban area. The access and drainage areas of the site are outside the boundaries of Wakefield urban area. To the north and north east of the site are agricultural fields, south east is Fieldhead Hospital, and to the south is a relatively new residential area. The part of the site for the proposed access road abuts the boundaries with the Hospital and the gardens of houses in Hatfeild View and 80 Ouchthorpe Lane.
20. I have noted the findings of the Landscape and Visual Impact Assessment (LVIA) that has been carried out by TPM Landscape Ltd for the appellant. This identifies the area of landscape where the proposed access road would be

¹ Appeal Ref APP/C1245/A/14/2221524

located as 'rolling countryside' with a landscape value of 'moderate' and sensitivity of 'medium'. The users of the public rights of way are classed as 'high sensitivity' receptors. In the case of footpath 28, which would run alongside the proposed access road, the landscape change in view to pedestrians is assessed as 'medium' due to them experiencing a more urbanising experience along the access road. At the Inquiry, the appellant's landscape expert witness accepted that, using Table 2.12 in the LVIA to determine the visual effects, these effects would be 'moderate/substantial'. Whilst he indicated that the effects would be mitigated by planting, I have been given insufficient evidence to show how this would significantly reduce that impact, as the access road would in places be very close to the footpath, minimising the scope for planting to separate them.

21. At the Inquiry, the appellant's landscape expert indicated that the proposed planting to the north of the access road would take 3 to 5 years to make a visual impact and that, as it would be a 'living entity', it would be a 'potential' impact. As such, the planting would only provide an adequate screen from views of the access road after a significant period of time and, if and when sufficiently established, it would have the potential to prevent views from footpath 28 over the surrounding countryside. At my site visit I observed that wide expansive views over the countryside and surrounding area are currently available and I am concerned that these could be harmed due to some of the planting being on higher ground than the footpath.
22. At my site visit, I viewed the appeal site from some of the surrounding area, including footpath 36. I accept that, when established, the planting would hide from these views the security fencing around the NHS land at Fieldhead Hospital and at the rear of the Hatfeild View gardens. However, in the interim period vehicles would be visible along the proposed access road and the planting would be unlikely to ever reach a sufficient height and density to hide the roofs of the houses in Hatfeild View that are currently visible. Also, I observed that some of the security fencing is already screened by planting that would be most effective during the summer months and that in many of the views the fencing is hidden behind the higher land along the ridge on which the proposed access road, street lighting and additional planting and fencing would be located.
23. Taking account of the above, whilst there would be benefits to visual amenity from the proposed planting, particularly in the long term, they would not be sufficient to outweigh the harm that I have identified that would be caused to the rural character and appearance of the surrounding area due to the urbanising effect of the proposed access road and the activity from vehicles using it close to a ridgeline that is currently open field. As such, the proposal would fail to accord with Wakefield LDF Development Policies Document, 2009, policy D9, which requires new development to make a positive contribution to the environment and amenity of its locality by virtue of high quality design, layout and landscaping, as the location and layout of the access road would not respect the character of the locality and key views from footpaths in the area.

Other Considerations

24. Having found that the proposal would be inappropriate development in the Green Belt, I have considered the other considerations that have been put forward by the appellant.

25. In terms of the houses that the proposal would deliver, the Council has accepted that it cannot currently demonstrate a 5 year supply of deliverable housing sites as required by the Framework. It has provided evidence, which has not been tested at the Inquiry, that demonstrates that it could have the potential to satisfy its 5 year supply. This is based on its Strategic Housing Land Availability Assessment, which is contested and has not been finalised. The appellant has questioned the methodology used by the Council, particularly with regard to whether the 20% buffer to address persistent under delivery should be applied to the backlog as well as the base requirement, and how much windfall allowance should be included, based on past levels of windfall. I have therefore given very little weight to the Council's claim to potentially be able to meet the 5 year housing land supply requirement.
26. The appellant has not suggested an alternative calculation to provide a figure for a 5 year housing supply. As such, the extent of the shortfall has not been agreed, except that the inclusion of the dwellings on the appeal site would be insufficient to address this shortfall, particularly as the site has been included in the LDF Site Specific Policies Local Plan, 2012, (SSPLP) as housing allocation HS1 to provide 104 dwellings within the plan period.
27. The proposal would be in accordance with the Framework's aim to boost significantly the supply of housing. However, although part of the appeal site is allocated for housing development, the access to the site is not referred to in the allocation. If it had been intended that the site should be accessed through the Green Belt at that time, I would have expected that it would have been mentioned. It was promoted in an advocacy report as being accessed from Hatfeild View and was allocated and removed from the Green Belt on the basis of there being no infrastructure or other constraints that would prevent the anticipated housing delivery. The appellant has stated that the option of an access over hospital owned land from the western end of Hatfeild View is no longer available.
28. Sanderson consulting engineers, on behalf of the appellant, has undertaken an Access Review Study, which was updated in January 2014, to examine potential access routes. The Council and appellant have agreed that the Access Review Study demonstrates that there are no other suitable or deliverable access routes into the allocated housing site other than those in the appeal proposal. Although objectors have queried the findings of the Study and have suggested other access options, they have provided insufficient supporting evidence to demonstrate that any of their suggested access arrangements would be feasible and deliverable at the current time. As such, I accept the position that has been agreed between the Council and the appellant that the proposed road is required to ensure that the housing land could be accessed by vehicular traffic.
29. Some of the objectors have expressed concerns about the safety of the junction of the proposed access road with Ouchthorpe Lane. In this respect, I have noted the findings of the Transport Statement² and Safety Audit³ undertaken on behalf of the appellant and the agreed Statement of Common Ground related to highway issues. Taking account of these, together with my observations on site, I am satisfied that adequate visibility splays could be

² Transport Statement prepared by Sanderson Associates (consulting engineers) Ltd, dated January 2014

³ Stage 1 Road Safety Audit by Sanderson Associates (consulting engineers) Ltd, dated January 2014, included as Appendix G to the Transport Statement

provided in accordance with the recommendations in Manual for Streets 2 and that there would be no significant risk to highway safety at that junction, particularly with the proposed provision of vehicle activated warning signs.

30. Based on the above, the evidence suggests to me that part of the appeal site was allocated for housing without knowing that it would require access through the Green Belt, which was only evident to the appellant after the publication of the Inspector's SSPLP examination report. Also, the proposal would provide 68 dwellings, the deliverability of which has not been contested, which would be significantly less than the allocation figure. I find that the proposed provision of housing, including the affordable housing that would be provided to meet the policy requirements, carries significant weight. However, the weight that I have given to this consideration is not as great as it would have been if the road had provided access to more housing development and facilities than are proposed.
31. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. I have found that the Council cannot demonstrate a 5 year supply of deliverable housing sites. However, as the access road would be within the designated Green Belt, specific policies in the Framework indicate that development should be restricted, in accordance with footnote 9 to paragraph 14 of the Framework. Therefore, although relevant policies should be considered to be out-of-date, this does not necessarily mean that planning permission should be granted.
32. With respect to the sustainability of the proposal, the appellant has suggested that the appeal site is in a sustainable location and the proposal would be a sustainable form of development. Whilst I accept that the location of the proposed dwellings is sustainable, that is not the test for sustainable development. I have found that the proposed vehicular access arrangement would have an adverse impact on the environment and would therefore not represent sustainable development.
33. The construction jobs and new expenditure that would be brought into Wakefield's economy would be those provided by any new housing development within or adjacent to Wakefield. Whilst the appellant has given an indication of how much this would be, I attach moderate weight to these benefits, which is a similar level to that given by the appellant. However, the New Homes Bonus can be given very little weight as it is an incentive to Councils to provide much needed housing.
34. The provision of open space and contributions towards open space and education are mitigation and so only minimal weight can be given to these considerations. I agree with the appellant that limited weight should be ascribed to the improvements in accessibility of public footpaths and ecological improvements due to the proposed landscaping. However, the landscaping would act as mitigation and I have found that, taking it into account, there would still be harm to visual amenity due to the access road. Therefore, even though the landscaping would help to reduce many of the detrimental effects that the road would have on the appearance of the area, I have not included it as a positive consideration with regard to visual amenity.

Whether Very Special Circumstances Exist

35. The Framework states in paragraph 88 that substantial weight should be given to any harm to the Green Belt. In addition to this, I have found that overall there would be significant harm to the character and appearance of the surrounding area. This is weighed against the significant benefit that I have identified due to the supply of market and affordable housing, the moderate weight that I have given to the benefits to the economy, the limited weight that I have attached to the improvements to accessibility and ecological benefits, together with the minimal weight that I have given to some of the other considerations put forward. Based on this, and having regard to the advice given in the written Ministerial Statements of 1 July 2013 and 17 January 2014, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusions

36. For the reasons given, I have found that the proposed access road would reduce the openness of the Green Belt and would have an adverse effect on the purposes of including land in the Green Belt. As such, it would represent inappropriate development in the Green Belt having regard to the Framework and development plan objectives. It would also cause significant harm to the character and appearance of the surrounding area. Other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and the other harm identified, and the very special circumstances necessary to justify the development have not been demonstrated. The proposal would conflict with policies in the Framework and development plan policies and would fail to represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter	Of Counsel, instructed by Kevin Winter, Solicitor, Legal Manager, Planning, Highways and Local Land Charges, Wakefield Metropolitan District Council
He called Sam Dewar BSc MA	Planning Manager, DPA Planning Ltd

FOR THE APPELLANT:

Andrew Piatt	Solicitor and Partner, Gateley plc
He called Rob Greenwood IEng FIHE	Associate Director and Team Leader, Sanderson Associates (Consulting Engineers) Ltd
Kit Patrick BA(Hons) DipLa CMLI	Director, TPM Landscape
David Rolinson BA(Hons) MRTPI DipPEL	Chairman, Spawforths

INTERESTED PERSONS:

Katie Atkinson MA BA DipTP MRTPI	Director, KVA Planning Consultancy on behalf of the Yorkshire and Humber regional branch of CPRE
Councillor David Dews CEng BSc(Eng) MICE ACGI	Wakefield Councillor
Councillor Jacqui Williams	Local Councillor
Councillor Matthew Morley	Wakefield Councillor
Kevin Swift	Local resident and on behalf of Wakefield Civic Society
Mark Fudge BSc(Hons) CEng MICE	Local resident
John Gravett	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson, submitted by the appellant at the Inquiry on 17 November
- 2 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson- Appendices, submitted by the appellant at the Inquiry on 17 November
- 3 Opening Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 17 November
- 4 Opening Statement on behalf of the Local Planning Authority, submitted by the Council at the Inquiry on 17 November
- 5 Letters, date 10 July 2015 and 23 September 2015 from Andrea Jenkyns MP, submitted by Nick Prior at the Inquiry on 17 November
- 6 Statement read at the Inquiry by Councillor David Dews, submitted by Councillor David Dews at the Inquiry on 17 November
- 7 Statement read at the Inquiry by Councillor Jacqui Williams, submitted by Councillor Jacqui Williams at the Inquiry on 17 November

- 8 Statement read at the Inquiry by Katie Atkinson, submitted by Katie Atkinson at the Inquiry on 17 November
- 9 Copy of the grant of planning permission for the construction of new access road to serve existing sports club at West Of Dudfleet Lane, Horbury, Wakefield, submitted by the appellant at the Inquiry on 18 November
- 10 Council's note on Community Infrastructure Levy and S106 contributions, submitted by the Council at the Inquiry on 18 November
- 11 Statement read at the Inquiry by Mark Fudge, submitted by Mark Fudge at the Inquiry on 19 November
- 12 Heat mapping plan from a bat transit survey for the resubmission of the planning application, submitted by Mark Fudge at the Inquiry on 19 November
- 13 Copy of signed and dated Section 106 Unilateral Undertaking Planning Obligation, submitted by the appellant at the Inquiry on 19 November
- 14 Closing Submission of the Local Planning Authority, submitted by the Council at the Inquiry on 19 November
- 15 Closing Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 19 November

PLANS SUBMITTED AT THE INQUIRY

- A Drawing No 766-01 Rev C- Proposed Improvements, submitted by the appellant at the Inquiry on 18 November
- B Drawing No 7566-016 Rev D- Indicative Junction Layout with Junction Visibility Splays, submitted by the appellant at the Inquiry on 18 November

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

- 1 Photograph of Ouchthorpe Lane, submitted by Mark Fudge at the Inquiry on 19 November
- 2 Photograph of Footpath 28, submitted by Mark Fudge at the Inquiry on 19 November

BG2.3g **Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire (February 2015)**

Appeal Decision

Site visit made on 5 January 2015

by David Spencer BA (Hons) DipTP MRTPI

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

Decision date: 4 February 2015

Appeal Ref: APP/W0530/A/14/2228347

Land to the south of Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire CB25 9QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ede and Ravenscroft against the decision of South Cambridgeshire District Council.
 - The application Ref S/0571/14/FL, dated 10 March 2014, was refused by notice dated 6 May 2014.
 - The development proposed is 139 car parking spaces, means of access, landscape planting, other engineering operations, all ancillary to units A and D, Units 51 and 51A, Pembroke Avenue.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The application form provided a partial address for the appeal site and as such I have expanded it to use the address from the Council's decision notice in order to identify the location of the appeal site.

Background and Main Issues

3. The appeal site consists of arable farmland immediately to the south of the Denny End Industrial Estate. The wider setting of the site is open countryside consisting of fields to the east beyond which the dwellings of Waterbeach are visible, some scattered residential development and a public footpath to the south and the embanked A10 road to the west. The surrounding countryside, scattered dwellings and A10 road are within the Cambridge Green Belt, a designation which washes over the appeal site.
4. As such, it is necessary firstly to establish whether the appeal proposal represents inappropriate development in the Green Belt before proceeding, under the heading of "any other harm", to consider its effects on the openness of the Green Belt, together with other matters such as character and appearance. If it is inappropriate development, paragraph 87 of the National Planning Policy Framework (the Framework) says that it is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations (paragraph 88).

5. Accordingly, I consider the main issues in this appeal are as follows:
- (i) whether the proposal represents inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
 - (ii) the effect of the proposal on the openness of the Green Belt;
 - (iii) the effect of the proposal on the character and appearance of the area; and
 - (iv) whether any harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether or not the proposal is inappropriate development in the Green Belt

6. Policy GB/1 of the adopted South Cambridgeshire Local Development Framework Development Control Policies Development Plan Document 2007 (the DPD) states a presumption against inappropriate development in the Cambridge Green Belt. Whilst the policy references inappropriate development in the context of the then extant PPG2¹, I nonetheless find that the policy is broadly consistent with Section 9 of the Framework and as such it has significant weight in decision making.
7. The Framework states at paragraph 90 that certain forms of development are not inappropriate in Green belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These include, amongst other things, local transport infrastructure which can demonstrate a requirement for a Green Belt location.
8. Local transport infrastructure can reasonably be interpreted to mean those physical assets which enable people and goods to move about efficiently. In coming to this view I note that paragraph 31 of the Framework refers to viable infrastructure necessary to support sustainable development and then sets out a number of transport infrastructure examples. Additionally, paragraph 41 of the Framework refers to infrastructure which would widen transport choice. Accordingly, the Framework primarily considers transport infrastructure as being those facilities necessary to support communities and sustainable development through the movement and circulation of people and goods by various transport modes.
9. Consequently, I am of a view that there would need to be sound reasons in the wider public interest for local transport infrastructure to be located in Green Belt. On this basis, I am not persuaded that local transport infrastructure at paragraph 90 of the Framework would include a private surface car park to meet the needs of an individual business.
10. Therefore, in not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 87 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that in considering a planning application substantial weight

¹ PPG 2 Green Belts (1995) - revoked by the publication of the National Planning Policy Framework 2012.

should be given to any harm to the Green Belt. I also find that the proposal does not accord with saved DPD Policy GB/1.

Effect on openness of Green Belt

11. Paragraph 79 of the Framework sets out that openness is an essential characteristic of the Green Belt. The appeal proposal would involve 139 parking spaces, arranged in a single block layout. The parking spaces would be enclosed by perimeter planting however there would be tall steel mesh fencing erected to the inside of this planting. Further ancillary structures would include the low level lighting columns and the street lighting and CCTV columns. As such, the appeal proposal, without any cars that might be parked on it, would have a negative effect on the openness of the Green Belt by reason of the height and distribution of the various ancillary structures on land which is presently uncluttered. Additionally, the presence of such a concentration of parked vehicles would further conflict with the openness of the Green Belt.
12. The appellant submits that the effect on openness in terms of parked vehicles and ancillary structures is no different to park and ride sites elsewhere in the Cambridge Green Belt. I have very few details about the planning history for these park and ride facilities. In any event, such facilities were not inappropriate in the Green Belt as set out in previous guidance in PPG2 which notably limits their comparison to the appeal proposal. Consequently, and for the reasons given above I disagree with the appellant that surface car parking is an essentially open land use. As such the appeal proposal would result in significant harm to the objectives of the Green Belt to which the government attaches significant importance.

Character and Appearance

13. The appeal site is part of the fabric of flat arable farmland which is the predominant character of the countryside at this rural edge of Waterbeach. The appeal proposal would erode this rural character not only in terms of the loss of farmland but also by the introduction of features such as lighting columns, vehicles and associated human activity. Notwithstanding the proposed perimeter planting the appeal proposal would be visible, albeit filtered by intervening trees, from the lay-by on the embanked A10 road to the west and more widely from the public footpath to the south.
14. Whilst some conifers largely screen Unit D, it nonetheless remains that Unit 51A and other large buildings on the industrial estate form a conspicuous built edge in the wider landscape. Whilst the proposed native landscaping including specimen trees would, over time, soften the edge to this part of the industrial estate I do not share the appellant's view that the landscaping would conceal it. The landscaping would take some time to become established and in the interim both the large expanse and ancillary structures of the appeal proposal would be visible as well as the backdrop of the large industrial units.
15. The appellant has referred to Policy GB/2 of DPD in respect of mitigating the impact of development in the Green Belt however this policy does not apply to inappropriate development. The appellant also submits that the screen planting and bund would obscure parked cars. I am not persuaded that the relatively shallow height of the bund and the depth of the perimeter planting would completely mask the presence of vehicles in the short term and possibly beyond if there are weaker points in the landscaping. Furthermore, even if the

landscaping was effective over time in terms visibility, I find that the appeal proposal, by virtue of its scale and the associated level of activity, would be perceptible from public vantage points in the locality and as such harmful to the rural character.

16. In the context of Green Belt, openness and character are two separate issues. Whilst the Council has not put forward a development plan policy in relation to character and appearance in its reason for refusal I nonetheless find that there would be moderate harm to the rural character and appearance at the appeal location. Accordingly, the appeal proposal would conflict with the Framework which states at paragraph 17 that a core planning principle is to recognise the intrinsic character and beauty of the countryside.

Other considerations

Improvements to local parking conditions and demonstrable need for the proposal

17. I am satisfied that as currently configured the appellant has some 55 operationally feasible parking spaces for a business which generally employs 90 core staff, augmented by approximately 100 short-term employees for 6 months of the year from early summer through to Christmas. I therefore accept the appellant's business generates on-street parking.
18. From the evidence submitted by the appellant and from what I saw on my site visit of the Denny End Industrial Estate, which I recognise did not coincide with the peak period of employment for the appellant, there are notable levels of on-street parking including parking on footways and a narrowing of the highway for other users. However, whilst it may be unsightly and moderately disruptive to other highway users I have very little persuasive evidence that the on-street parking, both during peak and off-peak periods of employment, has resulted in a severe impact on highway safety or adversely affected businesses on the industrial estate. As such I only attach limited weight to the benefit of improving parking conditions on the industrial estate.
19. The appellant also submits that the appeal proposal would provide more secure and convenient parking for its employees. Whilst the existing and proposed parking provision through the appeal scheme would be well below the Council's parking standards for the amount of floorspace at the appellant's premises, it seems to me that the more appropriate measure is to look at the particular demands for the appellant's business, including those leasing Unit 51A. In this regard the appellant has undertaken a travel survey of core staff in 2013 which shows that 83% travel to work by car (including car sharing). There is no comparable survey data for seasonal staff and as such it is difficult to gauge whether the appellant has been reasonable to extrapolate the 83% figure to all staff in assessing the scale of parking at the appeal proposal.
20. Furthermore, I am mindful that the appeal scheme does not reflect the impact of any travel planning measures at the appellant's business. Whilst I have before me a Travel Plan Framework (October 2013), it does not set out any SMART goals for travel planning at the business and nor is there any evidence before me that travel plan measures have been implemented and their effectiveness monitored by an updated staff travel survey. As such I am concerned that the appeal proposal represents a theoretical maximum.

21. In arriving at this view, the submitted Transport Statement identifies that the appellant's premises are close to a bus stop served by what the appellant describes as "primarily a commuter service"² connecting the industrial estate to Cambridge and Ely. There are also dedicated cycle routes from Waterbeach into Cambridge. In my view, it would be reasonable to assume, given the numbers of core staff living in Waterbeach, Ely and Cambridge³ that with appropriate travel planning measures the appellant could secure some modal shift to these options thus reducing the demand for car parking.
22. Additionally, whilst I accept the appellant's evidence that its workforce is widely distributed there are nonetheless notable clusters of core staff in certain settlements and locations. Whilst current levels of car sharing are low, the 2013 staff survey identifies the barriers to car sharing which could be addressed through travel planning. Furthermore, the staff survey shows that there are identifiable measures⁴ that could be investigated to make car sharing more attractive to staff. Accordingly, I see no reason why with appropriate travel planning, the option of car sharing for both core and seasonal staff could further reduce the demand for car parking at the appellant's premises.
23. I have also noted that the appellant's evidence⁵ indicates that the existing yard areas to the business could yield 62-67 additional parking spaces. Whilst I accept that some yard area needs to be retained for operational purposes I observed that these areas were not always suitably demarcated and some areas inefficiently laid out for external storage. As such I find that these areas could be better utilised to provide some modest amounts of additional off-street parking thereby reducing demand for on-street parking.
24. The appellant advises that they have considered alternative parking solutions on the industrial estate and at the nearby Waterbeach Barracks. However, I have very little evidence of when these alternatives were investigated, how long the temporary solution at Sterling House would have been available, and how the efforts to secure alternative provision were undertaken. Given the identified harm to the Green Belt, in my view the evidential standard to demonstrate that alternative sites are not available has not been met.
25. Accordingly, for the reasons set out above, I do not share the appellant's submission that the appeal proposal represents the most sustainable option. Nor, for similar reasons, would it represent the most sustainable pattern of development. Whilst I accept that travel planning and better management of existing curtilage areas would reduce rather than remove the need for on-street parking, I am not persuaded that any residual levels of on-street parking would be harmful. Therefore, in bringing all the evidence together, I attach limited weight that there is demonstrable need for the appeal proposal.

Sustaining local employment

26. The appellant is a significant employer, particularly during peak periods. However, I have very little evidence that current parking arrangements would adversely affect the existing and future viability of the business. Accordingly, I attach limited weight to these submissions.

² Page 8, Transport Assessment March 2014 and paragraph 25 of the Economic Assessment March 2014

³ Figure 4.3 page 12, Transport Assessment, SLR, March 2014

⁴ Figure 4.8, page 18, Transport Assessment, SLR, March 2014

⁵ Table 2, page 7, Planning Statement March 2014

Drainage, Archaeology and living conditions

27. Turning to matters of drainage and archaeology, I have noted the concerns of the Parish Council however I am satisfied from the evidence before me that the site can be appropriately drained. I am also satisfied it can be developed, subject to conditions, without a significant adverse effect on local archaeological interest. I have also noted the concerns of a nearby dwelling regarding living conditions but I am satisfied that given the design, separation distances and background noise levels from the A10 that the appeal proposal would not result in any significant harm in terms of outlook or noise and disturbance. However, these matters do not add weight either in favour or against the development. The absence of harm in one respect cannot outweigh harm in another. Such factors are essentially neutral in the final balance.

Conclusion

28. The proposed development would be inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be a material loss of openness and harm to the rural character. As explained above I give only limited weight to the other considerations given in support of the proposal and conclude that they do not clearly outweigh the harm the scheme would cause. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Spencer

INSPECTOR

**BG2.3h Land North of Berry Hill Purification Works, Throop, Bournemouth
(October 2014)**

Appeal Decision

Hearing held on 23 September 2014

Site visit made on 23 September 2014

by Roger Pritchard MA PhD MRTPI

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

Decision date: 10 October 2014

Appeal Ref: APP/C1245/A/14/2221524

Land North of Berry Hill Purification Works, Throop, Bournemouth, BH8 0AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wessex Water Services Ltd against the decision of Dorset County Council.
 - The application Ref 8/2012/0514, dated 12 November 2012, was refused by notice dated 26 February 2014.
 - The development proposed is an access track and Bailey bridge to serve Berry Hill Sewage Treatment Works.
-

Decision

1. The appeal is allowed and planning permission is granted for an access track and Bailey bridge to serve Berry Hill Sewage Treatment Works at Land North of Berry Hill Purification Works, Throop, Bournemouth, BH8 0AJ in accordance with the terms of the application, Ref 8/2012/0514, dated 12 November 2012, and subject to the conditions attached as a Schedule to this Decision.

Main Issues

2. I consider the main issues to be whether the proposed development –
 - 1) Constitutes inappropriate development in the Green Belt and, if it is inappropriate development, whether the harm by reason of that inappropriateness and any other harm, including its effects on the openness of the Green Belt, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development; and
 - 2) Represents the least environmentally damaging practicable option in the terms set out by Policy 46 of the adopted Bournemouth, Dorset and Poole Waste Local Plan ('the Waste Local Plan').

Reasons

Background

3. The proposed development would construct a new access to the Berry Hill Sewage Treatment Works, which is located in the Green Belt between the northern edge of the built-up area of Bournemouth and the River Stour.
4. An objective of Wessex Water's (henceforth 'Wessex') Asset Management Plan 2010 - 2015 (AMP5) Sludge Strategy is to provide the capability to digest over

90% of all sewage sludge by March 2015 in order to minimise greenhouse gas emissions and increase renewable electricity generation in conformity with the Government's climate change commitments.

5. A key aim of the adopted strategy is '*...to consolidate sludge digestion at fewer sites with round-the-clock treatment capability, to benefit from operational and generation efficiencies.*' By the end of AMP5, sludge digestion will be concentrated at a limited number of sites, one of these being Berry Hill, where Wessex is committed to major investment in additional capacity. Berry Hill is the largest Sludge Treatment Centre (STC) in southeast Dorset, receiving sludge from all over Dorset as well as from some areas across the county boundary.
6. The sole, existing access road to the STC passes through a housing estate in Throop to the south of the STC and there is a history of complaints regarding tanker traffic. Local residents have raised concerns directly with Wessex about vehicle movements, noise and odour and also made representations to the Water Services Regulation Authority (Ofwat).
7. To address those access problems and facilitate improvements in capacity, a new access track ('the track') is proposed, using a northern approach to the STC via a Bailey bridge ('the bridge') across the River Stour. It will provide access to the main highway network on the B3073 (Parley Lane), close to the main entrance to Bournemouth International Airport. The track would be gated, with an access control system at its junction with Parley Lane thereby preventing public use.
8. The southern bank of the River Stour is the administrative boundary between Bournemouth to the south and East Dorset to the north. Wessex thereby made identical applications to Bournemouth and to Dorset County Council (henceforth 'Dorset'), in its capacity as Waste Planning Authority (WPA) for the East Dorset area. The current position is that Bournemouth has resolved to grant planning permission for its section of the access track, subject to the completion of a section 106 Unilateral Undertaking.

Inappropriate development in the Green Belt

9. The track, on both sides of the Stour, and thereby the bridge, are in the South East Dorset Green Belt as formally designated in 1981. The Government's National Planning Policy Framework ('the Framework'), which is a material consideration in all applications and appeals, states (Para 87) that inappropriate development is harmful to the Green Belt and should not be approved except in '*very special circumstances*'. The Framework goes on to state (Para 89) that the construction of new buildings should, subject to certain limited exceptions, be regarded as inappropriate in the Green Belt.
10. The Framework (Para 90) also states, however, that certain other forms of development are considered not inappropriate in the Green Belt provided (*my emphasis*) they preserve its openness and do not conflict with the purposes for which land is included in the Green Belt. The main parties agree that the proposed development constitutes '*...local transport infrastructure requiring a Green Belt location and involves engineering works*'. Both local transport infrastructure and engineering works are among the exceptions listed in the Framework. (It is a nice point as to whether the track, which would be a private road not open to the public, comprises local transport infrastructure or

- another form of engineering operation. Since the Framework applies the same criteria to both forms of development, however, this is not a matter that need concern me.)
11. The Framework emphasises (Para 79) that the essential characteristics of Green Belts are their openness and permanence and comments (Para 80) that Green Belts may serve five purposes. The parties to this appeal agreed that the proposed development does not put at risk four of those purposes, but that the critical issue is the third purpose listed, i.e. to assist in safeguarding the countryside from encroachment.
 12. However, Policy KS3 of the adopted Christchurch and East Dorset Core Strategy states that the two most important purposes of the Green Belt in its area are to protect the physical identity of individual settlements by maintaining wedges and corridors of open land between them and to maintain an area of open land around the conurbation.
 13. I agree that safeguarding the countryside from encroachment is a significant factor in this appeal, but I also consider that the area of land over which the track would pass clearly falls within the category of Green Belt land identified by the first important purpose recognised by Policy KS3. The Stour represents a corridor of open land running from west to east that plays an important role in separating the northern outskirts of Bournemouth from the development to the north of the river. In the area of the proposed development that role is emphasised by the presence of the Airport immediately to the north of the B3073. The Core Strategy removed the Airport from the Green Belt, citing amongst other reasons, the constraint the Green Belt represented on its sustainable growth. Future development of the Airport must therefore be considered to be probable, thereby increasing the important role of the corridor of open, Green Belt land along the Stour to the south of the B3073.
 14. Any built development must compromise the openness of the Green Belt to some degree. However, I draw an important distinction between the impact on the purposes of the Green Belt as set out in Paragraph 80 of the Framework, and the effects on the landscape within a defined Green Belt which the Framework advises (Para 81) should be retained and enhanced but which should be considered under the heading of other material harm.
 15. The track will be some 830 metres long, with a width of 3.5 metres and be constructed of concrete. There will be three passing places and a small turning area some 50 metres south of the junction with the B3073. The track will be largely at grade (apart from a small section where it climbs the terrace, around 2 metres high, that forms the northern edge of the Stour floodplain and also where it approaches the bridge on low embankments on both sides of the river).
 16. I accept that traffic along the track would result in some visual impact on openness but the 'worst case' scenario suggested by Wessex implies only an average of 2-3 lorries per hour during the working day and the absence of public traffic would mean significantly less impact than might arise from a normal highway development, of which there are, of course, many in Green Belts.
 17. The track therefore seems to me to represent only the most limited of impacts in terms of encroachment on the open countryside. I consider that impact on

the openness of the Green Belt would be less than either existing development south of the B3073, e.g. the aviation museum or the Adventure Wonderland theme park, both in the Green Belt to the east of the proposed track, or even perhaps of the planned extension to the Parley Court Golf Centre to the west. In coming to that conclusion, I recognise the fear that the proposed development would result in adverse cumulative impacts when taken in conjunction with existing development. Nevertheless, in terms of impact on the openness of the Green Belt here, I consider those effects would still be marginal. I therefore conclude that the track would not be inappropriate development in the Green Belt.

18. The bridge represents slightly different issues. The proposed design is for a low profile, pre-fabricated, girder structure some 40 metres in length that would be constructed off-site and then moved into position. (It is described as a 'Bailey bridge'). The bridge would have the capacity to take fully loaded sludge tankers with a maximum weight of 44 tonnes. It would represent a more prominent structure than the track, although its positioning along the Stour would limit its visual impact, especially when considered in terms of long-distance views. Consequently, in considering whether the bridge would compromise the openness of the Green Belt, in terms of encroachment into the countryside I consider that its impact would be sufficiently limited so as not to represent inappropriate development in the Green Belt.
19. I have slightly more concerns about putting at risk the role of the Stour valley in separating Bournemouth from the Airport. The track would cross the valley and thereby provide a north-south vehicular link currently absent in this area. It would, however, not do so as a public highway that might encourage or provide a precedent for further development. On balance, I therefore conclude that the track and bridge would not compromise the important role that Policy KS3 of the adopted Core Strategy provides for the Green Belt in this location as a means of separating Bournemouth from the Airport to the north.
20. In considering whether the proposed development is inappropriate in the Green Belt I have also had particular regard to the advice in Paragraph 3 of the still extant Planning Policy Statement 10, *Planning for Sustainable Waste Management* (PPS10). PPS10 advises that waste planning authorities should protect Green Belts but also recognise that, in determining planning applications, the particular locational needs of some types of waste management facilities, together with their wider environmental and economic benefits, are material considerations that should be given significant weight in determining whether planning permission should be given. The Berry Hill STC is in the Green Belt and any surface link to it must cross the Green Belt.
21. Furthermore, in this context, I note that whilst Dorset based its case against the proposal on the presumption that it was inappropriate development in the Green Belt (a view supported by Christchurch and East Dorset Councils), Bournemouth Borough Council confirmed at the Hearing that its position was that the track within its jurisdiction was not inappropriate development.
22. It is my overall conclusion that the proposed development is not inappropriate development in the terms set out by the Framework. I take this view in terms of its neither compromising the openness nor the permanence of the Green Belt. I also conclude that in the specific context of Policy KS3 of the adopted Christchurch and East Dorset Core Strategy, the proposed development would

not conflict with those objectives which that policy sets as especially important in the context of the Green Belt in this area.

The least environmentally damaging practicable option

The consideration of alternatives

23. It is the position of Dorset that Wessex have promoted the proposed development without sufficient examination of the alternatives and that the consequence is that the proposal is contrary to elements of Policy 46 of the adopted Waste Local Plan. These require development associated with the processing of waste water or sewage, including links to sewage works etc., to adopt the least environmentally damaging practicable option and, where built development would normally be inappropriate (as presumably within the Green Belt), to explore the feasibility of subterranean options.
24. From the evidence put to me, I was not convinced that there were realistic alternatives to the expansion of the Berry Hill STC. Apart from the overall drivers of national policy to reduce carbon emissions etc, and Wessex's approved AMP5 strategy, any alternative existing site within south east Dorset seems likely to raise issues similar to those arising here. Either sites, like the Holdenhurst works, are also in the Green Belt or there would similar if not more severe problems of access or a new facility would have to be constructed. Not only would the last option almost certainly raise severe planning problems but it would result in the underuse of existing capacity that would represent so poor a use of resources as to breach the test of practicability. I also note that Wessex commented that the use of Berry Hill as an STC could and would go ahead irrespective of the outcome of the appeal, the only issue being the extent to which the problems of the existing road access would constrain any planned expansion.
25. If Berry Hill is accepted as a site where Wessex should concentrate its sludge treatment facility in south east Dorset, I was equally unpersuaded that there were any alternative track and bridge access options that might be preferable to the proposed development. Because Berry Hill STC is in the Green Belt, all surface access options as alternatives to the current arrangements must raise similar concerns in respect of inappropriate development, impact on the landscape etc. Moreover, none of the alternatives investigated, of which there appear to have been four other than the preferred route, was promoted by any party as preferable. I agree: none demonstrates any advantage over the proposed route.
26. The issue therefore resolves itself into the second of Policy 46's relevant criteria, i.e. whether the subterranean alternatives had been explored in sufficient detail and whether, as Dorset considers, the environmental benefits of a pipeline were undervalued in comparison to the other criteria cited. In general terms, Wessex appears to have rejected the pipeline option on three grounds.
27. The first is practicality. The pumping of sludge over any distance requires high pressures and necessitates 24/7 working in order to avoid blockages building up that can be difficult to shift. Wessex rejects this possibility not because it would be impossible to maintain 24/7 pumping or because it is not proposed to operate Berry Hill on a continuous basis, but because it would be impractical to commission tanker movements on a 24/7 basis to provide a continuous flow of

material into the pipeline. Such movements would be necessary wherever the pumping station at the other end of the pipeline was sited. Dorset suggested that a solution to this might be to dilute the sludge at the pumping station, thereby easing the flow issues. However, I was not persuaded that this would be easy to achieve without significant changes in working practices and that it might raise additional issues in terms of water usage etc.

28. The second ground was risk. In simple terms, Wessex assesses that the failure of a pipeline would be far more likely to result in a serious environmental incident than, say, an accident to a single sludge tanker. Wessex already has experience of a pipeline that exists from Holdenhurst to Berry Hill and maintenance and repair of this pipeline is an on-going issue. I accept that this is a relevant risk.
29. The third ground is cost. Whilst there would be variations in cost depending on the routes chosen, Wessex suggested to me that, on average, the pipeline would be around 50% more expensive than that of a surface track and bridge. No one seriously questioned that estimate. I accept that Ofwat may have approved Wessex's AMP5 budget, in this respect, on the basis of a link to Berry Hill that could be either surface or subterranean but additional expenditure on a pipeline must represent an opportunity cost on Wessex's budget and should not be discounted.
30. Nevertheless, Wessex looked three subterranean options, all of which, however, were limited to providing a pipeline to Berry Hill STC from a new pumping station at the Kinson Sewage Treatment Works around 2½ kilometres to the west. Kinson is on the edge of the built-up area of Bournemouth and, whilst these alternatives would avoid the impact on the Green Belt of the track and bridge option, the necessity of directing sludge lorries to Kinson would raise issues of traffic and environmental disturbance to adjacent residential areas that I suspect would prove even more unacceptable.

The impact on the landscape

31. I have already commented that the Framework (Para 81) advises the retention and enhancement of landscapes within Green Belts. The character of the landscape to the north of the Stour between the river and the B3073 has strong urban fringe elements to it. The immediate river valley is an attractive feature, fringed by trees, that retains a countryside feel, especially when looking south towards the fields and woodland that screens it from the Berry Hill STC. However, north of the river, the presence of the Parley Court Golf Course, Adventure Wonderland, the aviation museum and the riding centre create less of a rural ambience. Nevertheless, I accept Dorset's assessment that whilst the quality of the landscape should be rated only as moderate, it is sensitive to development. I also accept that the track and bridge would add to the already present urbanising tendency.
32. However, I also consider that in the medium-term, the proposals for mitigating landscaping associated with the bridge and track have the potential not only to reduce the magnitude of their impacts to 'minor adverse' but also to generate some overall improvements to the landscape character of the area. The physical appearance of the development should reduce visual impact through use of boundary materials and landscape planting. Wooden post and rail fencing and bollards would blend in with the surrounding landscape, whilst

planting in the form of individual replacement trees and hedgerows as well as supplementary woodland would reduce visual impact.

33. I consider that the material harm to the landscape from the proposed development to the existing landscape would be limited and largely temporary. Mitigation should especially restrict the visual harm that may occur from public viewpoints of the proposed development. At present, I see these as principally being at the junction of the track with the B3073 (where the context must remain very much that of the adjacent Airport) and the views south from the Public Right of Way (PRoW) that runs from the Golf Course to Merritown Lane. I accept that views from the latter could represent some visual material harm in respect of both the track and bridge but consider that with landscape mitigation, the permanent impact would be sufficiently marginal to be acceptable.
34. I therefore conclude that although the proposed development would result in some material harm to the landscape north of the river, the proposed mitigation measures would reduce that impact to the point where the harm would not be so significant to conflict with the requirements of Policy 46.

Traffic issues

35. Wessex made clear that, whilst there were other factors associated with their long-term strategy and national objectives that underpinned the proposed development, its immediate driver is the intention to remove traffic from the residential areas in north Bournemouth through which the sludge tankers currently pass.
36. I saw for myself the issues that are associated with the existing access route to the Berry Hill STC. I can fully appreciate that not only is this route inappropriate in its width and form for the articulated tankers that use it, but that it passes through a residential area, especially along Boundary Lane, some of whose properties are very close to the highway, and accesses the main highway network on to Castle Lane West, where there are already problems of significant congestion.
37. I can appreciate why residents of the areas north of the Stour may be apprehensive about the re-routing of the sludge tankers. There would be some further pressure on Parley Lane which is already heavily trafficked especially because of the access to the Airport. Nevertheless, I consider that the proposed re-routing would, in overall terms, result in a reduction in material harm in respect of environmental damage. The new track would not pass close to any residential property. Furthermore, the design of the new junction with Parley Lane should ensure that there is no unacceptable risk to other highway users.
38. I therefore agree with the Highway Authority that there can be no sustainable highway or traffic objection to the proposed access arrangements to the Berry Hill STC and that, on balance, these would represent an improvement over the current circumstances.

Flood risk

39. The area immediately north of the Stour plays an important role in providing water meadows that are part of the floodplain which is inundated by excess water after periods of heavy rainfall. The Environment Agency (EA) rightly

insists that this role must continue and that there should be no unacceptable risk of the capacity of the floodplain being reduced by the proposed development. Wessex has calculated that the maximum displacement of flood water as a result of the track and bridge would be of the order of 1.5%. The EA has accepted this and on this basis has raised no objection to the proposed development.

40. However, the consequence of the agreed arrangements is that there will be periods when the new track is sufficiently inundated as to be impassable to the sludge tankers. Wessex recognises this and therefore wishes to retain the route through Throop for use in such emergencies. It is unclear to me how often such circumstances would occur. Wessex suggested around two weeks a year, most probably in the winter. This was not disputed by Dorset, although Hurn Parish Council commented that its experience was that the floodplain was brought into use more frequently.
41. It would obviously not make sense for a new access to be provided if that access was frequently unavailable for use and the current, generally agreed to be unsatisfactory, arrangements had to be reinstated. Nevertheless, the evidence did not persuade me that the frequency of the new access being unavailable would be so often as to represent a significant argument against it. I have therefore set aside the issue of flood risk as one that should weigh against allowing this appeal.

Conclusion on Policy 46

42. I conclude that there is insufficient evidence to persuade me that a subterranean option would represent a less environmentally damaging practicable (*my emphasis*) option or that any alternative surface track and bridge would be preferable. The proposed development is therefore not in conflict with the relevant provisions of Policy 46 of the adopted Bournemouth, Dorset and Poole Waste Local Plan.

Other Matters

43. The current position is that, in respect of section 106 Unilateral Undertakings, Wessex has submitted these separately, but in identical form, to both Bournemouth and Dorset. As Paragraph 8 above comments, Bournemouth has resolved to grant permission for the track on their side of the Stour subject to its agreement of such an Undertaking.
44. The Undertakings provide for contributions to be paid to the respective authorities towards the implementation of '*...improved public access links from Throop and North Bournemouth to Hurn and Parley across the Stour*'.
45. It appears that there was originally an intention to provide a pedestrian/cycle route across the Stour using the new bridge. Its design incorporates features in respect of the abutments etc that would allow a parallel crossing to be provided. However, objections from riparian owners have so far prevented the completion of a Unilateral Undertaking on this basis and I was told at the Hearing that it was now probably the intention to concentrate the funds provided by the Undertakings to improve existing PRowS in the Stour valley.
46. However, although it may be desirable to improve public access in this area, and I note that the Framework (Para 81) looks to opportunities to provide access in the Green Belt, I cannot accept that the section 106 Unilateral

Undertaking, as put to me, is necessary to allow the proposed development to go ahead. In these circumstances, I conclude that, although properly made, the Undertaking presented to Dorset does not meet the requirements of Section 122 of the Community Infrastructure Levy Regulations 2010 and the advice in paragraph 204 of the National Planning Policy Framework ('the Framework').

47. I therefore conclude that the appeal could be allowed and permission granted without the existence of a section 106 Unilateral Undertaking. However, in coming to that conclusion, I am more than aware that the proposed development cannot be implemented without the parallel approval of the track south of the Stour and that Bournemouth's confirmation of its resolution to give planning permission is dependent on the provision to it of a section 106 Unilateral Undertaking.

Conclusion

48. For the reasons given above I conclude that the appeal should be allowed.

Conditions

49. I have considered the conditions put before me by the Council that it would wish me to impose were the appeal to be allowed in the light of policies towards conditions as now set out in the Government's published Planning Practice Guidance and the model conditions included in the still extant Annex to Circular 11/95, *The Use of Conditions in Planning Permissions*.
50. In addition to standard conditions that set a time-limit for the development and require it to be implemented in conformity with the submitted and approved plans, I consider that conditions are necessary to ensure that prior approval is given to a scheme for the hard and soft landscaping of the site, as well as to arrangements to ensure that those trees which are to be retained are properly safeguarded during construction and that all new and replacement trees that die, are damaged or suffer from disease within five years of being planted are appropriately replaced. By the same token, I consider it essential that appropriate arrangements for the junction with Parley Lane, including highway drainage and necessary visibility splays, and for necessary access, parking and turning areas all to be in place before the track and bridge are brought into use. I shall impose conditions in all these respects.
51. I also consider that a Traffic and Construction Management Plan needs to be in place before development begins. Moreover, I consider that this plan should incorporate the arrangements for the protection of existing rights of way that were originally proposed as a separate condition. I shall therefore amalgamate these two conditions in imposing them.
52. Finally, I agree that, irrespective of the drawings already submitted, final details of the proposed bridge should be submitted and approved before work begins on its construction. I shall therefore impose a condition in this respect.

Roger Pritchard

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved must be begun not later than three years from the date of this decision.
- 2) The development hereby approved shall be carried out in strict accordance with the approved plans D9494/0700 Rev A; D9494/0701 Rev A; D9494/0702 Rev B; D9494/0703 Rev A; D9494/0704 Rev A; D9494/0705 Rev A; D9494/0706 Rev A; D9494/0710 Rev B; D9494/0711 Rev A; D9494/0712 Rev A; D9494/0713 Rev B; and the Environmental Supporting Statement dated November 2012 submitted in support of the application unless otherwise agreed in writing by the Waste Planning Authority. For the avoidance of doubt, the extent of development permitted by this decision is limited to that shown on the approved plans and falling within the red edged area identified on the appeal site location plan comprising Drawing Number D9494/ENV/200/Rev B.
- 3) No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to, and approved in writing by, the Waste Planning Authority.
Hard landscaping details shall include, as appropriate:
 - i. Proposed finished levels and contours;
 - ii. Means of enclosure;
 - iii. Surfacing of vehicle and pedestrian access and circulation areas;
 - iv. Hard surfacing materials;
 - v. Proposed and existing functional services above and below ground, e.g. drainage, power, communication cables, pipelines, etc.; and
 - vi. An implementation timetable.Soft landscaping details shall include, as appropriate:
 - i. Planting plans;
 - ii. Written specifications (including cultivation and other operations associated with grass establishment);
 - iii. Schedules of plants, noting species, planting sizes and proposed numbers/densities, where appropriate; and
 - iv. An implementation timetable.The development shall be carried out in accordance with the approved details.
- 4) All existing trees, shrubs and other natural features not scheduled for removal shall be fully safeguarded during the course of the site works and building operations in accordance with the Arboricultural Impact Appraisal and Method Statement dated November 2012. The protection measures shall be as specified in Drawing Number S101 and the Arboriculture Impact Assessment and shall be retained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the identified fenced area.
- 5) Details of the size, species and location of new and replacement trees shall be submitted to and agreed in writing by the Waste Planning Authority before commencing the works hereby permitted and shall be planted within three months from the date that the trees which are removed as a result of this permission are felled, or, if this period does not fall within a planting season, in accordance with a timetable to be agreed in writing with the Waste Planning Authority. Any trees that are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective within five years of planting shall be replaced with specimens of a similar size and species as originally required.

- 6) Before any other operations are commenced, the visibility splay areas as shown on Drawing Number D9494/0709 Rev B shall be cleared and excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be retained and kept free from all obstructions.
- 7) The development hereby permitted shall not be occupied or brought into use until the access, turning and parking areas shown on Drawing Number D9494/0702 Rev B have been constructed. Thereafter, these areas shall be retained, kept free from obstruction and kept available for access and the parking and turning of vehicles.
- 8) The surface of the first 100 metres of the internal access road measured from the public highway shall be metalled, drained and kept clear of debris to a specification to be submitted and approved in writing by the Waste Planning Authority. The approved scheme shall be constructed before the bridge over the River Stour is brought into use and shall be retained thereafter.
- 9) The development hereby permitted shall not be brought into use until provision has been made to ensure that no surface water drains directly from the site onto the adjacent public highway.
- 10) The development hereby permitted shall not commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the Waste Planning Authority. The Plan shall include construction vehicle details (number, size, type and frequency of movements), vehicular routes, delivery hours, and contractors' arrangements (provision of a compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The plan shall also provide for:
 - i) The inspection of the highways serving the site jointly between the developer (or his contractor) and the Waste Planning Authority prior to work commencing and at regular, agreed intervals during the construction phase so that any damage to the edges of the carriageway and verges can be identified and suitable remedial works, to be paid for by the developer, agreed;
 - ii) A scheme of signing of the heavy vehicle route to the site agreed with advice/warning signs at appropriate points;
 - iii) A programme of works and details of measures for the protection of rights of way that may be affected by the development hereby permittedThe development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.
- 11) Notwithstanding any information already submitted, prior to works commencing, the detailed design and construction of the Bailey bridge and access road from Parley Lane to the River Stour shall be submitted to, and approved in writing by, the Waste Planning Authority. The scheme shall include a working methodology, and details of the earthworks and levels, and works affecting watercourses and details of culverts. The development shall be carried out in strict accordance with the approved scheme.

APPEARANCES

FOR THE APPELLANT:

Stuart Lewis
Janette Shaw

Wessex Water
Senior Planner, Atkins, Consultant to Wessex
Water

Sergio Perez

Wessex Water

FOR THE LOCAL PLANNING AUTHORITY:

Huw Williams

Acting Team Leader, Dorset County Council

INTERESTED PERSONS:

Steve Davies
Margaret Phipps

Bournemouth Borough Council
Hurn Parish Council

DOCUMENTS PRESENTED AT THE HEARING

1. Draft Section 106 Unilateral Undertaking to be submitted to Dorset County Council

**BG2.3i Application for the Grade Separation of Junction 10A Serving the M1
(October 2013)**



**Department
for Transport**

Martin Woods
Head of the TWA Orders Unit
General Counsel's Office
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London SW1P 4DR

Pinsent Masons LLP
30 Crown Place
Earl Street
London
EC2A 4ES

Enquiries: 020 7944 3293

E-mail: transportandworksact@dft.gov.uk

Web Site: www.gov.uk/dft

Our Ref: TWA 8/1/5

For the attention of Robbie Owen

30 October 2013

Dear Sirs,

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED M1 JUNCTION 10A (GRADE SEPARATION)
ORDER**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Examining Authority, Alan T Gray MRICS DipTP MRTPI & Accredited Mediator, who conducted an examination into the application made by your clients, Luton Borough Council ("LBC") on 29 June 2012 for the M1 Junction 10a (Grade Separation) Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 16 November 2012 and was completed on 13 May 2013. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Luton between 13 February and 30 April 2013.

3. The Order would grant development consent for the grade separation of M1 Junction 10a at Kidney Wood on the south side of Luton, including the removal of the existing at-grade roundabout, the widening of the M1 Spur and the A1081 Airport Way, and the construction of new slip roads and roundabouts giving access to London Road. The Order would also authorise LBC to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for the purposes of the scheme. The scheme would allow traffic to flow without interruption between the M1 Spur and Airport Way, which leads to Luton Airport and residential, commercial and industrial areas to the south of Luton.

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 3 to 6 of the report, and his overall conclusions and recommendation are at section 7.

Summary of the Examining Authority's recommendation

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix E to his report.

Summary of Secretary of State's decision

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Secretary of State's consideration

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to Requirements are to those in Schedule 2 to the Order, as set out in Appendix E to the ER.

Policy context

8. The Secretary of State has considered and agrees with the Examining Authority's appraisal of the policy context of this scheme as set out at ER 3.8-40. In particular, he agrees with the Examining Authority that, at the national level, the National Planning Policy Framework ("NPPF") offers broad support for a scheme of this nature in that it would promote economic growth, relieve congestion and ensure the vitality of Luton town centre; and that there is no significant conflict with the NPPF (ER 3.10-11, 3.40). He notes also the specific support for the scheme in the National Infrastructure Plan and the 2011 Treasury Autumn Statement (ER 3.12-14).

9. At the local level, the Secretary of State agrees with the Examining Authority that there is little conflict between the scheme and the Luton Local Plan 2001-2011 ("LLP"), the South Bedfordshire Local Plan Review 2004, and the emerging Development Strategy for Central Bedfordshire; and that such conflict as there is can be effectively mitigated (ER 3.16-3.26, 3.40). As regards the impact of the scheme on the availability of land for a replacement stadium for Luton Town Football Club, he agrees that the scheme would not be in serious conflict with the relevant LLP policy for the reasons given by the Examining Authority (ER 3.29-34).

10. The Secretary of State notes that all of the land required for the scheme in Central Bedfordshire is designated Green Belt. Having regard to section 9 of the NPPF, he agrees with the Examining Authority that, since the scheme is local transport infrastructure and must be located at and around the existing junction which lies in the Green Belt, it would not be inappropriate development in the Green Belt. He agrees also that the scheme would accord with the Green Belt's original purpose of urban containment and that, taking into account the limited and temporary nature of the adverse visual impact of constructing the scheme, it would not detract from the openness of the Green Belt (ER 3.35-39, 4.107-109).

The need for and the costs and benefits of the scheme

11. The Secretary of State agrees with the Examining Authority that the relief of traffic congestion, taken with the additional capacity for proposed development and associated economic growth, creates a sound need for the scheme, which is supported by the policy findings referred to above (ER 4.3-4). He notes that the Examining Authority has tested

the methodology and assumptions used in LBC's business case for the scheme and agrees with his conclusion that the scheme would offer net benefits to users and represents good Value for Money (ER 4.5-18).

Scheme design and alternatives

12. The Secretary of State notes that during the evolution of the scheme there had been extensive and repeated consultations with stakeholders on how to meet the need for additional capacity at Junction 10a. Like the Examining Authority, he is satisfied that the options were properly considered during this process (ER 4.19-28). With regard to the representations relating to the design of the scheme the Secretary of State agrees that, for the reasons given by the Examining Authority, none of the proposed alternatives or modifications to the scheme should be pursued (ER 4.29-47).

Socio-economic impacts

13. The Secretary of State notes the Examining Authority's finding that there are substantial employment sites in the area whose potential is likely to be delayed or frustrated by the lack of capacity in Junction 10a. He agrees with the Examining Authority that by contributing to improved accessibility to Luton and the strategic road network, the scheme would support economic growth opportunities and sustain regeneration through new development. He accordingly agrees that the socio-economic benefits of the scheme would contribute very significantly to the public interest (ER 4.48-59).

Environmental impacts

Geology and soils

14. The Secretary of State notes that for contractual reasons it has not been possible to identify or measure the environmental consequences of transporting by road 115,000m³ of spoil from the development site. He nevertheless agrees with the Examining Authority that measures such as the Code of Construction Practice ("CoCP") and the Traffic Management Plan are capable of delivering the necessary mitigation. He agrees furthermore that the estimated total number of spoil lorries would be insignificant as a proportion of total traffic flows on Airport Way and the M1 Spur which are the routes likely to be used by such traffic (ER 4.67-4.75). In these circumstances, the Secretary of State does not consider that it is necessary at this stage to identify the exact destination or routing of spoil lorries for the purposes of reaching a decision on the scheme.

Noise and vibration

15. The Secretary of State agrees with the Examining Authority's assessment that the scheme would give rise to no significant vibration effects during construction or operation (ER 4.76). He also agrees with the Examining Authority that satisfactory mitigation of the unavoidable noise impacts of constructing the scheme could be secured by way of the CoCP and the Construction Environmental Management Plan ("CEMP") (ER 4.77-78, 4.82). As for operational noise, given that in the long term no more than minor increases would be experienced at a few receptors, the Secretary of State agrees further that there is no need to mitigate those impacts of the scheme (4.79-83).

Air quality

16. The Secretary of State agrees with the Examining Authority that during construction implementation of the CEMP and the Dust Management Plan would effectively mitigate adverse impacts at sensitive receptors under normal circumstances. He notes also the Examining Authority's conclusion that in operation the scheme would, overall, have a slight/moderate beneficial effect on air quality at locations where baseline conditions are already within the National Air Quality Objectives (ER 4.84-88).

Landscape and visual effects

17. The Secretary of State has considered and agrees with the Examining Authority's assessment of the landscape, townscape and visual effects of the scheme and the mitigation measures proposed by LBC, as set out at ER 4.89-105. In particular, he agrees that overall the scheme would have a maximum effect on landscape character in the Opening Year of moderate significance, declining to slight by Year 15 as a consequence of the mitigation measures that would be secured by the Requirements (ER 4.89-94). He agrees also that the maximum adverse visual impact would occur at Newlands Farm which lies very close to the scheme, where the impact would be substantial/moderate adverse in the Opening Year, reducing to slight/negligible by Year 15 once mitigation planting had matured (ER 4.96-99). The Secretary of State accordingly agrees with the Examining Authority that, weighed against the positive benefits of the scheme, the limited adverse landscape and visual impacts that would remain after mitigation are broadly acceptable (ER 4.100).

Cultural heritage and archaeology

18. The Secretary of State agrees with the Examining Authority that the visual and aural impacts of the scheme would have very little impact on the setting of the heritage assets at Luton Hoo, and that any such impact would be effectively mitigated as intervening planting matured (ER 4.110-118). He agrees also with the Examining Authority that, in relation to archaeological remains within or near the site of the scheme which might be adversely affected during the construction phase, the mitigation strategy that would be secured by the Requirements is appropriate for safeguarding them (ER 4.120-123).

Ecology and nature conservation

19. The Secretary of State notes that the scheme's construction phase could result in significant impacts on ecological resources as a result of disturbance, fragmentation, pollution and direct loss of hedges, trees and woodland. However, he agrees with the Examining Authority that following mitigation the residual long-term effect would be slight adverse. He notes also in this context that Natural England has no objections to the scheme and he agrees with the Examining Authority that Natural England's mitigation concerns are adequately addressed by the Order. The Secretary of State is accordingly satisfied that, despite some conflict with local nature conservation and biodiversity policies, the significance of the impact on ecological interests is not sufficient to stand in the way of the scheme and the benefits it would bring in the wider public interest (ER 4.124-133).

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

20. The Secretary of State is satisfied overall that, although there would be some significant adverse environmental impacts of implementing the scheme, they could be

adequately mitigated through design and construction, and that implementation of the proposed mitigation measures would be secured by the Requirements (ER 4.63, 4.136). He confirms for the purposes of regulation 3(2) of the above Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii), the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of scheme are the CoCP, the CEMP and the other plans that would require approval by the relevant planning authority under the Requirements (see ER 4.65-66).

Conclusions on the case for development consent

21. The Secretary of State agrees with the Examining Authority that LBC has made a strong case for the scheme. He agrees that taking into account the need for additional highway capacity, the socio-economic impact of the scheme and the broad policy support for the proposals, the benefits of the scheme outweigh its potentially adverse environmental impacts which could be satisfactorily mitigated (ER 4.134-138). He has therefore concluded that development consent should be given for the scheme.

Compulsory acquisition

22. The Secretary of State has considered the compulsory acquisition powers sought by LBC against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act and relevant guidance, and has considered the one outstanding objection to compulsory acquisition from an Affected Person. He agrees with the Examining Authority for the reasons given that the proposed development is for a legitimate purpose; sufficient resources are likely to be available to fund the scheme; a clear purpose has been identified for each plot of land and no more land is to be acquired than is reasonably necessary for the purposes of the scheme; the public benefits of the scheme outweigh the potential private dis-benefits; and there is a compelling case in the public interest for compulsory acquisition. The Secretary of State also agrees with the Examining Authority that there is no substance in the remaining objection to compulsory acquisition and that, as far as human rights considerations are concerned, the examination process has ensured a fair and public hearing; any interference with human rights is proportionate and strikes a fair balance between the rights of the individual and the public interest; and compensation would be available in respect of any quantifiable loss (ER 5.11-19, 5.25-34, 7.2-3).

Draft Development Consent Order

23. The Secretary of State agrees with the Examining Authority that the various changes to the Order proposed by LBC during the course of the examination are appropriate and necessary (ER 6.10-15). He agrees also that, subject to following qualifications, the further amendments explained by the Examining Authority at ER 6.16-6.37 are justified for the reasons given and should be incorporated in the Order. The qualifications are that:

- the words “unless otherwise agreed in writing by the relevant planning authority” should also be deleted in Requirement 8(1) in the interests of precision and reasonableness, for the reasons given by the Examining Authority at ER 6.30-35; and

- Requirement 18 should be further amended by the deletion of the words “any amendments to”, so as to be consistent with the Examining Authority’s view that the Order should not sanction subsequent amendments by informal arrangements (see ER 6.31).

24. The Secretary of State has also decided to make the following additional modifications to the form of the Order set out in Appendix E to the Examining Authority’s report:

- in article 18 to insert paragraph (4) to make clear that the compulsory acquisition powers in the Order do not apply to Crown interests;
- in Requirements 3 and 4(2), to insert implementation provisions; and
- various minor drafting changes to the Order which do not materially alter its effect, including further changes to conform with the current practice for Statutory Instruments, changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

He is satisfied that, subject to these further changes, the Order is appropriate for implementation of the scheme.

Secretary of State’s overall conclusions and decision

25. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the grade separation of Junction 10a of the M1. He considers in particular that relieving congestion and providing additional highway capacity in the vicinity of the junction would provide significant benefits. While recognising that the scheme would have a number of limited adverse impacts as identified by the Examining Authority, taking into account the mitigation measures that would be secured by the Order he does not consider that any of those impacts would be unacceptable. The Secretary of State has concluded that, overall, the benefits of the scheme clearly outweigh its likely adverse impacts.

26. The Secretary of State has accordingly decided to accept the Examining Authority’s recommendation at ER 7.5 and is today making the Order granting development consent and imposing the Requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 23 and 24 above.

27. The Secretary of State confirms that, in reaching this decision, he has had regard to the local impact report prepared jointly by LBC and Central Bedfordshire Council, any matters prescribed by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).

Challenge to decision

28. The circumstances in which the Secretary of State’s decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

29. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Martin Woods

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The M1 Junction 10a (Grade Separation) Order 2013 (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/eastern/m1-junction-10a-grade-separation-luton/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

PART 5
POWERS OF ACQUISITION

18. Compulsory acquisition of land
19. Time limits for exercise of authority to acquire land compulsorily and to use land temporarily
20. Compulsory acquisition of rights etc.
21. Private rights over land
22. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
23. Acquisition of subsoil or air-space only
24. Rights under or over streets
25. Temporary use of land for carrying out the authorised development
26. Temporary use of land for maintaining authorised development
27. Statutory undertakers
28. Apparatus and rights of statutory undertakers in stopped up streets
29. Recovery of costs of new connections

PART 6
OPERATIONS

30. Felling or lopping trees
31. Trees subject to tree preservation order

PART 7
MISCELLANEOUS AND GENERAL

32. Operational land for purposes of the 1990 Act
33. Defence to proceedings in respect of statutory nuisance
34. Protection of interests
35. Certification of plans etc.
36. Service of notices
37. Arbitration
38. Traffic regulation
39. Procedure in relation to approvals etc. under Schedule 2

SCHEDULES

- SCHEDULE 1 — THE AUTHORISED DEVELOPMENT
- SCHEDULE 2 — REQUIREMENTS
- SCHEDULE 3 — CLEARWAYS
- SCHEDULE 4 — SPEED LIMITS
- PART 1 — M1 MOTORWAY
- PART 2 — ROADS SUBJECT TO 40 MPH SPEED LIMIT
- PART 3 — ROADS SUBJECT TO 50 MPH SPEED LIMIT
- SCHEDULE 5 — STREETS TO BE PERMANENTLY STOPPED UP
- SCHEDULE 6 — TEMPORARY STOPPING UP OF STREETS
- SCHEDULE 7 — ACCESS TO WORKS

- SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
- SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — TREES SUBJECT TO TREE PRESERVATION ORDERS
- SCHEDULE 12 — PROTECTIVE PROVISIONS
- PART 1 — FOR THE PROTECTION OF HIGHWAY AUTHORITIES
- PART 2 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
- PART 3 — FOR THE PROTECTION OF NATIONAL GRID

An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Order 2013 and comes into force on 20th November 2013.

Interpretation

2.—(1) In this Order—

-
- (a) S.I. 2009/2264.
 (b) 2008 c. 29.
 (c) S.I. 2010/103.

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(d);
- “the 1990 Act” means the Town and Country Planning Act 1990(e);
- “the 1991 Act” means the New Roads and Street Works Act 1991(f);
- “the 2008 Act” means the Planning Act 2008;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “the authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;
- “demolition” means destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the Works described in Schedule 1 (the authorised development); and such demolition may occur on one occasion or over any period of time.
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or

-
- (a) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1984 c. 27.
- (e) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (f) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) by other means but while in electronic form;

“the environmental context plans” means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;

“the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footpath” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation);

“maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“the relevant planning authority” means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the sections” means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the street plans” means the plans certified as the street plans by the Secretary of State for the purposes of this Order;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6 (benefit of Order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of deviation

5. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1.5 metres upwards; and
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3 STREETS

Application of the 1991 Act

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial streetworks);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary

nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act referred to in paragraph (4) are—
- section 54 (advance notice of certain works), subject to paragraph (6);
 - section 55 (notice of starting date of works), subject to paragraph (6);
 - section 57 (notice of emergency works);
 - section 59 (general duty of street authority to co-ordinate works);
 - section 60 (general duty of undertakers to co-operate);
 - section 68 (facilities to be afforded to street authority);
 - section 69 (works likely to affect other apparatus in the street);
 - section 75 (inspection fees);
 - section 76 (liability for cost of temporary traffic regulation); and
 - section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

- (7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to—
- (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie are to be—

- (a) maintained by and at the expense of the undertaker for a period of 12 months from their completion; and
- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, is to be —

- (a) maintained by and at the expense of the undertaker for a period of 12 months from its completion; and
- (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act applies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

(a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—

(i) for Article 1A substitute—

“The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of the Secretary of State for Transport and deposited at Deposited Documents Service, Department for Transport, Room F13, Ashdown House, Sedlescombe Road North, St. Leonards-on-Sea, East Sussex, TN37 7GA”; and

(ii) for the Schedule to that Scheme, after the “The Route of the Special Road”, substitute—

“From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north-westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.”;

(b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to be trunk roads for which the Secretary of State is the highway authority and are to be classified as the A1081 trunk road; and

(c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195 metres in a westerly direction, is to cease to be trunk road, is to be classified as the A1081, and is to become—

(i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and

(ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) of the 1980 Act.

(2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to—

(a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and

(b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) takes effect, and the general effect of that paragraph.

(3) Upon completion of the authorised development, the following sections of highway are to be classified as the A1081, and are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—

(a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241 metres;

(b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187 metres;

(c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331 metres;

- (d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310 metres;
- (e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;
- (f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502 metres;
- (g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and
- (h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300 metres.

Clearways

11.—(1) This article has effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(a), substitute—

“Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.”.

(3) Subject to paragraph (4), no person is to cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(b); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, a safety camera partnership or the Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(c); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(d); and
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control; or

(a) S.I. 1963/1172.

(b) 1984 c. 12.

(c) 1991 c. 56.

(d) 2000 c. 26.

- (d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(5) Paragraphs (2) to (4) have effect as if made by traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

(6) In this article, “traffic officer” means an individual designated under Section 2 (designation of traffic officers) of the Traffic Management Act 2004(a).

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(b) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

(a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (Restriction) Order 1988 is revoked;

(b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—

(i) in Schedule 3, omit “London Road” from the “road” column, and from the corresponding entry in the “length subject to speed limit” column, omit “From a point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout”; and

(ii) in Schedule 4, replace “New Airport Way” with “A1081 Airport Way (previously described as New Airport Way)”, and replace the corresponding entry in the “length subject to speed limit” column with “The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres”;

(c) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person is to drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(c) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(a) 2004 c. 18.

(b) S.I. 2011/1015.

(c) S.I. 2011/935.

(2) No street specified in columns (1) and (2) of Schedule 5 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 28 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—
- (a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and
 - (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4 SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(a).

- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(a) S.I. 2010/675

(b) 1991 c. 57

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate or is incidental to it, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19 (time limits for exercise of authority to acquire land compulsorily and to use land temporarily), paragraph (2) of article 20 (compulsory acquisition of rights etc.) and paragraph (9) of article 25 (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

(4) In relation to Crown Land, the powers in paragraph (1) are limited to interests in that land which for the time being are held otherwise than by or on behalf of the Crown.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(a) 1981 c. 66.

- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)(time limits for exercise of authority to acquire land compulsorily and to use land temporarily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights or imposing restrictive covenants over any part of the land specified in Schedule 8.

(10) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27.—(1) Subject to paragraph (2), the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) does not have effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act;
- (b) article 28 (apparatus and rights of statutory undertakers in stopped up streets); or
- (c) Parts 2 and 3 of Schedule 12 (protective provisions).

Apparatus and rights of statutory undertakers in stopped up streets

28.—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed

more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work carried out, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003^(a).

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

(a) 2003 c. 21.

PART 6

OPERATIONS

Felling or lopping trees

30.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

31.—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty imposed by section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

34. Schedule 12 (protective provisions) has effect.

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the environmental statement;
- (c) the land plans;
- (d) the works plans;
- (e) the street plans;
- (f) the sections; and
- (g) the environmental context plans,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;

(a) 1990 c. 43.

(b) 1974 c.40.

- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

(a) 1978 c. 30.

Arbitration

37. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

38.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004^(a) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers conferred by paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act has the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals etc. under Schedule 2

39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

30th October 2013

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

^(a) 2004 c.18.

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332 metres in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

- (a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;
- (b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);
- (c) construction of an un-segregated footway and cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;
- (d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435 metres to the north-west of its junction with A1081 London Road (south);
- (e) provision of private pedestrian access to maintain highways equipment at:
 - (i) a point on the south-western highway boundary of Newlands Road approximately 30 metres to the north-west of the underbridge crossing of the M1 Spur;
 - (ii) a point on the south-western highway boundary of Newlands Road approximately 25 metres to the south-east of the underbridge crossing of the M1 Spur;
 - (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20 metres to the north-west of the underbridge crossing of the M1 Spur; and
 - (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30 metres to the south-east of the underbridge crossing of the M1 Spur;
- (f) provision of average speed cameras;
- (g) erection of overhead gantry signs;
- (h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115 metres in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in a north-north-westerly direction through a proposed underbridge under the M1 Spur (85 metres in length), then proceeding in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on

London Road approximately 113 metres south of the centre of Ludlow Avenue's junction with London Road, including—

- (a) construction of new single carriageway highway;
- (b) improvements to the existing highways;
- (c) construction of two new roundabout junctions;
- (d) construction of footways and cycleways;
- (e) construction of an underbridge and associated wing walls and retaining walls;
- (f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349 metres in length) commencing at the proposed Kidney Wood Southern Roundabout on the A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455 metres north-east of M1 Junction 10 Roundabout, including—

- (a) construction of a new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391 metres in length) commencing on the A1081 Airport Way westbound carriageway 480 metres south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

- (a) construction of new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281 metres in length) commencing on the M1 Spur eastbound carriageway 544 metres north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

- (a) construction of new two lane connector road;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225 metres in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then

going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448 metres south-west of the Capability Green Overbridge, including—

- (a) construction of new single lane connector road with hardshoulder;
- (b) construction of a combined un-segregated footway and cycleway;
- (c) provision of average speed cameras; and
- (d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. 5 — Reconfiguration of the existing A1081 London Road (409 metres in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150 metres north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81 metres south of the existing M1 Junction 10a roundabout, including—

- (a) construction of new single lane road and junction;
- (b) construction of a turning head;
- (c) construction works to narrow the existing carriageway to a single track road with passing places;
- (d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180 metres and 370 metres to the north of its junction with A1081 London Road (South);
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. 6 — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

- (a) construction of a new private vehicular and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13 metres to the north of its junction with Kidney Wood Northern Roundabout;
- (b) construction of a turning head;
- (c) construction of works to widen the existing London Road footway to form a public footpath;
- (d) landscaping works;
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373 metres in length) commencing 20 metres north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147 metres south-west of the proposed Kidney Wood Northern Roundabout, including—

- (a) erection of footpath gates or stiles;

- (b) erection of signing; and
- (c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

- (a) construction of piped drainage outfall; and
- (b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill;
- (c) any earthworks strengthening measures as may be required; and
- (d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

- (a) construction of attenuation pond;
- (b) construction of infiltration basin;
- (c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235 metres to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;
- (d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill; and
- (c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) planting of a new boundary hedge;
- (d) erection of a new fence to protect the hedge; and
- (e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

- (a) trimming, pollarding and coppicing of trees;

- (b) clearance of vegetation, as required to construct the works;
- (c) erection of a new boundary fence; and
- (d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

- (i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;
- (iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (vii) works for the benefit or protection of land affected by the authorised development; and
- (viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

For the avoidance of doubt, any demolition preceding the Works is to be regarded as an integral part of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1.—(1) In this Schedule—

“contaminated land plan” means a written scheme for the treatment of contaminated land during construction;

“dust management plan” means a written scheme for the attenuation of dust during construction;

“relevant highway authority” means the highway authority responsible for the highway in question; and

“stage” means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority under requirement 3.

(2) References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved in writing by the relevant planning authority. The authorised development must be carried out in accordance with the approved scheme.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections.

(2) No stage of the authorised development is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority. The proposed gantries must be constructed in accordance with the approved details.

Ecology

5.—(1) None of the authorised development, including any site clearance works, is to commence until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological strategy.

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) The authorised development must be landscaped in accordance with a written landscaping scheme, reflecting the environmental statement and incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must be approved before the authorised development commences.

(2) The landscaping scheme must be in accordance with the ecological strategy approved under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

- (a) for hard landscaping areas—
 - (i) proposed finished levels;
 - (ii) hard surfacing materials;
 - (iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);
 - (iv) retained historic landscape features and proposals for restoration, where relevant; and
 - (v) boundary treatments and all means of enclosure; and
- (b) for soft landscaping areas—
 - (i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;
 - (ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;
 - (iii) services below ground, including drainage, pipelines, power and communication cables; and
 - (iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant

planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

Measures to protect the water environment

10.—(1) None of the authorised development is to commence until—

- (a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified;
- (b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and
- (c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development must be carried out—

- (a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and
- (b) incorporating any such measures or treatments as are approved under sub-paragraph (2)..

Flood risk assessment

11.—(1) None of the authorised development is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with any recommendations made in the flood risk assessment.

Archaeology

12.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme.

Construction traffic and access strategy

13.—(1) No stage of the authorised development is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan.

Construction work and construction compounds

14.—(1) No stage of the authorised development is to commence until for that stage—

- (a) written details of the type and location of screen fencing for the proposed construction compounds;
- (b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development;
- (c) a scheme for the attenuation of noise and vibration during construction;
- (d) a dust management plan; and
- (e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1).

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1).

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice..

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan.

Approved details

18. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by each relevant highway authority, after consultation with the police, other emergency services and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

(3) The plan must be approved before the authorised development commences.

SCHEDULE 3 CLEARWAYS

Article 11

The roads specified for the purposes of article 11(3) (clearways) are—

- (a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1,338 metres;
- (b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1,130 metres;
- (c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
- (d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
- (e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
- (f) Kidney Wood Westbound Merge Slip Road from its junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
- (g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
- (h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
- (i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
- (j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4
SPEED LIMITS

Article 12

PART 1
M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(a) substitute—

“SPECIFIED ROADS

- 1.** The specified roads are the—
 - (a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;
 - (b) carriageways of the northbound slip roads;
 - (c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and
 - (d) carriageways of the southbound slip roads.
- 2.** Any reference in this Schedule to—
 - (a) the letter “M” followed by a number is a reference to the motorway known by that name;
 - (b) the letter “A” followed by a number is a reference to the road known by that name; and
 - (c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.
- 3.** In this Schedule—

“northbound slip roads” is a reference to the lengths of carriageway specified in paragraph 4;

“off-slip road” means a slip road intended for the use of traffic leaving the M1;

“on-slip road” means a slip-road intended for the use of traffic entering the M1;

“southbound slip roads” is a reference to the lengths of carriageway specified in paragraph 5; and

“zone sign” means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(b) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.
- 4.** The northbound slip roads are as follows—
 - (a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;
 - (b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;
 - (c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;

(a) S.I. 2011/1015.

(b) 1984 c. 27.

- (d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;
- (e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;
- (f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and
- (g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

- (a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45 metres to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;
- (b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100 metres to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;
- (c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;
- (d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;
- (e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;
- (f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and
- (g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3

ROADS SUBJECT TO 50 MPH SPEED LIMIT

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1,371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road from its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

SCHEDULE 5

Article 13

STREETS TO BE PERMANENTLY STOPPED UP

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New Street to be substituted
Luton Borough Council and Central Bedfordshire Council	A1081 London Road London Road	Between points A and B on the street plans, sheet 3 (being from a point 10 metres to the south of the A1081 London Road junction with M1 Junction 10a Kidney Wood Roundabout, southwards for a distance of 80 metres). Between points C and D on the street plans, sheet 3 (being from the London Road junction with M1 Junction 10a Kidney Wood Roundabout, northwards for a distance of 220 metres), including private means of access to Kidney Wood at points J and K on those plans (being respectively 87 metres and 200 metres to the north of the junction with M1 Junction 10a Kidney Wood Roundabout).	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5 Work Nos.1, 2, 3A, 3B, 4A, 4B, 5, 6(a) and 6(c)
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Between points E and F on the street plans, sheet 3 (being part of the circulatory carriageway, from a point 25 metres west of its junction with the centreline of London Road, eastwards for a distance of 45 metres)	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20 metres from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435 metres to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Northbound Diverge Slip Road M1 Junction 10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
	<p>Capability Green Eastbound Diverge Slip Road</p> <p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
Luton Borough Council	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45 metres to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes</p>

SCHEDULE 7

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165 metres to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45 metres to the north-west of the underbridge crossing of the M1 Spur. This temporary access is to be located at an existing gated access to arable farmland, and is to provide access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	T7	<p>A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235 metres to the north-west of its junction with the A1081 London Road (south). This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.</p>
	T8	<p>A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.</p>
	T9	<p>A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.</p>

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Number of land shown on land plans, sheet 1</i>	(2) <i>Purpose for which rights over the land may be acquired</i>
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

(a) 1973 c. 26.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“**8.—(1)** Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Order 2013^(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(a) S.I. 2013/[]

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) is modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur from Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A and Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 and Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 and Work No.6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 and Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 and Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 and Work No.3B
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A and Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B and Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1, Work No.3B and Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 and Work No.10

SCHEDULE 11

Article 31

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
Birch, oak, ash, rowan and hornbeam.	Kidney Wood Tree Preservation Order shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood Tree Preservation Order to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12
PROTECTIVE PROVISIONS

Article 34

PART 1
FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with article 37 (arbitration).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37.

PART 2

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and interpretation

10.—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that statutory undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—

- (i) any drain or works vested in the undertaker under the Water Industry Act 1991(b); and

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“plans” includes sections and method statements;

“undertaker” means the undertaker as defined in article 2 (interpretation); and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and,
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(3) Except in the case of paragraph 11, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

11.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 13 or the power of the undertaker to carry out works under paragraph 15.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets), and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

13.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) apply in relation to such works.

(3) (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the

necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(6) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

14.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

15.—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been

required by the undertaker under paragraph 13(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

16.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections to apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub-paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

17.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

18. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

19. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 13(2)

or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 15(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

20. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Interpretation

21. In this Part of this Schedule—

“National Grid” means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH (“National Grid”);

“the high pressure gas main” means the Kinsbourne Green to Dallow Road high pressure gas main; and

“plans” means all drawings, designs, sections, specifications, method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

22.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 23 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 15 of Part 2.

(3) Paragraph 23 of this Part of this Schedule (except in the case of paragraph 23(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 16 to 20 of Part 2 have effect, except as provided for in paragraph 24 of this Part.

High pressure gas main: protection

23.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within 3 metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within 3 metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

- (a) the exact position of those works;
- (b) the level at which those works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal; and
- (d) the position of the high pressure gas main.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);
- (b) must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies must be executed only in accordance with—

- (a) the plan approved under sub-paragraph (2); and
- (b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and National Grid is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

- (a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and
- (b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

24.—(1) Sub-paragraph (2) applies instead of paragraph 17(3) of Part 2 in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 17(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering the undertaker's representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

**GRADE SEPARATION of M1 JUNCTION 10a
LUTON**

**Examining Authority's Report of Findings and Conclusions
and Recommendation to the Secretary of State for Transport**

Alan T Gray

MRICS DipTP MRTPI & Accredited Mediator

Examining Authority

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File Ref TR010009

M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

- The application, dated 29 June 2012, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 29 June 2012.
- The applicant is Luton Borough Council (LBC).
- The application was accepted by the Planning Inspectorate for examination on 27 July 2012.
- Examination of the application began on 16 November 2012 and was completed on 13 May 2013.
- The proposed development (the scheme) comprises the grade separation of Junction 10a of the M1, which is currently an at-grade roundabout by Kidney Wood on the south side of Luton. The roundabout is located at the north-eastern end of the Motorway Spur connecting the M1 at Junction 10 with Airport Way (A1081), which affords access to Luton Airport and to residential, commercial and industrial areas on the south side of Luton. The scheme would include slip roads connecting the main line to two new roundabouts north and south of an improved Motorway Spur/Airport Way. These roundabouts would, in turn, provide connections to the existing side road network.
- Once completed and operational, the scheme would be owned, managed and maintained by LBC, albeit partly within the administrative boundary of Central Bedfordshire.

Summary of Recommendation

The Examining Authority recommends that the Secretary of State for Transport should make the Development Consent Order in the attached, proposed form in Appendix E.

ABBREVIATIONS used in the REPORT

AGLV	Area of Great Landscape Value
ALLI	Area of Local Landscape Importance
AP	Affected Person
APP	Application Document
AS	Additional Submission
AST	Appraisal Summary Table
ASV	Accompanied Site Visit
BCR	Benefit/Cost Ratio
BIS	Department for Business Innovation & Skills
BoR	Book of Reference
CA	Compulsory Acquisition
CA	Conservation Area
CBC	Central Bedfordshire Council
CEMP	Construction Environmental Management Plan
CLP	Contaminated Land Plan
CMR	Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010
CoCP	Code of Construction Practice
CPRE	Council for the Protection of Rural England
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DEC	Procedural Decision
DECC	Department of Energy & Climate Change
DfT	Department for Transport
DMP	Dust Management Plan
DMRB	Design Manual for Roads and Bridges
DoS	Degree of Saturation
DPD	Development Plan Document
DSCB	Development Strategy for Central Bedfordshire: Pre-Submission 2013
EA	Environment Agency
ECHR	European Convention on Human Rights
EH	English Heritage
EIA	Environmental Impact Assessment
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EV	Preliminary Meeting or Hearing Document
ExA	Examining Authority
GB	Green Belt
GLVIA	Guidelines for Landscape and Visual Impact Assessment

HA	Highways Agency
HCA	Homes and Communities Agency
HMT	Her Majesty's Treasury
IP	Interested Party
IPC	Infrastructure Planning Commission
ISH	Issue Specific Hearing
J10	(M1) Junction 10
J10a	(M1) Junction 10a
LBC	Luton Borough Council
LCA	Landscape Character Area
LDF	Local Development Framework
LIR	Local Impact Report
LLP	Luton Local Plan 2001-2011
LP	Local Plan
LPA	Local Planning Authority
LTP3	Luton Local Transport Plan 2011-2026
MM	Managed Motorway (hard shoulder running with gantries etc)
MoU	Memorandum of Understanding
NE	Natural England
NIP	National Infrastructure Plan
NPPF	National Planning Policy Framework 2012 (the <i>Framework</i>)
NSIP	Nationally Significant Infrastructure Project
PA	Planning Act 2008
PD	Project Document
PINS	Planning Inspectorate
PM	Preliminary Meeting
PPG	Planning Policy Guidance
R	Requirement
RGF	Regional Growth Fund
RHPG	Registered Historic Park and Garden
RR	Relevant Representation
RSS	Regional Spatial Strategy
SBLPR	South Bedfordshire Local Plan Review 2004
SOCG	Statement of Common Ground
SoR	Statement of Reasons
SoV	Schedule of Variation
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SPPH	Stockwood Park Property Holdings Limited
SSCLG	Secretary of State for Communities and Local Government
SSECC	Secretary of State for Energy and Climate Change
SST	Secretary of State for Transport
SWMP	Site Waste Management Plan

TfL	Transport for London
TMP	Traffic Management Plan
TWA	Transport and Works Act 1992
USV	Unaccompanied Site Visit
VfM	Value for Money
REP	Written Representation
RR	Relevant Representation
ZTV	Zone of Theoretical Visibility

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Textual References

References within the text to the examination library shown thus APP-015

References within the text to another paragraph shown thus 4.37



ERRATA SHEET – M1 Junction 10a Grade Separation – Luton - Ref. TR010009

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 13 August 2013.

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
19	4.33	last sentence seems to have missing or superfluous words	Delete 'with'
22	4.42	the Examining authority's conclusion seems at odds with his findings in the preceding paragraphs. Should the sentence read "should not " rather than "should"?	Agreed
25	4.63	the current second sentence is incomplete: should it be merged into the following sentence by replacing the full stop with a comma?	Replace full stop with comma
26	4.65	second line - CoCP is the Code of Construction <u>Practice</u> , and not as shown. (see page ii – abbreviations used in report)	Agreed

Page No.	Paragraph	Error	Correction
28	4.80	last sentence seems to have missing or superfluous words	Rephrase: 1% of receptors at dwellings would.....
29	4.85	seventh line – “dry” not “dray”.	Agreed
31	4.99	second sentence seems to have missing or superfluous words	Replace the second ‘also’ with ‘states’ and insert ‘the’ before ES
34	4.121	second sentence seems to have missing or superfluous words	Replace ‘recoding’ with ‘rec <u>o</u> rding’
53	7.4	the Examining authority's conclusion seems at odds with his findings earlier in the report. Should the sentence read “ no reason ” rather than “every reason”?	Agreed
A5ff	Appendix B	in the scanned copy supplied to us by PINS, none of the purported hyperlinks are active.	Link to appendix B with hyperlinks now active: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/09/Appendix-B-Examination-Library.pdf

1 INTRODUCTION

The Application and the Examination

- 1.1 Annex E to the letter of 23 October 2012 (giving notice of the Preliminary Meeting etc) confirmed my appointment as the Single Examining Inspector to be the Examining Authority (ExA) for the examination of this application DEC-003. This report sets out my findings and conclusions, and my recommendation to the Secretary of State for Transport (SST) under section 83 of the Planning Act 2008 (as amended) (*the 2008 Act*).
- 1.2 The scheme for which consent is required under Section 31 of the 2008 Act comprises the grade separation of Junction 10a of the M1 on the south side of Luton as described earlier and later in this report ⁽ⁱ⁾ & 2.8-11. It lies wholly within England and comprises a Nationally Significant Infrastructure Project (NSIP) as defined by sections 14(h) and 22(2) of the 2008 Act.
- 1.3 The applicant notified the Planning Inspectorate (PINS) in July 2011 under Regulation 6(91)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) that an Environmental Statement (ES) would be provided in respect of the scheme. The application was accompanied by an ES, which satisfies the definition in regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. I can confirm that I have taken account of the environmental information as defined in the aforementioned regulation 2(1).
- 1.4 The application was accepted for examination on 27 July 2012 by PINS. It was then advertised by the applicant, Luton Borough Council (LBC) and 16 relevant representations (RRs) were received. I subsequently accepted 3 late representations and treated them as if they were RRs.
- 1.5 A Preliminary Meeting (PM) was convened on 15 November 2012 when Interested Parties (IPs) and Affected Persons (APs) were able to make representations about the process of examining the application. The examination then commenced and my procedural decisions about the timetabling and form of the examination were communicated on 30 November 2012.
- 1.6 Hearings about Specific Issues were held with regard to the Draft Development Consent Order (DCO), needs, costs and benefits, environmental impacts and mitigation proposals, and compulsory acquisition matters.
- 1.7 I undertook Accompanied Site Visits (ASVs) on three occasions with IPs and an AP's representative in attendance. I made unaccompanied Site Visits (USVs) before and during the examination.

- 1.8 A Local Impact Report (LIR) was prepared jointly by Luton Borough and Central Bedfordshire Councils (LBC and CBC) in their capacities as Local Planning Authorities (LPAs). It was accompanied by a Statement of Common Ground between them (SOCG). The scheme straddles the boundary separating the administrative areas of Luton and Central Bedfordshire, both of which are unitary authorities.
- 1.9 I posed two rounds of written questions, which prompted substantial responses. A number of additional questions were also posed in a request for further information¹.
- 1.10 The application together with RRs, other submissions, procedural decisions, my questions, responses and comments thereon were all made available (and remain) online.
- 1.11 The examination closed on 13 May 2013.
- 1.12 Other consents are required. One has already been secured, namely Crown consent for compulsory acquisition of SST (Highways Agency) highway interests APP-058. Environmental licences would be required by way of Discharge Consents and Waste Management Permits, and applications would need to be made to the Environment Agency (EA)². Protected species consents may be required. The ES identifies the potential for badgers and bats in the area. Protected Species Licences would be required if any protected species are found in pre-construction surveys and if required, applications would need to be made by the contractor to Natural England (NE)³.
- 1.13 Applications would also need to be made to the relevant LPAs in order to comply with Requirements (Rs).
- 1.14 A Replacement Land Certificate in respect of public open space to be compulsorily acquired was originally envisaged, but is no longer required as the relevant land has been acquired by agreement 5.23.
- 1.15 Two Memoranda of Understanding have been signed, largely dealing with highway matters, the first between the applicant and HA and the second between the applicant and CBC REP-027 & EV-022.

¹ Regulation 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)

² Discharge Consents & Waste Management Permits from the EA under the Environmental Permitting Regulations 2010

³ Licences from NE under the Conservation Habitats and Species Regulations 2010, Wildlife and Countryside Act 1981 & Badger Act 1992

2 MAIN FEATURES OF THE SCHEME

Land

- 2.1 Land within the scheme boundary comprises highway land including the existing Kidney Wood roundabout, the M1 Spur to the south-west, a length of Airport Way (A1081) to the north-east, and stretches of London Road North and London Road South (A1081); agricultural land, woodland, public open space and part of an agricultural compound.
- 2.2 Useful plans for locating and describing the scheme are the Location Plan in the ES Non-Technical Summary and the Works Plan, respectively APP-034 & APP-077.

Location

- 2.3 The scheme is located immediately to the south of Luton, at and around Junction 10a of the M1 (known as the Kidney Wood roundabout). The M1 and Junction 10 lie approximately 1km along the M1 Spur to the south-west, Capability Green Business Park lies to the north of its grade-separated junction with Airport Way (A1081) some 500m to the north-east, with Luton Airport situated about 2.5km farther along the A1081 to the north-east.
- 2.4 Stockwood Park Golf Course and Athletics Centre are immediately to the north on the western side of London Road (North), with Kidney Wood on the eastern side. Luton Hoo Registered Historic Park and Garden (RHPG), Hotel, Spa and Golf Course lie approximately 500m to the south-east on the eastern side of London Road (South). Bull Wood separates Luton Hoo from the A1081 to the north.
- 2.5 There are several dwellings close to the scheme. Approximately 150m south-east of the Kidney Wood roundabout on London Road South (A1081), there are five dwellings (Bull Wood Cottages and Kidney Wood House). There is a further dwelling (Newlands Farm) on Newlands Road (B4540), approximately 125m east of where it is crossed by the M1 Spur, south-west of the Kidney Wood roundabout
- 2.6 To the south of the Kidney Wood roundabout, running through the application site in a north-east to south-west direction, there are overhead power lines. To the north of the Kidney Wood roundabout is a telephone line running through the proposed scheme in an approximately east-west direction.
- 2.7 Close to the existing London Road (North) there are multiple underground services, including a gas pipeline.

Works

- 2.8 The scheme comprises the grade-separation of M1 Junction 10a, which is currently an at-grade, unsignalised roundabout. Works would extend from Junction 10 of the M1 to the Capability Green Junction on Airport Way. Further works are also proposed on and around London Road to the north and south of the existing Kidney Wood roundabout.
- 2.9 The scheme would include slip roads connecting the widened main line to two new roundabouts north and south of an improved M1 Spur/Airport Way. These roundabouts would, in turn, provide connections to the existing side road network on London Road (North and South). The existing M1 Spur from J10 to J10a and Airport Way as far as the Capability Green grade separated junction, would be widened to provide three lanes in each direction, with lane-gains and lane-drops at the proposed Kidney Wood junction and at the improved Capability Green junction.
- 2.10 Works to the south would extend along London Road (South) as far as the junction with the Newlands Road. Works to the north would terminate approximately 113m south of the junction of London Road (North) with Ludlow Avenue.
- 2.11 The M1 Junction 10 roundabout and M1 Spur would cease to be motorway and would become an all-purpose trunk road, to a point near the Spur's west facing slip road entries/exits. The existing arrangements for traffic leaving or entering the M1 Junction 10 would be modified to provide three lanes in each direction.

Substantial Changes

- 2.12 No substantial changes to the scheme were made during examination of the application, nor any of significance.

3 POLICY CONTEXT

Introduction

- 3.1 The planning policy context is the first of the seven identified determining issues for the scheme.
- 3.2 Up to and by the completion of this report, no National Policy Statement (NPS) for National Networks has been published in draft or any other form⁴. In the absence of an NPS regard must therefore be paid to⁵:
- The Local Impact Report (LIR) prepared jointly by LBC and CBC;
 - Any matters prescribed in relation to development of a description to which the application relates; and
 - Any other matters considered both important and relevant to the decision.

Local Impact Report

- 3.3 A joint LIR associated with a Statement of Common Ground (SOCG), was produced by LBC and CBC as the Local Planning Authorities (LPAs) because the scheme straddles the boundary separating the administrative areas of Luton Borough and Central Bedfordshire Councils PD-011 & PD-012.
- 3.4 The LIR addresses the following matters and reaches conclusions summarised below as appropriate:
- Site Description, Surroundings and History
 - Relevant Development Plan Policies
 - Two adopted local plans and emerging plans
 - Broad accord with relevant policies
 - Potential landscape, visual and Green Belt conflict
 - Highway Justification
 - Scheme would increase capacity and relieve congestion
 - Regeneration would benefit
 - Air Quality
 - Construction dust could be adequately mitigated
 - Slight beneficial change in operational air quality
 - Cultural History
 - Archaeological remains could be undervalued
 - Archaeological mitigation needs scrutiny
 - Impact on Luton Hoo needs further investigation
 - Ecology and Nature Conservation
 - Potential impact on badgers

⁴ *Action for Roads* was published in July and presages publication of a draft NPS in the near future, but it has not been taken into account in the production of this report

⁵ s105 of The Planning Act 2008 (as amended)

- Monitoring and mitigation basically sound
- Pre-construction surveys required for bats
- Landscape and Visual Impacts
 - Scheme would follow ground contours
 - Landscaping would change historic character
 - Scheme lies largely in Area of Great Landscape Value (AGLV)
 - More scrutiny of visual impact required
- Land Issues
 - No recent planning applications within vicinity of scheme
- Noise and Vibration
 - Adequate requirements for mitigation
- Pedestrian/Cycle Interests
- Vehicle Travellers
 - Implications for driver stress unclear
- Water
- Geology/Soils
 - Difficult to assess impact of waste spoil disposal
- Economic Impact
 - Inadequate highway infrastructure frustrates development
- Development Consent Order
 - Need for Construction Environmental Management and Site Waste management Plans

3.5 The LIR notes that other than in its construction, the scheme would not directly create employment. But additional highway capacity would encourage development with a positive impact on local regeneration, resulting in related employment opportunities with positive social implications. There would be some adverse environmental impacts for landscape, air quality and noise levels but effective mitigation measures would offset impacts. On balance, the LIR concludes that the social and economic benefits of the scheme would outweigh its adverse environmental impacts and the scheme should be supported.

3.6 I find the LIR, with the associated SOCG, accords with guidance, is comprehensive and well-balanced⁶.

Background

3.7 The applicant's justification for the scheme is that Junction 10a is congested at peak periods, and the stated need for the scheme is to provide capacity and alleviate congestion, thus encouraging economic growth and regeneration in Luton. It is against this background that the policy context should be considered.

⁶ PINS Advice Note 1

- 3.8 From consideration of the above factors, taken together with the application, the relevant representations and responses thereto, and the proceedings of the hearings, various policy considerations emerge which are addressed below APP-059. What is considered is the scheme's support from, or the potential for its conflict with policy. The policy appraisal is essentially an overview because conclusions on detailed issues emerge from more detailed consideration in later in the report Section 4.
- 3.9 There is only one policy-based representation and it is considered later in this section of the report 3.29-34.

National Policy

National Planning Policy Framework (the Framework)

- 3.10 The Framework was published in 2012 and identifies a need for improvements to infrastructure and systems that support economic growth. In the absence of an NPS it should carry considerable weight as an expression of national policy. As the LPAs, LBC and CBC acknowledge that in the LIR; and no-one disagrees PD-011. The ES considers the Framework and the applicant relies upon it in respect of transport, Green Belt, and natural and local environment APP-035 APP-059.
- 3.11 Subject only to further remarks on the Green Belt, I can find no significant conflict with the Framework. On the contrary, it offers broad encouragement for a scheme of this nature in promoting economic growth, relieving congestion and ensuring the vitality of Luton's town centre.

National Infrastructure Plan (NIP)

- 3.12 The 2011 National Infrastructure Plan specifically supports the improvement of Junction 10a under local infrastructure funding programmes through support from the Regional Growth Fund (RGF) for:
- A project to improve Junction 10A of the M1 motorway, which is currently creating a traffic bottleneck stopping economic growth in the area and will complement the Junction 6a-10 and Junction 10-13 M1 improvement schemes* APP-059.

- 3.13 The 2012 update of the plan has not weakened this support.

Treasury (HMT) Autumn Statement 2011

- 3.14 The Statement specifically lists the Junction 10a improvement as *an infrastructure project that will be taken forward* APP-059.

Regional Policy

- 3.15 The East of England Plan was the applicable Regional Spatial Strategy (RSS) when the application was accepted. It was revoked on 3 January 2013 during the examination and is no longer relevant to examination of the application.

Local Policy

- 3.16 Annex 1 of the Framework states that full weight should still be given to relevant policies adopted since 2004, even if there is a limited degree of conflict with the Framework. The scheme lies within the administrative areas of Luton Borough and Central Bedfordshire Councils. Two local plans therefore have relevance and they are the saved policies of the:

- Luton Local Plan 2001-2011; and
- South Bedfordshire Local Plan Review 2004.

There is no relevant Supplementary Planning Guidance (SPG), nor any Supplementary Planning Documents (SPDs) or Development Briefs within Luton Borough or Central Bedfordshire Plans affecting the scheme.

- 3.17 The Framework also affords weight to emerging policy and thus the policies of the:
- Development Strategy for Central Bedfordshire - Pre-Submission 2013; and
 - Luton Local Plan 2011-31

- 3.18 The Luton and Southern Central Bedfordshire Joint Core Strategy was withdrawn in 2011, but its evidence base is up-to-date PD-011.

Luton Local Plan 2001–2011 (LLP)

- 3.19 The LLP was adopted in 2006. It is being reviewed and should be subject to consultation in 2013. Meantime, the LIR identifies following saved Policies as relevant to the scheme and I consider them now briefly, in terms of the scheme's support from or conflict with the policy PD-011:

- *ENV4* Protection and promotion of countryside access and public footpath network: No significant conflict.
- *ENV5* Protection and enhancement of nature conservation: Some conflict. ES identifies a partial slight adverse effect on County Wildlife Sites (CWSs) near the scheme which mitigation measures would not fully address.
- *ENV9* Design principles: No serious conflict on account of effective mitigation.

- *ENV10* Landscaping: ES identifies only slight adverse residual effects and thus no serious conflict with effective mitigation.
 - *ENV14* Water Environment: ES assesses no increased flood risk or contamination of watercourses from scheme with effective mitigation measures in place and EA has no outstanding objection REP-041.
 - *SA1* Identifies the Stockwood Park Action Area and the site for a football stadium: No apparent conflict because policy requires completion of the junction improvement as pre-requisite of development; but it is suggested that there could be and that is addressed later RR-014 & 3.29-34.
 - *T12* Protects land for road proposals including Junction 10a: Supportive of scheme.
 - *T8* Protects and seeks improvement of existing pedestrian and cycle routes: Scheme accords with policy.
- 3.20 The LIR does not identify saved Policy ENV2 which seeks the preservation and enhancement of Areas of Local Landscape Importance, of which Stockwood Park is one. The ES does, however, and I deal with that later; but I find no serious conflict as a result of effective mitigation measures.
- 3.21 I am satisfied that there is broad conformity between the LLP and the Framework and any potential for conflict with its policies could be satisfactorily addressed by the design and construction of the scheme or by the effectiveness of mitigation measures. Where necessary, therefore, findings on issues will be balanced against any policy conflict later in the report Section 4.

South Bedfordshire Local Plan Review 2004 (SBLPR)

- 3.22 The SBLPR was adopted in 2004. The following saved Policies are relevant to the scheme and I consider them now briefly in terms of the scheme's support from, or conflict with the policy:
- *NE3* Safeguarding landscape generally and the Area of Great Landscape Value (AGLV) within which the scheme lies: No serious conflict with effective mitigation.
 - *NE10* Use of agricultural land, subject to provisos relating *inter alia* to safeguarding best quality land, traffic generation and Green Belt: No conflict as scheme does not use best quality agricultural land PD-011, but potential Green Belt conflict.
 - *BE7* Protects historic parks and gardens: No serious conflict with effective mitigation.

- *BE8* Design and environmental assessment criteria: No serious conflict because impact effectively mitigated.
- *R14* Encourages countryside access: No significant conflict.
- *R15* Protects public rights of way network: No significant conflict.

3.23 I am satisfied that there is general conformity between the SBLPR and the Framework, but there is the potential for conflict with Policy NE10 according to the scheme's appropriateness in the Green Belt. I deal with that below.

Emerging Local Policies

Development Strategy for Central Bedfordshire - Pre-Submission 2013 (DSCB)

- 3.24 The DSCB was produced for and approved by CBC, and published for a six week consultation period in January 2013 during the examination PD-011. The results of the consultation are not known, but it was produced in the light of the Framework, mostly in the wake of its publication and is the most up-to-date expression of local policy for Central Bedfordshire.
- 3.25 The following DSCB Policies are relevant to the scheme and, as before, I consider them in terms of the scheme's support from, or conflict with the policy:
- *Policy 1* Seeks sustainable development: No significant conflict.
 - *Policies 3 & 36* Green Belt designation and inappropriate development: Potential conflict.
 - *Policy 23* Safeguards public rights of way: No significant conflict.
 - *Policy 25* Identifies and prioritises the scheme: Support for scheme.
 - *Policy 43* Seeks high quality development: No obvious conflict.
 - *Policy 44* Protects against pollution: No conflict provided effective mitigation measures employed.
 - *Policy 45* Safeguards historic environment: No conflict provided impact minimal and effective mitigation measures employed.

- *Policy 48* Encourages adaptation to climate change: No conflict.
- *Policy 49* Assesses potential flood risk implications: Scheme not within higher risk flood zone so no conflict provided effective mitigation measures employed.
- *Policy 50* AGLV designation: No serious conflict with effective mitigation.
- *Policy 56* Encourages access to high quality open spaces: No significant interaction.
- *Policy 57* Addresses issues of biodiversity and geodiversity, and habitats and species: Some conflict but could be outweighed by scheme benefits.
- *Policy 59* Addresses amenity and climate change benefits of tree cover: No significant conflict.

3.26 I am satisfied that there is well-developed consistency between the emerging DSCB and the Framework, but there is a potential for the scheme to conflict with DSCB Policies 3 & 36 & 57, according to the severity of the scheme's impact and/or the effectiveness of mitigation measures coupled with green belt factors. Findings on issues will be balanced against any policy conflict later in the report Section 4.

Luton Local Plan 2011-2031

3.27 Luton's Local Plan is being reviewed by LBC but the process was not sufficiently advanced to produce any meaningful evidence for the examination, except to say that the production of a Community Infrastructure Levy is envisaged.

Luton Local Transport Plan 2001-2026 (LTP3)

3.28 LTP3 has been produced and prepared by LBC in accordance with national requirements⁷. It specifically cites improvements at Junction 10a as being necessary because of its importance for reducing congestion, improving connections to key employment sites in the area, enabling development and facilitating economic growth generally APP-059.

Local Policy-based Representation

3.29 Stockwood Park Property Holdings Limited (SPPH) argues that the scheme has a degree of conflict with LLP Policy SA1, because as a consequence of the need to acquire land north of Junction 10a,

⁷ Transport Act 2000 & Transport Act 2008

the area of land available for implementation of the policy would be unrealistically restricted. The company owns the land which is identified in Policy SA1 for development of a 15,000 all-seated replacement football stadium for Luton Town Football Club. SPPH does not consider that the residue of Policy SA1 land north of the M1 Spur would be sufficient to accommodate the development needs REP-015.

- 3.30 Although an Affected Person, SPPH does not object to Compulsory Acquisition (CA) and importantly, nor does the company oppose the scheme. Earlier discounted options would have had a lower land take but the reasons for rejecting them are accepted by SPPH. The purpose of the company's representation is to gain acknowledgment of its belief that more land would need to be allocated to compensate for the scheme's land take and thus implement Policy SA1 effectively REP-025.
- 3.31 The company's concern arises from the application's failure to recognise that, rather than stating that the scheme would have no *material impact* on the development potential of the allocated land APP-059. SPPH's justification for challenging that view is based on its calculation of the residual developable land north of the M1 Spur being 8.52ha following implementation of the scheme, which would be insufficient for the proposed stadium according to SPPH.
- 3.32 The applicant broadly agrees with the extent of the residue (8.74ha) but disagrees with the company's method of calculating the extent of reduction and that, as a consequence of the scheme, the Policy SA1 allocation would be insufficient to accommodate the proposed stadium. No planning application has been made, traffic generated by the proposed stadium would require improvement of Junction 10a to accommodate it and Policy SA1 recognises that on its face RR-017, REP-032 & REP-033.
- 3.33 In summary, SPPH neither objects to the scheme nor CA of its interest. It claims the residue of the SA1 allocation would be too restricted to develop a stadium and the applicant disagrees, although both accept that the allocation would be reduced by a similar amount on implementation of the scheme.
- 3.34 I do not consider this representation is about the scheme, but about the developability of a development plan allocation. As such, it should be considered in the context of the emerging LLP 2011-2031, at the examination if necessary. In the meantime, therefore, I conclude that the scheme would not be in serious conflict with LLP Policy SA1.

Green Belt

- 3.35 All of the land required for the scheme falling within Central Bedfordshire is designated Green Belt. The Green Belt Policies (GB1, 2, 3 & 4) of the SBLPR were not saved because the former

PPG2 was still in existence and could be relied upon for development control purposes.

- 3.36 For Green Belt Policy it is now necessary to look to section 9 of the Framework, which reiterates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It also explains that certain forms of development are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These include local transport infrastructure which can demonstrate a requirement for a Green Belt Location.
- 3.37 The term *local transport infrastructure* would embrace the scheme, in my opinion. It is clearly transport infrastructure. The scheme is an NSIP, but not all NSIPs necessarily have national significance in themselves. This scheme's objectives are all local and the improvements must be undertaken at and around the existing junction which lies in the Green Belt. Consequently I regard the scheme as a prime example of *local transport infrastructure* and accordingly it would not be inappropriate in the Green Belt.
- 3.38 It is also necessary to consider whether the scheme would preserve the Green Belt's openness and conform with the purposes of including the land in the Green Belt. The land was originally included as an extension of the Metropolitan Green Belt, for the *purpose of containing the outward growth of Luton and other towns*⁸ because of the expansion pressures on settlements at the time PD-012. The scheme would reinforce the existing barrier to development formed by the M1 Spur-Airport Way route and the Kidney Wood roundabout. So to my mind the scheme would accord with the Green Belt's original purpose of urban containment.
- 3.39 I am also satisfied that it would have no real impact on openness of the Green Belt in the long-run and I address that in detail when considering landscape and visual effects Section 4.

Conclusions

- 3.40 There is broad policy support for the scheme at national and local levels and relatively little by way of conflict; and, as later consideration reveals, such conflict as there is can be effectively mitigated. As for protection of the Green Belt, later consideration of landscape and visual matters, reveals that the scheme would have no significant on openness 4.104.

⁸ South Bedfordshire Local Plan Review 2004 paragraph 2.3

4 ISSUES AND FINDINGS

Principal Issues

4.1 Seven principal issues were identified for examination following the Preliminary Meeting ^{DEC-004}:

- Planning Policy Context
- Need, Costs and Benefits
- Highway Design
- Socio-Economic Impacts
- Environmental Impacts
- Compulsory Acquisition and Funding
- Development Consent Order

4.2 The policy context is addressed in Section 3, CA and Funding in Section 5 and the Draft DCO in Section 6. The remaining four issues are addressed in this section.

Need, Costs and Benefits

4.3 The applicant's identified need for the scheme is based on the alleviation of traffic congestion and the resultant reduction in delays, coupled with additional capacity for proposed development and associated economic growth in Luton ^{APP-059}. The alleviation of congestion and enhanced access is borne out by the later findings in this section, as are the benefits for development potential and regeneration.

4.4 Some IPs argue that the scheme is unnecessary and that the alleviation of congestion (which they consider is largely in peak periods) could be achieved by simpler or less expensive means, involving widening and signalling the existing roundabout ^{RR-001, RR-010 & RR-016}. Alternative means of relieving congestion have already been addressed and rejected by the applicant ^{4.22}. I am therefore satisfied that relief from traffic congestion creates a sound need for the scheme and that is underpinned by the policy findings ^{3. 40}.

4.5 Yet it is important to quantify benefits and compare them with scheme costs to ensure that the former exceed the latter to the extent that the scheme can reasonably be said to represent good value for money (VfM) in the wider public interest.

4.6 The business case for the scheme was originally produced in the spring of 2012, using the outcome from forecast traffic flows on the network and reporting in terms of the scheme's transport-related economics, the costs and benefits that might accrue. The methodology is commonly used in assessing the VfM of highway and other schemes, within DfT mandatory requirements. It revealed a benefit/cost ratio (BCR) of 5.57:1.

- 4.7 That BCR was manually revised to 5:1 for the application's CA Statement of Reasons, by advancing the base year for scheme costs from summer 2011 to spring 2012 ^{APP-013}. I did not regard that as a wholly adequate basis for reaching an important conclusion, but on further enquiry it emerged that the business case was being updated in the light of the latest DfT Design Manual for Roads and Bridges (DMRB) and WebTAG guidance ^{REP-046}. It was produced late in the examination process, taking account of current scheme costs and traffic data ^{AS-013}. The resulting mid-range BCR is 4.82:1.
- 4.8 The updated business case uses the outcomes from forecast traffic flows on the network (with and without the scheme) to express the potential costs and benefits that might result in terms of the scheme's transport-related economics. Scheme economics are based on costs and savings (benefits) relating to:
- Scheme building and maintenance costs;
 - Increases in time and vehicle operating costs for road users during construction;
 - Reduction in time and vehicle operating costs throughout the life of the scheme; and
 - Change in the number of road traffic accidents.
- 4.9 An updated Traffic Forecasting Report was produced late in the examination process ^{AS-011}. It uses a more sophisticated approach to demand forecasting and does not influence the business case which uses the *core scenario* flows.
- 4.10 The economic appraisal is not peculiar to this scheme and is widely used. I find no fault with it. The methodology accords with DMRB and WebTAG guidance, using a suite of computer programmes (including COBA⁹) to derive costs and benefits over a 60 year operating period as required by HMT; and information sources are in accordance with the HMT Green Book ^{AS-013}. I believe there are also likely to be some wider economic costs (mainly beyond the modelled network), but more importantly benefits. They do not, however, feature in the economic appraisal.
- 4.11 The benchmark for the appraisal is the *do minimum* option, which anticipates the junction remaining as it is now (ie effectively a *do nothing* option other than committed future network improvements). That is contrasted with the *do something* option which anticipates the network with the scheme (and committed improvements). Committed network improvements are thus taken into account for both options.

- 4.12 The appraisal period and modelled years are:

⁹ HA sponsored Cost Benefit Appraisal computer programme for highway schemes

- First Construction Year 2013 (part)
- Last Construction Year 2015
- First Full Scheme Year 2016
- First Intermediate Year 2021
- Last Traffic Growth Year 2029
- Local Plans' Horizon Year 2031
- Horizon Year 2075

- 4.13 The analysis years are self-explanatory other than 2029 and 2031. The former is the last in which the *core scenario* forecast is employed, which predicts outcomes without the scheme. The latter is the last year for which local plans allocate development sites and this year was used for developing a *full development scenario* forecast. It was to all these years, from 2013 to 2075, that the COBA model was applied.
- 4.14 In summary, the appraisal methodology employs the following elements:
- Traffic forecasts cover a range of possibilities including core, full development, and low and high uncertainty;
 - Scheme costs including land acquisition, construction and maintenance are appropriately discounted to £27.31m at 2010 prices; and
 - User delays during construction are costed.
- 4.15 The following are then assessed for both *do minimum* and *do something* options:
- Journey times;
 - Road safety, using personal injury accident data; and
 - Driver stress;
- 4.16 The results show a range of BCRs from low growth at 4.01:1 through core growth at 4.82:1 to high growth at 9.29:1. These appear to be robustly positive results across the full range of uncertainty forecasts appraised. In my experience, rigorous analyses of major highway schemes requiring SST approval¹⁰ have favourably regarded lower BCRs than any in this case, so the mid-range BCR of 4.82:1 convinces me that the scheme represents good VfM.
- 4.17 The customary Appraisal Summary Table (AST) is also produced for environmental impacts.
- 4.18 Neither the business case nor its methodology have been challenged in any respect by any IP or anyone other than me; nor have the resultant BCRs. But through the examination process I

¹⁰ eg Mersey Gateway Project - BCR 3.97

have tested methodology and assumptions as necessary. I accept the veracity of the data used, the variables and the assumptions employed in the appraisal; and that has assured me that the scheme would offer net benefits to users.

Highway Design

- 4.19 The Kidney Wood roundabout experiences congestion at peak periods. Queuing traffic results in long tail-backs on each of its four arms with resultant implications for delay, principally of vehicles, and road safety for vehicle drivers, cyclists and pedestrians. On the M1 Spur in the AM peak period, congestion can be so acute that stationary traffic may be seen queuing on the north-bound carriageway of the M1 itself as far as the eye can see from the elevated vantage point of Junction 10, as my site inspections confirmed.
- 4.20 There has been a keen desire in Luton to do something about Junction 10a for some time. The scheme has been evolving for a number of years and has been the subject of extensive consultation with the general public, national agencies, local authorities, statutory undertakers, business interests and other stakeholders. Alternative ways of dealing with congestion have been considered and rejected in favour of the scheme. Within the RRs there is relatively little by way of objection to the scheme and significant support from local authorities and other statutory bodies, and the business community APP-016-033.
- 4.21 The lack of capacity is quantitatively illustrated in the ES and confirms the observational remarks above APP-036 & APP-060. The applicant is no doubt that the provision of extra capacity is needed and I strongly endorse that view. The question is not what to do but how to do it.
- 4.22 There were four consultation rounds with statutory bodies, other stakeholders and the general public APP-016-033. The first was in 2009 and the second in 2010, prior to the scheme being considered as an NSIP. The third round was in 2011 in full accordance with the requirements of the 2008 Act and the fourth was in 2012, shortly before the application was made to PINS.
- 4.23 The first consultation round in 2009 was on two options. The first (low cost) option involved a connector road linking Newlands Road with London Road (North) to the north-west of the M1 Spur and three associated roundabouts; the second involved a different arrangement of two roundabouts with a new bridge under the M1 Spur. The second consultation in 2010 was to demonstrate how the preferred (second) option layout had been developed in response to the results of the first round; and the third in 2011 demonstrated how the scheme had been developed in response to the second consultation round.

- 4.24 The third and last consultation resulted in two final changes to the scheme:
- The site of the proposed northern roundabout was relocated to minimise the impact on Stockwood Park and eliminate any land take from the golf course; and
 - Proposals were revised for what would be the redundant stretch of London Road (South) to assuage local residents' concerns about anti-social behaviour.
- 4.25 As a result of these changes, further consultation was undertaken in 2012 and the scheme is the result. Its objectives are to:
- Reduce congestion and delay;
 - Make the road safer;
 - Reduce congestion;
 - Make journey times more reliable;
 - Improve facilities for pedestrians and cyclists; and
 - Improve access to existing and potential development sites for employment and housing.
- 4.26 The scheme proposes to create continuity of vehicular movement between the M1 Spur and Airport Way(A1081)) by grade separation of the existing surface roundabout junction of that route with London Road and the provision of slip roads to two new roundabouts north and south of the proposed junction to connect with London Road. That would permit easier movement from the M1 at Junction 10 to the eastern side of Luton via Airport Way, which has recently been improved between Junction 10a and Luton Airport as part of the East Luton Corridor.
- 4.27 The scheme would provide additional capacity by providing an uninterrupted south-west/north-east connection between the M1 Spur and Airport Way, both of which would be widened; and slip roads would be provided to connect with two roundabouts serving the existing north/south road network.
- 4.28 I agree that options were properly considered and the scheme developed through a series of balanced responses to wide and repeated consultations. Notwithstanding that extensive engagement, however, four objections relating *inter alia* to the design of the scheme were made in Relevant Representations from three IPs who had expressed concern about the scheme at earlier stages and one who had not and their representations follow.

Relevant Representations promoting Alternatives

Elizabeth E Higgins

- 4.29 Mrs Higgins considers that the need for the scheme's extensive works could be avoided by easing peak period congestion through the use of traffic lights, which would prevent traffic backing up

badly on each of the four legs as happens at present. Significant congestion occurs in peak periods. Traffic lights work well at roundabouts in the vicinity, notably at Stevenage, Milton Keynes, Old Stratford and M25 Junction 20 ^{RR-001}.

- 4.30 In her opinion, reduction or enforcement of the Airport Way 50mph speed limit would also help to reduce entry speeds and ease flows at Kidney Wood. But accelerating traffic movements through the Kidney Wood roundabout would simply move the queue more quickly to the next junction at Gypsy Lane (B653) or thereafter at Kimpton Road (A505).
- 4.31 However, similar objections were raised in earlier Community Consultation exercises and were rejected for good reasons. Signalisation and enlargement of the roundabout was one of the four options considered and rejected because traffic lights, with or without associated widening, would not safely provide the required capacity to meet predicted traffic flows at the junction; nor would they solve existing problems ^{RR-017}.
- 4.32 Whether or not signalisation and associated highway improvements would significantly alleviate or even eradicate current congestion, I find that it would be a short-life solution which would not cater for future growth.

Slip End Parish Council

- 4.33 The Parish Council is concerned that the scheme does not include improvement of the junction of Newlands Road and London Road South (A1081). Street lighting and the imposition of a 40mph speed limit are proposed and would be helpful, but insufficient to eliminate road traffic accidents. Traffic calming measures are needed in addition to ensure that traffic approaches the junction at a safe speed. A roundabout of appropriate diameter with would better regulate movements and slow traffic on the A1081 to around 20mph ^{RR-016}.
- 4.34 I recognise that road safety is an issue for the Newlands Road junction. But LBC point out that the inclusion of works at the junction within the scheme were considered at an earlier stage but rejected because they would increase land-take and costs, and reduce the scheme's benefits ^{RR-017}. CBC (the highway authority) support the scheme which includes changes to the junction complementing works undertaken in 2009, since when accident rates have fallen. The scheme measures would include improved signage, street lighting, high friction surfacing and lowering the speed limit to 40mph ^{RR-032}.
- 4.35 There is no doubt that LBC and CBC take the safety of the Newlands Road junction very seriously and whilst the Parish Council's concern is understandable, I think it entirely reasonable that the highway authority's view should prevail. CBC confirms

that it will continue to monitor the junction and take such action as may be required in the interests of road safety.

Mike Sanders

- 4.36 As a long-time resident of Slip End, Mr Sanders has a wealth of local knowledge and in addition, has occupational highway experience. In summary, he has been a user of M1 Junctions 10 and 10a since their construction and has actively participated in all the consultations regarding their improvement. In his opinion the scheme is flawed in terms of traffic forecasting and particularly in terms of its potentially adverse impact on local traffic movements. Moreover, it would simply move congestion to the next signalised junctions on the route, at M1 Junction 10 to the east or west to Gypsy Lane (A505/B653); the scheme would not alleviate congestion RR-010.
- 4.37 Mr Sanders believes Option 1 in the 2009 Consultation was wrongly rejected. A new connector road should be provided between Newlands Road and London Road North, coupled with connections and widening of existing features of the Kidney Wood roundabout, either instead of or at least in addition to the scheme. That would be of great value to local highway users from the east and north, who could thus avoid conflicting traffic movements on the proposed southern roundabout; they would be separated from most airport traffic and their journeys would be significantly shortened. Furthermore, the land that would be lost to the connector road is of limited agricultural value, utilities would need to be relocated for the scheme anyway and the cost of the connector road would be in the order of only £1.5m REP-028.
- 4.38 He also has adverse weather concerns arising from the local microclimate, the topography and the design of the scheme. The scheme would be situated at one of the highest points in Bedfordshire and consequently cuttings and design features exposed to prevailing winds could be affected by adverse winter weather. He points out that the existing network has experienced that in the past.
- 4.39 The applicant confirms that all Mr Sanders's previous concerns have been addressed and are recorded in the Consultation Report RR-017 & APP-017. There follows a brief summation of conclusions emerging from the statistical analysis to which his representations have been subjected REP-032:
- It is not economic to design for unpredictable events which give rise to heavy congestion (eg M1 closure);
 - The aim of the scheme is to eliminate congestion at M1 J10a and by doing so avoid blockages of M1 J10;
 - Modelling of the nearest junctions (at M1 J10 and Gypsy Lane) show that in the Design Year the Degree of Saturation (DoS) at M1 J10 would be up to 77% which is

well short of the maximum acceptable level of 90% or less; at Gypsy Lane the junction would operate at up to 83%^{APP-061}.

- It is neither practical nor cost-effective to upgrade all junctions on a route at the same time and it may become necessary to undertake future improvements to other junctions along the East Luton Corridor between the M1 and the airport;
- A roundabout with additional features was discounted as an earlier option because it could not operate satisfactorily with predicted traffic flows in this location;
- A roundabout with *cut through* carriageways would provide adequate capacity but would have operational flaws in terms of design standards;
- The need for the scheme has been fully assessed and is clear; a temporary scheme would not be cost-effective; the scheme represents good VfM;
- Traffic on Newlands Road (where the proposed connector road would begin) originates from a wide area as Mr Sanders suggests; and there is broad agreement with his predictions of its destinations;
- Modelling reveals that in the Design Year the proposed southern roundabout would be operating well within capacity^{APP-061};
- Mr Sanders's alternative solution has been quantitatively analysed, showing that J10a would operate slightly over capacity in the base year, queues of over 500 vehicles would build up in the PM peak period on the *core growth* scenario and queues of over 900 in the *with development* scenario; these would be unacceptable^{REP-032}; and
- By meeting the appropriate design standards, scheme gradients should cope with adverse weather conditions, while gritting and salting of highways are operation concerns of the highway authorities.

4.40 Mr Sanders's representation demonstrates considerable concern for the local road network and its implications; and the applicant has taken the concern seriously by the comprehensive nature of the response. I appreciate the value of local knowledge in assessing the scheme and it has certainly reinforced the examination process. But so too has the detail of the applicant's response to the representation.

4.41 I recognise the attraction of the connector road and the benefits it could offer to traffic originating in the north and west. But these benefits would come at a price. The first cost would be that of construction, especially if in addition to scheme costs and the second would be the failure to achieve a satisfactory overall solution if the connector road were provided in isolation. I believe there is also a third and that is the implications for the land allocated for the development of a football stadium under Policy SA1 of the LLP, which is discussed elsewhere. The land take from

that site as a consequence of the proposed connector road would be far greater than that of the scheme.

- 4.42 Consequently, I conclude that the scheme should be modified in the way that Mr Sanders proposes.

Malcolm C Howe

- 4.43 Mr Howe regards the scheme as over-designed. It would absorb too much open land, some 50% of which is within an Area of Great Landscape Value (AGLV). Congestion and delay at the Kidney Wood roundabout usually occurs at peak periods and the scheme's cost to the public purse is an excessively expensive response. In his opinion, the provision of additional highway capacity would be the wrong response and would increase car dependency in a town where it is allegedly higher than most. The roundabout should be modified and signalised for times of congestion, as other similar junctions have been successfully treated, and each approach to the roundabout should be widened

RR-016 & REP-022.

- 4.44 The applicant explains, however, that Mr Howe expressed these concerns in response to the 2010 Preferred Option Exhibition, which were considered and addressed in the Consultation Report, as also in response to the 2011 Community Consultation Exercise. The results are documented in the extensive Consultation and Options Reports APP-016-033. The signalised/modified objection was studied and modelled using TRASYT software¹¹, which demonstrates that it would be severely over capacity, would not meet future needs and would not be long-lived. Conversely, the scheme would meet long-term demand and following the 2011 exercise it was redesigned to reduce its land take and, inter alia, the impact on public open space RR-017, APP-018 & APP-024.

- 4.45 I recognise that other similar junctions have been improved by way of traffic signals and land widening/reconfiguration, but the outcomes depend on factors unique to those junctions. What matters here are the problems of Junction 10a and its needs. I am persuaded by the applicant's quantitatively analysed responses that modification of the existing roundabout would simply not cater for future needs.

- 4.46 Whether or not road improvements generate demand in themselves is a perennially posed question in relation to the provision of increased capacity. In this case, however, traffic forecasts using TEMPro¹² software have included background traffic growth REF. Moreover, derived forecasts have been produced against a range of uncertainties APP-060 & AS-011.

¹¹ TRL programme for assessing junction performance and optimising signalised solutions

¹² DfT programme for traffic planning purposes

- 4.47 Consequently I find no persuasive arguments why the scheme should be modified to meet Mr Howe's concerns.

Socio-Economic Impacts

- 4.48 The LIR explains that Luton was designated as a Priority Area for Economic Regeneration in the former RPG9. It has one of the highest levels of unemployment of any Borough in the South East and is within the 10% most deprived areas in England.
- 4.49 Luton is still recovering from the impact of Vauxhall closures a few years ago and worklessness remains a key challenge as the town tries moving towards a more mixed economy. Strategy and aims of the emerging Local Plan and LDF for Central Bedfordshire address these matters. There are areas of land in and around Junction 10a which are being promoted through the emerging plans as potential areas of future growth.
- 4.50 The withdrawn Core Strategy identified potential strategic housing and employment sites across its administrative areas. Its Chapter 4 (Infrastructure Delivery Strategy) defined the types and levels of infrastructure required to accommodate planned growth. Work to improve Junction 10a was listed as being a critical transport infrastructure project ie infrastructure identified as being of the highest level of need and *infrastructure that must happen to enable physical development*.
- 4.51 Despite its demise, the work undertaken in its production remains the most up-to-date and relevant policy guidance at the local level, evidenced by Central Bedfordshire's intention for the withdrawn Core Strategy to form 'development management guidance' for an interim period. This has been endorsed by the Executive of Central Bedfordshire stating that:
- The Luton and Southern Central Bedfordshire Core Strategy has been in production for the past 6 years, is underpinned by extensive technical evidence, has been subject to widespread formal and informal consultation, was 'strongly supported and endorsed' by Central Bedfordshire and continues to reflect the Council's preferred approach to development for the South Central Bedfordshire area.*
- 4.52 Against that background, the LIR observes that as a result of relieving congestion and creating additional capacity, the scheme would have economic benefits. That view is strongly shared by the applicant because the M1 Spur/Airport Way is an important access route to Luton town centre, to its eastern employment areas and to Luton Airport.
- 4.53 The LIR explains that development proposals continually emerge for the town and the employment areas; and expansion is planned for the airport which would result in a substantial increase in passenger numbers and associated functions. But growth is

currently constrained by congestion at the Kidney Wood roundabout, which acts as a bottleneck or pinch point. It is the weak link in the critical infrastructure which is a key requirement for triggering economic development and regeneration. It is the missing link between the M1 and the airport in the East Luton Corridor. Grade-separation would, in the applicant's view, be a relatively modest investment for high value returns in unlocking jobs.

- 4.54 The applicant's concern is significantly reinforced by the support which the scheme has received from CBC and local enterprises¹³, whose representations demonstrate a substantial interest in further development and some have ambitious plans eg RR-003, RR-008, RR-015, AS-004 & AS-005.
- 4.55 Yet planning applications submitted to LBC in the past have repeatedly faced highway concerns, resulting in lengthy delays in determination while Highways Agency (HA) holding directions remained in place. These were withdrawn only following extensive negotiations with applicants involving detailed modelling work to establish the impact of potential traffic generation during the peak periods. Furthermore, achieving the withdrawal of directions required the imposition of strict conditions ensuring developments are implemented in a phased manner and S106 agreements securing contributions to highway improvements. Such negotiations have been laboured and costly exercises, potentially discouraging further development, inward investment and employment generation PD-011 & APP-013.
- 4.56 Nevertheless, the LIR reflects the hopes of the applicant and developers that up to about 17,000 jobs could be created on a series of sites, the majority of which have outline planning permission and await the necessary investment, but are frustrated by the lack of capacity in Junction 10a. Significantly, at the close of the examination London Luton Airport Operations Limited had a live planning application for works that would substantially increase the operating capacity of the airport. It is already a major employment generator providing jobs for a wide range of skills and levels of remuneration, which is important to the economy of Luton and the surrounding area. It alone, could produce around 3,000 new jobs.
- 4.57 Experience suggests to me that accurately predicting job creation is, at best, challenging and such figures do not attract great certainty. But whether or not the prediction of jobs is to be relied on, there is no doubt that there are substantial employment sites whose potential is likely to be delayed or frustrated by the lack of capacity in Junction 10a, as the planning history reveals.

¹³ including the Augur Group Limited, Legal & General Property Partners Limited, Power Court Luton Limited, Prologis UK Limited, Luton Airport, The Mall Luton & Wates Construction Limited

- 4.58 I agree that the proposed scheme would contribute to improved accessibility to Luton and the surrounding strategic road network, bringing with it the potential for supporting economic growth opportunities and sustaining regeneration through new development. Improvements at Junction 10a could unlock the potential for some of the employment-generating development which would otherwise be held up in the planning process due to a lack of adequate highway infrastructure. Not undertaking the scheme would frustrate development and constrain regeneration potential.
- 4.59 I therefore conclude that the scheme would offer socio-economic benefits contributing very significantly to the public interest.

Environmental Impacts

General

- 4.60 When it emerged from the earlier assessment of options, the scheme was perceived as the best in design terms but not necessarily the least damaging environmentally APP-059.
- 4.61 The scheme's environmental impacts are comprehensively assessed in the Environmental Statement (ES), supplemented by answers to questions posed by the ExA and informed by the proceedings at hearings. In addition, the customary Appraisal Summary Table (AST) accompanies the updated Business Case APP-034-055 & AS-010.
- 4.62 The ES assesses the environmental impacts in accordance with standard practice and reference to appropriate professional standards, for a full range of issues including these particular areas of interest in relation to the principal issues¹⁴:
- Proposed Scheme
 - Geology and Soils
 - Noise and Vibration
 - Air Quality
 - Landscape and Visual Effects
 - Cultural Heritage
 - Ecology and Nature Conservation
- 4.63 I draw on these chapters in addressing the principal identified issues. For some, as later considerations reveal. I am satisfied that the scheme either has no predicted significant adverse impacts, or significant adverse impacts which could be satisfactorily mitigated through design and construction, or appropriate requirements within the DCO for regulation by the LPA or the appropriate statutory consultee as regulatory authority¹⁵. This can be said of air quality, ecology and nature conservation, and noise and vibration.

¹⁴ eg GLVIA, LCA, DMRB, WebTAG, etc

¹⁵ eg EA, EH, HA, NE, etc

- 4.64 I was concerned, as were IPs, to ensure that mitigation measures identified in the ES could be securely delivered by the DCO, but as a consequence of the examination process I am now content on that score, subject to comments in Section 6 (DCO) and those that follow.
- 4.65 However, it is necessary briefly to mention the Code of Construction Plan (CoCP) and the Construction Environmental Management Plan (CEMP). These should be important means through which mitigation measures would be secured and/or delivered in the construction phase and they feature in some of the Requirements (Rs) ^{AS-017}. The CEMP would have to be prepared in accordance with the CoCP and both would have to be approved by the appropriate LPA (LBC and/or CBC) before the commencement of development. Having seen a draft of the CoCP, I am satisfied that it should be robust and effective ^{REP-045}.
- 4.66 There are also other plans which will require LPA approval, including the Dust Management Plan (DMP) the Contaminated Land Plan (CLP), the Site Waste Management Plan (SWMP) and the Traffic Management Plan (TMP), to which it may also be necessary to make brief reference in addressing following matters.

Geology and Soils

- 4.67 The ES reveals that an imbalance between cut and fill would arise in the scheme's construction and consequently there would be an estimated export of spoil from the site amounting to 115,000m³ ^{APP-035}. For contractual reasons it remains unclear where that spoil would be deposited or how it might reach its destination, except that it would be by road and it seems likely that the M1 Spur or Airport Way would be used ^{REP-027}. But because of the uncertainty surrounding destination and routeing, it is impossible to identify or measure the environmental consequences of transporting waste.
- 4.68 It is a matter of concern to me that the impacts could include traffic consequences coupled with additional noise and vibration, and reduced air quality for occupants of buildings close to the waste route, wherever they may be. Furthermore, to remove the spoil the ES estimated the required number of 20m³ lorry loads at 5,750, whereas it transpired during the examination, in response to my questions, that the number would be double the previous estimate, at 11,500 ^{REP-027}.
- 4.69 The disparity appears to have been no more than an arithmetic error but it reflects adversely on the reliability of the ES and caused me to exercise caution when considering its conclusions in other areas. However, no more errors came to light during the examination.
- 4.70 Although the additional traffic generation could be staggered by stockpiling, the other implications would remain. This means that effectively mitigating these potentially significant impacts would have to rely upon DMRB defined contractual working restraints, together with the CoCP, the CEMP, the SWMP and the DMP. I

have seen a draft of the CoCP which strengthens my belief that it could deliver the necessary mitigation REP-045.

- 4.71 The applicant has stated that the maximum number of HGV daily and peak period movements would be restricted; that routing restrictions would be agreed with the highway authorities through the Traffic Management Plan; and that lorries would neither be allowed to use London Road north-bound nor London Road (A1081) south-bound when exiting the site, thereby avoiding passing roadside dwellings REP-027.
- 4.72 I am also encouraged by the fact that, as a highway authority, LBC routinely undertakes traffic counts at key locations and one is undertaken annually on between Capability Green and Junction 10a. The last manual count shows some 20,200 out-bound (west-bound) vehicles passing the count in a 12 hour, daytime, mid-week period (07:00-19:00 on Thursday 6 September 2012) and 18,700 inbound (east-bound) EV-023.
- 4.73 Spoil lorries would be likely to join the observed flow, or a lesser one as some of the flow would peel off at Junction 10a. The ES foresees 115 HGV out-bound HGV movements/working day exporting spoil. Doubling the number would mean an additional 115 traffic movements/working day, which as a proportion of 22,200 would result in an increase of some 0.57%.
- 4.74 As I have noted, the flow would probably be less than 22,200 outbound between J10a and the M1 so the proportion would be higher. But the proportion is so small and the increase so marginal that I regard it as relatively insignificant against the background that the recognised daily variation in traffic flows can be up to 5% EV-022. And by calculating on the same basis, the inbound proportion would be 0.61% ($18,700/115=0.61$).
- 4.75 I agree that the total number of spoil lorries would be insignificant as a proportion of total traffic flows. My concerns have been laid to rest and I shall not therefore pursue the issue further.

Noise and Vibration

- 4.76 Turning to vibration, no piling is proposed in construction of the scheme. Consequently, construction vibration was scoped out of the assessment for the ES PD-009. So far as operation vibration is concerned, there is an absence of roadside occupied dwellings or other buildings, or any other sensitive receptors in the immediate vicinity of the scheme. Consequently, operational vibration has not been considered in the ES either APP-035. Furthermore, there are no known vibration concerns associated with Junction 10a or the M1 Spur and I therefore consider there is no reason to conclude that the scheme would give rise to vibration effects of any significance.
- 4.77 For noise, the ES shows 15 sensitive receptors as dwellings on London Road North/Ludlow Avenue (9) and London Road South (5), and Newlands Farm. In the construction phase the predicted impacts would be moderate adverse at most by day for the

dwellings on London Road South and minor adverse at night. For the closest dwellings on London Road North, the predicted impacts would be major adverse by day during a single phase of connecting the scheme to the existing highway and moderate during another phase. But there would be no night-time effects on London Road dwellings. At Newlands Farm, the predicted impacts by day or night are not predicted to be significant.

- 4.78 These unavoidable noise impacts associated with the scheme's construction would require specific mitigation measures such as localised, temporary noise barriers round specific construction activities; and these would have to be secured by specific Requirements. Examples are provided in the ES and I am satisfied that they could be secured by way of the CoCP and the CEMP APP-035 & Appendix E.
- 4.79 As to the scheme's operational phase, in the Opening Year new low noise surfacing could have a beneficial impact on noise from the M1 Spur and the realigned A1081, but it has not been factored in because of inadequate research about existing use of such surfacing generally. Nevertheless, no change in impact is predicted at 46% of the façades of dwellings in the ES study area, a negligible impact at 33% and a minor/moderate decrease at the five dwellings on London Road South¹⁶. There would be negligible impact across the majority of Luton Hoo RHPG and Stockwood Park APP-035.
- 4.80 In 2009, taking the worst case of comparing 2014 *do minimum* with 2029 *do something* scenarios, 92% of dwellings are predicted to experience a negligible increase in noise levels and 6% a minor increase in the long-term. Minor increases are also predicted at non-residential receptors including the closest parts of Luton Hoo RHPG. 1% of dwellings would experience no change and 1% would experience a decrease in the long-term as a result of the scheme.
- 4.81 No specific operational noise mitigation measures are proposed, although its design would, in itself, reduce the potential impact by way of cuttings and bunds. The ES explains that it is not practical to introduce noise mitigation measures remotely, at some distance from the scheme along roads that would experience significant increases in traffic generation and noise by 2029 as a consequence of *very likely* developments facilitated by the scheme. That would require later assessment during the consenting process for such developments.
- 4.82 I agree that there is no need to mitigate the operational noise implications of the scheme and I agree with the applicant's approach to noise mitigation in the construction phase.
- 4.83 It should also be noted that, according to the ES, the scheme would not have any significant effect on the implementation of

¹⁶ The study area boundary has remained consistently at 2km from the scheme, notwithstanding the reduction in DMRB requirement to 1km

Defra's Noise Action Plan for Major Roads because at most, only relatively small changes (< +25%) in traffic flows are predicted on the M1 north of Junction 10.

Air Quality

- 4.84 According to the ES, the operation of the scheme would have a slight/moderate beneficial effect in air quality APP-030.
- 4.85 The generation of dust during construction of the scheme is a potential air quality issue APP-035. But requirements relating to construction, including the CEMP and the Dust Management Plan (DMP) if properly observed, would effectively mitigate adverse impacts under normal circumstances at sensitive receptors such as nearby dwellings, ensuring there were no significant effects. Conversely, in periods of dry and or windy weather it would be possible for dust to have a minor adverse effect at nearby receptors.
- 4.86 Without the scheme in 2009 and 2014, when measured at all receptors in the study area¹⁷, annual mean concentrations of NO₂, PM₁₀, PM₂₅ and the number of exceedances of the 24 hour PM₁₀ objective are predicted to be well within the National Air Quality Objectives. With the scheme operational there would be a marked decrease in pollutant concentrations at dwellings on London Road South and a negligible change elsewhere. They would all be well within national requirements in 2014.
- 4.87 There would also be a net increase in total emissions of pollutants if and when the scheme becomes operational, mainly because of the increased distance travelled by vehicles in the study area. With the scheme there would be a marked decrease at nearby dwellings owing to the realignment and rerouting of carriageways. Elsewhere, any change would be negligible and overall, the scheme is assessed as having a slight/moderate beneficial effect at locations where baseline conditions are already below the respective objective values.
- 4.88 I agree with these assessments and have no significant concerns about air quality.

Landscape and Visual Effects

- 4.89 The scheme lies partly within and is surrounded by various landscape designations. It lies partly within the Green Belt (GB) and an Area of Great Landscape Value (AGLV). There is an Area of Local Landscape Importance (ALLI) approximately to the north (Stockwood Park), and an RHPG (Luton Hoo) with its associated Conservation Area (CA) to the south. The Chilterns Area of Outstanding National Beauty lies over 3km to the north-west.
- 4.90 NE does not consider that the scheme would be likely to have a significant effect upon the setting of the Chilterns AONB because

¹⁷ The study area is illustrated in ES Figure 4.1, is drawn tightly and does not extend very far beyond the scheme in any direction

the scheme would be some 3.2km distant and beyond the M1, which forms an existing landscape buffer.

- 4.91 The ES points out that the presence of landscape designations underlines that the urban fringe within which the scheme lies is sensitive to landscape and visual change. The scheme straddles two landscape character areas within Central Bedfordshire (Slip End and Caddington/Luton Hoo) and abuts three townscape character areas in Luton (Ludlow Avenue, Farley Hill and Capability Green) APP-035.
- 4.92 The LIR points out that the design of the scheme employs minimal super-elevation (eg embankments or flyovers substantially above surrounding ground levels) with the main line following the natural contours of the ground, and the link between London Road North and South using an underpass. Reliance is placed on ground moulding and landscaping to offer additional mitigation but they would alter the historic wooded edge along Airport Way, east of London Road. Conversely, landscaping would otherwise strengthen characteristic elements in the longer term as woodland planting matures and hedgerows rejuvenate PD-011.
- 4.93 The ES assesses landscape and visual impacts in the well-established and widely understood way, using the GVLIA, LCA and DMRB methodologies AP-035.
- 4.94 As for landscape impact, according to the ES the impact of the scheme on the Slip End LCA would be of medium magnitude in the Opening year falling to low magnitude in Year 15 as a consequence of woodland development and landscape management. On the Caddington/Luton Hoo LCA, the magnitude of the landscape impact would be of low magnitude in the Opening Year and very low by Year 15 and because of the limited incursion and as a consequence of landscape mitigation proposals. Overall the scheme would have a maximum effect on landscape character in the Opening Year of moderate significance, declining to slight by Year 15. The mitigation measures can be secured by the Requirements and I therefore agree with these conclusions.
- 4.95 Turning to townscape impact, there would be no direct or indirect effects on Farley Hill as a result of the intervening distance, topography and vegetation. Nor would there be any impact on Capability Green for the same reasons. There would be an impact of very low magnitude on Ludlow Avenue/London Road in the Opening Year as a consequence of tree loss, but that would be compensated by new planting and increased woodland cover so that there would be no impact by Year 15. I agree with these assessments and conclude there would be no significant impact on townscape character.
- 4.96 The ES has assessed the significance of the scheme for visual impact by comparing the sensitivity of the receptor with the magnitude of the effects at representative viewpoints. Of the 13, five would experience no significant adverse impact from the

- scheme at any stage and another four of slight/negligible significance would experience low or very low adverse impacts.
- 4.97 For one the result would be a beneficial effect of slight/negligible significance, but for the remaining three the impact would be more marked.
- 4.98 At Stockwood Park Golf Course and Halfmoon Overbridge (over the M1) the significance of the impact would be moderate/slight in the Opening Year, reducing to slight/negligible in Year 15 as a result of mitigation. The ES states and I agree that the maximum adverse visual impact would occur at Newlands Farm which lies very close to the scheme, below and to the south of the M1 Spur. The significance of the impact there would be substantial/moderate adverse in the Opening Year reducing to slight/negligible as a result of maturing mitigation planting by Year 15.
- 4.99 Personal observations on site visits have reinforced my agreement with these assessments, not least because the M1 Spur, the Kidney Wood roundabout and Airport Way are existing features in that landscape and the assessment must necessarily be concerned with change from that baseline. It also has to be remembered that ES also the scheme would have visual and landscape impacts of positive significance, albeit modest. These would occur at Kidney Wood House as a result of realignment of London Road South, at London Road North as a result of additional open space linkage, and at Kidney Wood, Bull Wood and Stockwood Park as a result of woodland management and landscape reinforcement.
- 4.100 The scheme would result in adverse landscape and visual impacts, but I agree that effective mitigation measures would ensure that they were eventually only slightly adverse. And weighed against the positive benefits of the scheme, I consider that limited impact broadly acceptable.
- 4.101 IPs have other concerns about landscape and visual effects.
- 4.102 Whilst offering broad support for the scheme, CPRE is concerned about its inter-relationship with Kidney Wood to the north-east. Because London Road (North) would be re-aligned, a void would be created between the wood and the proposed northern roundabout. CPRE propose that the former carriageway should be tree-planted with complementary species to become a westward extension of Kidney Wood, which is used by the general public for recreational purposes RR-002 & REP-021.
- 4.103 However, as the applicant explains, the scheme involves creating a transitional meadow between Kidney Wood (within the AGLV) and Stockwood Park (within the ALLI) to the west. The edge of the wood reveals historic boundary features. They would be lost to further planting, disturbing the wood's ecological balance and creating difficulties for statutory undertakers who would require access to remaining apparatus RR-017 & REP-032.

- 4.104 I consider that either solution would represent a fair transition from open land to woodland. However, whilst site visits confirmed that LBC has enhanced the wood by improving public access and traditionally relaying the boundary hedgerow, it also confirmed the presence of apparatus which would not, in my opinion, satisfactorily co-exist with substantial tree planting of appropriate complementary species. I therefore find the scheme's treatment of residual land more appropriate than the CPRE alternative, principally for the practical reasons relating to services.
- 4.105 CBC is concerned about the visual impact of many new lighting columns on open agricultural land to the south of the scheme, west of London Road (South) which would be prominent in the landscape. The applicant points out that the design height of columns has been reduced from 15m to 12m to reduce prominence and that LPAs would have control of appearance through requirements, including R7 which has been amended to refer specifically to column colour. Consequently I agree that the visual impact can be disguised and that CBC's concern can be met.
- 4.106 I am satisfied that with effective mitigation measures in place, there would be no serious conflict with LLP Policies ENV2, ENV9 and ENV10, or SBLPR Policies NE3 and BE8, or emerging Policy DSCB 50.
- 4.107 And finally there is the question of whether the scheme would detract from the openness of the Green Belt. I have already reached the conclusion that the scheme would not be inappropriate in the Green Belt. But I have also reached the conclusion that it would have a substantial/moderate adverse visual impact in the Opening Year. It therefore follows that it could be said to detract from the openness of the Green Belt.
- 4.108 However, I do not think so because it would be limited and mainly experienced on the urban side of the scheme which is otherwise acceptable. Moreover, the impact would not be permanent; the adverse impact would worst at first and decrease over time. I do not therefore consider that the scheme would detract from the openness of the Green Belt.
- 4.109 If, however, SST were to disagree any minor conflict with policy should be outweighed by the public interest in meeting the scheme's objectives; and an exception made to the Framework and SBLPR Policy NE10 together with emerging DSCB Policies 3 & 36, 43 & 50.

Cultural Heritage

- 4.110 The juxtaposition of the scheme with Luton Hoo is important. It comprises the extensive Grade II* Registered Historic Park and Garden (RHPG) landscaped by Capability Brown, the Grade I Listed Mansion originally designed by Robert Adam, the Grade II* Listed Stables, and several other Grade II Listed buildings with the Conservation Area embracing several of them. English Heritage (EH) and CBC do not object to the impact of the scheme

on the Luton Hoo setting. Both sought adequate mitigation arising from a more informed assessment than provided in the ES.

- 4.111 The RHPG lies to the south-west of the scheme. The Mansion is now an hotel and spa resort, while a substantial part of the parkland has been developed as a golf course. Thus Luton Hoo can no longer be viewed as the entity it once was; the house has been resited and rebuilt while much of Brown's landscaping has been lost, not least as a result of constructing the golf course. But the impact of the scheme on the setting still merits careful consideration, not least because of the national and local policy considerations.
- 4.112 I agree with the ES assessment that the setting of Luton Hoo is influenced by both visual and aural factors. The M1 to the west together with its lighting columns and also similar lighting columns for J10 and the Motorway Spur to the north-west are variously visible from quite a few vantage points near the Mansion and on the golf course; and they clearly contribute to the Luton Hoo setting. So too, do overhead power lines to the north.
- 4.113 The same goes for noise impact. The ES measurement of ambient noise levels was undertaken at the only three sensitive receptors (dwellings) within 600m of the site, although it noted that the dominant noise sources included the M1 and Luton Airport's approaching/departing aircraft. Based upon observations made on my site visits, M1 traffic noise is constant but variable depending upon wind direction. From some parts of the RHPG and especially the golf course, it is difficult to ignore planes landing or taking off from the Airport to the north-east, over Stockwood Park and Capability Green to the north, in both directions. In my opinion, civil aviation movements also contribute to Luton Hoo's setting, both visually and aurally.
- 4.114 There is therefore a well-established context for assessing the impact of the scheme on the setting of Luton Hoo. I was greatly assisted in making the preceding and following findings by site visits undertaken with the aid of additional photographs, photomontages and long sections through the RHPG provided in response to my request during the examination REP-044 & LBC 8.7.
- 4.115 The majority of the RHPG lies outwith the Zone of Theoretical Visibility (ZTV) for the scheme and to my mind its visual impact on the setting would be very limited as the ES confirms. Only some of the lighting columns and the upper parts of gantries would be visible and less so when new planting as a consequence of R7 becomes established, reinforcing the existing, substantial, intervening mature tree belt. Furthermore, the visual impact could be further restricted by appropriate colouring of lighting columns in accordance with R7.
- 4.116 Regarding the impact of noise, the ES concludes that this would not be significant as there would be a negligible increase in levels in the scheme's opening year across the RHPG and I see no reason to question that conclusion. But overall the ES assesses

the effects as slight adverse for the RHPG and neutral for the CA because of its greater distance from the scheme. I regard the assessment of impact on the setting of the RHPG as overly cautious.

- 4.117 I have considered whether the scheme might have a cumulative impact if coupled with other development, as yet unbuilt. The only potential candidate would be the proposed Stockwood Stadium, but it would be on the farther side of the scheme and in the absence of any detailed design details at this early stage in its evolution, I am unable to find at this stage that the scheme would have a significant impact on the setting of Luton Hoo, cumulatively with any other development.
- 4.118 Consequently I find that the scheme would have very little impact on the setting of Luton Hoo and such impact as it might have, would be effectively mitigated as intervening planting matures. I find no significant conflict with the Framework, SBLPR Policy BE7 or emerging DSCB Policy 45.
- 4.119 Archaeological heritage assets have been identified within the site and near the scheme. According to the ES, the scheme has the potential to cause direct physical impacts on the archaeological resource leading to a number of adverse effects during the construction phase. The potential for Palaeolithic remains has been identified in two areas where field surveys have been conducted and the potential is unknown in two others where no field survey work has been undertaken APP-035.
- 4.120 Archaeological assets have been identified of which there is a potential for 11 to be impacted by construction of the scheme resulting in disturbance or loss of the archaeological resource. No remains of medium, high or very high value have been identified and the low value remains would be of importance at the local level. But the potential Palaeolithic remains, if found, could be of medium-high value because of their rarity and regional-national significance.
- 4.121 Mitigation measures to reduce or avoid adverse impacts have been incorporated in planning the scheme's construction, involving a phased programme of archaeological works in two stages. The first would comprise an investigation of the unknown areas and the second would comprise a programme of mitigation measures to preserve remains in situ, which failing recoding and appropriately disseminating information about them. This would be achieved through the CEMP resulting in an overall effect of measured as slight adverse.
- 4.122 I agree with the principle of the approach and the assessment of the impact. But the LPAs consider that the significance of the Palaeolithic remains may have been underestimated. They express concern about potential Palaeolithic remains, which if found in good condition, could even be of international importance PD-011. They believe that the design and implementation of

mitigation measures is therefore of considerable importance and much of the effectiveness turns on rapidly evolving fieldwork techniques.

- 4.123 Both the LPAs and I were exercised by the use of terms in the ES and or the DCO which seemed ill-defined and considered that there ought to be more certainty over the mitigation strategy. Detailed consideration of this matter follows later in the context of the DCO. But there I eventually conclude that its drafting, in reflection of the ES, is appropriate for safeguarding the remains and I therefore find no unacceptable threat to them as a consequence of the scheme ^{6.21}.

Ecology and Nature Conservation

- 4.124 There are nine non-statutory County Wildlife Sites (CWS) within 2km of Junction 10a, six of which have connectivity with it. The nearest are at Kidney and Bull Woods (adjacent), and at Stockwood Park (240m north); the next nearest are at Heavens and Chalk Wood (1km), and at Luton Hoo RHPG (1.9km) to the south.
- 4.125 According to the ES and in summary, the scheme's construction phase could result in significant impacts on ecological resources, especially habitats as a result of disturbance, fragmentation, pollution and direct loss, particularly of hedges, trees and woodland. Mature specimens could not readily be replaced and the resultant ecological impact, notwithstanding mitigation, would result in a residual long-term slight adverse effect. I agree with that assessment.
- 4.126 Natural England (NE) is the statutory nature conservation body. NE is satisfied that the scheme would not be likely to have a significant effect on any Natura 2000 or Ramsar sites because at 5km or more, it would be too distant from such sites to present any concern. NE is also satisfied that the scheme would not be likely to affect any Sites of Special Scientific Interest (SSSIs) for the same reason. The nearest site is some 12km away and no connecting environmental pathways have been identified. Nor does NE anticipate that the scheme would be likely to have a significant effect upon the Chilterns Area of Outstanding Natural Beauty (AONB) because the scheme would be some 3.2km distant, beyond the M1.
- 4.127 NE regards the ES as robust, including its assessment of the lack of connectivity with the scheme in terms of air quality and hydrology ^{REP-019}.
- 4.128 The ES states that there is no need to invoke NE's licensing function in respect of European protected species such as bats and/or badgers and no application for a licence has been made ^{APP-035}. NE concurs fully with the ES assessment, but should such species be discovered (eg by pre-felling tree inspection as required by the CEMP) I realise that NE would be required to exercise its licensing function ^{RR-013}.

- 4.129 NE broadly welcomes proposed enhancements to offset the scheme's local ecological and landscape-related impacts, and is satisfied that they would be sufficiently secured through the DCO's Requirements. Amenity and species-rich grassland, hedgerows, together with areas of woodland and heathland would make an important contribution towards local green infrastructure provision, and local biodiversity and open space targets APP-035 & REP-019.
- 4.130 I am satisfied that NE has no objections to the scheme and find that its mitigation concerns are adequately addressed by the Proposed DCO Appendix E, RR-013 & REP-019 & AS-017.
- 4.131 Badger surveys conducted in 2009 and 2010 leading to the conclusion in the ES that no badger setts were present within the scheme's footprint APP-035. However, CBC is concerned about badgers re-establishing setts before, during, or as a result of the scheme's construction and migrating across Airport Way to the woodland opposite REP-014. The applicant responds, however, that monitoring badger kills on Airport Way between Kidney Wood and Bull Wood is not proposed because they currently occur and it would be difficult to identify an accurate causal link with the impact of the scheme. Furthermore, to provide an underpass or subway under Airport Way would necessitate retro-fitting a tunnel in cutting with extensive fencing required to encourage its use.
- 4.132 In my opinion, such mitigation measures would have extensive engineering implications for construction impacts, land take and cost. Moreover, it is by no means clear that this solution would be effective and it might even be counter-productive for badger safety. And finally, considering NE is content to rely on requirements to secure safeguards, I can find no reason to recommend any modification of the scheme or the DCO in relation to CBC's concerns for badgers.
- 4.133 The slight adverse impact on ecological interests following mitigation should not stand in the way of the scheme and the benefits it brings in the wider public interest. Consequently I find that despite some conflict with LLP Policy ENV5 and emerging DSCB Policy 57, it should be possible to make an exception in view of the scheme's benefits to for the wider public interest.

Conclusions

- 4.134 Drawing the threads together, it is clear that the applicant, with support from CBC, local businesses and others, has made a strong case for the scheme.
- 4.135 It has evolved consultatively through options in pursuit of additional highway capacity to alleviate congestion and stimulate economic growth in the interests of regenerating Luton. Socio-economic impacts would be positive and the scheme would offer good VfM. Furthermore, the scheme finds support in national planning policies and broadly at local level; and I judge it not inappropriate development within the Green Belt.

- 4.136 There would be some significant adverse environmental and ecological impacts and they should not be lightly ignored. But there is an identified need to provide additional highway capacity in the wider public interest. In my opinion, that benefit should outweigh the potentially adverse effects which could be satisfactorily mitigated by design, or in construction, or through compliance with requirements.
- 4.137 In so finding, I have had regard to the LIR, prescribed matters in relation to a highway scheme and all other relevant and important matters.
- 4.138 There is no reason to doubt that other required consents for environmental permits and protected species licences (if required) would not be forthcoming from the EA and NE, respectively.

5 COMPULSORY ACQUISITION

Land to be Acquired

- 5.1 The land that would be the subject of Compulsory Acquisition (CA) lies to the south of Luton and to the east of the M1. It is predominantly agricultural land, mainly arable but some pasture and part of an agricultural compound. The remaining land is woodland and open space. In summary, it comprises land bounded by the B4540 (Newlands Road), the A1081 (London Road South) and the M1 Spur. Land would also be taken between the M1 Spur and the London Road (North) north of the existing M1 Junction 10a APP-006.

Purpose of Compulsory Acquisition

- 5.2 Compulsory acquisition powers would enable construction and maintenance of the proposed development.

Draft Order Powers¹⁸

- 5.3 The Draft DCO seeks compulsory acquisition powers for land through Article 18 and for related rights through Article 20. In summary, other articles affecting land, rights and interests include:

- 21 Private rights over land
- 22 Vesting
- 23 Subsoil or air-space only
- 24 Rights under or over streets
- 25 Temporary use of land for carrying out the development
- 26 Temporary use of land for maintaining the development
- 27(28) Statutory undertakers
- 18(29) Apparatus and rights in stopped-up streets
- 29(30) Recovery of costs of new connections

- 5.4 The Book of Reference (BoR) submitted with the application identifies affected persons and land in three categories APP-015. There are seven parcels containing 45 plots of land to be acquired together with owners, lessees, tenants, occupiers or other interests. During the Examination, the BoR was the subject of two Schedules of Variation (SoV). The first amended entries of owners and lessees or tenants of Crown, Special Category and Replacement land¹⁹ PD-003. The second amended the entries of owners and claimants in respect of open space PD-004.

¹⁸ Proposed DCO articles used throughout with original Draft DCO articles in parentheses

¹⁹ The Draft DCO originally included Special Category and Replacement land relating to open space

- 5.5 The Statement of Reasons (SoR) concludes that there is sufficient justification to exercise compulsory purchase powers over all identified land, rights and interests APP-013.
- 5.6 Finally, Article 26 of the draft DCO seeks powers of entry to and temporary possession of nearby land for purposes of occasional, but significant maintenance of the proposed development, while accommodating other uses in the interim. These powers would not extend to any house and/or garden, or any other occupied building.

Tests for Compulsory Acquisition

- 5.7 In summary, for the compulsory acquisition of land or rights to be authorised SST must be satisfied that the land is:
- required for the development to which the development consent relates,
 - required to facilitate or is incidental to the proposed development, or
 - is replacement land which is to be given in exchange for the order land

and that there is a compelling case in the public interest to do so²⁰.

- 5.8 In balancing the public benefits against the loss of private rights, the considerations are essentially that²¹:
- All reasonable alternatives to compulsory acquisition have been explored and discounted;
 - A clear use for the land or need for the rights has been identified; and
 - There is likelihood that adequate funds for the development will be available.
- 5.9 Furthermore, there is also a need to be satisfied that the stated purpose of acquisition is legitimate and sufficient to justify interference with the human rights of those affected²².
- 5.10 The objectives for the scheme, its policy context and alternatives to it were considered in Sections 3 and 4, leading to the conclusions that there is a need for the scheme and no reasonable alternative to it. It is now necessary to assess the representations made and the special considerations applying to the compulsory acquisition of local authority, statutory undertaker and Crown land, and in relation to public space, before going on to consider funding and human rights issues.

²⁰ Planning Act 2008 ss122 & 123

²¹ Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 & Planning Act 2008: Guidance related to procedures for compulsory acquisition (February 2010)

²² Planning Act 2008: Guidance related to procedures for compulsory acquisition (February 2010)

Affected Persons (APs)

- 5.11 There are some 17 APs in total, of whom seven²³ made representations in writing. Two did not object to CA and four subsequently withdrew their objections, leaving only one objection outstanding from Ms Elizabeth Eldridge RR-014 REP-025 RR-011 PD-016, PD-021 & PD-019. A CA Hearing was requested and held, but Ms Eldridge did not attend REP-016.

AP's Case and Applicant's Response REP-071 & REP-023

- 5.12 Ms Eldridge is a Category 1 Person as defined in s57 of the 2008 Act. She tenants part of Plot 3, Plots 3A, 3B, 3C and part of Plot 3E, comprising pasture land. It lies generally to the south-east of the M1 Spur, north and north-east of Newlands Road, between Newlands Farm and London Road South (A1081).
- 5.13 She has rented land and buildings at Newlands farm for the last five years to stable her 25 competition ponies and provide them with adjoining grazing. She has also used the facilities to develop, break-in and produce (equine) teams for national and international (carriage) drivers. CA would mean the loss of grazing land. Furthermore, the ponies are valuable and the stables at Newlands Farm allow securely managed operations with minimal risk.
- 5.14 Ms Eldridge has spent five years building a client base and hoping to establish a reputation as one of the leading horse breaking yards in the country while enjoying her hobby. But in the current, difficult economic climate, loss of the grazing land could spell the demise of all her hard work. Furthermore, because she lives in nearby Harpenden with an elderly relative and has a child attending a local school, proximity to her ponies is very important.
- 5.15 The applicant replied promptly to Ms Eldridge's representation and met with her shortly thereafter to gain a better understanding of her pony operations and interest in the land RR-017. LBC has been assisting her in a search for alternative premises but by the close of the examination had still found it impossible to identify any which wholly met her extensive requirements. Nevertheless, relocation discussions continue with Ms Eldridge who has submitted the heads of her compensation claim to LBC EV-018.
- 5.16 It is clear to me that CA powers are required for the proposed scheme, which could not be constructed within the existing highway boundary. The land which she occupies as a tenant is required for construction of the proposed southern roundabout and associated highways.

²³ L&G Property Partners (Life Fund) Ltd, L&G Property Partners (Life Fund) Nominee Ltd, Stockwood Park Property Holdings Limited, Central Bedfordshire Council, National Grid plc, Mr Gary Speirs & Ms Elizabeth Eldridge

- 5.17 Alternative routes (for the scheme) have been considered, subjected to wide consultation and rejected by the applicant ^{APP-016}. Some alternatives have also been actively pursued by IPs through the examination and considered within this report. Nevertheless, alternatives would also have necessitated CA and none of those suggested have I found preferable to the scheme
- Section 4.
- 5.18 The land being compulsorily acquired is no more than is necessary for the proposed development and not all of the tenancy would be required; although the grazing would need to be taken for the scheme, the stables would not. The resultant inconvenience of severance is clear, but it is also clear that the applicant is making significant efforts to assist with relocation; and compensation exists to address all quantifiable losses.
- 5.19 Consequently I cannot find any substance in this objection to CA.

Statutory Undertakers

- 5.20 Seven statutory undertakers have rights to keep apparatus within the Order lands ^{APP-015}. Only one objected and the objection was subsequently withdrawn ^{PD-021}. Furthermore, the rights of Statutory Undertakers are adequately protected by Articles 28 and 29 of the Final Draft DCO.

Crown Land

- 5.21 It is proposed to compulsorily acquire:
- Plots 6 & 6A - Land at the Kidney Wood roundabout vested in the Secretary of State for Transport (SST), managed by the Highways Agency and largely occupied by LBC; and
 - Plot 3G - Land at Newlands Farm in the ownership of Legal and General, occupied by SST and managed by the Highways Agency.
- 5.22 Crown consent for the acquisition was provided by the Highways Agency on behalf of SST ^{REP-035}. Additionally, there is a signed Memorandum of Understanding (MoU) between the applicant and the Highways Agency regarding mutually acceptable arrangements for works and other matters relating to the proposed development ^{REP-027}. And finally, there are protective provisions for highway authorities such as the Highways Agency in Schedule 12 of the Final Draft DCO.

Open Space

- 5.23 There was originally a proposal to compulsorily acquire public open space and consequently also replacement land ^{APP-013}. That would have involved the applicant seeking a certificate from the Secretary of State for Transport (SST) in order to avoid the need

for Special Parliamentary Procedure (SPP)²⁴. But the applicant was able to appropriate land already owned by LBC²⁵ and acquire other interests outright, by agreement. Consequently, there is no need for the applicant to apply for a certificate or for the relative suitability of replacement land to be examined PD-003.

Local Authority Land

- 5.24 Land, almost exclusively highway, is being acquired from LBC and CBC. Neither objects to CA nor the principle of the proposed development. Furthermore, there are signed MoUs between the applicant and CBC, and HA regarding arrangements for implementation of the proposed development EV-021 & 1.15.

Funding APP-014 & EV-020

- 5.25 The cost estimate of the scheme is £29,399,315 and the available funds broadly match AS-010. The funding amounts to £29.2m and the components are:
- LBC will continue to make budgetary provision for promotion of the application, relying *inter alia* upon £1m of Growth Area Funding from the Homes and Communities Agency (HCA) and £900,000 of its own funds;
 - Regional Growth Funding (RGF) amounting to some £24.8m has been secured from the Department for Business, Innovation & Skills (BIS);
 - London Luton Airport Limited and London Luton Airport Operators Limited will contribute £2.5m; and
 - LBC will continue to seek contributions from other sources, including private sector developers likely to benefit from the scheme.
- 5.26 On any land to be compulsorily acquired, a notice to treat could be served up to five years from the date of making the Order²⁶. Whilst RGF funds must effectively be spent by June 2015, there is no such constraint on other funding. Consequently, the likelihood of the availability of sufficient resources to meet compensation claims and the cost of acquiring blighted land appears firmly established.

Human Rights Considerations

- 5.27 In reaching conclusions on CA I am required to have regard to the relevant articles of the European Convention on Human Rights (ECHR) as implemented by the Human Rights Act 1998.

²⁴ Planning Act 2008 s131

²⁵ Local Government Act 1972 s122

²⁶ Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 regulation 3(2)

- 5.28 Article 6 requires a fair and public hearing by an independent and impartial tribunal. The procedures under the 2008 Act make provision for objections to be heard by the ExA as an independent tribunal and for challenges to be brought by judicial review in the High Court. Moreover, I am satisfied that the examination process including the written representations both at the outset and during the examination, together with the CA Hearings and accompanied site visits, have ensured a fair and public hearing under Article 6.
- 5.29 Article 8 is not invoked because no dwellings are the subject of CA.
- 5.30 Article 1 of the First Protocol provides the right to peaceful enjoyment of possessions and is invoked in respect of Ms Elizabeth Eldridge's potential loss. However, only part of her interest is being acquired. Moreover, she continues to occupy the land and graze her ponies while the applicant actively assists with relocation. The plots on which her ponies graze comprise a substantial and important proportion of the land required for the scheme, acquisition of her interest is necessary to implement the scheme and compensation is available in respect of quantifiable loss. I therefore find that the interference is proportionate and strikes a fair balance with the public interest.
- 5.31 For the scheme as a whole, I find that any potential interference with human rights is proportionate and strikes a fair balance with the public interest, for which a compelling case has been made Section 4. The land to be acquired is no more than required to implement the scheme which would offer very significant public benefits. The benefits could only be realised by implementing the scheme which in turn, requires CA. Furthermore, APs have had access to a fair and public hearing and would be entitled to compensation in respect of quantifiable losses.

Conclusions on Compulsory Acquisition

- 5.32 As a consequence of the examination process, including consideration of:
- The relevant representations and all written submissions;
 - Two rounds of questions and the relevant responses;
 - A request for further information and responses thereto; and
 - The proceedings of four hearings including specifically, a compulsory acquisition hearing,

I am satisfied that the proposed development is for a legitimate purpose, that there is a likelihood of sufficient resources being available to fund it and that each plot to be acquired has been identified for a clear purpose. I am also satisfied that no more land is being acquired than is reasonably required for the purpose

of the scheme, or is reasonably necessary for facilitating or incidental to the purpose, and is proportionate. I am satisfied that the public benefits of the proposed development outweigh any potential private disbenefits and that there is a compelling case in the public interest for CA.

- 5.33 In reaching these conclusions I am satisfied that the mitigation measures set out in the ES can be provided, retained and maintained where necessary through construction of the scheme and the DCO's Requirements, which would satisfactorily minimise the environmental impacts of the proposed development ^{Section 4}. Furthermore, the DCO also includes provisions to ensure adequate monitoring of environmental impacts and remedial measures if necessary.
- 5.34 And finally, so far as human rights are concerned, I am satisfied that the examination process has ensured a fair and public hearing; that any interference with human rights arising from implementation of the scheme is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss.

6 DEVELOPMENT CONSENT ORDER

Draft DCO

- 6.1 The Draft DCO is accompanied by the required Explanatory Memorandum and both form an integral part of the application APP-011 & APP-012.
- 6.2 The DCO is sought in order to authorise construction of a new junction at M1 J10a to replace the existing roundabout. The purpose of the new junction would be to permit less restricted south-west/north-east vehicular movements. The DCO would authorise:
- Modification of lanes for traffic leaving or entering M1 Junction 10 when travelling to or from the M1 Spur;
 - Creation of a continuous highway between the M1 Spur and Airport Way (A1081);
 - Widening of the road between M1 Junction 10 and Capability Green to three lanes in each direction; and
 - Realignment of sections of London Road (North and South) coupled with construction of two new roundabouts and a bridge beneath the M1 Spur as well as construction of new slip roads between the new roundabouts at the M1 Spur, allowing traffic to join or leave the motorway by way of M1 Junction 10a.
- 6.3 The DCO also provides for associated development including APP-011:
- Reconfiguration of highways; and
 - Construction of a diverted footpath APP-011.
- 6.4 Schedule 1 of the DCO does not differentiate between Works forming part of the NSIP and Works which are associated development because there may be some definitional overlap and there is no statutory requirement to do so.
- 6.5 Ancillary matters (ie provisions not comprising development) provided for by the DCO include:
- Compulsory acquisition (CA);
 - Improvement, alteration, diversion and stopping-up of highways;
 - Classification and re-classification of highways;
 - Stopping-up and creation of new means of access;
 - Provision of clearways;
 - Variations of speed limits;
 - Application and disapplication of relative legislation; and
 - Deemed consents.

- 6.6 The drafting of the DCO is generally based on the model provisions²⁷. However, because of the linear nature and related characteristics of the scheme some articles are based on the associated model provisions for railways and Orders²⁸ or Transport and Works Act (TWA) model clauses²⁹ and Orders³⁰ or other NSIP DCOs which have been made by SST³¹ and Hybrid Bills. Although there is no longer a legal requirement to use the model provisions, they are a useful point of for comparison.
- 6.7 For the most part, definitions replicate the model provisions. Some definitions have been adapted from models, some models have not been used and some definitions have been added where un-modelled. I am generally satisfied with the applicant's reasons for doing so APP-011 & APP-012.
- 6.8 Most Articles and Requirements replicate or are very similar to the model provisions and where departures have been made it is generally because the power sought is not modelled in the infrastructure provisions³². Where variations from the model provisions are proposed I am satisfied that there are good reasons and that a broadly suitable alternative approach has been adopted³³.
- 6.9 Articles and Requirements requiring further consideration are dealt with as necessary, below 6.13.

Development of the DCO through Successive Drafts

- 6.10 The DCO developed during the examination and it may be helpful to follow the trail. Drafting was amended iteratively in response to my questions and responses thereto, together with representations, submissions and hearing proceedings; and also in response to negotiations between the applicant and IPs and APs. Consequently there are now four substantive (a, c, e & g) and three developing (b, d & f) versions. Tracked changes are used on successive drafts to illustrate revisions and allow comparisons with the First Draft DCO. They are:
- First Draft DCO submitted with the application APP-011;
 - Draft DCO (Schedule 2) with revisions as at 13 March 2013 REP-035;
 - Draft DCO with all revisions as at 10 April 2013 AS-007;
 - Draft DCO with revisions between 11 and 26 April 2013 AS-016;
 - Draft DCO with all revisions as at 26 April 2013 AS-015;

²⁷ Infrastructure Planning (Model Provisions)(England and Wales) Order 2009

²⁸ eg Network Rail (Nuneaton North Chord) Order 2010

²⁹ Transport and Works Act (Model Provisions) Order 2006

³⁰ eg Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 & Nottingham Express Transit System Order 2009

³¹ eg Network Rail (North Doncaster Chord) & Rookery South (Resource Recovery Facility) DCOs 2011

³² eg clearways, speed limits, classification of highways etc

³³ Articles modelled on made DCOs or TWA Orders or other Orders

- Draft DCO with revisions between 27 April and 3 May 2013^{AS-018}; and
- Final Draft DCO with all revisions as at 3 May 2013^{AS-017}.

6.11 Another version of the DCO is appended in a final form for making, if all recommendations relating to the Final Draft are accepted:

- Proposed DCO as at 12 August 2013³⁴.

6.12 In considering DCO provisions I shall refer mainly to the first and the last versions as the First Draft DCO and Final Draft DCO. I shall also refer to the Proposed DCO.

Revisions Proposed by the Applicant

6.13 Most of the applicant's revisions were either directly or indirectly in response to my questions, or an agreement with an IP or AP, or as a result of subsequent discussion at hearings. The applicant also undertook un-prompted revisions^{AS-014}.

6.14 The drafting style has been modernised throughout so that the language of the Final Draft DCO now accords with current drafting practice for statutory instruments. A series of minor inaccuracies have been corrected, and definitions added and deleted; and there have also been amendments of the provisions relating to compulsory acquisition of open space and replacement land. These are important but uncontroversial revisions.

6.15 I am satisfied that these changes are necessary and that the DCO has been improved as a result, particularly in respect of comprehension.

DCO Drafting needing Further Consideration

6.16 The Final Draft DCO does not address all the concerns about drafting raised during the examination. In some cases, however, I am satisfied that the concerns have been resolved by re-drafting consistently or in a more modern style, or through further clarification.

6.17 Nevertheless, there are other concerns where the applicant was not persuaded that the drafting should be revised, but which I regard as sufficiently important to highlight below. In doing so I am mindful that insofar as the adequacy of requirements under the 2008 Act is concerned, regard should be had to the advice in Circular 11/95 as is required for the consideration of conditions under the 1990 Act.

³⁴ Appendix E of this report incorporates tracked changes to the applicant's Final Draft DCO

Part 1 Article 2 and Schedules 1 & 2: Demolition

- 6.18 During the examination I expressed concern about *demolition* and the extent to which it might subvert the intention of requirements DEC-004 & REP-034. That is because there are a number of requirements which must be fulfilled before the authorised development may commence. I realise that the extent of demolition would be fairly restricted in the scheme but it is essential to avoid ambiguity. The description of authorised development in Schedule 1 makes no reference to demolition works, save for a brief mention as *further development* in (viii). But I regard it inappropriate to refer to demolition as further development when it should be unambiguously included within the meaning of authorised development.
- 6.19 In my view there is a need to be clear that demolition is within the description of authorised development. For example, Schedule 2, R5(1) states:
- None of the authorised development, including any site clearance works is to be commenced until an ecological strategyhas been submitted to and approved by...*
- 6.20 The process of demolition may precede site clearance, but as demolition is not embraced within the context of authorised development it seems to me that demolition could occur without triggering any requirement for an ecology strategy, with adverse consequences potentially arising.
- 6.21 The term demolition should therefore be defined in Article 2. The applicant accepts that a definition would be possible along the following lines REP-027:
- Destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the scheme; and such works may occur on one occasion or over any period of time.*
- 6.22 Reference should then be made to demolition at the end of Schedule 1 in the following terms:
- For the avoidance of doubt, any demolition preceding the Works shall be regarded as an integral part of the authorised development.*
- 6.23 I realise that three DCOs have been made by SST without defining demolition or clarifying its inclusion within the meaning of authorised development. I am unaware of the circumstances or related considerations in drafting other DCOs, but in this case I do see very considerable merit in defining and including it to ensure that demolition does not occur ahead of discharging a requirement.

Archaeology: Tool Box Talks and General/Targeted Watching Brief

- 6.24 I also expressed concern about use of the terms *tool box talks* and *watching brief* because they seemed ill-defined^{REP-034 & DEC-011}. They appear in the ES in the context of archaeological remains where suitable mitigation measures may include^{APP-050}:
- a general watching brief would be required to identify, assess the significance of and record any surviving Palaeolithic remains;
 - a targeted watching brief where archaeological remains of low value have been identified within the scheme alignment; and
 - a series of tool box talks for the Principal Contractor or earth moving contractor to provide advice on the identification of archaeological remains in advance of and during construction.
- 6.25 If discovered, Palaeolithic remains would be of importance and it is therefore essential to secure effective mitigation for protecting, recording or preserving them. That responsibility would apply also to remains of lower value.
- 6.26 My concern was shared by CBC and LBC, to whom it would fall (as LPAs) to monitor and if necessary, enforce R12 (Archaeology)^{REP-014}. However, the term *tool box talks* does not appear in R12 and perhaps should, but would then require to be defined. Conversely, *watching brief* features in R12, but the LPAs would prefer to see it deleted because it could become dated by developing archaeological practice.
- 6.27 I recognise the anxiety of the LPAs to include the use of expert archaeological expertise in any mitigation strategy, but I believe that is most likely to be secured through implementation of the requirement as drafted, including the term *watching brief*. As the applicant explains, the term *watching brief* is well-established, broad and not intended to limit the techniques used in archaeological work. Specifically, it should not preclude the use of newer techniques, as and when they evolve, but ensure that archaeological works are carried out at least to the standard of the *watching brief*. Moreover, R12 provides that no work can take place without the LPA's approval of an investigative scheme^{REP-033, REP-035 & AS-014}.
- 6.28 Furthermore, I have concluded that the term need not be defined in the DCO in order to permit some flexibility for both applicant and LPAs in order to make use of the most appropriate mitigation techniques available at the time of exploration. Such flexibility would be unlikely to lead to abuse because, like so many working

practices, the practice is professionally described and regulated³⁵, which should provide comfort.

- 6.29 As for *toolbox talks*, I have also concluded that there is no need for the DCO to go into such detail and consequently no need for the term to be defined within it, bearing in mind that the LPAs have to approve a detailed archaeological scheme before any stage of the authorised development may commence.

Schedule 2, Requirements: Approval of Details and Subsequent Amendments

- 6.30 During the examination I expressed reservations about inclusion of the words *unless otherwise agreed in writing by the relevant planning authority* in many Requirements which necessitate approval of details from the LPA^{DEC-007}. I remain concerned because the wording implies that the applicant may be afforded an opportunity to do something different from that which the requirement contemplates without the need for a formal application to the LPA and the associated scope for public scrutiny. And that is reinforced by the fact that in the case of LBC, the LPA and the applicant (as developer) are one and the same.
- 6.31 The Final Draft DCO contains a greatly expanded number of requirements which employ this wording. It is possible that all relevant details approved under 12³⁶ requirements could be altered subsequently by an informal exchange of correspondence between the developer and the LPA. R18 reinforces these informal arrangements by application to the subsequent amendment of any requirement and consequently, there are only two requirements which are not capable of subsequently being changed informally³⁷.
- 6.32 The applicant argues that this wording has been used before in other DCOs made by SST and SSECC³⁸, custom and practice supporting the flexibility to vary the requirement rather than depart from it^{AS-006 & AS-014}. I am not familiar with the circumstances pertaining or the considerations relating to other orders. But I am mindful that changes in requirements which could potentially result in material changes to the authorised development should be dealt with through the statutory code ie by making an application to the LPA to vary the requirement.
- 6.33 Conditions under the 1990 Act must meet the tests of Circular 11/95 and it follows that so too should requirements under the

³⁵ Institute for Archaeologists Standard and Guidance for an Archaeological Watching Brief

³⁶ Rs 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17

³⁷ Rs 2 & 6

³⁸ North Doncaster Chord, Heysham to M6 & Kentish Flats Extension DCOs

2008 Act. I do not consider that such flexibility meets two of the six tests, namely precision and reasonableness.

- 6.34 I realise that SST has not always shared this concern in similar circumstances where the Council was both promoter of the scheme ie the applicant and the LPA³⁹; and it now appears the decision-maker was not persuaded to do so in making another DCO⁴⁰. But circumstances alter cases and I regard it as essential that the concern be addressed in this case.
- 6.35 In my opinion the only way in which that could be done would be by deletion of the problematic wording and I so recommend.

Consistency in Drafting Requirements

- 6.36 Like a planning condition, a requirement should have three parts:
- the requirement to submit details for approval and when they should be submitted;
 - the grant of approval by the local planning authority; and
 - the implementation in accordance with the approval.

- 6.37 Some but not all Final Draft DCO requirements conform to this pattern, possibly as a result of hasty redrafting ahead of the close of the examination. Two⁴¹ provide no timescale for submission of details. R7 (landscaping) provides no timescale for submission of landscaping details. R19 (traffic management during construction) also exhibits this defect. Both should be amended to incorporate a timescale for certainty and consistency; and I so recommend.

Final Draft and Proposed DCOs

- 6.38 For the avoidance of doubt, the Final Draft DCO incorporates all the revisions discussed above which are acceptable to the applicant and those where I have reported outstanding concerns. The Proposed DCO incorporates all the applicant's acceptable revisions and the remedies for my concerns in tracked changes. The Proposed DCO is in the recommended form for making

Appendix E.

DCO Conclusions

- 6.39 I am satisfied with the drafting style of the Final Draft DCO and with the applicant's approach to some but not all the outstanding concerns. Consequently I am proposing the following modifications to the Final Draft DCO:

³⁹ Halton Borough Council – The Mersey Gateway Project decision letter (20 December 2010) paragraph 52

⁴⁰ Rail Chord North of Ipswich Goods Yard

⁴¹ Rs 7 & 19

- Define *demolition* in Article 1 as earlier suggested;
- Delete the words *unless otherwise agreed in writing* by the relevant local planning authority from Rs4, 5, 9, 10, 11, 12, 13, 14, 15, 16, & 17;
- Redraft R18 by deleting the reference to subsequent amendments in (1) and by combining (1) and (2); and
- Add *None of the authorised development is to commence until the landscaping scheme has been approved* at the end of R7(1) and add at the end of R19(3) *None of the authorised development is to commence until the traffic management plan has been approved*.

6.40 These modifications have been incorporated within the Final Draft DCO as tracked changes and the Proposed DCO results Appendix E. Thus the DCO may be made in that form if these and other recommendations are accepted.

7 OVERALL CONCLUSIONS AND RECOMMENDATION

Conclusions

- 7.1 The principle of the proposed grade-separation of Junction 10a of the M1 is consistent with national planning policies and supported by the most relevant local planning policies [3.40]. Where there is a degree of conflict, or the potential for conflict, it can be suitably addressed by appropriate mitigation measures [Section 4]. The scheme would not be inappropriate development within the Green Belt [3.40] and such visual impact as the scheme may have is short-term and of little significance for openness [4.104].
- 7.2 The Draft DCO submitted with the application, as amended during the examination, is appropriate for implementation of the scheme subject to amendments proposed in Section 6 [6.36]. The DCO also makes provision for the compulsory acquisition of land and rights, and the creation of new rights [6.5]. These are necessary for implementation of the scheme and meet the tests set out in the s122 of the 2008 Act [5.32-33].
- 7.3 So far as human rights are concerned, the examination process has ensured a fair and public hearing; any interference with human rights arising from implementation of the scheme is proportionate and strikes a fair balance between the rights of the individual and the public interest; and compensation would be available in respect of any quantifiable loss [5.34].
- 7.4 Other consents are required and some may be required to implement the scheme, but there is every reason to suppose that they will not be granted by the EA or NE if required [1.12]. None is a prerequisite of making the DCO.

Recommendation

- 7.5 For the reasons set out above and in accordance with section 83 of the 2008 Act, I recommend that the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] be made by the Secretary of State for Transport.

APPENDICES

APPENDIX A THE EXAMINATION

The main events during the examination occurred on the following dates:

Date	Event
15 November 2012	Preliminary Meeting (PM) held & Examination began thereafter
30 November 2012	Notification by the Examining Authority (ExA) of procedural decisions including confirmation of the examination timetable, venues, times and dates of Issue Specific (IS), Open Floor (OF) and Compulsory Acquisition (CA) Hearings, and Accompanied Site Visits (ASVs)
	Note of the PM issued
	First Written Questions issued
21 December 2012	Deadline for Statutory Bodies to notify the ExA of their wish to be considered as an Interested Party (IP)
9 January 2013	<p>Deadline for receipt by the ExA of:</p> <p><i>Written Representations by IPs</i></p> <p><i>Local Impact Report (LIR) from Local Planning Authorities (LPAs)</i></p> <p><i>Responses to ExA's First Written Questions</i></p> <p><i>Notification by an IP of their wish to be heard at (a) an OF Hearing (none received) or by an Affected Person (AP) at a (b) CA Hearing (one received)</i></p> <p><i>Comments on Relevant Representations (RRs)</i></p>
6 February 2013	<p>Deadline for receipt by the ExA of:</p> <p><i>Comments on Written Representations (WRs)</i></p> <p><i>Comments on LIR</i></p> <p><i>Comments on Responses to Examining Authority's First Written Questions</i></p> <p><i>Statements of Common Ground (SOCG)</i></p> <p><i>Responses to Comments on RRs</i></p>

	<i>Notification of wish to cross-examine at IS or CA Hearing (one received)</i>
13 February 2013	IS Hearing on Draft Development Consent Order (am) ASVs (pm)
20 February 2013	ExA's Second Written Questions issued
13 March 2013	Deadline for receipt by the ExA of: <i>Responses to Second Written Questions</i>
10 April 2013	Deadline for receipt by the ExA of: <i>Comments on Responses to Second Written Questions</i> <i>Initial revised proposed schedules or requirements for inclusion within the Draft DCO</i>
16 April 2013	ASVs (adjourned)
17 April 2013	IS Hearing on Environmental Impacts and Mitigation Proposals (am) and Alternatives, Justification, Need, Costs & Benefits (pm)
18 April 2013	IS Hearing on Draft DCO (adjourned)
19 April 2013	CA Hearing (adjourned)
26 April 2013	Deadline for receipt by the ExA of: <i>Revised proposed schedules or requirements for inclusion within the Draft DCO</i>
30 April 2013	Resumed Hearings into Alternatives, Justification, Need, Costs & Benefits, CA and Draft DCO
3 May 2013	Final Draft DCO and related material received
9 May 2013	Deadline for receipt by the ExA of: <i>Comments on Final Draft DCO and any related material (none received)</i>
13 May 2013	Deadline for receipt by the ExA of: <i>Applicant's response to comments on Final Draft DCO and any related material (not required because no comments received)</i>

13 May 2013

Examination closed

-end-

APPENDIX B EXAMINATION LIBRARY

The following documents have been used during the course of the Examination. They are grouped by category with each document having a unique reference and all documents available on the Planning Inspectorate's National Infrastructure Planning website at the Luton M1 Junction 10a – Grade Separation project page:

<http://infrastructure.planningportal.gov.uk/projects/eastern/m1-junction-10a-grade-separation-luton/?ipcsection=overview>

Categorisation of Documents

<i>References</i>	<i>Documents</i>
APP-001/062	Application Documents
PD-001/023	Project Documents
DEC-001/014	Procedural Decisions
RR-001/017	Relevant Representations
REP-001/048	Written Representations
AS-001/021	Additional Submissions
EV-001/024	Preliminary Meeting & Hearing Documents

Application Documents (APP)

Application Documentation

APP-001	Application Covering Letter
APP-002	1.1 Application Document List
APP-003	1.2 Introduction
APP-004	1.3 Application Form
APP-005	1.4 Copies of Newspaper Notices

Plans

APP-006	2.1 Land Plans
APP-007	2.2 Works Plans
APP-008	2.3 Street Plans
APP-009	2.4 Sections and Other Plans
APP-010	2.5 Environmental Context Plans

Draft Development Consent Order

APP-011	3.1 Draft Development Consent Order
APP-012	3.2 Explanatory Memorandum

Compulsory Acquisition

APP-013	4.1 Statement of Reasons
APP-014	4.2 Funding Statement
APP-015	4.3 Book of Reference

Reports

APP-016	5.1.1 Consultation Report
APP-017	5.1.2 Consultation Report Appendices – Part A
APP-018	5.1.3 Consultation Report Appendices – Part B
APP-019	5.1.4 Consultation Report Appendices – Part C
APP-020	5.1.5 Consultation Report Appendices – Part D
APP-021	5.1.6 Consultation Report Appendices – Part E
APP-022	5.1.7 Consultation Report Appendices – Part F
APP-023	5.1.8 Consultation Report Appendices – Part G
APP-024	5.1.9 Consultation Report Appendices – Part H
APP-025	5.1.10 Consultation Report Appendices – Part I
APP-026	5.1.11 Consultation Report Appendices – Part J
APP-027	5.1.12 Consultation Report Appendices – Part K
APP-028	5.8.1 Options Report
APP-029	5.8.2 Options Report – Appendices – Part 1
APP-030	5.8.3 Options Report – Appendices – Part 2
APP-031	5.8.4 Options Report – Appendices – Part 3
APP-032	5.8.5 Options Report – Appendices – Part 4
APP-033	5.8.6 Options Report – Appendices – Part 5

Environmental Statement

APP-034	6.1.1 Environmental Statement – Non Technical Summary
APP-035	6.1.2 Environmental Statement – Main Text
APP-036	6.2.1 Environmental Statement – Volume 2 – Figures – Part A
APP-037	6.2.2 Environmental Statement – Volume 2 – Figures – Part B
APP-038	6.2.3 Environmental Statement – Volume 2 – Figures – Part C

APP-039	6.2.4 Environmental Statement – Volume 2 – Figures – Part D
APP-040	6.2.5 Environmental Statement – Volume 2 – Figures – Part E
APP-041	6.2.6 Environmental Statement – Volume 2 – Figures – Part F
APP-042	6.2.7 Environmental Statement – Volume 2 – Figures – Part G
APP-043	6.2.8 Environmental Statement – Volume 2 – Figures – Part H
APP-044	6.2.9 Environmental Statement – Volume 2 – Figures – Part I
APP-045	6.3.1 Environmental Statement – Volume 3 – Appendices – Part A
APP-046	6.3.2 Environmental Statement – Volume 3 – Appendices – Part B
APP-047	6.3.3 Environmental Statement – Volume 3 – Appendices – Part C
APP-048	6.3.4 Environmental Statement – Volume 3 – Appendices – Part D
APP-049	6.3.5 Environmental Statement – Volume 3 – Appendices – Part E
APP-050	6.3.6 Environmental Statement – Volume 3 – Appendices – Part F
APP-051	6.3.7 Environmental Statement – Volume 3 – Appendices – Part G
APP-052	6.3.8 Environmental Statement – Volume 3 – Appendices – Part H
APP-053	6.3.9 Environmental Statement – Volume 3 – Appendices – Part I
APP-054	6.3.10 Environmental Statement – Volume 3 – Appendices – Part J
APP-055	6.3.11 Environmental Statement – Volume 3 – Appendices – Part K
APP-056	5.2 Flood Risk Assessment
APP-057	5.3 Environmental Protection Act Statement
APP-058	5.7 Environmental Licences Statement

Planning Statement

APP-059	5.6 Planning Statement
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Other Documents

APP-060	5.4 Traffic Forecasting Report
APP-061	5.5 Transport Assessment
APP-062	7.1 Aerial Photos

Project Documents (PD)

General Project Documents

PD-001	Late Consultation Responses – East of England Development Agency
PD-002	Luton Borough Council – Corrected Plan Submission
PD-003	Section 56 Certificates of Compliance and Book of Reference Schedule of Variation

PD-004	Book of Reference – Schedule of Variation 2
PD-005	Luton Borough Council – Transboundary Screening Matrix

Comments on Draft DCO & Explanatory Memorandum

PD-006	Luton M1 Junction 10a Grade Separation Scheme comments on draft Development Consent Order & Explanatory Memorandum and related documents
PD-007	Infrastructure Planning Commission comments on Draft Development Consent Order and Explanatory Memorandum
PD-008	The Planning Inspectorate's comments on draft documents

Scoping Documents

PD-009	Scoping Opinion
PD-010	Scoping Report

Local Impact Report & Statement of Common Ground

PD-011	Local Impact Report - Central Bedfordshire Council & Luton Borough Council
PD-012	Statement of Common Ground - Central Bedfordshire Council & Luton Borough Council

Correspondence from Interested Parties

PD-013	Environment Agency – Letter to confirm no further issues
PD-014	Health and Safety Executive - Request to become an Interested Party
PD-015	Health Protection Agency - Request to become an Interested Party
PD-016	Letter from Graham Lawrence LLP – Withdrawal of objection by Legal & General Property Partners Limited
PD-017	Letter from Natural England – Response to late Written Representation
PD-018	Letter from British Railway Board – Withdrawal from Interested Party status
PD-019	Letter from Bidwells – Withdrawal of objection by Gary Speirs
PD-020	Letter from Berwin Leighton Paisner – National Grid Plc objection update
PD-021	Letter from Berwin Leighton Paisner – Withdrawal of objections by National Grid Plc
PD-022	Letter from Affinity Water – Withdrawal of Written Representation
PD-023	Letter from Bircham Dyson Bell – Update regarding position on submissions on Monday 13 May 2013

Procedural Decisions (DEC)

General Procedural Decisions

DEC-001	Acceptance Decision Letter
DEC-002	Section 55 Acceptance Checklist
DEC-003	Rule 6 Letter including Rule 4 Notice
DEC-004	Rule 8 Letter
DEC-005	Rule 13 Letter
DEC-006	Notice of Issue Specific Hearing on 13 February 2013 – Bircham Dyson Bell
DEC-007	Issue Specific Hearing and Accompanied Site Visit Agenda Letter – Including comments and questions on Draft Development Consent Order
DEC-008	Notice of further Hearings and Accompanied Site Visit letter
DEC-009	Letter to confirm venue of further Hearings
DEC-010	Notice of Issue Specific Hearing and Compulsory Acquisition Hearing on 17, 18, 19 April 2013
DEC-011	Rule 17 letter requesting further information sent on 3 April 2013
DEC-012	Hearing and Accompanied Site Visit agenda for week commencing 15 April 2013
DEC-013	Rule 17 and Rule 8 (3) letter for further deadlines
DEC-014	Rule 99 Close of Examination letter

Relevant Representations (RR)

RR-001	10016318	Elizabeth E Higgins
RR-002	10016686	Campaign to Protect Rural England
RR-003	10016689	Prologis UK Limited
RR-004	10016690	Edward Lewis on behalf of Legal & General Property Partners
RR-005	10016694	Highways Agency
RR-006	10016695	Slip End Parish Council
RR-007	10016697	Environment Agency
RR-008	10016698	Augur Group
RR-009	10016699	English Heritage
RR-010	10016700	Mike Sanders
RR-011	10016701	Central Bedfordshire Council
RR-012	10016702	National Grid plc

RR-013	10016704	Natural England
RR-014	10016705	Stacey Rawlings of Bidwells on behalf of Stockwood Park Property Holdings Ltd
RR-015	10016706	Power Court Luton Limited Partnership
RR-016	LUTO-0001	Malcolm C Howe

Comments on Relevant Representations

RR-017	8.2 Luton Borough Council
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Written Representations (REP)

Adequacy of Consultation

REP-001	Adequacy of Consultation Response – Aylesbury Vale District Council
REP-002	Adequacy of Consultation Response – Bedford Borough Council
REP-003	Adequacy of Consultation Response – Central Bedfordshire Council
REP-004	Adequacy of Consultation Response – Hertfordshire County Council
REP-005	Adequacy of Consultation Response – Huntingdonshire District Council – Holding Reply
REP-006	Adequacy of Consultation Response – Huntingdonshire District Council – Hard Copy
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REP-010	Affinity Water
REP-011	Lawrence Graham LLP on behalf of Legal & General Property Partners
REP-012	Health and Safety Executive
REP-013	Bidwells on behalf of Gary Speirs
REP-014	Central Bedfordshire Council
REP-015	Mike Sanders
REP-016	National Grid
REP-017	Elizabeth E Higgins (Late Written Representation)
REP-018	Elizabeth Eldridge (Late Representation accepted by ExA as Relevant)
REP-019	Natural England (Late Written Representation)
REP-020	Natural England Land Use Planning Feedback Form (accompanying

	Late Written Representation)
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Responses to Examining Authority's First Written Questions

REP-021	Thurstan Adburgham on behalf of CPRE
REP-022	Malcolm C Howe
REP-023	Elizabeth Eldridge
REP-024	English Heritage
REP-025	Bidwells on behalf of Stockwood Park Property Holdings Ltd
REP-026	Highways Agency
REP-027	8.1 Luton Borough Council
REP-028	Mike Sanders
REP-029	National Grid
REP-030	Slip End Parish Council

Comments on First Written Questions Responses, Local Impact Report & Written Representations

REP-031	8.5 Luton Borough Council comments on Local Impact Report
REP-032	8.3 Luton Borough Council comments on responses to the Examining Authority's First Written Questions
REP-033	8.4 Luton Borough Council comments on Written Representations

Examining Authority's Second Round of Written Questions

REP-034	Examining Authority's Second Round of Written Questions
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Responses to Examining Authority's Second Round of Written Questions

REP-035	8.6 Luton Borough Council
REP-036	English Heritage
REP-037	Central Bedfordshire Council
REP-038	Highways Agency
REP-039	Central Bedfordshire
REP-040	Luton Borough Council as Local Planning Authority
REP-041	Environment Agency
REP-042	Health and Safety Executive
REP-043	Bidwells on behalf of Gary Speirs
REP-044	8.7 Luton Borough Council – Photomontages and Location Plan
REP-045	8.8 Luton Borough Council – Draft Code of Construction Practice

Comments on the Second Round of Written Questions Responses

REP-046	8.11 Luton Borough Council
REP-047	Luton Borough Council – Appendix 1

Response to Rule 17 Letter

REP-048	8.10 Luton Borough Council
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Additional Submissions (AS)

AS-001	Centrebus Limited
AS-002	Augur Group Limited
AS-003	Wates Construction Limited
AS-004	London Luton Airport
AS-005	The Mall Luton
AS-006	8.9 Luton Borough Council – Responses to the Examining Authority's Questions on the Draft Development Consent Order
AS-007	3.1 Luton Borough Council - Responses to the Examining Authority's Questions on the draft Development Consent Order – Appendix 1
AS-008	National Grid – Protective Provisions
AS-009	Luton Borough Council – Update to Funding Statement
AS-010	8.13 Luton Borough Council – Updated Business Case Report
AS-011	8.12 Luton Borough Council – Updated Traffic Forecasting Report
AS-012	8.13 Luton Borough Council – Updated Business Case Report (Version 2 – Cover Sheet and Note)
AS-013	Luton Borough Council – Updated Business Case Report (Version 2)
AS-014	8.15 Luton Borough Council - Consolidated Note on the Draft Development Consent Order Queries & Amendments
AS-015	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 1)
AS-016	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 2)
AS-017	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 3)
AS-018	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 4)
AS-019	8.15 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments – Version 2
AS-020	8.19 Luton Borough Council – Full List of Examination Documents

Audio Recordings (EV)***Preliminary Meeting***

EV-001	Preliminary Meeting – Recording (15 November 2012)
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Hearing on 13 February 2013

EV-002	Issue Specific Hearing on draft Development Consent Order – Recording (13 February 2013)
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Hearings on 17, 18 & 19 April 2013

EV-003	Issue Specific Hearing on Environmental Impacts and Mitigation Proposals – Recording - Session 1 (17 April 2013)
EV-004	Issue Specific Hearing on Environmental Impacts and Mitigation Proposals – Recording - Session 2 (17 April 2013)
EV-005	Issue Specific Hearing on Alternatives, Justification, Need, Cost & Benefits - Recording (17 April 2013)
EV-006	Issue Specific Hearing on draft Development Consent Order – Recording – Session 1 (18 April 2013)
EV-007	Issue Specific Hearing on draft Development Consent Order – Recording – Session 2 (18 April 2013)
EV-008	Compulsory Acquisition Hearing – Recording – Session 1 (19 April 2013)
EV-009	Compulsory Acquisition Hearing – Recording – Session 2 (19 April 2013)

Hearings on 30 April 2013

EV-010	Resumed Hearings – Recording – Session 1 (30 April 2013)
EV-011	Resumed Hearings – Recording – Session 2 (30 April 2013)
EV-012	Resumed Hearings – Recording – Session 3 (30 April 2013)

Speaking Notes from Hearings

EV-013	Luton Borough Council - Speaking Notes (13 February 2013)
EV-014	Central Bedfordshire Council – Speaking Notes (17 April 2013)
EV-015	Central Bedfordshire Council – Archaeologist's Speaking Notes (17 April 2013)
EV-016	8.14 Luton Borough Council – Speaking Notes (17 April 2013)
EV-017	Campaign to Protect Rural England - Speaking Notes (17 April 2013)
EV-018	8.17 Luton Borough Council – Speaking Notes (30 April 2013)

Hearing Documents

EV-019	Bircham Dyson Bell suggested agenda for Draft Development Consent Order Hearing (18 April 2013)
EV-020	8.18 Luton Borough Council – Requested Documents resubmitted
EV-021	8.16 Luton Borough Council – Additional Submissions arising from Hearings (17 – 19 April 2013) – Version 1
EV-022	8.16 Luton Borough Council – Additional Submissions arising from Hearings (17 – 19 April 2013) – Version 2
EV-023	8.16 Luton Borough Council – Additional Submissions arising from Hearings – Version 2 - Appendix 1- Outbound Traffic Data
EV-024	Agenda for Resumed Hearings (30 April 2013)

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APPENDIX C ATTENDEES at MEETINGS, HEARINGS & ACCOMPANIED SITE VISITS

Name Organisation

15 November 2012 (am) Preliminary Meeting

Alan Gray	Examining Authority
Susannah Guest	Planning Inspectorate
Oliver Blower	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Monika Weglarz	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
John Spurgeon	Central Bedfordshire Council
Dave Buck	Central Bedfordshire Council
Wendy Rousell	Luton Borough Council (as LPA)
Thurstan Adburgham	Campaign to Protect Rural England
Jason Jordan	Luton Hoo Estate
Mark Webb	Interested Party
Michael Sanders	Interested Party
Chloe Renner	Observing (Bidwells)
James Sherman	Observing (London Luton Airport)

13 February 2013 (am) Draft Development Consent Order Hearing

Alan Gray	Examining Authority
Oliver Blower	Planning Inspectorate
Daniel Hyde	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Monika Weglarz	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Jason Jordan	Luton Hoo Estate
Michael Sanders	Interested Party
Malcolm Howe	Interested Party
A Speirs	Observing (on behalf of Gary Speirs - AP)
Lesley Mahon	Observing (HA)
Wendy McKay	Observing (HA)
Maria Murioz	Observing (DCLG)
Hannah Bartram	Observing (DCLG)

13 February 2013 (pm) Accompanied Site Visits

Alan Gray	Examining Authority
Oliver Blower	Planning Inspectorate
Daniel Hyde	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Bernie Roome	URS on behalf of LBC
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council

Joined and left the ASV at Luton Hoo Hotel & Spa

Richard Biffen	Luton Hoo Estate Manager
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Left the ASV at Newlands Farm

A Speirs	On behalf of Mr Gary Speirs (AP)
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Left the ASV at Front Street, Slip End

Michael Sanders	Interested Party
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16 April 2013 (am) Accompanied Site Visits (adjourned)

Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Nettey	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)

Left the ASV at Stockwood Park Golf Centre:

Bernie Roome	URS on behalf of LBC
Ian Williamson	URS on behalf of LBC
Michael Stonnell	Campaign to Protect Rural England
Michael Sanders	Interested Party

Joined and left the ASV at Stockwood Park Golf Centre:

John Spurgeon	Central Bedfordshire Council
Wendy Rousell	Luton Borough Council (as LPA)

Joined and left the ASV at Luton Hoo Hotel & Spa:

Richard Biffen	Luton Hoo Estate Manager
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17 April 2013 (am) Environmental Impacts and Mitigation Proposals Hearing

Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Nettey	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC

Bernie Roome	URS on behalf of LBC
Ian Williamson	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Nigel Weir	URS on behalf of LBC
Sheila Banks	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Hannah Firth	Central Bedfordshire and Luton Borough Councils
Michael Stonnell	Campaign to Protect Rural England
Jason Jordan	Luton Hoo Estate
Michael Sanders	Interested Party
Robert Upton	Observing (PINS)
Justine Curry	Observing (Transport for London)
Dawn Blackwell	Observing (TfL)
Neil Chester	Observing (TfL)
Ellen Mellington	Observing (TfL)
Tony Wilson	Observing (TfL)
Jason Saldanha	Observing (TfL)

17 April 2013 (pm)***Alternatives, Justification, Need, Costs & Benefits Hearing (Adjourned)***

Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Netley	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
Michael Sanders	Interested Party
Malcolm Howe	Interested Party

18 April 2013 (am)***Draft DCO Hearing (Adjourned)***

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Steffan Jones	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC

Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Michael Sanders	Interested Party
Stacey Rawlings	Bidwells on behalf of Mr Gary Speirs

19 April 2013 (am) Compulsory Acquisition Hearing (Adjourned)

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Steffan Jones	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Michael Sanders	Interested Party
Jonathan Brooke	Observing (LBC)

30 April 2013 (am) *Alternatives, Justification, Need, Costs & Benefits, Draft DCO and Compulsory Acquisition Hearings (resumed from 17, 18 & 19 April 2013)*

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
James Cuthbert	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Malcolm Howe	Interested Party
Sue Lovelock	Observing (DCLG)
Luke Taylor	Observing (DCLG)

30 April 2013 (pm) Accompanied Site Visits (Resumed)

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)

-end-

APPENDIX D Final Draft DCO

This appendix comprises the Final Draft DCO with all proposed amendments to the First Draft up to the close of the examination in tracked changes.

This appendix supplied separately

 STATUTORY INSTRUMENTS

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

**The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]**

Made - - - - 201[3]

Coming into force - - 201[3]

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An application has been made to the Secretary of State for Transport, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 117(4), 120, ~~121~~ and 122 of the Planning Act 2008(b).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

[The single appointed person ~~Panel~~, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] and ~~shall~~ come into force on [] 201[3].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

(a) S.I. 2009/2264.

(b) 2008 c. 29.

(c) S.I. 2010/103.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(f) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51);

“the 1984 Act” means the Road Traffic Regulation Act 1984(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2008 Act” means the Planning Act 2008(d);

~~“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(e);~~

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“the authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the environmental context plans” means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;

~~“the environmental statement” means the document certified as the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State under article 36(1)(g) for the purposes of this Order;~~

“footpath” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 5;

“maintain” ~~and any of its derivatives~~ includes inspect, repair, adjust, alter, remove or reconstruct ~~or replace in relation to the authorised development~~ and any derivative of “maintain” ~~shall~~ is to be construed accordingly;

section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1984 c. 27.
- (b) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (d) 2008 c. 29.
- (e) S.I. 2009/2264.

“Order land” means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“the relevant planning authority” means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the sections” means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means [a statutory undertaker for the purposes of](#)~~any person falling within~~ section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the street plans” means the plans certified as the street plans by the Secretary of State for the purposes of ~~the~~^{is} Order;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;~~or~~
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development ~~shall~~^{are to} be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters or numbers ~~are to~~^{shall} be construed as references to points so lettered or numbered on the street plans.

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2

PRINCIPAL POWERS

Development consent etc., granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of Deviation

5. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1.5 metres upwards; and
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order ~~shall~~ have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), ~~shall~~ include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) ~~shall be~~ subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3 STREETS

Application of 1991 Act

8.—(1) Works ~~executed~~carried out under this Order in relation to a highway which consists of or includes a carriageway ~~shall be~~are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been ~~executed~~carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned ~~shall be~~are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act ~~shall do~~do not apply in relation to any works ~~executed~~carried out under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial streetworks);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions ~~shall~~do apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the ~~promoter~~undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- section 54 (advance notice of certain works), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) ~~shall~~ have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) ~~is to shall~~—

- (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker ~~shall is~~ not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order ~~shall are to be public~~ highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie ~~shall are to be~~—

- (a) ~~be~~ maintained by and at the expense of the ~~highway authority~~ undertaker for a period of 12 months from their completion; and
- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a ~~public~~ highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, ~~shall is to be~~—

- (a) ~~be~~ maintained by and at the expense of the undertaker for a period of 12 months from its completion; and
- (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act ~~shall apply~~ ies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

- (a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—

- (i) for Article 1A substitute—

“The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of [] and deposited at []; and

- (ii) for the Schedule to that Scheme, after the “The Route of the Special Road”, substitute—

“From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.”;

- (b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) ~~are to~~shall be trunk roads for which the Secretary of State is highway authority and ~~are to~~shall be classified as the A1081 trunk road; and
- (c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195m in a westerly direction, ~~is to~~ shall cease to be trunk road, ~~is to~~ shall be classified as the A1081, and ~~is to~~ shall become—
- (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
 - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,
- as if such classification had been made under section 12(3) of the 1980 Act.
- (2) Prior to the date on which paragraph (1) is to take effect, the undertaker ~~is to~~ shall—
- (a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and
 - (b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) ~~shall~~ takes effect, and the general effect of that paragraph.
- (3) Upon completion of the authorised development, the following sections of highway ~~shall~~ are to be classified as the A1081, and ~~shall~~ are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—
- (a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241m;
 - (b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187m;
 - (c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331m;
 - (d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310m;
 - (e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;
 - (f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502m;
 - (g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and
 - (h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300m.

Clearways

- 11.—(1) This article ~~shall~~ has ~~ve~~ effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(a), substitute—

“Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.”.

(3) Subject to paragraph (4), no person ~~shall~~must cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) ~~shall~~applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(a); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Vehicle and Operator Services Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); and

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person’s control; or

(d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or disposed.

(5) Paragraphs (2) to (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by such an order ~~made under that Act, or by any other enactment which provides for the variation or revocation of such orders.~~

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(d) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

(a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (De-restriction) Order 1988 is revoked;

(a) S.I. 1963/1172

(b) 1984 c. 12

(c) 2000 c. 26

(d) S.I. 2011/1015

- (b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—
- (i) in Schedule 3, omit “London Road” from the “road” column, and from the corresponding entry in the “length subject to speed limit” column, omit “From a point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout”; and
 - (ii) in Schedule 4, replace “New Airport Way” with “A1081 Airport Way (previously described as New Airport Way”, and replace the corresponding entry in the “length subject to speed limit” column with “The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres”;
- (c) no person ~~shall~~must drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and
- (d) no person must~~shall~~ drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this Order article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 ~~shall~~is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up ~~are~~shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(a) S.I. 2011/935

(5) This article is subject to article 298 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without ~~limitation prejudice to on~~ the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker ~~shall~~must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without ~~prejudice to limitation on~~ the ~~generality~~scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker ~~shall~~must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent ~~shall~~must not be unreasonably withheld,

except that this paragraph ~~does~~shall not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority ~~is~~shall be deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for

that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker ~~under pursuant to~~ paragraph (1) ~~is to~~ ~~shall~~ be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker ~~shall~~ ~~must~~ not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but ~~shall~~ ~~must~~ not be unreasonably withheld.

(4) The undertaker ~~must~~ ~~shall~~ not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval ~~shall~~ ~~must~~ not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker ~~shall~~ ~~must~~ not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker ~~shall~~ ~~must~~ take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) ~~This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of~~ ~~Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of~~ the Environmental Permitting (England and Wales) Regulations 2010^(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourses, used both in this article and in the [Water Resources Act 1991](#)^(c) ~~Environmental Permitting Regulations 2010~~ have the same meaning as in [that Act](#) ~~those regulations~~.

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without ~~limitation on~~ ~~prejudice to~~ the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without ~~limitation~~ ~~prejudice to~~ ~~on~~ the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days’ notice has been served on every owner and occupier of the land.

(a) 1991 c. 56.

(b) S.I. 2010/675

(c) [1991 c. 57](#)

(3) Any person entering land under this article on behalf of the undertaker—

- (a) ~~must~~~~shall~~, if so required, before entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes ~~are to~~~~shall~~ be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent ~~shall~~~~must~~ not be unreasonably withheld.

(5) The undertaker ~~must~~~~shall~~ compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, ~~or to facilitate;~~ or is incidental; to it, ~~or~~ is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19~~(4)~~, paragraph (2) of article 20 (compulsory acquisition of rights) and paragraph (9) of article 25~~(9)~~ (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat ~~shall~~~~is to~~ be served under Part 1 of the 1965 Act; and
- (b) no declaration ~~shall~~~~is to~~ be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981~~(a)~~ as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) ~~shall~~~~ceases~~ at the end of the period referred to in paragraph (1), except~~save~~ that nothing in this paragraph ~~shall~~~~prevents~~ the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(a) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

Compulsory acquisition of rights, etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker ~~shall~~is not ~~be~~ required to acquire a greater interest in that land.

(4) Schedule 9 ~~shall~~haves effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under ~~this Order~~ paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order ~~shall~~be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order ~~are~~shall~~be~~ extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker ~~shall~~be extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order ~~shall~~be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article ~~shall~~be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article ~~28~~7 (statutory undertakers) applies.

- (7) Paragraphs (1) to (3) ~~shall~~ have effect subject to—
- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker’s appropriation of it;
 - (iii) the undertaker’s entry onto it; or
 - (iv) the undertaker’s taking temporary possession of it,
 that any or all of those paragraphs ~~shall~~do not apply to any right specified in the notice; and
 - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it ~~is shall-be~~ effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) ~~shall apply~~iesy as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, ~~shall have~~s effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there ~~shall be~~is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority ~~shall~~must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there ~~shall be~~is substituted “(1)” and after “given” there ~~shall be~~is inserted “and published”.

(5) In that section, for subsections (5) and (6) there ~~shall be~~is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there ~~shall be~~ inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) ~~shall be~~ omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” ~~shall be~~ omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall be~~ construed as references to the ~~at~~ 1965 Act as applied by section 125 ([application of compulsory acquisition provisions](#)) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker ~~shall be~~ not ~~be~~ required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) ~~shall do~~ not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, ~~shall be~~ entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation ~~shall be~~ not ~~be~~ payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)—

- (a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~ must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
 - (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~is n~~ shall not ~~be~~ required to—
- (a) replace a building removed under this article;
 - (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
 - (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.
- (5) The undertaker ~~shall~~ must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, ~~is to~~ shall be determined under Part 1 of the 1961 Act.
- (7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) ~~shall~~ does not prevent the undertaker giving up possession of the land.
- (8) Nothing in this article ~~shall~~ affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- ~~(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall~~ is ~~not~~ be precluded from—
- ~~(a) (9) acquiring new rights or imposing restrictive covenants over any part of that land under article 20 (compulsory acquisition of rights) the land specified in Schedule 8; or~~
- ~~(a) acquiring any part of the subsoil or the air space over (or rights in the subsoil or the air space over) that land under article 23 (acquisition of subsoil or airspace only).~~

(10) Where the undertaker takes possession of land under this article, it ~~is shall~~ not ~~be~~ required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall~~ ~~applies~~ to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) ~~shall~~ ~~does~~ not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker ~~shall~~ ~~must~~ serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ ~~must~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker ~~must~~ ~~shall~~ pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, ~~shall~~ ~~is to~~ be determined under Part 1 of the 1961 Act.

(8) Nothing in this article ~~shall~~ ~~affects~~ any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it ~~is shall~~ not ~~be~~ required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) ~~shall~~ ~~applies~~ to the temporary use of land ~~underpursuant to~~ this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Special category land

~~27.~~—(1) ~~The undertaker shall not under the powers of this Order take possession of any part of the special category land until the undertaker has acquired so much of the replacement land as is equivalent in area to the amount of the special category land that is required by the undertaker for the authorised development.~~

~~(2) The undertaker shall lay out as open space before the authorised development is completed so much of the replacement land of which possession has been taken under paragraph (1).~~

~~(3) As soon as Luton Borough Council has certified that a scheme for the provision of the replacement land referred to in paragraph (2) as open space has been implemented to its satisfaction, the replacement land shall be, subject to the same rights, trusts and incidents as attached to the special category land of which possession has been taken under paragraph (1), and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(4) In this article—~~

~~“the special category land” means the land numbered 2 in the book of reference and on the land plans and forming part of open space which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land numbered 1E, 1F, 2D, 2E, 2F, 6, 6A, 7, 7A, 7B in the book of reference and on the land plans.~~

Statutory undertakers

~~28.27.—~~(1) Subject to ~~paragraph (2) section 138 of the 2008 Act~~, the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

~~(2) Paragraph (1) shall~~ does not have effect in relation to apparatus in respect of which the following provisions apply—

- ~~(a) Part 3 of the 1991 Act;~~
- ~~(b) article 28; and~~
- ~~(c) Parts 2 and 3 of Schedule 12.~~

Apparatus and rights of statutory undertakers in stopped up streets

~~29.28.—~~(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street ~~shall have~~ the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker ~~shall~~ must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker ~~shall~~ must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined ~~by arbitration~~ to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) ~~shall is to~~ be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus ~~shall is~~ not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole ~~shall is to~~ be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) ~~shall must~~, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) ~~shall do~~ not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs ~~shall are to~~ be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work ~~executed~~carried out, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

~~30:29~~.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~287~~ (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall is~~ be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) ~~shall does~~ not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~287~~, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

~~is~~~~shall be~~ entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article ~~shall~~~~does~~ not have effect in relation to apparatus to which article ~~29~~~~28~~ (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping trees

~~31.30.~~—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker ~~shall do~~~~must not cause~~ unnecessary damage to any tree or shrub and ~~must~~~~shall~~ pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~is to~~~~shall~~ be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

~~32.31.~~—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, ~~or~~ cut back its roots ~~or undertake such other works described in column (3) of that Schedule~~ if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to ~~passengers or other~~ persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker ~~must~~ ~~shall do~~ ~~not cause~~ unnecessary damage to any tree or shrub and ~~must~~~~shall~~ pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty ~~imposed by~~~~contained in~~ section 206(1) of the 1990 Act (replacement of trees) ~~shall~~~~does~~ not apply.

(3) The authority given by paragraph (1) ~~shall~~ constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

~~33.32.~~ Development consent granted by this Order ~~shall~~is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

~~34.33.~~—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to ~~shall~~ be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) ~~shall do~~ not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

~~35.34.~~ Schedule 12 (protective provisions) to this Order has effect.

Certification of plans, etc.

~~36.35.~~—(1) The undertaker ~~shall~~must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the environmental statement;
- ~~(b)(c)~~ _____ the land plans;

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
 (b) 1974 c.40, as amended at the date of the coming into force of this Order.

- ~~(d)~~ the works plans;
- ~~(e)~~ the street plans;
- ~~(f)~~ the sections;
- ~~(g)~~ the environmental context plans; and
- ~~(h)~~ any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified ~~is~~ ~~shall be~~ admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

37.36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 ([references to service by post](#)) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement ~~shall be~~ ~~is~~ taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of

(a) 1978 c. 30.

that notice or other document the sender ~~shall~~must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person ~~shall~~must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation ~~shall~~is be final and ~~shall~~takes effect on a date specified by the person in the notice but that date ~~must~~shall not be less than 7 days after the date on which the notice is given.

(9) This article ~~does~~shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

~~38.37.~~ Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) ~~must~~shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

~~39.38.~~—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent ~~shall~~must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker ~~shall~~must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker ~~shall~~must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
- (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the ~~promoter~~ undertaker under paragraph (1) ~~shall~~—

- (a) has ~~ve~~ effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

- (b) ~~is~~ be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(a) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers of paragraph (1) the ~~promoter~~ undertaker ~~must~~ shall consult such persons as it considers necessary and appropriate and ~~must~~ shall take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act ~~shall~~ have the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road ~~shall~~ have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals, etc., under Schedule 2

40.39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(a) 2004 c.18

Signed by authority of the Secretary of State for Transport

[] 201[3]

/ [Designation]
[Department]

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332m in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

- (a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;
- (b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);
- (c) construction of an un-segregated footway cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;
- (d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435m to the north-west of its junction with A1081 London Road (south);
- (e) provision of private pedestrian access to maintain highways equipment at: (i) a point on the south-western highway boundary of Newlands Road approximately 30m to the north-west of the underbridge crossing of the M1 Spur; (ii) a point on the south-western highway boundary of Newlands Road approximately 25m to the south-east of the underbridge crossing of the M1 Spur; (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20m to the north-west of the underbridge crossing of the M1 Spur; and (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30m to the south-east of the underbridge crossing of the M1 Spur;
- (f) provision of average speed cameras;
- (g) erection of overhead gantry signs;
- (h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115m in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in north-north-westerly direction through a proposed underbridge under the M1 Spur (85m in length), then proceeding

in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on London Road approximately 113m south of the centre of Ludlow Avenue's junction with London Road, including—

- (a) construction of new single carriageway highway;
- (b) improvements to the existing highways;
- (c) construction of two new roundabout junctions;
- (d) construction of footways and cycleways;
- (e) construction of an underbridge and associated wing walls and retaining walls;
- (f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349m in length) commencing at the proposed Kidney Wood Southern Roundabout on A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455m north-east of M1 Junction 10 Roundabout, including—

- (a) construction of a new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391m in length) commencing on the A1081 Airport Way westbound carriageway 480m south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

- (a) construction of new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281m in length) commencing on the M1 Spur eastbound carriageway 544m north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

- (a) construction of new two lane connector road;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225m in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448m south-west of the Capability Green Overbridge, including—

- (a) construction of new single lane connector road with hardshoulder;
- (b) construction of a combined un-segregated footway/cycleway;
- (c) provision of average speed cameras; and
- (d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. 5 — Reconfiguration of the existing A1081 London Road (409m in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150m north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81m south of the existing M1 Junction 10a roundabout, including—

- (a) construction of new single lane road and junction;
- (b) construction of a turning head;
- (c) construction works to narrow the existing carriageway to a single track lane road with passing places;
- (d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180m and 370m to the north of its junction with A1081 London Road (South);
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. 6 — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

- (a) construction of a new private vehicle and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13m to the north of its junction with Kidney Wood Northern Roundabout;
- (b) construction of a turning head;
- (c) construction of works to widen the existing London Road footway to form a public footpath;
- (d) landscaping works;
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373m in length) commencing 20m north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147m south-west of the proposed Kidney Wood Northern Roundabout, including—

- (a) erection of footpath gates or stiles;
- (b) erection of signing; and
- (c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

- (a) construction of piped drainage outfall; and
- (b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill;
- (c) any earthworks strengthening measures as may be required; and
- (d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

- (a) construction of attenuation pond;
- (b) construction of infiltration basin;
- (c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235m to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;
- (d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill; and
- (c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) planting of a new boundary hedge;
- (d) erection of a new fence to protect the hedge; and
- (e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) erection of a new boundary fence; and
- (d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

- (i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;
- (iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (vii) works for the benefit or protection of land affected by the authorised development; and
- (viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

1.—(1) In this Schedule—

“contaminated land plan” means a written scheme for the treatment of contaminated land during construction;

“dust management plan” means a written scheme for the attenuation of dust during construction;

“relevant highway authority” means the highway authority responsible for the highway in question; and

~~(a)~~ “stage” means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority pursuant to requirement 3. ~~;~~ ~~and~~

~~(b)(2)~~ ~~References~~ in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development ~~shall~~ ~~must not be~~ ~~commenced~~ ~~no~~ later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, n ~~None~~ of the authorised development ~~shall~~ ~~is to~~ commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections, unless otherwise agreed in writing by the relevant planning authority.

(2) No stage of the authorised development ~~shall~~ ~~is to~~ commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority.

Ecology

5.—(1) None of the authorised development, including any site clearance works, ~~shall~~ ~~is to~~ ~~be~~ commenced ~~d~~ until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development ~~shall~~ ~~must~~ be carried out in accordance with the approved ecological strategy, unless otherwise agreed in writing by the relevant planning authority.

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development ~~shall is to~~ commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures ~~shall—must~~ be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas ~~shall—must~~ be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) ~~No stage of t~~The authorised development ~~shall commence until~~ must be landscaped in accordance with a written landscaping scheme, ~~—for that stage, reflecting the environmental statement and~~ incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme ~~shall—must~~ be ~~based upon~~ in accordance with the ecological strategy approved ~~pursuant to~~ under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

- (a) for hard landscaping areas—
 - (i) proposed finished levels;
 - (ii) hard surfacing materials;
 - (iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);
 - (iv) retained historic landscape features and proposals for restoration, where relevant; and
 - (v) boundary treatments and all means of enclosure.
- (b) for soft landscaping areas—
 - (i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;
 - (ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;
 - (iii) services below ground, including drainage, pipelines, power and communication cables; and
 - (iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable ~~shall—must~~ be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) Unless otherwise agreed in writing by the relevant planning authority, ~~A~~all landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant

planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 ~~shall~~must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development ~~shall~~is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed by the relevant planning authority.

Measures to protect the water environment

10.—(1) None of the authorised development ~~shall~~is to commence until—

- (a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified; ~~and~~
- (b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and
- (c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result ~~shall~~must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development ~~shall~~must be carried out—

- (a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and
- (b) incorporating any such measures or treatments as are approved under sub-paragraph (2).

unless otherwise agreed in writing by the relevant planning authority.

Flood risk assessment

11.—(1) None of the authorised development ~~shall~~is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development ~~shall~~must be carried out in accordance with any recommendations made in the flood risk assessment, unless otherwise agreed in writing by the relevant planning authority.

Archaeology

12.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme ~~shall must reflect the mitigation measures included in Chapter 5 of the environmental statement, and must~~ identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme ~~shall~~ must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme, unless otherwise approved in writing by the relevant planning authority.

Construction traffic and access strategy

13.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and; including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan, unless otherwise agreed by the relevant planning authority.

Construction work and construction compounds

14.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage ~~written details of~~ —

(a) written details of the type and location of screen fencing for the proposed construction compounds;

(b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development; ~~and~~

(c) a scheme for the attenuation of noise and vibration during construction;

(d) a dust management plan; and

~~(e)~~(e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development ~~must~~shall be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1), unless otherwise agreed in writing by the relevant planning authority.

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1), unless otherwise agreed in writing by the relevant planning authority.

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice, unless otherwise agreed in writing by the relevant planning authority.

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan, unless otherwise agreed in writing by the relevant planning authority.

Amendments to approved details

18.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

(2) Any amendments to the approved details referred to in sub-paragraph (1) must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by ~~the~~ each relevant highway authority~~ies~~, after consultation with the police, other emergency services, and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

SCHEDULE 3

Article 12

CLEARWAYS

The roads specified for the purposes of article 11(3) are—

- (a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1338 metres;
- (b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1130 metres;
- (c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
- (d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
- (e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
- (f) Kidney Wood Westbound Merge Slip Road from its junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
- (g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
- (h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
- (i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
- (j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4

Article 12

SPEED LIMITS

PART 1

M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011 substitute—

“SPECIFIED ROADS

1. The specified roads are the—

- (a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;
- (b) carriageways of the northbound slip roads;
- (c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and
- (d) carriageways of the southbound slip roads.

2. Any reference in this Schedule to—

- (a) the letter “M” followed by a number is a reference to the motorway known by that name;
- (b) the letter “A” followed by a number is a reference to the road known by that name; and
- (c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.

3. In this Schedule—

“northbound slip roads” is a reference to the lengths of carriageway specified in paragraph 4;

“off-slip road” means a slip road intended for the use of traffic leaving the M1;

“on-slip road” means a slip-road intended for the use of traffic entering the M1;

“southbound slip roads” is a reference to the lengths of carriageway specified in paragraph 5;

and

“zone sign” means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(a) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.

4. The northbound slip roads are as follows—

- (a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;
- (b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;
- (c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;
- (d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;

- (e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;
- (f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and
- (g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

- (a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45m to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;
- (b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100m to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;
- (c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;
- (d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;
- (e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;
- (f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and
- (g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3
ROADS SUBJECT TO 50 MPH SPEED LIMIT

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road from its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New Street to be substituted
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20m from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435m to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Northbound Diverge Slip Road M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
	<p>Capability Green Eastbound Diverge Slip Road</p> <p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
Luton Borough Council	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45m to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes</p>

SCHEDULE 7

Article 15

ACCESS TO WORKS

<i>(1)</i> Area	<i>(2)</i> Reference on street plans, sheet 3	<i>(3)</i> Description of access
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165m to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45m to the north-west of the underbridge crossing of the M1 Spur. This temporary access is located at an existing gated access to arable farmland, and provides access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30m to the north-west of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is replaced with a permanent pedestrian private means of access at the same location that provides access to maintain highways equipment.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
Central Bedfordshire Council	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235m to the north-west of its junction with the A1081 London Road (south). This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land ~~shall apply~~^{ies}, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope ~~prejudice to the generality~~ of paragraph 1, the Land Compensation Act 1973(a) ~~shall have~~^{has} effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there ~~shall be~~^{are} substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there ~~shall be~~^{are} substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there ~~shall be~~^{are} substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there ~~shall be~~^{are} substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there ~~shall be~~^{are} substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there ~~shall be~~^{are} substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act ~~shall have~~^{is} effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope ~~prejudice to the generality~~ of sub-paragraph (1), Part 1 of the 1965 Act ~~shall apply~~^{ies} in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c. 26.

4. For section 7 of the 1965 Act (measure of compensation) there ~~shall is be~~ substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard ~~shall is to~~ be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) there ~~shall is be~~ substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Development Consent Order 201[3](a) (“the Order”) ~~shall~~, in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice ~~shall is be~~ deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section ~~is to shall~~ be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(a) S.I. 201[] []

~~shall are be so~~ modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) ~~is shall be so~~ modified as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which ~~shall is be~~ deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act ~~shall are be~~ modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) ~~shall applies~~ with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) ~~shall is be so~~ modified ~~so~~ as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur from Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A & Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 & Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 & Work No.6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 & Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B & Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1, Work No.3B & Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 & Work No.10

SCHEDULE 11

Article 3~~2~~1

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
Birch, oak, ash, rowan and hornbeam.	Kidney Wood TPO shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood TPO to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 34~~5~~

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF HIGHWAY AUTHORITIES

1. ~~The following provisions of this Schedule shall, u~~Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent ~~shall~~must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose ~~in the interests of safety and in order to minimise inconvenience to persons using the highway, but~~ must~~shall~~ not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker ~~shall~~must submit to the highway authority for its approval in writing proper and sufficient plans and ~~shall~~must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with arbitration (article 37).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it ~~shall~~is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it ~~shall~~is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction ~~shall~~is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority ~~shall~~is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned ~~shall~~must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker ~~respecting about~~ the authorised development.

9. The authorised development ~~shall~~must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37 (arbitration).

PART 2
PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE
UNDERTAKERS

Application and Interpretation

1. —(1) For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions ~~shall~~, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that statutory undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act(b); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“plans” includes sections and method statements; ~~and~~

“undertaker” means the undertaker as defined in article 2 of this Order; and

“statutory undertaker” means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and,

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

(a) 1989 c. 29.

(b) 1991 c. 56

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 2, this Part of this Schedule ~~shall~~ does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 298 (apparatus and rights of statutory undertakers in stopped up streets) ~~shall~~ does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 3029 (recovery of costs of new connections) ~~shall~~ have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

2.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street ~~shall~~ is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph ~~shall~~ affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 4 or the power of the undertaker to carry out works under paragraph 6.

(2) ~~Notwithstanding~~ Regardless of the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up of streets) of this Order, and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker ~~shall be~~ is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

3. Regardless of any provision in this Order or anything shown on the land plans, the undertaker ~~shall~~ must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land ~~shall~~ must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) ~~shall~~ apply in relation to such works.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it ~~shall~~ must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker ~~shall~~ must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question shall must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that such obligation shall does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 387 (arbitration).

(5) The statutory undertaker in question shall must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 387, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(7) Nothing in sub-paragraph (6) shall—authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 387 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker ~~shall~~ must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker ~~shall be~~ is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) ~~shall~~ must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph ~~shall~~ precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections thereto which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 387 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) shall is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus shall is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

10. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 4(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

11. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker shall must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3**FOR THE PROTECTION OF NATIONAL GRID****Interpretation**

1. —(1) In this Part of this Schedule—

“National Grid” means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH (“National Grid”);

“the high pressure gas main” means the Kinsbourne Green to Dallow Road high pressure gas main; and

“plans” means all drawings designs sections specifications method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

2.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 3 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 6 of Part 2.

(3) Paragraph 3 of this Part of this Schedule (except in the case of paragraph 3(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 7 to 11 of Part 2 have effect, except as provided for in paragraph 4 of this Part.

High pressure gas main: protection

3.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within three metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within three metres of the high pressure gas main, the undertaker shall must submit to National Grid detailed plans describing—

- (a) the exact position of those works;
- (b) the level at which those works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal; and
- (d) the position of the high pressure gas main.

(2) The undertaker ~~shall~~ must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);

(b) ~~shall~~ must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies ~~shall~~ must be executed only in accordance with—

(a) the plan approved under sub-paragraph (2); and

(b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and the statutory undertaker ~~shall be~~ is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of Part 2 of this Schedule ~~shall~~ apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) of Part 2.

(7) Nothing in this paragraph ~~shall~~ precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph ~~shall~~ apply to and in respect of the new plan.

(8) The undertaker ~~shall~~ is not ~~be~~ required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it ~~shall~~ must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

(a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and

(b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

4.—(1) Sub-paragraph (2) applies instead of paragraph 8(3) of Part 2 of this Schedule in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 8(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering his representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the [designation and](#) maintenance of the new section of highway.

A copy of the various plans, ~~and~~ the book of reference [and other documents](#) mentioned in this Order and certified in accordance with article 356 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.

STATUTORY INSTRUMENTS

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]

BIRCHAM DYSON BELL LLP

50 Broadway

London Sw1H 0BL

Solicitors and Parliamentary Agents

[8764320.04321 — 2926310.0546.132]

APPENDIX E Proposed DCO

This appendix is the DCO in its recommended form for making, including modifications to the Final Draft in Appendix D.

This appendix supplied separately

 STATUTORY INSTRUMENTS

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

**The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]**

Made - - - - 201[3]

Coming into force - - 201[3]

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An application has been made to the Secretary of State for Transport, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(b).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

[The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] and comes into force on [] 201[3].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

(a) S.I. 2009/2264.

(b) 2008 c. 29.

(c) S.I. 2010/103.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(f) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51);

- “the 1984 Act” means the Road Traffic Regulation Act 1984(a);
- “the 1990 Act” means the Town and Country Planning Act 1990(b);
- “the 1991 Act” means the New Roads and Street Works Act 1991(c);
- “the 2008 Act” means the Planning Act 2008(d);
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “the authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;
- “demolition” means destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the scheme; and such works may occur on one occasion or over any period of time.
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “the environmental context plans” means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;
- “the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;
- “footpath” has the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;
- “the limits of deviation” means the limits of deviation referred to in article 5;
- “maintain” includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;
- “Order land” means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1984 c. 27.
- (b) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (d) 2008 c. 29.

“the Order limits” means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“the relevant planning authority” means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the sections” means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

“statutory undertaker” means a statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the street plans” means the plans certified as the street plans by the Secretary of State for the purposes of this Order;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc., granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of Deviation

5. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1.5 metres upwards; and
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3 STREETS

Application of 1991 Act

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial streetworks);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- section 54 (advance notice of certain works), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to—

- (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie are to be—

- (a) maintained by and at the expense of the undertaker for a period of 12 months from their completion; and
- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, is to be —

- (a) maintained by and at the expense of the undertaker for a period of 12 months from its completion; and
- (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act applies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

- (a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—
 - (i) for Article 1A substitute—

“The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of [] and deposited at []; and
 - (ii) for the Schedule to that Scheme, after the “The Route of the Special Road”, substitute—

“From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.”;

- (b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to be trunk roads for which the Secretary of State is highway authority and are to be classified as the A1081 trunk road; and
 - (c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195m in a westerly direction, is to cease to be trunk road, is to be classified as the A1081, and is to become—
 - (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
 - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,
 as if such classification had been made under section 12(3) of the 1980 Act.
- (2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to—
- (a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and
 - (b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) takes effect, and the general effect of that paragraph.
- (3) Upon completion of the authorised development, the following sections of highway are to be classified as the A1081, and are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—
- (a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241m;
 - (b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187m;
 - (c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331m;
 - (d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310m;
 - (e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;
 - (f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502m;
 - (g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and
 - (h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300m.

Clearways

11.—(1) This article has effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(a), substitute—

(a) S.I. 1963/1172

“Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.”.

(3) Subject to paragraph (4), no person must cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(a); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(b); and
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control; or
- (d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or disposed.

(5) Paragraphs (2) to (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(c) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

- (a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (De-restriction) Order 1988 is revoked;
- (b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—
 - (i) in Schedule 3, omit “London Road” from the “road” column, and from the corresponding entry in the “length subject to speed limit” column, omit “From a

(a) 1984 c. 12
 (b) 2000 c. 26
 (c) S.I. 2011/1015

point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout”; and

- (ii) in Schedule 4, replace “New Airport Way” with “A1081 Airport Way (previously described as New Airport Way”, and replace the corresponding entry in the “length subject to speed limit” column with “The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres”;

(c) no person must drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person must drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 28 (apparatus and rights of statutory undertakers in stopped up streets).

^(a) S.I. 2011/935

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(a) 1991 c. 56.
 (b) S.I. 2010/675
 (c) 1991 c. 57

(4) No trial holes are to be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate or is incidental to it, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19, paragraph (2) of article 20 (compulsory acquisition of rights) and paragraph (9) of article 25 (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights, etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive

^(a) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights or imposing restrictive covenants over any part of the land specified in Schedule 8.

(10) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27.—(1) Subject to paragraph (2), the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) does not have effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 of the 1991 Act;
- (b) article 28; or
- (c) Parts 2 and 3 of Schedule 12.

Apparatus and rights of statutory undertakers in stopped up streets

28.—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work carried out, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Felling or lopping trees

30.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

31.—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

- (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1)—
 - (a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
 - (b) the duty imposed by section 206(1) of the 1990 Act (replacement of trees) does not apply.
- (3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

34. Schedule 12 (protective provisions) to this Order has effect.

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
 (b) 1974 c.40, as amended at the date of the coming into force of this Order.

Certification of plans, etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the environmental statement;
- (c) the land plans;
- (d) the works plans;
- (e) the street plans;
- (f) the sections;
- (g) the environmental context plans; and
- (h) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) 1978 c. 30.

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

37. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

38.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(a) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers of paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act has the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals, etc., under Schedule 2

39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(a) 2004 c.18

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

/ [Designation]
[Department]

[] 201[3]

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332m in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

- (a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;
- (b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);
- (c) construction of an un-segregated footway cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;
- (d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435m to the north-west of its junction with A1081 London Road (south);
- (e) provision of private pedestrian access to maintain highways equipment at: (i) a point on the south-western highway boundary of Newlands Road approximately 30m to the north-west of the underbridge crossing of the M1 Spur; (ii) a point on the south-western highway boundary of Newlands Road approximately 25m to the south-east of the underbridge crossing of the M1 Spur; (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20m to the north-west of the underbridge crossing of the M1 Spur; and (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30m to the south-east of the underbridge crossing of the M1 Spur;
- (f) provision of average speed cameras;
- (g) erection of overhead gantry signs;
- (h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115m in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in north-north-westerly direction through a proposed underbridge under the M1 Spur (85m in length), then proceeding

in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on London Road approximately 113m south of the centre of Ludlow Avenue's junction with London Road, including—

- (a) construction of new single carriageway highway;
- (b) improvements to the existing highways;
- (c) construction of two new roundabout junctions;
- (d) construction of footways and cycleways;
- (e) construction of an underbridge and associated wing walls and retaining walls;
- (f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349m in length) commencing at the proposed Kidney Wood Southern Roundabout on A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455m north-east of M1 Junction 10 Roundabout, including—

- (a) construction of a new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391m in length) commencing on the A1081 Airport Way westbound carriageway 480m south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

- (a) construction of new single lane connector road with a hardshoulder;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281m in length) commencing on the M1 Spur eastbound carriageway 544m north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

- (a) construction of new two lane connector road;
- (b) provision of average speed cameras; and
- (c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225m in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448m south-west of the Capability Green Overbridge, including—

- (a) construction of new single lane connector road with hardshoulder;
- (b) construction of a combined un-segregated footway/cycleway;
- (c) provision of average speed cameras; and
- (d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. 5 — Reconfiguration of the existing A1081 London Road (409m in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150m north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81m south of the existing M1 Junction 10a roundabout, including—

- (a) construction of new single lane road and junction;
- (b) construction of a turning head;
- (c) construction works to narrow the existing carriageway to a single track lane road with passing places;
- (d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180m and 370m to the north of its junction with A1081 London Road (South);
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. 6 — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

- (a) construction of a new private vehicle and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13m to the north of its junction with Kidney Wood Northern Roundabout;
- (b) construction of a turning head;
- (c) construction of works to widen the existing London Road footway to form a public footpath;
- (d) landscaping works;
- (e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373m in length) commencing 20m north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147m south-west of the proposed Kidney Wood Northern Roundabout, including—

- (a) erection of footpath gates or stiles;
- (b) erection of signing; and
- (c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

- (a) construction of piped drainage outfall; and
- (b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill;
- (c) any earthworks strengthening measures as may be required; and
- (d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

- (a) construction of attenuation pond;
- (b) construction of infiltration basin;
- (c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235m to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;
- (d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

- (a) excavation to sound ground;
- (b) fill to original ground levels with engineering fill; and
- (c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) planting of a new boundary hedge;
- (d) erection of a new fence to protect the hedge; and
- (e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

- (a) trimming, pollarding and coppicing of trees;
- (b) clearance of vegetation, as required to construct the works;
- (c) erection of a new boundary fence; and
- (d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

- (i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;
- (iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (vii) works for the benefit or protection of land affected by the authorised development; and
- (viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

For the avoidance of doubt, any demolition preceding the Works shall be regarded as an integral part of the authorised development.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

1.—(1) In this Schedule—

“contaminated land plan” means a written scheme for the treatment of contaminated land during construction;

“dust management plan” means a written scheme for the attenuation of dust during construction;

“relevant highway authority” means the highway authority responsible for the highway in question; and

“stage” means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority pursuant to requirement 3.

(2) References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections, ~~unless otherwise agreed in writing by the relevant planning authority.~~

(2) No stage of the authorised development is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority.

Ecology

5.—(1) None of the authorised development, including any site clearance works, is to commence until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological strategy, ~~unless otherwise agreed in writing by the relevant planning authority.~~

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) The authorised development must be landscaped in accordance with a written landscaping scheme, reflecting the environmental statement and incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority. [The landscaping scheme must be approved before the authorised development commences.](#)

(2) The landscaping scheme must be in accordance with the ecological strategy approved under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

- (a) for hard landscaping areas—
 - (i) proposed finished levels;
 - (ii) hard surfacing materials;
 - (iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);
 - (iv) retained historic landscape features and proposals for restoration, where relevant; and
 - (v) boundary treatments and all means of enclosure.
- (b) for soft landscaping areas—
 - (i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;
 - (ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;
 - (iii) services below ground, including drainage, pipelines, power and communication cables; and
 - (iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) Unless otherwise agreed in writing by the relevant planning authority, all landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, ~~unless otherwise agreed by the relevant planning authority.~~

Measures to protect the water environment

10.—(1) None of the authorised development is to commence until—

- (a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified;
- (b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and
- (c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development must be carried out—

- (a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and
- ~~(b) incorporating any such measures or treatments as are approved under sub-paragraph (2).~~
- (b) ~~unless otherwise agreed in writing by the relevant planning authority.~~

Flood risk assessment

11.—(1) None of the authorised development is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with any recommendations made in the flood risk assessment, ~~unless otherwise agreed in writing by the relevant planning authority.~~

Archaeology

12.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme, ~~unless otherwise approved in writing by the relevant planning authority.~~

Construction traffic and access strategy

13.—(1) No stage of the authorised development is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan, ~~unless otherwise agreed by the relevant planning authority.~~

Construction work and construction compounds

14.—(1) No stage of the authorised development is to commence until for that stage—

- (a) written details of the type and location of screen fencing for the proposed construction compounds;
- (b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development;
- (c) a scheme for the attenuation of noise and vibration during construction;
- (d) a dust management plan; and
- (e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1), ~~unless otherwise agreed in writing by the relevant planning authority.~~

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1), ~~unless otherwise agreed in writing by the relevant planning authority.~~

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice, ~~unless otherwise agreed in writing by the relevant planning authority.~~

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan, ~~unless otherwise agreed in writing by the relevant planning authority.~~

Amendments to approved details

~~18.—(1)(5)~~ With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, ~~the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.~~

~~(2)~~ 18.A any amendments to the approved details referred to ~~in sub-paragraph (1)~~ must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by each relevant highway authority, after consultation with the police, other emergency services and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

(3) The plan must be approved before the authorised development commences.

SCHEDULE 3

Article 12

CLEARWAYS

The roads specified for the purposes of article 11(3) are—

- (a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1338 metres;
- (b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1130 metres;
- (c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
- (d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
- (e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
- (f) Kidney Wood Westbound Merge Slip Road from its junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
- (g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
- (h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
- (i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
- (j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4

Article 12

SPEED LIMITS

PART 1

M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011 substitute—

“SPECIFIED ROADS

1. The specified roads are the—
 - (a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;
 - (b) carriageways of the northbound slip roads;
 - (c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and
 - (d) carriageways of the southbound slip roads.
2. Any reference in this Schedule to—
 - (a) the letter “M” followed by a number is a reference to the motorway known by that name;
 - (b) the letter “A” followed by a number is a reference to the road known by that name; and
 - (c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.
3. In this Schedule—

“northbound slip roads” is a reference to the lengths of carriageway specified in paragraph 4;

“off-slip road” means a slip road intended for the use of traffic leaving the M1;

“on-slip road” means a slip-road intended for the use of traffic entering the M1;

“southbound slip roads” is a reference to the lengths of carriageway specified in paragraph 5;

and

“zone sign” means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(a) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.
4. The northbound slip roads are as follows—
 - (a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;
 - (b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;
 - (c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;
 - (d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;

- (e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;
- (f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and
- (g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

- (a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45m to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;
- (b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100m to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;
- (c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;
- (d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;
- (e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;
- (f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and
- (g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3
ROADS SUBJECT TO 50 MPH SPEED LIMIT

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road from its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New Street to be substituted
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20m from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435m to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Northbound Diverge Slip Road M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

<i>(1)</i> Area	<i>(2)</i> Street to be temporarily stopped up	<i>(3)</i> Extent of temporary stopping up
	<p>Capability Green Eastbound Diverge Slip Road</p> <p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
Luton Borough Council	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45m to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes</p>

SCHEDULE 7

Article 15

ACCESS TO WORKS

<i>(1)</i> Area	<i>(2)</i> Reference on street plans, sheet 3	<i>(3)</i> Description of access
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165m to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45m to the north-west of the underbridge crossing of the M1 Spur. This temporary access is located at an existing gated access to arable farmland, and provides access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30m to the north-west of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is replaced with a permanent pedestrian private means of access at the same location that provides access to maintain highways equipment.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
Central Bedfordshire Council	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235m to the north-west of its junction with the A1081 London Road (south). This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land applies, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there are substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

(a) 1973 c. 26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Development Consent Order 201[3](a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(a) S.I. 201[] []

are modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur from Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A & Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 & Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 & Work No.6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 & Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B & Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1, Work No.3B & Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 & Work No.10

SCHEDULE 11

Article 31

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
Birch, oak, ash, rowan and hornbeam.	Kidney Wood TPO shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood TPO to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with arbitration (article 37).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37 (arbitration).

PART 2

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and Interpretation

1. —(1) For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that statutory undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act^(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“plans” includes sections and method statements;

“undertaker” means the undertaker as defined in article 2 of this Order; and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986^(c);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and,
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

(a) 1989 c. 29.

(b) 1991 c. 56

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 2, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

2.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 4 or the power of the undertaker to carry out works under paragraph 6.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up of streets) of this Order, and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

3. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) apply in relation to such works.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections thereto which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub-paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

10. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 4(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

11. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3**FOR THE PROTECTION OF NATIONAL GRID****Interpretation**

1. —(1) In this Part of this Schedule—

“National Grid” means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH (“National Grid”);

“the high pressure gas main” means the Kinsbourne Green to Dallow Road high pressure gas main; and

“plans” means all drawings designs sections specifications method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

2.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 3 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 6 of Part 2.

(3) Paragraph 3 of this Part of this Schedule (except in the case of paragraph 3(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 7 to 11 of Part 2 have effect, except as provided for in paragraph 4 of this Part.

High pressure gas main: protection

3.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within three metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within three metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

- (a) the exact position of those works;
- (b) the level at which those works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal; and
- (d) the position of the high pressure gas main.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);
- (b) must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies must be executed only in accordance with—

- (a) the plan approved under sub-paragraph (2); and
- (b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and the statutory undertaker is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of Part 2 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) of Part 2.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

- (a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and
- (b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

4.—(1) Sub-paragraph (2) applies instead of paragraph 8(3) of Part 2 of this Schedule in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 8(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering his representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.

STATUTORY INSTRUMENTS

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]

BIRCHAM DYSON BELL LLP
50 Broadway
London Sw1H 0BL
Solicitors and Parliamentary Agents
[8764320.04 — 3.05.13]

BG2.3j Application for the proposed M54 to M6 Link Road Development Consent Order (TR010054-001200) (21 April 2022)



Department for Transport

National Highways
Temple Quay House
2 The Square
Bristol
BS1 6HA

Rosalind Wall
Co-Director Motoring and Freight
DEPARTMENT FOR TRANSPORT
ZONE 1/14-18
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON
SW1P 4DR

ENQUIRIES: 07971145878
E-MAIL: TRANSPORTINFRASTRUCTURE@dft.gov.uk

Web Site: www.gov.uk/dft

21 April 2022

Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED M54 to M6 LINK ROAD DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the report of 21 July 2021 of the Examining Authority (“the ExA”), a Panel of two examining Inspectors consisting of Robert Jackson BA MPhil DMS MRTPI MCMI (Lead Member) and Kenneth Stone BSc (Hons) DipTP MRTPI, who conducted an examination into the application by Highways England (now known as National Highways) (“the Applicant”) for the M54 to M6 Link Road Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- late representations received by the Secretary of State following the close of the examination; and
- responses to further consultation undertaken by the Secretary of State in respect of the application.

2. The application was accepted for examination on 28 February 2020. The examination began on 21 October 2020 and was completed on 21 April 2021. The examination was conducted on the basis of written and oral submissions submitted to the ExA. Due to the ongoing pandemic the ExA was unable to hold an accompanied site visit but conducted three unaccompanied site inspections in June 2020 and March 2021.

3. The Order as applied for under the 2008 Act would grant development consent to the Applicant to provide a link road between Junction 1 on the M54, M6 North and the A460 to Cannock. The proposals would comprise the replacement of the existing M54 junction 1 with free flow slip roads between the new link road and the M54, the construction of three new roundabouts and construction of a new dual carriageway between M54 junction 1 and the M6 junction 11.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA's Report") (as amended by Errata Sheet (Ref TR0 010054)). The ExA's findings and conclusions are set out in sections 5 to 17 of the ExA's Report, and the ExA's summary findings and conclusions and recommendation are set out in section 18.

Summary of the ExA's Recommendation

5. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the ExA's Report under the following headings:

- Legal and Policy Context;
- Planning Issues
- Air Quality;
- Biodiversity, Ecology and Natural Environment;
- Cultural Heritage including Archaeology;
- Green Belt;
- Landscape and Visual Effects;
- Noise and Vibration;
- Socio-Economic Effects;
- Traffic and Transport;
- Water Environment;
- Habitats Regulations Assessment;
- The case for Development Consent
- Compulsory Acquisition and Related Matters; and
- Draft Development Consent Order and Related Matters

6. The ExA recommended that the Secretary of State should make the Order in the form recommended at Appendix D of the Report.

Summary of the Secretary of State's Decision

7. **The Secretary of State has considered the ExA's Report and has decided under section 114(1)(a) of the 2008 Act to grant development consent.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

Secretary of State's Consideration

8. The Secretary of State has considered the ExA's Report, the further representations received after the close of the examination, responses to consultation, and all other material considerations. The Secretary of State's consideration of these matters is set out in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations, as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the

ExA in support of the conclusions and recommendations. All “ER” references are to the specified paragraph in the ExA’s Report. Paragraph numbers in the ExA’s Report are quoted in the form “ER x.xx.xx” as appropriate.

Legal and Policy Context

9. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to any relevant National Policy Statement (“NPS”), and any Local Impact Report (“LIR”) submitted, any matters prescribed in relation to development of the description to which the application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision (ER 3.1.2). Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant NPS which in this case is the National Networks National Policy Statement (“NNNPS”), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying. The Secretary of State does not consider any of these exceptions apply on the facts of this case.

10. The LIRs and the relevant development the Secretary of State has had regard to are described in ER 3.9 and 3.10. The Secretary of State also notes the ExA’s assessment set out in ER 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 of UK Regulations derived from European law, other relevant legal provisions, previous DCOs, transboundary effects, other relevant policy statements and the National Planning Policy Framework (“the Framework”), and agrees these are matters to be considered in deciding this application. The Secretary of State notes that the UK Regulations derived from European law set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

Need for the Development

11. Paragraph 2.2 of the NNNPS sets out a critical need to improve national networks and address road congestion. The Secretary of State agrees with the ExA that the proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NNNPS and local planning policy. The need and benefits include relieving traffic congestion on the A460, A449 and A5 and providing more reliable journey times, keeping the right traffic on the right roads and improving safety by separating local community traffic from long distance and business traffic, reducing volumes of through-traffic in villages, improving local community access and supporting local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes (ER 15.4.13). The Secretary of State notes the ExA’s view that significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality.

Planning Issues

12. The Secretary of State notes there was substantial local support for the principle of the development. However, the Secretary of State notes objections were raised to the detail of the proposal but the local community did not raise objections to the precise line of the link road. There were specific concerns from South Staffordshire Council (“SSC”) and

Hilton, Featherstone & Brinsford and Shareshill Parish Councils (“the Parish Councils”) that the Preferred Alignment decision was incorrect and that the easterly alignment would have less of an effect on local communities (ER 4.1.1 and 4.1.2).

13. The Secretary of State notes that in accordance with paragraph 4.26 of the NPSNN, the Applicant included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for the preferred route, taking into account the environmental effects. He further notes that in accordance with paragraph 4.27 of the NPSNN, that the ExA are satisfied that the project has been subject to a full options appraisal in achieving its status within the Road Investment Strategy, and that proportionate option consideration of alternatives would have been undertaken as part of the investment decision making process. The Secretary of State further notes that in considering whether the proposed alignment is acceptable, taking into account all considerations as set out in s104 of the 2008 Act, the ExA reached their conclusion in Chapter 15 of their Report, having assessed all the individual planning issues and reaching a balanced conclusion (ER 4.6.19 to 4.6.21).

14. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NPSNN will begin later in 2021, to be completed no later than Spring 2023. While the review is undertaken, the NPS remains relevant government policy and has effect for the purposes of the Planning Act 2008. The NPS will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

15. The Secretary of State notes that the Proposed Development is development for which an Environmental Impact Assessment (“EIA”) is required as recorded in Section 1.5 of the ExA Report and the documents which comprise the Environmental Statement (“ES”) and the various addenda to that are set out in the Examination Library set out in Appendix B of the ExA Report.

Air Quality

16. The Secretary of State notes the ExA’s assessment of the Policy frameworks relating to Air Quality set out in ER 5.2, the case for the Applicant set out in 5.3 and the position of interested parties in ER 5.5.

17. The Secretary of State notes there were no robust or technical objections or concerns raised in respect of the effect of the proposed development on air quality. The Parish Councils and SSC raised issues related to the alignment of the mainline of the link road (“the mainline”) and the preferred route, expressing concern that its proximity to residential properties around Dark Lane would result in a deteriorating environment for local residents including in respect of air quality. They did not however provide any evidence or data to support these assertions and SSC confirmed that their Environmental Health department did not raise any objections to the Proposed Development (ER 5.7.1).

18. The Secretary of State notes the Applicant’s air quality assessment concludes that there are no properties with adverse changes in air quality (small, medium or large) above the air quality values and there is no adverse effect on air quality for compliance links. Whilst the assessment does identify locations where the air quality position would be worse than in the Do Minimum (“DM”) situation the increase in concentrations of pollutants would

be imperceptible or a small change as a result of the Proposed Development and would be below limit values or objectives (ER 5.7.2).

19. The Secretary of State notes that overall, the ExA were satisfied the Proposed Development would not result in significant adverse effects on air quality. He notes there are areas which would have increases in pollutant levels but that these would not perceptibly worsen concentrations in those areas already above any objective and would not result in concentrations exceeding objective levels or relevant statutory air quality thresholds. The ExA concluded that across the study area there would be a net benefit for air quality for sensitive receptors. The Secretary of State notes the ExA's view that the Proposed Development therefore is in compliance with paragraphs 5.9 and 5.10 of the NPSNN (ER 5.7.7, 15.3.10).

20. During construction there would be the potential for dust to affect air quality, with particular impacts on residential receptors in relatively close proximity to the works (ER 5.7.9). However, the ExA concluded that this could be appropriately mitigated and that there would be no other significant air quality effects resulting from construction of the Proposed Development (ER 15.3.9). The Secretary of State is content this this mitigation has been secured through the Order.

21. The Secretary of State notes that the ExA were satisfied that the Proposed Development would not result in unacceptable air quality impacts, it would meet the tests in the NPSNN and would not result in a significant effect or deterioration of air quality and would not adversely affect an Air Quality Management Area or any nature conservation sites and would not conflict with local policies (ER 5.7.10). The Secretary of State agrees with this conclusion.

Carbon emissions

Background

22. Section 104(3) of the 2008 Act states that the Secretary of State must decide an application for a national network Nationally Significant Infrastructure Project in accordance with the NPSNN except to the extent that one or more of subsections 104 (4) to (8) of the 2008 Act apply. These include not only where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits, but where the Secretary of State is satisfied that deciding the application in accordance with the NPSNN would: lead to the UK being in breach of any of its international obligations; lead to him being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment (ER 3.1.3). The UK's international obligations include the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008.

23. In June 2019 the Government announced a new carbon reduction 'Net Zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment Order 2019). This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050 (ER 5.2.15). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth, fifth and sixth

budget are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

24. The ExA set out that the NPSNN advises that traffic-related emissions are expected to continue to fall, and that there are therefore only very limited circumstances in which a highway proposal will lead to material adverse change in carbon emissions, on a scale that would bear on the achievement of the statutory carbon budget. The Secretary of State considers that this part of the ExA's report relates particularly to paragraph 3.8 and 5.17 of the NPSNN Paragraph 3.8 sets out that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets. Paragraph 5.17 sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. The Secretary of State notes the ExA's view that this Proposed Development is not of sufficient scale to have such an effect (ER 5.7.11).

25. The Secretary of State notes that the ExA has considered the Government's carbon budgets which at the start of the Examination included the third (2018-2022), fourth (2023-2027) and fifth (2028-2032). The ExA highlighted that Greenhouse Gas ("GHG") emissions (measured as carbon dioxide equivalent and referred to as "carbon emissions") for the Proposed Development in net terms between the Do-something ("DS") and Do minimum ("DM") scenarios as set out by the Applicant in its ES would result in a total increase of 206,860tCO_{2e}. Splitting these between construction (81,890tCO_{2e}) and operation (121,730tCO_{2e}) and across the relevant carbon budgets, given that the construction of the Proposed Development was then expected to take place in 2021-2024 and opening in 2024, the ExA set out that the Proposed Development would contribute to 0.0013% of the UK's carbon budget for the third carbon budget period. The Proposed Development's carbon emissions would equate to 0.0048% of the UK's carbon budget for the fourth carbon budget period and 0.0043% of the UK's carbon budget for the fifth carbon budget period (ER 5.7.12).

26. The Secretary of State notes that during the Examination, whilst the sixth carbon budget was not available, the ExA asked the Applicant about the recommendations for the sixth budget as set out in the Committee on Climate Change's ("the CCC") Sixth Carbon Budget report of 9 December 2020. This set out recommendations for the 2033 to 2037 period and recommended a net reduction of 78% between 1990 and 2035, representing the bringing forward of the previous 80% target by nearly 15 years. The Secretary of State notes that the ExA asked the Applicant to make an assessment against this proposed change in carbon emissions from the development in respect of the third, fourth and fifth carbon budgets, and to comment on what effect, if any, that this might have on the Government's ability to meet any revised target set by Parliament. The Applicant responded by stating as the third, fourth and fifth carbon budgets would remain the same following publication of the sixth carbon budget, the percentage contribution from the Proposed Development remains the same for these periods despite the Government's more ambitious carbon reduction target. When compared against the sixth carbon budget as set out in the CCC report (and which was later confirmed by the Carbon Budget Order 2021) the Applicant identified that GHG emissions from the Proposed Development represent

0.0079% of that budget, which is a higher contribution than for the previous budgets, but which the Applicant considered was still well below a threshold of 1% of a given carbon budget. Therefore, the Applicant considered that their conclusion that “*the GHG impact of the Proposed Development would not have a material impact on carbon reduction targets as set by the UK government*” remained applicable (ER 5.7.13).

27. The Secretary of State notes that there were no substantive issues or concerns raised by any party with regard to the Applicant’s assessment of the effects or broader implications in respect of carbon emissions (ER 5.7.15). The ExA considered that given the Applicant’s comments regarding the CCC’s Sixth Carbon Budget report and its advised budget allocations, there was unlikely to be a significant effect but advised that the Secretary of State may wish to consider the impact of carbon equivalent emissions for the operational phase of the Proposed Development in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes namely RIS1/RIS2 (ER 5.7.16). The ExA also advised that the Secretary of State may also wish to consider the impact of the sixth carbon budget and the ‘Decarbonising Transport: a better, greener Britain’ (“the Transport Decarbonisation Plan”) (ER 5.7.14).

28. The Secretary of State therefore requested additional information from the Applicant with regard to the Proposed Development’s compliance with the sixth carbon budget and the direct, indirect and cumulative likely significant effects of the Proposed Development with other existing and/or approved projects on climate.

Sixth Carbon Budget

29. With regard to the Proposed Development’s compliance with the sixth carbon budget, the Applicant responded on 23 August 2021 to the Secretary of State’s request, setting out that the Proposed Development would contribute 0.0082% of the sixth carbon budget. The Applicant however noted that this assessment is conservative and likely to be an overestimate as the projected uptake of new electric vehicles is higher than the projections used in the national projections included in the version of Defra’s Emissions Factor Toolkit that was available at the time and used to provide the assessment. The Applicant also referenced DfT’s Transport Decarbonisation Plan published in July 2021 as outlining a number of commitments by the Government to remove all emissions from road transport to achieve the net zero target by 2050 which they argued would have a direct impact on road user emissions and was also not captured in their assessment. The Applicant also highlighted that in July 2021, the then Highways England published its own 2030/2040/2050 Net Zero highways plan that included a commitment to ensure its maintenance and construction activities become net zero by 2040 and road user emissions on the strategic road network become net zero by 2050.

30. The Secretary of State notes that the Applicant concluded in its letter of 23 August 2021 that the then predicted maximum impact on any carbon budget (including the sixth carbon budget) would be 0.0082% and that this would not have a material effect on the Government’s ability to comply with carbon budgets. In response to the Secretary of State’s follow up request of 22 December 2021 for additional information relating to the cumulative effects of the scheme on climate, the Applicant provided updated figures on the impact of the scheme on each of the carbon budgets using the newly available Emissions Factor Toolkit v11 which took account of the higher predicted uptake rates of electric vehicles. The

Applicant also presented the results of its sensitivity test to reflect the policies in the Transport Decarbonisation Plan. The Secretary of State notes that the figures set out in the Applicant's latest assessment show that the Proposed Development's contribution to any carbon budget will be a maximum of 0.0061%. The Secretary of State notes that this figure is a lower impact on each of the carbon budgets than that considered by the ExA except in relation to the third carbon budget where the impact is now assessed as being slightly higher than that considered by the ExA (0.0352Mt CO₂e in contrast to 0.0334mt CO₂e).

31. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as 'The Net Zero Strategy: Build Back Greener' ("Net Zero Strategy"), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State notes the Applicant's most recent assessment of the Proposed Development's impact on the carbon budgets takes account of the Transport Decarbonisation Plan and that no other party has questioned this assessment.

32. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the latest IEMA guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA Guidance") notes that "*The 2050 target (and interim budgets set to date) are, according to the CCC, compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects*". This guidance also sets out that, "*Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner*".

33. The ExA refers to a significance threshold of 1% of a given carbon budget used by the Applicant (ER 5.7.13). The Secretary of State considers that there is no set significance threshold for carbon. The latest IEMA guidance at section 6.1 refers back to three overarching principles in its original 2010 guidance that it considered to be particularly relevant in considering significance: GHG emissions from all projects will contribute to climate change, the largest interrelated cumulative environmental effect; the consequences of a changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: when evaluating significance, all new GHG emissions contribute to a negative environmental impact, but some projects will replace existing development or baseline activity that has a higher GHG profile and the significance of a project's emissions should therefore be based on its net impact over its lifetime, which may be positive, negative or negligible; where GHG emissions cannot be avoided, the goal of the EIA process should be to reduce the project's residual emissions at all stages; where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.

34. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant - such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

35. The Secretary of State notes that the scheme will result in an increase in carbon emissions but that the view reached by the ExA is that it will not be so significant that it would materially impact on the ability of Government to meet its carbon reduction targets (ER 15.3.11). The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in paragraph 5.18 of the NPSNN, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out above, the carbon budgets should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change. The Secretary of State considers this aligns with the approach to significance set out in the most recent IEMA Guidance. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have come into force since the NPSNN was designated. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The scheme's contribution to overall carbon levels is very low and the Secretary of State agrees with the ExA that its contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets.

36. In relation to mitigation, the Secretary of State notes that, with regard to construction the Applicant's ES sets out that these impacts will be mitigated through the CEMP. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as the use of energy efficient lighting (see section 14.8 of Chapter 14 of the ES). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

37. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution (“NDC”) in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party’s NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK’s NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy: Build Back Greener, published by Government in October 2021, sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK’s carbon budgets and 2030 NDC and establishes the UK’s longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a breach of the UK’s international obligations in relation to the Paris Agreement or any domestic enactments or duties.

38. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the operation of the scheme will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is below 0.01% of any carbon budget and therefore small; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonation Plan and NH’s own Net Zero Highway Plan published in July 2021. The Secretary of State is satisfied that the scheme is compatible with these policies and that the small increase in emissions that will result from the scheme can be managed within Government’s overall strategy for meeting net zero. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the scheme will not materially impact the Government’s ability to meet its net zero targets.

Assessment of Cumulative Impact of GHG emissions

39. The Secretary of State sought additional information from the Applicant on 9 August 2021 on the cumulative impact of GHG emissions. Following the Applicant’s response of 23 August 2022, the Secretary of State made a further request for information relating to this matter on 22 December 2022. The Applicant responded to this on 26 January 2022.

40. The Secretary of State notes the Applicant’s responses set out that the assessment of cumulative impacts of the scheme on climate was undertaken in line with DMRB guidance. The Applicant sets out that an assessment of GHG emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in [Chapter 14](#) (Climate) of the ES. The information contained in Chapter 14 sets out that the assessment of carbon emissions from the Proposed Development was separated into emissions during construction and emissions during operation. With regard to construction, the carbon assessment includes an assessment of construction activities, embodied carbon in raw materials, transportation of materials to site and land use change. The assessment relating to the operation of the scheme includes emissions from motorised users and maintenance.

41. The Secretary of State also notes that as stated in the Applicant’s response of 23 August 2021, the Applicant’s ES sets out that the study area adopted for the carbon

emissions assessment covers all direct carbon emissions (those arising from construction and operational activities undertaken within the Proposed Development's boundary) and indirect carbon emissions (those associated with construction materials and the transportation of materials and waste). The spatial extent of this assessment comprises the area of construction works falling within the Proposed Development's boundary and with regard to operational carbon emissions, the study area includes both direct emissions arising from energy use within the Proposed Development's boundary as well as emissions from road users on the road network within and beyond the Proposed Development's boundary, as set out in the Proposed Development's traffic model contained in the Transport Assessment Report.

42. The Secretary of State notes that the Applicant's response of 26 January 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the Proposed Development and the adjoining Strategic Road Network and the local road network as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the local planning authority and took account of national Government regional growth rates.

43. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and local road network between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The Applicant considers that this takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Applicant considers that as both the with and without scheme scenario includes all likely developments and traffic growth factors it is inherently cumulative.

44. The Secretary of State notes that the ExA suggested that a cumulative assessment should be undertaken in relation to the RIS (ER 5.7.16). The Secretary of State also notes that the Applicant has sought to rely on *R (Transport Action Network) v Secretary of State for Transport and Highways England (2021) EWHC 2095* in their response of 23 August 2021 to the effect that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's conclusion that a RIS is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Proposed Development.

45. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level. Furthermore, the Secretary of State considers that whilst an assessment at RIS level would provide a cumulative assessment of the RIS schemes that are planned or being delivered and the combined emissions from the RIS2 schemes are considered to be de minimis, it would not capture development in the surrounding area to the Proposed Development that could also have an impact. The Secretary of State also

notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than for other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Proposed Development on carbon is acceptable as it takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Secretary of State considers that the assessment is proportionate and reasonable in relation to the information the Applicant would have access to to enable the impacts of carbon to be understood and accounted for in the decision-making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact is adequate, as journeys will not begin and end within the Proposed Development's boundary.

46. With regard to assessing the cumulative impact of the emissions on climate and the scale used in this assessment, the Applicant has set out that carbon budgets (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered.

47. As well as being a requirement of the NPSNN, the Secretary of State considers that assessing a scheme against the carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

48. Overall, the Secretary of State considers that the information provided by the Applicant with regard to the impact of the scheme on carbon emissions (including the cumulative effects of carbon emissions from the scheme with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge.

49. With regard to the cumulative impact on climate adaptation, the Applicant noted that the "In-combination climate change impact assessment" included in the ES did not identify the potential for significant combined impacts of future climate change and the scheme on identified receptors in the surrounding environment.

50. In its response of 23 August 2021, the Applicant supplemented this assessment with an additional assessment to consider whether other strategic transport infrastructure beyond the boundary of the scheme, which may, when subject to climate impacts, have consequences that exacerbate likely significant effects. The Applicant concluded that the assessment demonstrated that the Proposed Development will improve the resilience of

the Strategic Road Network to the effects of climate change. The Secretary of State notes that this was not disputed by any party.

51. Overall, the Applicant set out in its response of 23 August 2021 that the cumulative effects of the scheme in relation to climate vulnerability were assessed as part of their original ES as set out above, and there would be no significant cumulative climate vulnerability effects associated with the scheme. The Secretary of State accepts this conclusion.

Conclusion

52. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other information' for the purposes of the EIA Regulations as it, builds on previously provided information, and that parties have been given sufficient opportunity to comment on this. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.

53. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that that the scheme complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

54. Given that the scheme will increase carbon emissions, it is given negative weight in the planning balance. However, the Secretary of State considers that weight also needs to be given to the Transport Decarbonisation Plan that will mean operational emissions reduce over time and that in relation to climate change adaptation the Proposed Development attracts positive weight in the planning balance.

Biodiversity, Ecology and the Natural Environment

55. The Secretary of State notes the policy framework relating to biodiversity, ecology and the natural environment as set out in ER 6.2, the Applicant's case set out in ER 6.3 and the position of Interested Parties set out in ER 6.5.

56. The Secretary of State notes that the ExA having reviewed the ES, is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly (ER 6.7.1).

57. The ExA considered that in the absence of any evidence to the contrary, there would be no significant adverse effects on nationally designated sites (in this case Sites of Special Scientific Interest) (ER 6.7.3, and 15.3.14). The Secretary of State notes that there would however be adverse effects on locally designated wildlife sites, the Lower Pool Site of Biological Importance/Local Wildlife Site (“SBI/LWS”) and the Brookfield Farm, Shareshill LWS and SBI with regard to direct and indirect effects. This would be from the physical loss of habitat and from on-going operational effects because of the location of the Proposed Development (ER 6.7.4). These effects could not be mitigated but the ExA were satisfied that they would be compensated for at an appropriate level (ER 6.8.1 and ER 15.3.14).

58. The Secretary of State notes that there are two areas of ancient woodland within the site, Whitegreaves Wood and Brookfields farm (ER 6.3.30). Following changes to the application there would no longer be any direct loss of ancient woodland but as some of the development would be within 15m of the ancient woodland, the ExA stated that it would be reasonable to assume that this ancient woodland would effectively be lost due to effects on the rooting systems and increases in air pollution (ER 6.7.8). The ExA noted that such indirect effects cannot be avoided and consent for the Proposed Development should not therefore be granted unless the need for and benefits of the Proposed Development outweigh the loss (ER 15.3.16). The Secretary of State is satisfied that the potential impact on ancient woodland is outweighed by the overall benefits of the scheme. The Secretary of State notes that as an irreplaceable resource the loss of ancient woodland cannot be mitigated but is satisfied that the Applicant has sought to provide compensation near to the two ancient woodland locations, in a ratio of 7:1 which is agreed with Natural England (“NE”) (ER 6.7.9).

59. The Secretary of State notes discussion took place around the location of the compensatory habitat for bats and that whilst the Applicant maintained that there would be no significant effect on bats from the location of the mitigation habitat on the west side of the mainline, the ExA concluded that the significance of the adverse effects would be greater (ER 6.7.24 and 6.7.29). The ExA, utilising the Applicant’s own level of impact descriptive criteria as set out in Table 8.3 of Chapter 8 of their ES, concluded that there would be effects of moderate adverse significance on bats. The Secretary of State notes again that consent should be refused unless the benefits of the Proposed Development outweigh the harm (ER 15.3.16). The Secretary of State agrees with the ExA’s assessment of harm but is satisfied that this is outweighed by the overall benefits of the scheme set out in paragraph 121 (ER 15.4.10).

60. The Secretary of State notes that concern was raised that the precautionary approach that had been followed by the Applicant with regard to Great Crested Newts (“GCN”) had led to there being more mitigation provided as part of the Proposed Development than was necessary, particularly with regard to the number of ecological ponds (ER 6.7.33). The Secretary of State notes that the October changes (changes to the application accepted in October 2020) included a more robust assessment of GCN populations taking account of surveys undertaken in 2020. The ExA noted that although a 500m zone to consider the effect on GCN represents a cautious approach, an appropriate precautionary approach has been taken by the Applicant with appropriate mitigation provided (ER 6.7.34 and 15.3.14).

61. The Secretary of State is content that there would no unacceptable effects on other habitats and protected species (ER 6.8.1). The ExA have concluded that following

completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. Taking all relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 6.8.1 and is content with the ExA's consideration that the effect would be beneficial and should be given moderate weight and would accord with the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has had regard to that Convention in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (ER 6.7.39 and 6.7.40).

Cultural Heritage including Archaeology

62. The Secretary of State notes the case for the Applicant on this matter as set out in ER 7.3 and for other Interested Parties in ER 7.2 and 7.5. The Secretary of State notes that the baseline conditions and identification of heritage assets within the study area are set out in the ES and that the Applicant identified a list of designated and non-designated heritage assets in Appendix 6.1 of the ES with the ES Chapter setting out a detailed description of the assets, including their significance (ER 7.7.1). The ExA considered that information provided in the ES is sufficiently comprehensive to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on significance (ER 15.3.17). The Secretary of State has no reason to disagree with this.

Hilton Park

63. The Secretary of State's notes that the area of greatest dispute was around the Hilton Park, its assessed significance, the impact of the Proposed Development on Hilton Park and the potential effects of the proposed mitigation. The ExA noted that the conclusions drawn in respect of these matters and in terms of Hilton Park overall, flow into matters related to the significance and effect of the Proposed Development on certain designated built assets. These designated built heritage assets are located within the Park and it forms their setting and the conclusions in respect of Hilton Park therefore have implications in terms of those heritage assets' significance and the effect of the Proposed Development thereon (ER 7.7.4). The Secretary of State notes the ExA's view that Hilton Park is not a Registered Park and Garden, and it is not therefore a designated heritage asset in the context of paragraph 5.123 of the NPSNN but that they concluded, based on SSC's definition, that it is reasonable to conclude that Hilton Park can be considered to be a non-designated heritage asset in the context of paragraph 5.125 of the NPSNN (ER 7.7.5).

64. The Secretary of State notes that the Applicant ascribes a medium value to the Park, but that this was questioned by Allow, due to the association with Repton, a late 18th Century landscape gardener. The Secretary of State notes the ExA's consideration of this and conclusion that they are satisfied that the Applicant has ascribed a reasonable value to the asset on the basis of the current information and condition of the Park, its designations and historic associations (ER 7.7.12).

65. The Secretary of State notes that the park has already been subject to development which has affected its significance. The ExA set out that this must be considered in the understanding of its current significance (ER 7.7.10). The ExA acknowledge that the

Proposed Development would result in the introduction of further development within the historic park and would result in the removal, alteration and severance of important elements that contribute to the significance of the historic park (ER 7.7.13).

66. The Secretary of State notes that it was argued that the Applicant had failed to properly consider the additional impact of their proposed mitigation works and that an alternative location for this was suggested (ER 7.7.14-7.7.18). The Secretary of State is content that the Applicant considered different options for delivering this mitigation and its impact and that the Historic Buildings and Monuments Commission for England accepted that there would be harm resultant from the Proposed Development, including from the additional planting, but considered the proposed planting to the west of the mainline was the least intrusive on the historic parkland setting (ER 7.7.16).

67. The Secretary of State notes the Park has already been affected by previous development and overall, the ExA concluded that the effect on the Park, a historic landscape that is a non-designated heritage asset, would, in ES terms be a moderate level of significance and that this would translate into a less than substantial harm in planning terms (ER 7.7.18). The Secretary of State agrees with this assessment.

68. The Secretary of State also notes and agrees with the ExA's conclusion that with regard to designated assets, the Proposed Development would also result in less than substantial harm to the following: Hilton Hall (Grade I), The Conservatory (Grade I), The Coach House and Stable Block (Grade II), The Gate Piers (Grade II) and the Portobello Tower (Grade II) through harm to Hilton Park which contributes to their setting and therefore their significance (ER 7.8.2, ER 15.3.18). The Secretary of State notes that the ExA have not identified any instances where, during construction or operation, the Proposed Development is likely to result in substantial harm to or loss of significance of any designated heritage asset (ER 15.3.20).

69. The Secretary of State notes the ExA concluded that on the Applicant's assessment there is sufficient evidence for the Secretary of State to conclude on archaeological remains as set out in NPSNN paragraphs 5.128 and 5.129. The Secretary of State agrees with the ExA that the evidence demonstrates that there would be no significant effect on archaeological remains with the only effects being those identified in respect of non-designated assets including crop marks and ditches but that this would be of limited or negligible effect (ER 7.7.33, ER 15.3.21).

70. The Secretary of State notes that during the Examination Mr Williams raised concerns that the Applicant had not properly considered and investigated the potential for Kettle Hole's and Holocene deposits (ER 7.5.11). Overall, the ExA was satisfied that there are no documented cases of Kettle Holes in the vicinity of the Proposed Development and application site (ER 7.7.41). The Secretary of State agrees with the ExA's conclusions that there is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order limits (ER 7.8.2, ER 15.3.21).

Conclusion

71. The Secretary of State agrees with the ExA's assessment that the need for and the benefits of the Proposed Development would outweigh, in each case, the harm that was identified in relation to designated heritage assets. He also agrees with the ExA that harm

to undesignated heritage assets, including the harm to archaeological assets, would be outweighed by the public benefits of the Proposed Development (ER 15.4.1).

72. The Secretary of State is satisfied with the ExA's view that an appropriate balance has been struck with regard to the provision of tree planting to the west of the mainline in the vicinity of Hilton Hall and the potential effect in terms of the effect on bats (ER 15.4.2). Taking account of the public benefits, the Secretary of State is satisfied with the ExA's conclusion that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated and undesignated heritage assets. The Secretary of State is satisfied that matters concerning the historic environment would accord with the relevant policy provisions of the NPSNN (ER 15.4.3).

Green Belt

73. The Secretary of States notes the case for the Applicant on this matter as set out in ER 8.3 and for other interested parties in ER 8.4. The Secretary of State notes that paragraph 5.164 of the NPSNN confirms that for the purposes and protection of the Green Belt reference should be made to the Framework (ER 8.2.1). The Framework is therefore an important consideration. The Applicant has identified that the site lies within the West Midlands Green Belt and this is confirmed by SSC and is identified in its Core Strategy (ER 8.6.1).

74. Paragraph 5.178 of the NPSNN notes that national network projects located in the Green Belt may be inappropriate development and that inappropriate development is by definition harmful to the Green Belt and that there is a presumption against it except in very special circumstances. The Secretary of State notes the ExA's conclusions that the Proposed Development would amount to inappropriate development in the Green Belt and would not be covered by any of the exceptions that are set out in paragraphs 145 and 146 of the Framework (ER 8.6.2 to 8.6.4 and ER 15.3.22). The Secretary of State notes that the ExA have also concluded that the Proposed Development will result in harm to the openness of the Green Belt, in terms of both its spatial and visual qualities, and would pose a conflict with one of the five purposes for including land within the Green Belt, as set out in paragraph 144 of the Framework (ER 8.6.21), namely assisting in safeguarding the countryside from encroachment (ER 8.7.2).

75. Like the ExA, the Secretary of State attaches substantial weight to this harm. The ExA noted that there will be a need to assess whether there are the very special circumstances referred to in paragraph 5.178 of NPSNN to justify the inappropriate development. The very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (ER 8.7.1, ER 15.4.5). The Secretary of State notes the ExA's analysis of this matter set out at ER 15.4.4-15.4.11 and like the ExA gives significant weight to the benefits of the scheme set out at in ER 15.4.8 which include delivery of Government policy and programmes, benefits from a decrease in congestion and improved journey times, the conformity with local Development Policy and allocations for delivery of transport infrastructure and the economic and social benefits from improved connectivity and improved reliability of journeys.

76. The Secretary of State, like the ExA is also satisfied that alternatives have been considered to achieve connection between the M54 and M6 that could have less impact on

the Green Belt but that all would fall within the Green Belt and that slight movements of the junction would also not reduce its impact (ER 8.3.9 and ER 15.4.8). The ExA noted that several of the structures that would impact on the Green Belt openness would replace existing structures that already impact the Green Belt's openness to varying degrees (ER 15.4.9). The Secretary of State agrees with the ExA that the potential harm to the Green Belt, and any other harm, would be clearly outweighed by the other considerations set out above in paragraph 75 and that they amount to very special circumstances (ER 15.4.10). The Secretary of State is therefore satisfied that very special circumstances exist to justify the approval of inappropriate development in the Green Belt and that the Proposed Development would accord with the Green Belt policy set out in paragraph 5.178 of the NPSNN and the Framework (ER15.4.8 to 15.4.10).

Landscape and Visual Effects

77. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Landscape and Visual Effects set out in ER 9.2, the case for the Applicants set out in ER 9.3 and the position of interested parties in ER 9.5.

78. The Secretary of State notes that the ExA concluded that it is reasonable to identify the overall landscape value in the locality of the Proposed Development as low (ER 9.7.6 and ER15.3.24). The Secretary of State notes that concerns were raised about the impact of the scheme on views from residential properties but that the ExA were satisfied that replacement tree planting and mitigation measures for screening purposes were necessary, reasonable and appropriate (ER 9.7.7-9.7.18 and 15.3.28). The Secretary of State has no reason to disagree with this.

79. The Secretary of State notes the Parish Councils and SSC raised concerns about the appearance of an existing corrugated fence that runs along the south side of Dark Lane and that the Proposed Development should take the opportunity to replace the fence with a more attractive means of enclosure. The Secretary of State notes that following discussions between the various parties and the landowner, Allow, it was agreed that a new fence would be provided and that this is confirmed in the Statement of Common Ground ("SoCG") between the Applicant and Allow. The ExA were satisfied and agreed that the proposed fencing would be a visual improvement to the exiting corrugated fencing (ER 9.7.15-9.7.18).

80. With regard to impacts on the landscape, the Secretary of State notes that the ExA concluded that as a significant infrastructure project it will have an impact and effect on the landscape but given the nature of the overall low value of the landscape, the greatest effect will be during construction which would rise to a moderate effect. He further notes that during operation, with the increasing maturity of the landscaping, the effect on landscape overall would be neutral to slightly adverse. The Secretary of State has no reason to disagree with this conclusion. Further, the Secretary of State is satisfied that the ExA consider that the Applicant has produced a design that has sought to minimise the adverse effect on the landscape to mitigate, as far as reasonable, the effects and that the Proposed Development accords with the aims of NPSNN paragraph 5.149 (ER 9.7.25).

81. With regard to visual impacts, the ExA concluded that the Proposed Development would be a significant element of engineered highway infrastructure in a primarily rural location and would therefore have harmful visual effects but that it incorporates appropriate

mitigation to reduce the overall effects. The ExA also considered that during construction the visual effects would be greater but reduced over time as construction completed and the landscape proposals matured (ER 9.7.31).

82. The Secretary of State notes that overall the ExA's concluded that due to the nature of the Proposed Development it would not be possible to avoid harm altogether to the landscape or visual receptors. The Secretary of State accepts this conclusion and agrees with the ExA that the Proposed Development incorporates suitable design and mitigation which is secured in the Order and therefore accords with the stated aim of paragraph 5.149 of the NPSNN (ER 9.7.32).

Noise and Vibration

83. The Secretary of State has had regard to the ExA's consideration of Policy - the framework on noise and vibration set out in the NPSNN, the Noise Policy Statement for England, the Framework and PPG, the Local Plan and the World Health Organisation Guidelines (ER 10.2), the case for the Applicant in ER 10.3 and the case for other Interested Parties in ER 10.5.

84. The Secretary of State notes that the Parish Councils raised concerns that the line of the Proposed Development is not their preferred route given its proximity and its potential noise and air quality effects on residents in Dark Lane and Park Road but gave no analysis or scientific assessment of the potential effect of the Proposed Development in this regard. They simply assert that they would wish to have such effects minimised (ER 10.7.1-10.7.2).

85. The Secretary of State notes one objector accepted the Proposed Development will not increase the noise impact on properties along the A449 but is concerned that the Proposed development did not take the opportunity to address the pre-existing situation in a more fundamental way, including consideration of de-trunking the A449. The Secretary of State agrees with the ExA that the Proposed Development achieves its objectives and the concerns raised with regard to de-trunking are outside the scope of the Proposed Development (ER 10.7.3).

Construction

86. The Secretary of State notes there is the potential for combined significant effects from construction noise and vibration during the construction works at receptors located in close proximity to the works along the section of A460 which would be modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm (ER 10.7.20).

87. The Secretary of State notes that with regard to construction, overall the ExA accepts that there will be significant adverse effects on various receptors in close proximity to the works associated with the Proposed Development. In many instances these will be for short periods of time with the exception of the relatively intense period around the three-week closure and works associated with the junction 1 works on the M54. The ExA considered that the Construction Environmental Management Plan ("CEMP") provides for appropriate means to mitigate and reduce as far as possible the adverse effects noting it requires effective communication and liaison with the local community. Given the nature and scale of the proposed works, the Secretary of State agrees with the ExA that the levels

of effects, whilst significant, have been minimised as far as possible and measures put in place to seek to mitigate the effects. These are secured through requirement 4 and the proposed CEMP (ER 10.7.21).

Operational effects

88. The Secretary of State notes that the Applicant divides these effects into short-term and long-term changes. The short-term change being the change between the DS and DM scenarios for the year of opening 2024 and the long-term changes being the difference between the DM scenario at 2024 and the traffic noise levels with the Proposed Development in operation in 2039 (ER 10.7.22).

89. The Secretary of State notes that the ExA agreed with the Applicant's conclusion in the ES that five residential buildings on Hilton Lane west of the Proposed development and one residential building at Brookfield Farm are identified as experiencing significant adverse effects from operational traffic. He further notes that thirty-seven residential buildings close to the existing A460 bypassed by the Proposed Development and 11 residential properties along Old Stafford Road (outside the calculation area) are identified as experiencing a significant beneficial effect. The effect on the other properties within the calculation area experience effects which are identified as not significant. The Secretary of State has no reason to disagree with this (ER 10.7.25 to 10.7.34).

90. Overall, the Secretary of State notes that he ExA considered that the Applicant's approach to noise and vibration assessment is generally acceptable in line with the NPSNN (ER 10.8.1 and ER 15.3.30). The Secretary of State acknowledges that the Proposed Development would not totally avoid significant adverse impacts on health and quality of life from noise. The Secretary of State agrees with the ExA that there would be some remaining significant effects, but that these would primarily relate to construction activity, would mostly be for short durations and that the mitigation measures proposed and secured in the Order would reduce these effects. The Proposed Development would mitigate and minimise other adverse impacts on health and quality of life from noise relating to the Proposed Development and would contribute to improvements to health and quality of life through the effective management and control of noise, where possible (ER 10.7.38). The Secretary of State agrees with the ExA's conclusions set out in ER 10.8.1 and ER 10.8.2 that the Proposed Development would overall meet the aims of the NPSNN and the significant adverse effects on a small number of properties, given the limited duration, should be afforded moderate negative weighting in the overall planning balance.

Socio-Economic Effects

91. The Secretary of State notes that the NPSNN promotes the delivery of environmental and social benefits as part of new schemes and requires any adverse impacts to be mitigated in line with the principles set out in the Framework and the Government's planning guidance (ER 11.2.1). The Secretary of State also notes the Applicant's case set out in ER 11.3 and the case for Interested Parties set out in ER 11.5.

Employment and social facilities

92. The Secretary of State notes the ExA's view that it is clear that the Proposed Development would have a direct detrimental effect on employment in the area from the

loss of the fishing lakes, the use of land for car boot sales, and from the reduction in land use for agriculture but quantifying it was not clear (ER 11.7.1). The ExA however concluded that the direct loss of employment opportunities on the application site would be more than offset by the enhancement of business opportunities from the improved connectivity to the area. (ER 11.9.1 and ER 15.3.37).

Best and Most Versatile Agricultural (BMV) Land

93. The Secretary of State notes there would be a loss of agricultural land described as the Best and Most Versatile (“BMV”). The Secretary of State notes the concerns raised by NE (ER 11.7.14-11.7.19) but that the ExA concluded that requirement 4 in the Order requires the Applicant to consult with NE in respect of a matter relevant to its function. As the effect on BMV land is relevant to NE’s function, the ExA are satisfied that the detailed design of the Proposed Development could allow for less harm than is currently identified through discussions between the Applicant and NE. The Secretary of State agrees with the ExA’s conclusion that the loss of BMV land should be given moderate weight against the Proposed Development, and that this would be of greater significance than identified by the Applicant (ER 11.7.19-11.7.20).

Mineral reserves

94. The Secretary of State notes that the Proposed Development passes through a Mineral Safeguard Area (ER 11.3.34). Paragraph 204 of the Framework makes clear that policies should encourage the prior extraction of such minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place (ER 11.2.6). The Secretary of State notes that the ExA accepted the evidence of the Applicant that the prior extraction on the mainline would delay the Proposed Development and there may be environmental objections. The Secretary of State agrees with the ExA that the non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development as the land affected would be used for environmental mitigation and drainage ponds which would not sterilise development of the area in the future, should it be necessary (ER 11.7.21-11.7.23 and ER 15.3.39).

Future development potential

95. The Secretary of State notes that there are objections relating to two areas of land, to the south of M6 junction 11 and to the north and west of M54 junction 1, with regard to whether the design of the Proposed Development would prevent future development. The Secretary of State notes that the provision of the Proposed Development would clearly have an effect on whether land could be developed, but the ExA concluded this predominantly relates to compensation and was not a matter for the Examination (ER 11.7.24-11.7.26).

97. The Secretary of State notes that Nurton, in particular, is seeking a reassurance that NH would not object to a proposal for a further bridge across the main line but that NH are not willing to give such an assurance. The Secretary of State agrees with the ExA’s consideration that NH’s approach is appropriate in that the law, policy and guidance may all change by the time that any proposal was brought forward and to give any assurance may fetter discretion at that time (ER 11.7.27).

98 Overall, the Secretary of State agrees that the positive economic and social benefits of the Proposed Development weigh in favour of the Order being made (ER 15.3.40).

Traffic and Transport

99. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Traffic and Transport set out in ER 12.2, the case for the Applicant set out in ER 12.3 and the position of Interested Parties in ER 12.5.

General

100. The ExA set out that there was effectively no opposition to the principle of the Proposed Development from any participants in the Examination and that the ExA considered that the current A460 is unsuited for its current purpose of linking traffic between Wolverhampton, Telford and Shrewsbury and the north. It was noted that that the mix of local and longer distance traffic puts pedestrians and other vulnerable road users in close proximity to traffic and that there is a high proportion of HGVs using the route that this adds to risks (ER 12.7.1). It is noted that one objector did not consider the Proposed Development to be bold enough in scope in terms of reducing the impact of traffic on local communities (ER 12.7.4) but the Secretary of State notes and agrees with the ExA that in general terms, the Proposed Development would meet its objectives (IR 12.7.16).

Weight restriction on Cannock Road

101. The Secretary of State notes that local community representatives considered that there should be weight restrictions on some roads post-development (ER 12.7.21). Whilst some were not controversial, effectively redefining the areas of existing restrictions in the vicinity of the application site, the Secretary of State notes the discussion around whether a weight restriction would be justified on Cannock Road. He notes that the Applicant considered such a restriction was not necessary as traffic on Cannock Road would be reduced by approximately 88% following the Proposed Development (ER 12.7.21 and 12.7.22). M6 Diesel was also against the proposal principally for socio-economic reasons and the potential effect on its business (ER 12.5.34). Both argued that SCC should use its powers to bring such a restriction forward once the Proposed Development opens if it considered it necessary (ER 12.5.38).

102. While the M6 Diesel site would be by-passed by the link road, alternative provision at the motorway service area at Hilton Park between M6 junctions 10A and 11 is also by-passed. The Secretary of State notes that although the Applicant considers that the site is not a "destination in its own right" the ExA consider that the nature of the facility is that it is and would be just that. This is because effectively the vast majority of the HGV traffic post-development on Cannock Road south of M6 Diesel would be travelling to or from the M6 Diesel site in Saredon (ER 12.7.21 to 12.7.24).

103. The Secretary of State notes that while there would be an increase in distance for traffic travelling via the M6 Diesel site from M6 junction 11 to M54 junction 1 and vice versa compared with having to return to M6 junction 11 were a weight restriction on Cannock Road to be imposed, he agrees with the ExA's consideration that this increase would not be excessive (ER 12.7.25).

104. The Secretary of State also notes that the Applicant considers that the imposition of a weight restriction could result in HGV traffic driving to the outer limits of the restriction and not being able to turn. However, the Secretary of State notes that the ExA consider that with appropriate advance signage this would be unlikely to happen and that traffic travelling from the south would be able to continue west along The Avenue, which does not have an existing weight restriction, and from the north would be able to turn through the M6 Diesel site. Whilst the Applicant also considered that Weight Restrictions would be challenging to enforce and were unlikely to be supported by the Police, the ExA said that enforcement would be no different from any other weight restriction, of which there are already existing examples in the area, and that they had no evidence that the Police would object to such a proposal (ER 12.7.26 and ER 12.7.27). The ExA concluded that the benefits to the local community of further significantly reducing HGV traffic south of the M6 Diesel site in terms of safety, convenience, noise reduction and air quality improvements, and reductions in severance to local communities is such that a weight restriction is appropriate. The Secretary of State agrees with this and accepts the changes to the Order to this effect (ER 12.7.25).

Signage relating to M6 Diesel

105. The Secretary of State notes that M6 Diesel (Saredon Filling station) considered that signage to it should be installed on the M6 junction 11 so as to avoid confusion with the gyratory and consequential potential highway risks (ER 12.5.39). The Applicant considered that M6 Diesel is not a motorway truckstop or service area and cannot be signed from the mainline of either motorway. The ExA noted that M6 Diesel was not requesting this, only on the gyratory and considered that providing signage on the M6 junction 11 gyratory would result in more convenience for all users of the gyratory, and if included within the overall signage design would not lead to visual clutter or harm. The Secretary of State agrees with this conclusion and the ExA's associated amendments to the Order (ER 12.7.30-12.7.31).

Other matters

106. The Secretary of State notes that SCC requested that Shareshill layby located to the south of Hilton Lane on the east side of Cannock Road be closed. The Secretary of State notes the changes to Cannock Road (including the weight restriction discussed above) would be likely to result in less traffic passing the layby and that it is therefore less likely to be used as a parking area. The Secretary of State agrees with the ExA's view that there is no need as part of the Proposed Development to close the layby and its closure is not needed to meet the objective of the Proposed Development (ER 12.7.33-12.7.35).

107. With regard to Non Motorised User ("NMU") Routes, the Secretary of State notes the original NMU route north/south through M54 junction 1 (12.3.35-42) and that some parties wished to see enhancements to the NMU routes between Featherstone and the south of M54 junction 1. He further notes that the ExA agree with them that the original arrangements requiring pedestrians, in particular, to travel effectively in the 'wrong direction' would be counter intuitive to most users who would therefore be more likely to utilise vehicles. The ExA highlighted that while a direct link would reduce the distances to be travelled, such a route needs to have the appearance of being safe for any users and also convenient. The alternative bridge and underpass routes that the Applicant investigated are considered not to be appropriate for these reasons. The Secretary of State agrees with the ExA's consideration that the ultimate solution proposed by the Applicant of

a pedestrian route to the Featherstone west roundabout from, effectively, opposite the junction of The Avenue with Cannock Road, would be an effective compromise and would appropriately mitigate the effects of the Proposed Development on pedestrians in this area (ER 12.7.36-12.7.39). The Secretary of State notes the other matters relating to NMUs set out in 12.7.40-12.7.51 and agrees with the ExA that no other changes are required to the NMU routes to make the Proposed Development acceptable (ER 12.8.1).

108. The Secretary of State notes that M6 Diesel has expressed concern about traffic being able to easily exit its site, as it would have to turn right across the flow of traffic which at present can cause delays both to those exiting the site and on the A460 when HGVs slowly exit. However, with the significant reduction in traffic on Cannock Road, the ExA considered that this would not be a problem post-development, as conflicts would infrequently occur. The Secretary of State has no reason to disagree with this. The Secretary of State also agrees with the ExA that the Environmental Mitigation Plans, together with appropriate consultation mechanisms in the Order and the Outline Environmental Management Plan, would ensure that undesirable fly-parking and fly-tipping would be unlikely to take place. (ER12.7.50-12.7.51).

Conclusions

109. Taking all the relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 12.8.1. The Secretary of State also agrees that the Proposed Development would deliver a significant benefit to the strategic road network of which significant weight is attached (ER 15.3.41) and that taking all matters in to consideration, traffic and transportation matters weigh substantially in favour of the Order being made (ER 15.3.46).

Water Environment

110. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Water Environment set out in ER 13.2, the case for the Applicant set out in ER 13.3 and the position of Interested Parties in ER 13.5.

General approach and analysis

111. The Secretary of State notes that overall, the ExA, are satisfied with the general approach, baseline and analysis of the Flood Risk Assessment ("FRA"), drainage strategy, potential for contamination and Water Framework Directive Assessment. There have been no substantive matters left unresolved between the Applicant and main Interested Parties in this regard. The Lead Local Flood Authority ("LLFA") and the Environment Agency ("EA") confirm, in their respective SoCG's with the Applicant, that outstanding issues were resolved (ER 13.7.1).

112 The Secretary of State notes the discussion around the flood risk associated with works impacting Watercourse 2, Lower Pool and Watercourse 5 (ER 13.7.2-13.7.16) and that risks will be minimised and mitigated through the Order and that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk (ER 13.8.1).

113. The Secretary of State notes that although the majority of the Proposed Development site is within Flood Zone 1 the Proposed Development alignment passes through Flood Zone 2 and Flood Zone 3 areas. The NPSNN paragraph 5.105 advises that if there is no reasonable available sites in these Flood Zones then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. In this case the project is for a linear infrastructure connecting two points. The majority of the Proposed Development is across Flood Zone 1 but includes Flood Zone 2 and 3 areas. The ExA noted that these include areas located close to junction 11 of the M6 and which cannot be avoided by the Proposed Development. The Proposed Development is therefore acceptable in the context of the Sequential Test if it meets the Exception Test (ER 13.7.17).

114. The Secretary of State notes that the information presented within the FRA further demonstrates that mitigation measures have been incorporated into the design to ensure that the new road will be at a low risk of flooding and would be safe for the lifetime of the development. Given the limited effect on flood risk, this risk is significantly outweighed by the sustainability benefits to the community that would result from the Proposed Development. The Secretary of State agrees with the ExA that on this basis the Proposed Development would meet the two elements of the Exception Test as set out in paragraph 5.108 of the NPSNN (ER 13.7.18-13.7.19).

Water Framework Directive (“WFD”)

115. The Secretary of State notes that in the context of the application the Applicant has assessed seven water courses that are part of the catchment of two water bodies designated under the WFD, the River Penk from Source to Saredon Brook and Saredon Brook from Source to River Penk (ER 13.7.27).

116. The Secretary of State notes that the EA and the LLFA are satisfied with the WFD assessment and that the Proposed Development would be WFD compliant. The Secretary of State agrees with the ExA that he has no evidence before him to reach a different conclusion and is therefore satisfied that the Proposed Development would be WFD compliant (ER 13.7.29-13.7.31) and would not result in a significant detriment to the overall condition and value of the potentially affected water bodies (ER 13.8.1).

Habitats Regulations Assessment

117. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site (ER 14.1.4). The Development is not directly connected with or necessary to the management of any European Site considered within the Applicant’s assessment (ER 14.3.2). The Secretary of State must therefore undertake an Appropriate Assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out (ER 14.4.1). In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

118. The Secretary of State notes that the Applicant provided a HRA No Significant Effects Report (“NSER”) as part of the application which was subsequently updated (ER 14.3.1). The Secretary of State notes that the NSER identified two European sites as being relevant considerations in terms of the Habitats Regulations, which are located 5.9km east and 6.5km north of the Proposed Development, and that these were screened into the assessment on the basis that they were susceptible to changes in air quality:

- The Cannock Chase Special Area of Conservation (“SAC”); and
- The Cannock Extension Canal SAC (ER 14.3.5).

119. In its Relevant Representation, NE stated that satisfactory information had been submitted to allow them to advise the Secretary of State that the Proposed Development would have no likely significant effects (“LSE”) on the Cannock Chase SAC but raised concerns in relation to the Cannock Extension Canal SAC and indirect impacts on air quality resulting from the Proposed Development (ER 14.4.9-14.4.10). The Secretary of State notes that discussion took place between NE and the Applicant and further information was provided and that it was confirmed by NE at Deadline 4 that they agreed with the Applicant’s conclusion that there would not be any LSE on the Cannock Extension Canal SAC. This was confirmed in the final SoCG submitted by the Applicant at Deadline 8 (ER 14.4.24-14.4.25).

120. The Secretary of State notes that the ExA concluded that the correct European sites and qualifying features had been identified for the purposes of the assessment (ER 14.4.5). The Secretary of State also notes that the ExA having given careful consideration to all relevant evidence and tested the position on HRA questions, said that they are satisfied that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features (ER 14.4.26). The Secretary of State agrees with the ExA’s view that there is no need to undertake an Appropriate Assessment (ER 14.6.1).

Overall Conclusions

121. As set out above at paragraph 109, the Secretary of State agrees with the ExA that the Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NPSNN. As set out above and highlighted by the ExA, significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality. Like the ExA, the Secretary of State attaches very significant weight to the benefits of the Proposed Development and compliance with a key policy objective of the NPSNN (ER 15.4.13).

122. The Secretary of State notes the ExA’s conclusions that subject to consideration of the effect on the Sixth Carbon Budget, the Carbon Budget Order 2021, the ‘Decarbonising Transport: a better, greener Britain’, and the cumulative effects of carbon emissions, there is a convincing case for development consent to be granted (ER 15.4. 22). The Secretary of State’s consideration of all these matters are set out above. The Secretary of State is satisfied that taking all matters into consideration, carbon emission matters are not a reason for refusing the Order.

123. The Secretary of State notes the ExA’s overall conclusions on the impacts of the Proposed Development at ER 15.4.17-15.4.18 and agrees with the ExA that although some

harmful impacts are likely to result, these are considered to be within the scope of the relevant policy provisions in the NNNPS (ER 15.4.20). The Secretary of State is also, like the ExA, satisfied that the Applicant has taken a reasonable and proportionate approach in seeking to minimise harm arising from the Proposed Development both during the construction and operational phases (ER 15.4.15). The ExA concluded and the Secretary of State agrees that the benefits of the Proposed Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts the ExA identified in relation to the construction and operation of the Proposed Development. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting the law and Government policy as set out in section 104 of the 2008 Act and the NPSNN (ER 15.4.21). The Secretary of State's consideration of all these matters are set out above. The Secretary of State agrees that taking all relevant matters into consideration, there is a convincing case for Development Consent.

Compulsory Acquisition (“CA”) and Related Matters

124. Section 122 of the 2008 Act enables a DCO to include powers of compulsory acquisition of land. Section 122(2) requires that the land to be compulsorily acquired must be required for the development to which the development consent relates, is required to facilitate or be incidental to that development, or land which is to be given in exchange for the Order land. Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the order included a request for CA of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land. In addition, a number of general considerations from the former Department of Communities and Local Government (“DCLG”) CA guidance need to be addressed (ER 16.5.1-16.5.4).

125. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant for the CA and Temporary Possession (“TP”) of land and the imposition of Permanent Rights over land in Chapter 16 of its Report.

126. The Secretary of State notes that the ExA addressed the situation of ten individual objections outstanding at the end of the Examination in ER 16.8.3-16.8.87. The Secretary of State notes that a SOCG was signed with Allow Limited and Ian Simkin and Adrian Simkin but matters remain unresolved in respect of whether CA and TP of land is justified (ER 16.8.3 and 16.8.32). The Secretary of State also notes that there are unsigned SoCG's between Barry Jones and Valerie Jones, Elizabeth Stella Whitehouse and Stella Arblaster, Michael John Alfred Byard, Nigel Simkin and Paul Simkin, William Bibbey and Nurton Development (Hilton) Limited and their objections remain unresolved. In relation to the objection from Danielle Leigh Killingworth the Secretary of State notes that at the close of Examination, the ExA noted that the Applicant was continuing to discuss matters with the objector. The Secretary of State notes in respect of all cases relating to individual objections, that the ExA are of the view that there is a compelling case in the public interest for the CA, TP with Permanent Rights or TP of the plots of land in question and that it is justified to enable implementation of the Proposed Development. The ExA also concludes that the tests and conditions set out in section 122 and section 123 of the 2008 Act would be met (ER 16.11.1). The Secretary of State agrees with that view.

127. The Secretary of State notes the ExA's conclusion that were development consent to be granted, the ExA would be satisfied that there would be a need to acquire the rights and interests in the CA land, and on that basis the Proposed Development would comply with section 122(1) and (2) of the 2008 Act (ER 16.9.3). The ExA was satisfied that the Applicant has sought to acquire land by negotiation, and has modified the Proposed Development by way of material and non-material changes to reduce the extent of the land for which it seeks CA or TP in accordance with paragraph 8 of the DCLG Guidance (ER 16.9.4). The ExA also concluded that there is adequate funding in place to ensure delivery of the Proposed Development (ER 16.9.6). The Secretary of State agrees with those conclusions.

128. With regard to Special Category Land, the Secretary of State notes that the National Trust has agreed in a land agreement with the Applicant and confirmed in a Planning Obligation under section 106 of the Town and Country Planning Act 1990 that it is content for its land to be utilised for compensation planting (ER 16.8.64). The Secretary of State also notes that plot 3/7b belonging to the National Trust is included in the application site (ER 16.2.20), but that no objection has been made by the National Trust meaning s130(2) of the 2008 Act does not apply (ER 16.8.65). The Secretary of State notes the ExA's consideration of plot 1/2, which is owned by a Statutory Undertaker, Severn Trent Water Limited and which would be impacted by the Proposed Development but that the ExA consider that this would not affect Severn Trent's statutory function. The ExA were therefore satisfied that it could be acquired and not replaced without the serious detriment to the carrying out of the undertaking (ER 16.8.66) and the Secretary of State has no reason to disagree with this.

129. The Secretary of State notes that there are no Crown interests in land which is subject to CA (ER 16.2.13).

130. In respect of Human Rights considerations, the Secretary of State notes that the Applicant acknowledges that the Order engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest (ER 16.10.1). The Secretary of State notes the ExA's considerations that in each case while rights would be interfered with, that interference would be proportionate and justified in the public interest, and that the CA and TP with Permanent Rights and TP would be compatible with the Human Rights Act and the ECHR (ER 16.10.5).

131. The Secretary of State has had regard to the benefits of the Development and is satisfied that with regard to the request for CA, Permanent Rights and TP powers there is a compelling case in the public interest and the CA powers sought would accord with section 122(2) and (3) of the 2008 Act (ER 16.11.1).

Protective Provisions

132. The Secretary of State notes that during the Examination Representations were made over the form of Protective Provisions to be contained in Schedule 9 to the preferred Order and these are addressed in Chapter 17 of the Report. The Representations were from Cadent Gas Limited, South Staffordshire Water Plc, Severn Trent Water Limited and

Western Power Distribution. The Secretary of State notes that agreement was reached between South Staffordshire Water and the Applicant on 23 April 2021 which enabled them to withdraw their Representation. The Secretary of State consulted the Applicant and Cadent Gas Limited, Severn Trent Water and Western Power on 9 August 2021 seeking an update on agreement of the Protective Provisions. The Applicant confirmed in their response of 23 August 2021 that agreements had been reached with all three Parties. On the 21 September 2021 the Secretary of State consulted those parties seeking confirmation that agreements had been reached. The Secretary of State notes that Severn Trent Water confirmed in their letter of 10 August that an agreement had been reached and their representations were withdrawn. Cadent Gas Limited confirmed in their letter of 6 September that agreement had been reached and they were withdrawing their representations and Western Power Distribution confirmed in their letter of 1 October that agreement had been reached and they were withdrawing their objections.

Late Representations (outside formal consultation)

133. Since the close of the Examination the Secretary of State has received a number of late representations, all of which are published on the Planning Inspectorate's website alongside this letter.

134. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA's report.

General Considerations

Equality Act 2010

135. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010) (ER 11.8.1).

136. The Secretary of State notes that the ExA agrees with the Applicant that due to the nature of the project there would be no positive or negative effects for those with protected characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership. The Secretary of State also notes that the ExA agree with the Applicant that the Proposed Development would have a positive effect on those with the protected characteristics of age and disability for the reasons set out in ER 11.8.3-11.8.4 and agrees with this conclusion.

137. Overall, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7) of the Equality Act 2010. On that basis there is no breach of the public sector equality duty (ER 18.2.12).

Natural Environment and Rural Communities Act 2006

138. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”) must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme on Biological Diversity of 1992, when granting development consent.

139. Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report (ER 3.4.6). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

The Secretary of State’s overall conclusions and decision

140. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

Modifications

141. The Secretary of State has made the following modifications to the Order:

- article 2 (interpretation) – the definition of ‘electronic transmission’ has been amended to reflect the position taken by the Secretary of State;
- article 2 (interpretation) – the definition of the ‘Secretary of State’ has been removed as this is an unnecessary definition;
- article 2 (interpretation) – the definition of ‘undertaker’ has been amended to reflect ‘National Highways Limited’;
- article 6 (limits of deviation) – the text in the tailpiece of that provision has been amended regarding the wording of the environmental effects;
- article 8(4)(b) and (c) (consent to transfer benefit of Order) – the Secretary of State has understood that the intention is for either Severn Trent Water Ltd and South Staffordshire Plc (or both) to obtain the powers to undertake Work No. 69(1);
- article 9 (application of the 1991 Act) – paragraph (8) has been removed. The Secretary of State notes that this provision appears to be unprecedented. While reference to precedents have been set out in the explanatory memorandum none of them have a provision that is the equivalent to paragraph (8). The explanatory memorandum details that the provision removes the need for a permit to be obtained for the works authorised by the Order. It is further sets out that given the scale of the works proposed by the Order that it is appropriate for those works to be regulated by the specific authorisation in the Order. However the Secretary of State is aware that many of the highways applications for a development consent order have a corresponding scale of works and it is unclear to the Secretary of State why this Order should be distinguished from the Orders which have not felt the need to include a provision that is the equivalent to paragraph (8);
- article 10 (construction and maintenance of new, altered or diverted streets and other structures) – paragraph (6) has been removed. The Secretary of State is unclear why this provision is needed. The explanatory memorandum sets out an explanation in relation to paragraph 3(b). However it seems to the Secretary of State that paragraphs (1) to (3) clearly set out the responsibilities for maintenance

and when those responsibilities are to start and on that basis the Secretary of State does not regard the inclusion of this paragraph as being necessary;

- article 11 (classification of roads etc.) – paragraph (8) has been reworked. The Secretary of State notes that this provision appears to seek to create a new traffic regulation order but without making reference to the Road Traffic Regulation Act 1984. It is under this Act that road traffic regulation orders on local highways are usually made. Speed limits on local highways (other than on restricted roads) are usually set by speed limit orders made under section 84 of that Act. This has resulted in the table in Part 7 of Schedule 7 also being reworked;
- article 23 (compulsory acquisition of rights and imposition of restrictive covenants) – paragraph (6) has been removed. The Secretary of State notes that this provision is unprecedented. The explanation provided in the explanatory memorandum is that this provision is to ensure the undertaker's powers to create rights extends to the power to create rights for the benefit of third parties such as statutory undertakers. This is to ensure that statutory undertakers continue to have appropriate rights of maintenance for their apparatus where that apparatus has been diverted into alternative third party land. The explanatory memorandum cites precedents for article 23 but those precedents do not include a provision equivalent to paragraph (6). The Secretary of State is not sufficiently satisfied by the provided explanation on the need for such a provision.
- Schedule 3 – The table in Part 7 has been amended to take account of the amendments made to article 11(8). The Examining Authority inserted Part 8 to make provision for the weight limit on Cannock Road. The Examining Authority noted that as a result of this change, the Classification of Roads Plans will need to be amended as Point 4.37 is shown but Point 5/8 will need to be added.

Challenges to decision

142. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

143. The Secretary of State's decision on the application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully

Rosalind Wall

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655)

BG2.3k M54 to M6 Link Road (TR010054-001200) – Extracts from Examiners' Report (21 July 2021)



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

M54 to M6 Link Road

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Robert Jackson BA MPhil DMS MRTPI MCMI (Lead Member)

Kenneth Stone BSc (Hons) DipTP MRTPI

21 July 2021

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OVERVIEW

File Ref: TR010054

The application, dated 30 January 2020, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 January 2020.

The Applicant is Highways England.

The application was accepted for Examination on 28 February 2020.

The Examination of the application began on 21 October 2020 and was completed on 21 April 2021.

The development proposed comprises a link road between the M54 and M6, providing a link between Junction 1 of the M54, M6 North and the A460 to Cannock.

Summary of Recommendation:

The Examining Authority recommends that, subject to the Secretary of State satisfying themselves on the point set out in paragraph 18.4.1, the Secretary of State should make the Order in the form attached.

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that. It does not deal with the 'Green Belt balance' where any harm to the Green Belt by reason of inappropriateness, and any other harm, is considered against other considerations to conclude whether they clearly outweigh that harm and whether very special circumstances exist. That balance is struck in the overall planning balance Chapter 15 where conclusions on all the other chapters and effects can be drawn together to identify those other harms, where they arise, and the other considerations.

8.6. ExA CONSIDERATIONS

- 8.6.1. The NPSNN confirms that for further information on the purposes and protection of the Green Belt reference should be made to the Framework (paragraph 5.164). The Framework is therefore an important consideration. The Applicant has identified the site lies within the West Midlands Green Belt and this is confirmed by SSC and is identified in the Core Strategy. The Applicant has also accepted that the Proposed Development would be inappropriate development within the meaning of Green Belt policy. This is consistent with the advice in paragraph 5.170 of the NPSNN.
- 8.6.2. Paragraph 5.178 of the NPSNN notes that national network projects located in the Green Belt may be inappropriate development and that inappropriate development is by definition harmful to the Green Belt and that there is a presumption against it except in very special circumstances. By way of a footnote inappropriate development is defined by reference to the definition in the Framework. It also advises that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, the 'Green Belt balance'. It is also advised that substantial weight will be attached to the harm to the Green Belt.
- 8.6.3. The Framework at paragraphs 145 and 146 by identification of certain forms of development and the identification of exceptions. Paragraph 145 advises that the construction of new buildings should be regarded as inappropriate with a list of exceptions. As the Proposed Development does not involve the erection of new buildings these are not relevant in this case.
- 8.6.4. Paragraph 146 of the Framework advises that other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Five forms of development are listed but only b) engineering operations and c) local transport infrastructure which can demonstrate a requirement for a Green Belt location are relevant in this case.
- 8.6.5. The Proposed Development is for a road scheme that could be described as transport infrastructure. However, the scheme as promoted is to upgrade part of the motorway network, improving linkages and seeking to get the right traffic on the right roads. In this case that means

primarily traffic moving from the M54 to the M6 and vice versa. This has an overall goal of improving the strategic road network. The Proposed Development has been accepted as a Nationally Significant Infrastructure Project, hence the current application. The Applicant accepts these points and also concludes that the exception made for "local transport infrastructure" would not apply to this scheme. For these reasons we are satisfied that the Proposed Development would not fall within this exception.

- 8.6.6. The Proposed Development would be an engineering operation. However, to fall within the other forms of development exceptions set out in paragraph 146 of the Framework the development needs to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.

Effect on Openness

- 8.6.7. The Court of Appeal in *Turner*⁴¹ confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The Supreme Court⁴² endorsed *Turner* to the effect that the word openness is open textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. The Supreme Court also highlighted that openness was the counterpart of urban sprawl and that it does not imply freedom from any form of development. Furthermore, it confirmed that matters relevant to openness in any particular case are a matter of planning judgement, not planning law.
- 8.6.8. The Proposed Development would provide for an amended junction 1 of the M54. This junction would increase the area of coverage of the junction providing for three linked roundabouts to provide access to the local road network and free flow lanes between the main carriageway of the main line to the M54. The increased area of coverage would be into fields and open spaces adjacent to the existing junction. The new junction would result in substantial engineering works including embankments, bridges, balancing ponds as well as new carriageway. Between junction 1 of the M54 and junction 11 of the M6 the mainline of the new link road would involve new carriage way, engineered cutting and embankments, bridges to accommodate Hilton Lane, an accommodation bridge and realigned access track amongst other features and a new bridge to cross Latherford Brook. At junction 11 of the M6 the junction would be enlarged with the carriageway works being on new embankments, new bridges created to accommodate the larger junction. The Applicant has also confirmed the likely size and dimensions of signage and gantries that would be required. All of the works are located within the Green Belt, all would be development and have an effect.

⁴¹ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

⁴² *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC 3

We have not identified any instances, during construction or operation where the Proposed Development is likely to result in substantial harm to or loss of significance of any designated heritage asset. The NPSNN requires that the harm we have identified should be weighed against the public benefit of the development, recognising that the greater the harm the greater the justification that will be needed. We go on to consider this within our overall conclusions later in this Chapter.

- 15.3.21. We conclude that the Proposed Development would result in some limited damage to undesignated archaeological assets including crop marks, ditches and other features but overall, the effect would be limited and not significant. There is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order Limits. The Proposed Development would provide for the re-use of materials salvaged from the Mile Wall, a feature of local interest. None of these matters therefore weigh significantly against the Order being made.

Green Belt (Chapter 8)

- 15.3.22. We conclude that the Proposed Development represents inappropriate development in the Green Belt and is not covered by any of the exceptions in paragraphs 145 or 146 of the Framework. Moreover, the Proposed Development would result in significant harm to the spatial qualities and moderate harm to the visual qualities of the openness of the Green Belt and it would conflict with one of the five purposes of including land within the Green Belt, namely, to assist in safeguarding the countryside from encroachment. The Proposed Development would therefore conflict with the fundamental aim of Green Belt Policy to prevent urban sprawl by keeping land permanently open, and their essential characteristics which are openness and permeance.

- 15.3.23. Inappropriate development is, by definition, harmful to the Green Belt. We attach substantial weight to the harm that would result to the Green Belt. We go on to consider the question of whether very special circumstances exist to clearly outweigh the harm by reason of inappropriateness below.

Landscape and Visual Effects (Chapter 9)

- 15.3.24. We conclude that given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the landscape or visual receptors and the Proposed Development incorporates reasonable mitigation measures. We also consider that the overall value of the landscape is low and that it is reasonable to judge the effects against this baseline.
- 15.3.25. We consider that the Applicant has sought to minimise harm to the landscape and provided reasonable mitigation where possible, the Proposed Development would therefore be in accordance with paragraph 5.149 of the NPSNN.

Appendix BG2.4 Heritage Note

**THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS
INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT
ROUNDAABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON
HAMPDEN BYPASS) COMPULSORY PURCHASE ORDER 2022
THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT TO CULHAM THAMES
BRIDGE) SCHEME 2022**

**THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS
INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT
ROUNDAABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON
HAMPDEN BYPASS) (SIDE ROADS) ORDER 2022**

AND

**THE CALLED-IN PLANNING APPLICATION BY OXFORDSHIRE COUNTY
COUNCIL FOR THE DUALLING OF THE A4130 CARRIAGEWAY,
CONSTRUCTION OF THE DIDCOT SCIENCE BRIDGE, ROAD BRIDGE OVER
THE APPLEFORD RAILWAY SIDINGS AND ROAD BRIDGE OVER THE RIVER
THAMES, AND ASSOCIATED WORKS BETWEEN THE A34 MILTON
INTERCHANGE AND THE B4015 NORTH OF CLIFTON HAMPDEN,
OXFORDSHIRE (APPLICATION NO: R3.0138/21)**

**PLANNING INSPECTORATE REFERENCE:
APP/U3100/V/23/3326625 and NATTRAN/SE/HAO/286 (DPI/U3100/23/12)**

HERITAGE TECHNICAL NOTE

prepared by

DR GILLIAN SCOTT

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1. INTRODUCTION AND QUALIFICATIONS

- 1.1 I, Gillian Scott, am a Principal Heritage Consultant within the Heritage team at AECOM. I joined AECOM in 2017 and I have over 10 years' experience in heritage impact assessment.
- 1.2 I have a BSc (with honours) in Archaeology and Palaeoecology (2005) and a PhD in Buildings Archaeology (2009) from Queen's University Belfast. I am an affiliate member of the Chartered Institute for Archaeologists (CIfA).
- 1.3 I have 16 years' experience in the heritage sector, including researching for my PhD thesis. I am an archaeologist specialising in historic buildings. I have experience as both an archaeological contractor and as a consultant. My role at AECOM involves providing cultural heritage impact assessment services for a wide range of applications including Listed Building Consents, Town and County Planning Applications, Environmental Impact Assessment, Hybrid Bills and Development Consent Orders. I provide advice on embedded design mitigation and additional mitigation options in relation to potential impacts to heritage assets. I completed the assessment of built heritage impacts contained within the Environmental Statement Cultural Heritage Chapter for the now called-in planning application by Oxfordshire County Council for the dualling of the A4130 carriageway, construction of the Didcot Science Bridge, road bridge over the Appleford Railway Sidings and road bridge over the River Thames, and associated works between the A34 Milton Interchange and the B4015 north of Clifton Hampden, Oxfordshire (Application No: R3.0138/21) (the **Planning Application**).

Scope of Heritage Technical Note

- 1.4 I confirm that the note that I have prepared concerning the Inquiries is given in accordance with the guidance of my professional institutions, the Chartered Institute for Archaeologists (CIfA), and I can confirm that the opinions expressed are my true and professional opinions.
- 1.5 My note specifically addresses the following statement made in the Inspector's Note issued on 21 December 2023. This states that:
- 'It would seem that there are a number of topics that are not explicitly covered in the note following the Pre- Inquiry Meeting on which I shall wish to hear evidence. It is unclear to me whether the matters below would be addressed by planning witnesses, or whether parties wish to put forward additional witnesses. I am therefore bringing these matters to the attention of the parties now, in order that that all parties have sufficient time to ensure that they are able to address them at the Inquiry. It may be that some of these matters are agreed by all parties, but I shall nevertheless need sufficient information to conclude upon them in my Report.*
- Having regard to my duty under the Planning (Listed Buildings and Conservation Areas) Act 1990, I shall need to understand the effect of the proposal on the significance of the various heritage assets identified. The parties should explain:*
- *The significance of the asset, and to what extent its setting contributes to that significance.*
 - *The contribution that the appeal site makes to that significance/setting of the asset.*
 - *The extent to which the appeal proposals enhance or detract from that significance and/or the ability to appreciate it.'*
- 1.6 My note therefore focusses on the impacts of the Scheme in relation to Listed Buildings and Conservation Areas in order to assist the Inspector in applying the Planning (Listed Buildings and Conservation Areas) Act 1990 to the determination of the Application. It does not discuss potential impacts of the Scheme in relation to other heritage assets not covered by the Planning (Listed Buildings and Conservation Areas) Act 1990, such as World Heritage Sites, scheduled monuments, registered battlefields, registered parks and gardens, protected wrecks and non-designated heritage assets. Relevant assessment of all of the above categories of heritage asset is contained within the Core Document (CD) Didcot HIF1 Environmental Statement

Chapter 7 Cultural Heritage (CD C.1 Annex 3 – Chapter 7 Cultural Heritage) in relation to the Scheme.

- 1.7 A further response is made specifically in relation to the comments made Jacqueline Mason via Thrings (CD N.3), about the impact of the Scheme on Fullamoor Farmhouse, a Grade II listed building.

2. CULTURAL HERITAGE ASSESSMENT

Environmental Statement Overview

- 2.1 Environmental Impact Assessments (EIAs) are a mandatory requirement for certain developments in the United Kingdom. This requirement stems from the European Council Directive on Environmental Assessment (EC Directive 85/337/EEC), which was established in 1985 and further integrated into UK law.
- 2.2 The EIA for this Scheme has been undertaken per the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (hereafter referred to as the 'EIA Regulations'). The EIA undertaken for the Scheme has followed the over-arching EIA process of screening, scoping, and an iterative design and assessment. These steps are explained within Mr Maddox's Proof of Evidence.
- 2.3 The scope of an EIA is comprehensive and includes a robust assessment of the potential environmental impacts of a project. This includes assessing the impact of the Scheme on cultural heritage and developing strategies for mitigation.
- 2.4 The Environmental Statement for the Scheme, prepared under the EIA Regulations, includes a detailed chapter (CD C.1 Annex 3 – Chapter 7 Cultural Heritage) and supporting technical appendices (CD A.17 Appendix 7.1 Gazetteer of Cultural Heritage Assets; CD B.1 Annex 3 – Appendix 7.2 Cultural Heritage Desk-Based Assessment; CD A.17 Appendix 7.3 Geophysical Survey; and CD B.7 Didcot Garden Town HIF1 Overall Scheme Archaeological Evaluation) on cultural heritage, providing sufficient cultural heritage baseline information, and assessing the Scheme's impact on cultural heritage assets during both construction and operational phases.
- 2.5 To address the Inspector's request for explanation of the impacts of the Scheme on conservation areas and listed buildings, the following sections provide information first on those assets scoped out of detailed assessment in the Environmental Statement and the reasons why, before moving on to provide the more detailed assessment of those assets that were scoped in to assessment in the Environmental Statement and through the Regulation 25 responses, using the Inspector's three bullet points as a staged form of assessment. Each concludes with an assessment of the degree of harm to those assets in the terms of the National Planning Policy Framework (NPPF) (2023).
- 2.6 Within the NPPF (2023), impacts affecting the significance of designated heritage assets are considered in terms of harm. Paragraphs 205-208 introduce the requirement to determine whether the level of harm amounts to 'substantial harm' or 'less than substantial harm'. There is no direct correlation between the significance of effects identified through the EIA process and the level of harm caused to heritage significance. The assessment of harm presented in this Heritage Note is determined using professional judgement.

CD B.1 Annex 3 - Appendix 7-2 Cultural Heritage Desk Based Assessment Findings – Listed Buildings and Conservation Areas Scoped out of Detailed Assessment.

- 2.7 CD B.1 Annex 3 - Appendix 7.2 Cultural Heritage Desk Based Assessment provided baseline information on heritage assets within a defined study area of 1km from the Scheme extents. The assessment identified five scheduled monuments, one registered park and garden, six conservation areas, 92 listed buildings and 14 non-designated buildings within the defined study area. As a result of the initial assessment of the significance of assets and the contribution made by setting to their significance, a number of assets were scoped out of further assessment in the Environmental Statement, and a rationale for scoping out these assets was included in Table 5.10 of CD B.1 Annex 3 - Appendix 7.2 Cultural Heritage Desk Based Assessment. This generally related to either the lack of potential for significant adverse effects requiring mitigation, or an assessment that the site did not form part of the assets' settings. This rationale is repeated here in relation to listed buildings and conservation areas scoped out. The references provided

in square brackets e.g. [NHLE 1194530] are the listed building's unique National Heritage for England asset number (maintained by Historic England).

Milton Conservation Area and the listed buildings therein

- 2.8 The Site does not form part of the setting of the conservation area or the 18 listed buildings it contains [NHLE: 1048181; 1300911; 1368669; 1048220; 1048221; 1300938; 1368649; 1368648; 1200074; 1465013; 1368647; 1200044; 1300905; 1048219; 1368668; 1300909; 1200060; and 1048221]. The conservation area is focused on the historic core of the settlement and views outward over the surrounding fields to the north and west. There is sufficient distance and significant intervening development between the conservation area and the Site, which is located south-west of the asset. The Zone of Theoretical Visibility (ZTV) (CD A.16 Figure 8.3) demonstrates that the conservation area has no inter-visibility with the Site and it is not considered that there will be significant changes in traffic levels within the conservation area during construction or operation as a result of the Scheme (CD A.15 Chapter 16: Transport).

Sutton Courtenay Conservation Area and the listed buildings within the study area therein

- 2.9 The Site does not form part of the setting of the conservation area or the thirteen listed buildings it contains [NHLE: 1194571; 1182464; 1052727; 1052730; 1052731; 1182205; 1182296; 1182304; 1284624; 1284657; 1368066; 1368101; and 1368102]. The conservation area is focused on the historic settlement and the area to the north up to the river. The key views are inward looking along its historic streets. The ZTV (CD A.16 Figure 8.3) demonstrates that within the study area the conservation area has no inter-visibility with the Site and this is based on a ZTV that does not include the screening effects of buildings which will further limit the visibility of the Site. The Noise Assessment concluded that there will not be significant increases in noise levels through this area due to construction traffic (CD A.15 Chapter 10). The Transport Assessment (CD A.15 Chapter 16) reports a predicted 30-40% reduction in traffic through the conservation area during operation, which is not EIA significant. The perception of this change in the conservation area and in the setting of its listed buildings is considered to be of negligible benefit. On the conservation area (medium value) and the listed buildings within it (generally of high value), this results in a slight beneficial significance of effect, which is not EIA significant.

Didcot (Old) Town Conservation Area and the twelve listed buildings within the study area therein

- 2.10 The Site does not form part of the setting of the conservation area or the twelve listed buildings within the study area that it contains [NHLE: 1047916; 1047917; 1047918; 1047919; 1047920; 1047921; 1047922; 1047923; 1180791; 1285283; 1368767; and 1368805]. The conservation area is focused on the historic core of the hamlet which is now surrounded by housing and commercial development. The key views are inward looking along its historic streets. There is sufficient distance and intervening built form between the conservation area and the Site, and the ZTV (CD A.16 Figure 8.3) demonstrates that the conservation area has no inter-visibility with the Site and this is based on a ZTV that does not include the screening effects of buildings which will further limit the visibility of the Site. It is not considered that there will be significant changes in traffic levels within the conservation area during construction or operation as a result of the Scheme (CD A.15 Chapter 16).

Culham Conservation Area and three of its listed buildings therein

- 2.11 Part of the eastern extent of Culham Conservation Area, containing three grade II listed buildings [NHLE: 1059790, 1059791 and 1194530], lies within the cultural heritage study area. The Site does not form part of the setting of the conservation area nor the listed buildings. The conservation area is focused on the historic core of the settlement. The key views are inward

looking along its historic streets. There is sufficient distance and intervening built form between the conservation area and the Site, and the ZTV (CD A.16 Figure 8.3) demonstrates that the conservation area has no inter-visibility with the Site. The Noise Assessment concludes that there will not be significant increases in noise levels through this area due to construction traffic (CD A.15 Chapter 10). The Transport Assessment (CD A.15 Chapter 16) reports a predicted 20-40% reduction in traffic through the conservation area during operation, which is not EIA significant. The perception of this change in the conservation area and in the setting of its listed buildings is considered to be of negligible benefit. On the conservation area (medium value) and the listed buildings within it (generally of high value), this results in a slight beneficial significance of effect, which is not EIA significant.

Schola Europaea Grade II listed building [NHLE: 1194452]

- 2.12 The Site does not form part of the asset's setting. There is a meaningful gap between the Site and the asset, and the scale of the interventions proposed in the vicinity of the asset are not considered likely to result impact to the asset's significance. The ZTV (CD A.16 Figure 8.3) demonstrates that within the study the conservation area has no inter-visibility with the Site.

Listed Buildings in Appleford

- 2.13 The Site does not form part of the setting of the nine listed buildings within Appleford [NHLE: 1368083; 1052766; 1368085; 1368084; 1052769; 1052767; 1052768; 1052770 and 1368046]. The listed buildings are focused in the historic core of the settlement at its east end away from the Site. There is sufficient distance and intervening built form between the Site and the listed buildings. The ZTV (CD A.16 Figure 8.3) demonstrates that there is no inter-visibility with the Site and this is based on a ZTV that does not include the screening effects of buildings which will further limit the visibility of the Site. The Noise Assessment concludes that there will not be significant increases in noise levels through this area due to construction traffic (CD A.15 Chapter 10). The Transport Assessment (CD A.15 Chapter 16) reports a predicted 30-40% reduction in traffic running north-south through the conservation area during operation, which is not EIA significant. The majority of assets within the settlement are located on the main east-west route through the settlement, so this change in traffic volume will not affect the settings of these assets. Only the grade II listed Elm Hayes [NHLE: 1368046] on Main Road, is located on the main north-south route through the village. As a 17th century cottage aligned gable-end to the road this reduction is unlikely to be a considerable change to the asset's setting, but it may result in some heritage benefit through better understanding of the asset as a rural vernacular cottage. The perception of this change in the setting of Elm Hayes is considered to be of negligible benefit to this asset of high value, resulting in a slight beneficial significance of effect, which is not EIA significant.

Road bridge over Railway (at Appleford) grade II listed building [NHLE: 1368082]

- 2.14 The Site does not form part of the asset's setting. As a historic road bridge associated with the Great Western Railway (GWR), the setting of this asset is assessed as its relationship with Appleford Road, the railway and other listed bridges and structures along it. The ZTV (CD A.16 Figure 8.3) demonstrates that there is no inter-visibility with the Site. The Scheme will have no impact upon the significance of the asset.

Thame Lane Bridge grade II listed building [NHLE: 1409238]

- 2.15 The Site does not form part of the asset's setting. As a historic road bridge associated with the GWR the setting of this asset is assessed as its relationship with Thame Lane, the railway and other listed bridges and structures along it. The ZTV (CD A.16 Figure 8.3) demonstrates that

there is no inter-visibility with the Site. The Scheme will have no impact upon the significance of the asset.

Engine Shed grade II listed building [NHLE: 1385232]

- 2.16 The Site does not form part of the asset's setting. There is significant intervening development between the asset and the Site, and the ZTV (CD A.16 Figure 8.3) demonstrates that there is no inter-visibility with the Site and this is based on a ZTV that does not include the screening effects of buildings and structure nearby which will further limit the visibility of the Site.

Railway Transfer Shed grade II listed building [NHLE: 1368768]

- 2.17 The Site does not form part of the asset's setting. There is significant intervening development between the asset and the Site, and the ZTV (CD A.16 Figure 8.3) demonstrates that there is no inter-visibility with the Site and this is based on a ZTV that does not include the screening effects of buildings and structure nearby which will further limit the visibility of the Site

CD C.1 Annex 3 – Chapter 7 Cultural Heritage Findings – Listed Buildings and Conservation Areas.

- 2.18 CD B.1 Annex 3 - Appendix 7-2 Cultural Heritage Desk Based Assessment concluded that one scheduled monument, one registered park and garden, two conservation areas (and the designated and non-designated assets therein), three listed buildings and five non-designated assets had the potential for impact from the Scheme as a result of changes to their settings and those assets were assessed in CD C.1 Annex 3 – Chapter 7 of the Environmental Statement.
- 2.19 Fullamoor Farmhouse, a grade II listed building, was initially scoped out of the Environmental Assessment in CD A.17 Appendix 7.2 Cultural Heritage Desk Based Assessment, however, following the Regulation 25 request (CD C.2 Appendix A Regulation 25 Request) (dated 26 April 2022) for further information on the assessment of that asset, the Cultural Heritage Desk Based Assessment was updated (CD B.1 Annex 3 – Appendix 7-2) and an addendum to the Environmental Statement Chapter 7 Cultural Heritage (CD B.1 Annex 7: Cultural Heritage November 2022) was provided to include assessment of that asset. This was further updated in relation to the assessment of non-designated archaeological assets in CD C.1 Annex 3 – Chapter 7.
- 2.20 The following section provides information on the assessment of impacts to the two conservation areas (Nuneham Courtenay and Clifton Hampden) and three listed buildings (Fullamoor Farmhouse, Culham Station Ticket Office and Waiting Room, and the Overbridge at Culham Station) that were scoped in to assessment in CD C.1 Annex 3 – Chapter 7 Cultural Heritage.

Nuneham Courtenay Conservation Area and the listed buildings therein

- *The Significance of the Asset, and to What Extent its Setting Contributes to that Significance.*
- 2.21 Nuneham Courtenay Conservation Area covers much of the same area as Nuneham Courtenay Registered Park and Garden and the significance of the conservation area is therefore very much tied to the significance of the park and garden. The significance of the park and garden derives from its artistic and architectural interest as an example of an 18th century designed landscape, comprising a pleasure ground and parkland, together with an 19th century arboretum. The parkland inspired works of art; being painted by a young William Turner in 1787, and, rather negatively, it is credited with inspiring Oliver Goldsmith's poem 'The Detested Village' which condemned rural depopulation and the indulgence of the rich. It was published in 1770 after Goldsmith witnessed the removal of the original Nuneham village to make way for Mason's garden in 1761. The parkland has historical interest due to its association with the

Harcourt family and their patronage of nationally significant architects and landscape architects to design the park and its buildings in several phases. Most notable amongst them is Lancelot 'Capability' Brown, and a plan of the garden he designed survives, strengthening understanding of this connection. The list of associated designers also includes William Mason, William Sawrey Gilpin, James Stuart, Henry Holland and Stiff Leadbetter, all of whom were key pioneers of architecture and garden design. Archaeological interest is also provided by the presence within the parkland of the former village of Nuneham village which was removed to make way for the park with a new village being created to the east of the park, comprising the present day Nuneham Courtenay Village. Archaeological interest is also provided by any parts of the parkland garden that may have been lost, altered or overgrown in the course of the last two centuries.

- 2.22 The setting of the garden includes its siting, approaches and carriage drives, as well as any designed key views of, from and within the garden. The 470ha estate is bounded to the west by the River Thames, and on the other sides largely by agricultural land and woodland which restricts long views into and out of the park on the east and southeast sides. The largely rural setting also includes Culham Science Centre to the south. The park overlies low, undulating hills, with a steep slope towards the west boundary where the land drops down to the river. Important long views look west towards Abingdon and north towards Oxford. The focus of views from within the garden looking out was directed predominantly to the north and west over the landscape and to the river. Other views are inward looking within the garden and along its drives and footpaths. The thick woodland belt along the south and east side of the garden provide an enclosing aspect to that side. This woodland is depicted on Lancelot 'Capability' Brown's plan of the estate from 1779.
- 2.23 The park and garden contain and provides the setting for, the 25 listed buildings within it, which form part of the designed landscape [NHLE: 1048050; 1286105; 1193569; 1048045; 1048046; 1368715; 1286179; 1193424; 1193479; 1193557; 1048049; 1048048; 1368717; 1286127; 1193524; 1368716; 1193586; 1048047; 1286134; 1368718; 1133508; 1368719; 1048051; 1193582; and 1048053]. The majority of the listed buildings are outside the formal cultural heritage study area, however, two grade II listed buildings comprising the Gamekeeper's Cottage [NHLE: 1048050] and the Venison House [NHLE: 1286105], fall within it. These are located as a small building cluster within the parkland, around 950 m to the south-east of the main Nuneham House [NHLE: 1286179]. Both buildings have architectural and historical interest as late-18th century, functional, yet also aesthetic, elements of the wider estate parkland round the house. The buildings' architects are not known. Both are accessed via an offshoot from the south drive. The buildings are contained within their own garden plots and back onto the Black Wood Planation to their east side and further dense woodland planting located around 350 m to the south. The woodland planting screens views out of the park on the east and southeast sides from these buildings and their setting.
- 2.24 There are two notable differences in extent between Nuneham Courtenay Conservation Area and Nuneham Courtenay Registered Park and Garden. The conservation area is smaller than the park at its south and south-western extent, where the park includes Furze Brake, but the conservation area excludes it. The conservation area is also larger than the park at its north-east side, where the conservation area extends to include the re-established, planned village of Nuneham Courtenay. Nuneham Courtenay contains a further 25 listed buildings, all grade II, and dating to the establishment of the village in the 18th century when it was moved from within the park [NHLE: 1048037; 1368710; 1368713; 1048034; 1368714; 1193363; 1048040; 1048043; 1286200; 1368711; 1048035; 1048044; 1048033; 1048038; 1048041; 1193400; 1193386; 1048042; 1048039; 1048004; 1368712; 1286210; 1193395; 1193390; and 1048036]. The buildings line the road and face each other on opposing sides. The significance of the conservation area is the same as that described for the park, with the added interest of the village and its architectural and historic interest. A greater buffer area of non-developed land is present between the conservation area boundary and Culham Science Centre, than is the case for the park, owing to its smaller extent at Furze Brake.

- *The Contribution that the Site Makes to that Significance/Setting of the Asset.*
- 2.25 The Site is outside the confines of the park and garden and the conservation area, in an area of agricultural land that forms part of its setting, contributing to significance through providing a green rural aspect and approach to the park and conservation area on its south and south-east side. It is outside any designed views to and from the asset, so this area makes a limited contribution to significance.
- 2.26 The setting assessment noted thick woodland along the south and south-east side of the designed park and garden, screening views inward and outward on this side, as well as screening views from the settings of the Gamekeeper's Cottage [NHLE: 1048050] and the Venison House [NHLE: 1286105]. A view from within the park and garden and conservation area towards the Scheme is represented by CD A.16 Figure 8.55.
- *The Extent to which the Proposals Enhance or Detract from that Significance and/or the Ability to Appreciate it.*
- 2.27 Within the setting of the conservation area the Scheme includes the Clifton Hampden Bypass which will be constructed to the south-east of the conservation area, between it and Clifton Hampden. The Scheme includes the bypass, adjacent cycle and footway, and grass verges, as well as landscaping to the north and north-west of Clifton Hampden. The proposed bypass crosses a lane that runs parallel to Thame Lane at the perimeter of Culham Science Centre. Realignment of part of this lane is also proposed with the creation of a crossroads. This lane was created in the 20th century and is not associated with the designed park.
- 2.28 The potential impacts arising from the Scheme are linked to the construction and presence of the Scheme within the agricultural setting of the conservation area and the operation of the Scheme including lighting and noise.
- 2.29 The construction and presence of the Scheme results in some change to the character of this part of the asset's setting and the approach to the park. Views of this area are represented by CD A.16 Figure 8.50 and CD A.16 Figure 8.53. The construction and presence of the bypass within the setting of this side of the park will continue the urbanising effect resulting from the existing presence of Culham Science Centre, building on and reflecting this character, and therefore altering the current agricultural setting of this side of the park. Whilst this change will be perceptible, it is considered that the change will alter one minor aspect of the setting of the conservation area, focused in an area that is not a key part of the setting and which has already experienced a degree of change. The village of Nuneham Courtenay, within the conservation area, is outside the formal study area for the EIA and outside the area for detailed traffic assessment. No significant changes to traffic volumes are predicted for this settlement (CD A.15 Chapter 16) and no impact to the significance of listed buildings in this settlement are predicted. The impact of the Scheme is therefore assessed as a negligible impact on the conservation area, resulting in a slight permanent adverse effect, which is not EIA significant.
- 2.30 In terms of the operation of the Scheme, operational lighting is not considered to result in any impact to the significance of the conservation area since the proposed lighting at the Clifton Hampden Bypass only includes the non-motorised user facilities and the southern roundabout, and the lighting is proposed to be dimmed to 75% between 00.00 and 06.00 (CD A.15 Chapter 2 The Scheme). The vast majority of the conservation area, including the Gamekeeper's Cottage [NHLE: 1048050] and the Venison House [NHLE: 1286105], as the closest parkland buildings to the Scheme, were outside the formal area for noise assessment. In order to facilitate the assessment of potential impact from noise on the parkland, conservation area and its listing buildings, the noise assessment consultants provided qualitative comments on the likely noise impacts for inclusion in the Cultural Heritage ES Chapter (CD C.1 Annex 3 – Chapter 7 Cultural Heritage). At a representative point where the boundary of the registered park and garden is at its closest to the Scheme was taken a worst-case assessment, where there will be a minor increase in noise in the short and long term. Further east the conservation

area extends up to the B4015 where moderate increases in noise levels are predicted in the long term only in a very small area (minor in short term), due to anticipated traffic growth on the B4015 in the long term, which connects onto the north-east end of the Scheme, from other developments in the area. These areas are covered by the noise change contour plots indicated on CD A.16 Figures 10.5 and CD A.16 Figure 10.6. Beyond these areas, the impact across the conservation area would be negligible. As a parkland, the conservation area is considered to be sensitive to aural intrusion in terms of its heritage significance. This negligible increase in noise levels within the parkland is therefore assessed as a negligible impact on the conservation area, resulting in a slight permanent adverse effect which is not EIA significant. This impact will be felt in combination with the permanent slight adverse effect resulting from the presence of the Scheme within the asset's setting, this is not considered to increase the level of impact or the significance of effect beyond slight adverse. No operational impacts to the heritage significance listed buildings within the conservation area are anticipated.

- 2.31 The Scheme will visually detract from the agricultural setting of the south side of the conservation area and lead to a negligible increase in noise levels during operation, however this an area that is not a key part of the setting and significance of the asset and which has already experienced a degree of change. In the terms of the NPPF (2023) this impact is considered to result in 'less than substantial' harm to the asset. There will be 'no harm' to individual listed buildings within the conservation area.
- 2.32 'Less than substantial harm' is a broad category that can range from almost 'no harm', at the lower end of the scale, to just below 'substantial harm' at the higher end of the scale. Planning Practice Guidance states that the extent of harm may vary and should be clearly articulated, (Paragraph: 018 Reference ID: 18a-018-20190723) stating:
- 'Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.'*
- 2.33 The paragraphs above describe the area where harm has been identified and, in respect of that, it is considered that this Scheme results in 'less than substantial harm' at the low end of this scale.

Clifton Hampden Conservation Area and the listed buildings therein

- *The Significance of the Asset, and to What Extent its Setting Contributes to That Significance.*
- 2.34 The significance of the conservation area is drawn from its architectural and historical interest as an early-medieval settlement centred on a rise overlooking the river which was probably fordable at that time. The historical interest of the settlement lies in its linear plan form demonstrating how the village grew along two routeways leading from the river crossing. Further historic interest is provided by the area's 26 listed buildings [NHLE: 1059782; 1059785; 1368836; 1194412; 1059781; 1059780; 1368835; 1059779; 1368834; 1059818; 1059815; 1368812; 1047903; 1059783; 1368815; 1059817; 1368843; 1368837; 1368813; 1194421; 1285700; 1194428; 1059784; 1059816; 1059787; 1059786]. This includes their group value with each other. The listed buildings also have architectural interest and provide such interest to the conservation area. The restored Manor House [NHLE: 1368813] and Clifton Hampden Bridge [NHLE: 1059815] were designed Sir George Gilbert Scott, and the Church of St Michael and All Angels [NHLE: 1368837] was also altered by Scott, as part of wider improvements he made to village to create the vision of a picturesque idyll of buildings in the landscape. This is a key historical association for the conservation area. The area also has archaeological interest in its buildings dating from the medieval period and in its open spaces where there is the potential for discoveries relating to the village's early-medieval origins. The area is a pleasant rural village which gave rise to its featuring in the classic work *Three Men in a Boat (To Say Nothing of the Dog)*, a travel account-cum-novel written by Jerome K. Jerome in 1889. In it the settlement is described as 'a wonderfully pretty village, old-fashioned, peaceful, and dainty with flowers, the river scenery is rich and beautiful. If you stay the night on land at Clifton, you cannot

do better than put up at the "Barley Mow". That the settlement could be described in the same way today adds to the significance of the area and provides it with a degree of artistic interest.

- 2.35 The boundary of the conservation area includes the majority of the built form within the settlement, together with fields to rear of buildings lining its main thoroughfares. This defines its character as a contained rural settlement. The approaches to the conservation area have a rural character featuring tree-lined and hedge-lined roads, where open-aspect views are also a strong feature, across farmland that emphasises the rural setting of the conservation area. This contributes to the heritage value of the asset by enhancing understanding of its form as a rural settlement. Views from outside the settlement seldom feature any of its buildings, however from higher ground to the north of the settlement, between it and Nuneham Courtenay Park and Garden, a view of the steeple of the Grade II* listed Church of St Michael and All Angels [NHLE: 1368837] can be achieved where it is nestled in the mature trees along the river valley. Whilst this is distant and unlikely to have been a designed view, it demonstrates Gilbert's Scott's picturesque vision for the conservation area. The river is also a key feature running through the conservation area, and within its setting, from where views of some its key buildings can be achieved.
- 2.36 The significance of the listed buildings within the conservation area is drawn from their individual and collective historic and architectural interest as examples of vernacular building in the village, beginning in the 13th century with the Church of St Michael and All Angels [NHLE: 1368837]. The buildings include farmhouses that illustrate the agricultural history of the area, as well as a series of cottages and polite houses demonstrating several periods of British architectural history and a range of materials and styles. The buildings designed, or altered, by Sir Gilbert Scott have an additional layer of associative historic interest and architectural interest. They are located in proximity with one another and have group value through this architectural association and through patronage. Whilst it is not possible now to view all three assets in combination, it is likely that this was a design intention when they were originally built/altered by Gilbert Scott, in views that also feature the river and its green banks. In terms of the settings of the listed buildings within the conservation area, these are generally inward looking and defined by the bounds of the settlement which is contained entirely within the conservation area boundary. The river also plays a key role in the setting of assets lining its banks and for Clifton Hampden Bridge. The exception to this is the Church of St Michael and All Angels [NHLE: 1368837], where a view of the steeple has been identified from the north, as discussed.
- *The contribution that the Site makes to that significance/setting of the asset.*
- 2.37 The Site is outside the confines of the conservation area, but it falls within its setting as one of the approaches to the conservation area, in this case from the north. This approach currently has a leafy-green rural character, featuring a tree-lined and hedge-lined road (the B4015 Oxford Road (south-west) with open-aspect views between the trees across farmland that emphasises the rural setting of the conservation area.
- 2.38 A fortuitous view of the steeple of the Church of St Michael and All Angels [NHLE: 1368837] from outside the conservation area to the north, reflects Gilbert's Scott's picturesque vision for the conservation area and contributes to the significance of both the church and the conservation area.
- *The Extent to which the Proposals Enhance or Detract from that Significance and/or the Ability to Appreciate it.*
- 2.39 The Scheme in the vicinity of the conservation area comprises the Clifton Hampden Bypass which begins on Abingdon Road at the south of Culham Science Centre and travels north-easterly to the west and north sides of the conservation area, and onto the B4015 Oxford Road heading westward. The bypass will tie-in with the current alignment of the B4015 Oxford Road (east) and a T-junction with a ghost island right turn will be included, to provide access to the current alignment of the B4015 Oxford Road (south-west). The Landscape Masterplan (CD D.152) outlines screening and placemaking features in this area. The proposed tree planting to

the north and west of the conservation area boundary reflects the outline of areas of orchard / woodland shown on 19th century Ordnance Survey maps (see Figure 15 in CD A.17 Appendix 7.2 Cultural Heritage Desk Based Assessment), except moved further north and westward than their historic extent, as those formerly wooded areas have since been built upon. The re-establishment of this woodland setting on the north and west of the conservation area is therefore in keeping with its historic appearance, whilst also providing necessary screening of the Scheme in views within the setting of the conservation area. The newly realigned section of the B4015 Oxford Road is proposed to have a relatively open aspect to both sides providing views across fields and amenity areas and up to existing hedgerows. This reflects the current rural character of the approaches to the conservation area.

- 2.40 The potential impacts arising from the Scheme are linked to the construction and presence of the Scheme within the setting of the conservation area and the operation of the Scheme including lighting, noise and changes in traffic volumes.
- 2.41 The impacts of the construction and presence of the Scheme in the setting of the conservation area are related to changes to the northern approach, and changes to the character of the rural setting of the conservation area on the north and west sides. The Scheme will continue the urbanising effect of the presence of Culham Science Centre to the north-west of the conservation area, building on and reflecting this character, and therefore altering the current agricultural setting that is present to the east of Culham Science Centre. The Landscape Masterplan (CD D.152) reflects the historic character of the conservation area. The bypass and the screening planting will not interfere with the view identified towards the steeple of the Grade II* listed Church of St Michael and All Angels [NHLE: 1368837] from the north, due to the local topography in this area, whereby the bypass will sit within a dip in the foreground with the view oversailing the bypass and screening planting, towards the steeple. This is a daytime view, so night-time lighting/ glow will not affect appreciation of it. No impacts are predicted in relation to other individual buildings within the conservation area, as their settings are inward looking and unaffected by changes outside the northern and western boundary of the conservation area. The construction and presence of the Scheme within the setting of the conservation area is therefore assessed as having a minor impact, resulting in a slight adverse effect, which is not EIA significant. This effect will be of temporary duration, until the planting for screening proposed in the Landscape Masterplan (CD D.152) has matured. After this point the impact will reduce to negligible, resulting in a neutral effect, which is not EIA significant.
- 2.42 Operation of the Clifton Hampden Bypass will take traffic away from the centre of the Clifton Hampden Conservation Area, with a projected 50-60% reduction of traffic through the area (CD A.15 Chapter 16). This is assessed as a beneficial impact of the Scheme which will improve understanding of the conservation area as a rural settlement and allow for greater appreciation of its architectural and historic interests, including those of its listed buildings. Operational lighting is not considered to result in any impact to the significance of the conservation area since the proposed lighting at the Clifton Hampden Bypass includes only non-motorised user (NMU) facilities and the southern roundabout. The lighting is also proposed to be dimmed to 75% between 00.00 and 06.00 (see ES Chapter 2: The Scheme). This will maintain the dark character of the asset's setting which contributes to understanding of it as a rural settlement. The impact of the operation of the Scheme is therefore assessed as negligible, which results in a slight beneficial effect to the conservation area and the listed buildings it contains. This is not EIA significant.
- 2.43 The temporary construction of the Scheme, until the mitigation planting matures, will detract from the significance of the conservation area through change to the rural character of its approach from the north. In the terms of the NPPF (2023), this results in 'less than substantial harm' of temporary duration during construction.
- 2.44 'Less than substantial harm' is a broad category that can range from almost 'no harm', at the lower end of the scale, to just below 'substantial harm' at the higher end of the scale. Planning Practice Guidance states that the extent of harm may vary and should be clearly articulated (Paragraph: 018 Reference ID: 18a-018-20190723), stating:

'Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.'

- 2.45 The paragraphs above describe the area where harm has been identified and in respect of that, it is considered that this Scheme results in 'less than substantial harm' at the low end of this scale until the screening planting matures.
- 2.46 Once the screening planting has matured this harm is reversed, whilst the operation of the Scheme, reducing traffic volumes through the conservation area, will enhance understanding of the conservation area's significance as a rural settlement. This will allow for greater appreciation of its architectural and historic interests, including those of its listed buildings.

Fullamoor Farmhouse grade II listed building [NHLE: 1449039]

- *The Significance of the Asset, and to What Extent its Setting Contributes to that Significance.*
- 2.47 The significance of Fullamoor Farmhouse is drawn from its architectural and historical interest, as a good example of 17th and 18th century vernacular domestic architecture. It has limited archaeological interest as part of the building is timber-framed and therefore holds further evidence of its construction date and techniques. The farmhouse is set within a courtyard and garden. Agricultural ranges that were present to the north of the farmhouse on 19th century OS maps have been demolished. The garden is surrounded on the east, south and west sides by farmland and the north by existing tall trees planted along the boundary. To the north the farm's drive meets Abingdon Road which runs east-west and to the north of the road the landscape takes on the character of a suburban park at the entrance to Culham Science Centre. The setting of the farmhouse comprises its courtyard and garden and the surrounding agricultural landscape to the south, west and east that contributes to understanding of its former function as a farmhouse. This understanding is eroded somewhat through the loss of the historic farmstead ranges that were previously located in the courtyard to the north of the farmhouse. Beyond the former farmstead, the farmhouse is accessed via Abingdon Road. Historically the farm's landholding extended beyond Abingdon Road to the north, and this area therefore has a functional setting relationship with the farmhouse, although there was not a visual connection between that land and the farmhouse due to the intervening farmstead buildings and there still is no visual connection presently. The land to the north of Abingdon Road is no longer farmland, having first been adapted for use as part of the airfield, and subsequently developed as Culham Science Centre. The land now reads as amenity landscaping associated with Culham Science Centre.
- *The Contribution that the Site makes to that Significance/Setting of the Asset.*
- 2.48 The farmhouse is located south of the Site. The Site lies within the land to the north of Abingdon Road that formerly formed part of the farmland associated with the farmhouse. The land is no longer farmland, nor does it appear as such, as it is now part of Culham Science Centre, so whilst it makes a contribution to the setting and significance of the farmhouse through this historic functional relationship, the agricultural land to the south, west and east of the farmhouse makes a much greater contribution. The land north of Abingdon Road is no longer understood as farmland, nor was there historically a visual connection between the two due to the former farmstead ranges that were present between the farmhouse and this land.
- 2.49 There are mature trees within the land to the north and on the northern boundary of the farmhouse's plot that screen views between the farmhouse and the Site. Views in this area are represented by Viewpoints 27 and 28 (CD A.15 Figure 8.42 and CD A.15 8.43). The area provides a historic route of approach to the farmhouse with an overall green character formed by the amenity landscaping to Culham Science Centre, making a very limited contribution to the significance of the farmhouse.
- *The Extent to which the Proposals Enhance or Detract from that Significance and/or the Ability to Appreciate it.*

- 2.50 The Scheme in the vicinity of the asset includes a new roundabout, to the north-west, to facilitate access to Culham Science Centre and the realigned A415 on embankment. There will also be a series of attenuation ponds and the existing A415 will become a cycleway and access lane to Fullamoor Farmhouse. The Landscape Masterplan (CD D.149) proposes that the existing hedge to the north side of Abingdon Road will be replanted with native species hedgerow with trees, and the surrounding area will be species rich grass interspersed with trees, woodland edge planting and ornamental shrub and bulb planting, some of which are retained existing planting. The area currently reads as amenity landscaping associated with Culham Science Centre and this overall character will be unchanged as a result of the Scheme, with the new landscaping scheme also reading as amenity landscaping associated with Culham Science Centre and the road and roundabout.
- 2.51 The potential impacts arising from the Scheme are linked to the construction and presence of the Scheme within part of the setting of the listed building and the operation of the Scheme including lighting and noise.
- 2.52 The construction and presence of the Scheme in the setting of the asset will have a slightly urbanising effect due to the scale and type of the Scheme, but this takes place within an area of the asset's setting that is already significantly changed. The Landscape Masterplan (CD D.149) includes planting that aims to minimise the impact of the Scheme. The construction of the Scheme is therefore viewed as having a negligible impact, resulting in a slight adverse and permanent effect, which is not EIA significant.
- 2.53 The operation of the Scheme includes lighting. Night-time views in this area are represented by Night Viewpoint 27 (see CD A.16 Figure 8.69). This demonstrates that there is lighting along the existing A415, and at the entrance of the Culham Science Centre. The latter is filtered by existing vegetation, with some sky glow evident. Car headlights and taillights are visible along the existing A415, which is a fairly busy route. The addition of the operational lighting to this existing lighting will increase the urbanising influence of the existing lighting in the land to the north of the farmhouse. A Preliminary Lighting Contour drawing has been produced to demonstrate the light spill from the Scheme (CD C.2 Appendix J: Light Spill Drawings CHB_PD ACM HLG SW_ZZ_ZZ_ZZ DR LE 1305 Rev P01). This indicates that Fullamoor Farmhouse would experience a minimal increase of up to 1.0 LUX additional light spill from the Scheme. Lighting will be dimmed to 75% between 0.00 and 06.00 (CD A.15 Chapter 2). The urbanising effect of the operational lighting will be felt in combination with the permanent slight adverse effect resulting from the presence of the Scheme within the asset's setting. Given the existing lighting in this area, this is not considered to increase the level of impact or the significance of effect beyond slight adverse.
- 2.54 The operational noise assessment (CD A.15 Chapter 10 and CD A.16 Figure 10.5) includes Fullamoor Farm in a group of receptors named '9 individual properties on the A415 east of Culham Station'. The noise assessment reports the impact to people living in the buildings, whereas the focus of the heritage assessment is on the impact to the significance of the building through changes to noise levels within its setting. The farmhouse is located to south of the A415 which is a major road that is bypassed by the scheme in this location. Traffic noise is therefore an existing feature of the asset's setting. In the opening year the noise assessment notes that there will be a beneficial impact ranging from minor to major decrease in noise levels depending on the façade/floor. In the long term this impact ranges from negligible change to moderate decrease in noise levels. This is not considered to affect the significance of the asset, but it demonstrates that the Scheme will not worsen noise levels within the asset's setting.
- 2.55 The Scheme will result in change to the ability to understand the land to the north of Abingdon Road as formerly being part of the farmland associated with the farmhouse, however this not something that it is readily understandable at present due to the previous development of this land firstly as part of the airfield, and subsequently as Culham Science Centre. In the terms of the NPPF this impact is considered to result in 'less than substantial' harm to the asset.
- 2.56 'Less than substantial harm' is a broad category that can range from almost 'no harm', at the lower end of the scale, to just below 'substantial harm' at the higher end of the scale. Planning

Practice Guidance states that the extent of harm may vary and should be clearly articulated (Paragraph: 018 Reference ID: 18a-018-20190723) stating:

'Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.'

- 2.57 The paragraphs above describe the area where harm has been identified and, in respect of that, it is considered that this Scheme results in 'less than substantial harm' at the low end of this scale.

Culham Station Ticket Office and Waiting Room grade II* listed building [NHLE: 1059789]

- *The Significance of the Asset, and to What Extent its Setting Contributes to that Significance.*
- 2.58 Culham Station Ticket Office and Waiting Room is located to the north of Abingdon Road between Clifton Hampden and Culham. The station is closest to Clifton Hampden, but it is in Culham parish and the Great Western Railway (GWR) therefore called it Culham. It formed part of an extension to the GWR in 1844 from Didcot to Oxford and was designed by Brunel and constructed in red brick on a stone plinth with ashlar stone dressings in a Tudor revival style. The building is a rare survival of a Brunel-designed station and it is the only surviving example of a station built to this particular design. This provides the asset with associative historical interest and architectural interest. These are enhanced by the survival of Brunel's original design drawing of the station. The station has group value with the adjacent and contemporary grade II listed Culham Station Overbridge [NHLE: 1401203], also designed by Brunel, along with assets further afield, such as the grade II listed Appleford Station Overbridge [NHLE: 1368082] and Thame Lane Bridge [NHLE: 1409238]. These structures form a key collection of Brunel-designed buildings and structures on the branch line, each with historical and architectural interest, as well as group value with one another.
- 2.59 The structures provide a functional setting relationship with the station informed by their relationship with the active railway line and with each other. This setting contributes to the station's historic and architectural interests. The station, along with the associated grade II listed Culham Station Overbridge [NHLE: 1401203], is in an enclosed area, with mature planting, generally screened from view of Abingdon Road to the south, and Culham Science Centre to the east. This enclosed character contributes to understanding of the assets as a collection of buildings forming a rural station.
- *The Contribution that the Site makes to that Significance/Setting of the Asset.*
- 2.60 The station is located approximately 30 metres north-west of the Site. Views in this area are represented by Viewpoint 26 (CD A.16 Figure 8.41). The Site lies beyond the asset's enclosed setting and in an area already significantly altered by the creation of Culham Science Centre.
- *The Extent to which the Proposals Enhance or Detract from that Significance and/or the Ability to Appreciate it.*
- 2.61 Near the station the Scheme includes a new roundabout, to the east, to facilitate access to Culham Science Centre and a series of attenuation ponds. The Landscape Masterplan (CD D.149) includes landscaping at the new junction where the strategy proposes retention of the existing mature planting east of the listed building, that presently screens it from view. The retention of this existing planting will continue to effectively screen the construction and presence of the Scheme from the asset. This, combined with the Scheme taking place within an area already significantly changed by the presence of Culham Science Centre, means that there are no impacts predicted to the station. This results in a neutral effect, which is not EIA significant.
- 2.62 The Scheme would not enhance or detract from the significance and/or the ability to appreciate the asset. In the terms of the NPPF (2023) this results in 'no harm' to asset.

Culham Station Overbridge grade II listed building [NHLE: 1401203]

- *The Significance of the Asset, and to What Extent its Setting Contributes to that Significance.*
- 2.63 Culham Station Overbridge is a Brunel-designed, brick-built, elliptical-arched overbridge which carried the Dorchester-on-Thames to Abingdon Road over the Didcot Junction to Oxford GWR Branch line. It has group value with the adjacent and contemporary Culham Station Ticket Office and Waiting Room grade II* listed building [NHLE: 1059789], as well as with Appleford Station Overbridge [NHLE: 1368082] on the line to the south, which is contemporary with it and also designed by Brunel of similar style, and with Thame Lane Bridge [NHLE: 1409238], also designed by Brunel, as a brick-built flying segmental arch road bridge designed by Brunel. These structures form a key collection of Brunel-designed building and structures on the branch line, each with historical and architectural interest, as well as group value with one another.
- 2.64 The setting of the structures is informed by their relationship with the active railway line and with each other. This setting contributes to the bridge's historic and architectural interests. The bridge, along with the associated grade II* listed Culham Station, is in an enclosed area, with mature planting, generally screened from view of Abingdon Road to the south, and Culham Science Centre to the east. This enclosed character contributes to understanding of the assets as a collection of buildings forming a rural station.
- *The Contribution that the Site makes to that Significance/Setting of the Asset.*
- 2.65 The station is located approximately 30 metres north-west of the Site. Views in this area are represented by Viewpoint 26 (CD A.16 Figure 8.41). The Site lies beyond the asset's enclosed setting and in an area already significantly altered by the creation of Culham Science Centre.
- *The Extent to which the Proposals Enhance or Detract from that Significance and/or the Ability to Appreciate it.*
- 2.66 Near the asset the Scheme includes a new roundabout, to the east, to facilitate access to Culham Science Centre and a series of attenuation ponds. The Landscape Masterplan (CD D.149) includes landscaping at the new junction where the strategy proposes retention of the existing mature planting west of the listed building that presently screen it from view. The retention of this existing planting will continue to effectively screen the construction and presence of the Scheme from the asset. This, combined with the Scheme taking place within an area already significantly changed by the presence of Culham Science Centre, means that there are no impacts predicted to the overbridge. This results in a neutral effect, which is not EIA significant.
- 2.67 The Scheme would not enhance or detract from that significance and/or the ability to appreciate the asset. In the terms of the NPPF (2023) this results in 'no harm' to asset.

3. RESPONSE TO INTERESTED PARTIES

Jacqueline Mason (letter from Thrings LLP dated 20 September 2023) (CD N.3)

- 3.1 An assessment of the impact of the Scheme upon Fullamoor Farmhouse Grade II listed building was initially scoped out of detailed assessment in the EIA because the land to the north of Abingdon Road was not, at that time, understood to have formerly formed part of the farmland associated with the farm. The representation submitted on behalf of Jacqueline Mason on 10 January 2022 included a Heritage Review carried out by HCUK [Annex A]. The Heritage Review included evidence, in the form of a 1909 Estate Map (Figure 5 of HCUK Heritage Review), and historic Ordnance Survey maps and aerial photographs that show that the land to the north of Abingdon Road, within the Site, formed part of the farmland associated with the farm until it was redeveloped, firstly as a Second World War airfield, then a conversion of this to the Government buildings, and then as part of Culham Science Centre.
- 3.2 This representation led to a Regulation 25 request for further information from the Conservation Officer for SODC (dated 26 April 2022) (CD B.2 Appendix A Regulation 25 Request) requesting that the Applicant provide a detailed assessment of the effects of the Scheme upon Fullamoor Farmhouse as part of the EIA.
- 3.3 An addendum to the EIA was submitted in November 2022 (CD B.1 Annex 2 and CD B.1 Annex 3) which contained an assessment of the effects of the Scheme on Fullamoor Farmhouse and this included the understanding that the land within the Site did formerly form part of the farmland associated with the farmhouse, and therefore forms part of its setting through this former functional relationship. The EIA concluded that the construction, presence and operation of the Scheme in the setting of the asset will have a slightly urbanising effect due to the scale and type of the Scheme, but that this is within an area of the asset's setting that is already significantly changed. The Scheme is therefore viewed as having a negligible impact, resulting in a slight permanent adverse effect, which is not EIA significant.
- 3.4 In the representation dated 20 September 2023, at paragraph 2, it is stated that “there will, therefore, be harm to a designated heritage asset which may be less than substantial, but must be considered as part of the application”. An assessment of harm was not made in relation to the Grade II Listed Fullamoor Farmhouse in the EIA, but this has been provided in Paragraphs 2.50 and 2.51 of this Heritage Note, where ‘less than substantial harm’ at the low end of the scale is identified due to the urbanising influence of the Scheme within the asset's setting.
- 3.5 In the representation dated 20 September 2023 (CD N.3), at paragraph 2, it is stated that ‘steps must be taken to appropriately minimise and mitigate this harm’. Such steps were taken in the Regulation 25 Responses and ES addendum. The landscape planting proposed to the north of Fullamoor Farmhouse was increased in density due to concerns raised about the lack of landscape planting at the Culham Science Centre roundabout. Immediately north of Fullamoor Farmhouse, additional native species hedgerow, individual trees and woodland edge/ scrub planting were proposed on land between Fullamoor Farmhouse and the Scheme. A comparison can be drawn by comparing Figure 8.72p of the originally submitted Planning Application [Annex B], with The Landscape Masterplan submitted in June 2023 (CD D.149), which is the latest submitted landscape design for that area.
- 3.6 In considering the additional information submitted as part of Regulation 25 Responses (November 2022, April 2023), Revised Submission (June 2023) and the ES Addendums (November 2022 and April 2023), the Conservation Officer for SODC stated (dated 20 June 2023) (CD E.34) that:

“The impacts to Fullamoor Farmhouse are now better understood and the lighting strategy and planting proposals reflect this. Upon completion there will be a reduction in vehicular impacts as the main road is moved further away from the building and although lighting in the area will increase, this is set further from the building than existing street lighting...”

I consider that the detail submitted is suitable to understand the likely impacts of the proposed infrastructure works...

I consider that there would be less-than-substantial harm to the significance of Fullamoor Farmhouse and the Clifton Hampden Conservation Area during the construction phases, at the lower end as this is still some distance away from any direct impacts and in the context of existing road infrastructure. I believe on completion this harm is likely to have significantly reduced to no harm as the infrastructure would take vehicles and lighting further away from the heritage assets than existing providing a moderate benefit as long as the acoustic and landscape mitigation proposed can be achieved.”

ANNEX A – Representation submitted on behalf of Jacqueline Mason on 10 January 2022 including a Heritage Review carried out by HCUK.

THRINGS

SOLICITORS

FAO: Emily Catchside
Oxford County Council
County Hall
New Road
Oxford
OX1 1ND

Also by email to: planning@oxfordshire.gov.uk

10 January 2022

Your Reference: R3.0138/21
Our Reference: FMQ/M8040-1

Direct Line: 0117 930 9572
Direct Fax:
Email: fquartermain@thrings.com

Dear Sirs

R3.0138/21 - The dualling of the A4130 carriageway (A4130 Widening) from the Milton Gate Junction eastwards, including the construction of three roundabouts; - A road bridge over the Great Western Mainline (Didcot Science Bridge) and realignment of the A4130 north east of the proposed road bridge including the relocation of a lagoon; - Construction of a new road between Didcot and Culham (Didcot to Culham River Crossing) including the construction of three roundabouts, a road bridge over the Appleford railway sidings and road bridge over the River Thames; - Construction of a new road between the B4015 and A415 (Clifton Hampden bypass), including the provision of one roundabout and associated junctions; and - Controlled crossings, footways and cycleways, landscaping, lighting, noise barriers and sustainable drainage systems on A linear site comprising a corridor between the A34 Milton Interchange and the B4015 north of Clifton Hampden including part of the A4130 east of the A34 Milton Interchange, land between Didcot and the former Didcot A Power Station and the Great Western Mainline, land to the north of Didcot where it crosses a private railway sidings and the River Thames to the west of Appleford-on-Thames before joining the A415 west of Culham Station, land to the south of Culham Science Centre through to a connection with the B4015 north of Clifton Hampden (“the Application”)

As you know, we are instructed by Mrs Jacqueline Mason (“our Client”) of Fullamoor Farmhouse, Clifton Hampden. Fullamoor Farmhouse is a grade II listed building set to the south of the existing A415 Abingdon Road. We write further to our letter of 7 December 2021.

As set out in our previous letter, our Client commissioned a heritage report due to deficiencies in the Council’s own application documentation. This report, prepared by HCUK Group, is enclosed with this letter. We summarise its contents as follows:

- The Cultural Heritage Desk-Based Assessment produced by the Council in support of the Application has inappropriately scoped Fullamoor Farmhouse out from a full assessment and is therefore deficient.

The Paragon ▪ Counterslip ▪ Bristol ▪ BS1 6BX ▪ Tel: 0117 930 9500 ▪ Fax: 0117 929 3369 ▪ DX: 7895 Bristol
Email: solicitors@thrings.com ▪ www.thrings.com Also in Bath, London, Romsey and Swindon

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- The land to the north of Fullamoor Farmhouse (including the Application site) contributes to the significance of our Client's property as a designated heritage asset.
- The proposed development would result in a notable change to the setting of Fullamoor Farmhouse. There will, therefore, be harm to a designated heritage asset which has not been considered by the Application.
- This harm may be less than substantial, but the Council should appropriately minimise and mitigate this harm.

Given the clear conclusions of this report, we look forward to further discussions with the Council on amendments and mitigations which must be introduced to make the proposed development acceptable in heritage terms.

If we can be of any further assistance in relation to this matter, please don't hesitate to contact the writer on the above contact details.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Thrings LLP', is written over a faint, light blue rectangular stamp.

Thrings LLP

Enc: HCUK Group Report

Fullamoor Farmhouse – Heritage Review

Clifton Hampden Bypass (Ref: R3.0138/21)

Introduction

1. In November 2021, an application was submitted to Oxfordshire County Council for infrastructure upgrades between Didcot and Abingdon (ref: R3.0138/21). The application description reads:

"The dualling of the A4130 carriageway (A4130 Widening) from the Milton Gate Junction eastwards, including the construction of three roundabouts; - A road bridge over the Great Western Mainline (Didcot Science Bridge) and realignment of the A4130 north east of the proposed road bridge including the relocation of a lagoon; - Construction of a new road between Didcot and Culham (Didcot to Culham River Crossing) including the construction of three roundabouts, a road bridge over the Appleford railway sidings and road bridge over the River Thames; - Construction of a new road between the B4015 and A415 (Clifton Hampden bypass), including the provision of one roundabout and associated junctions; and - Controlled crossings, footways and cycleways, landscaping, lighting, noise barriers and sustainable drainage systems."

2. HCUK Group have been commissioned by Jaqi Mason, owner of Fullamoor Farmhouse (a grade II listed building), to review the application and provide commentary on the potential heritage impacts with regards to this designated heritage asset. This note has been informed by a site visit and review of the application submission. Particular regard is given to the conclusions of the submitted Environment Statement (Chapter 7, Cultural Heritage) and its Appendices, Appendix 7.1 Gazetteer of Cultural Heritage Assets and Appendix 7.2 Cultural Heritage Desk Based Assessment (Aecom, September 2021).



Figure 1: Fullamoor Farmhouse (grade II)

Review of the Submitted Documentation

3. The submitted Cultural Heritage Desk-Based Assessment provides a brief overview of the significance of Fullamoor Farmhouse as follows:

"Fullamoor Farmhouse [A161] is a grade II listed farmhouse located approximately 70 m south of the Site. The farmhouse's significance is drawn from its architectural and historical interest, as a good example of 17th and 18th century vernacular domestic architecture. The building has two main ranges forming an L-shaped plan, and various outshuts and additions have been built on the north and east sides. The first phase of the building appears to be a c.17th century range orientated north-south, and which meets an 18th century east-west range at the southeast corner. There is a Victorian addition at the junction of the two, along with several later outshuts. The farmhouse is set within a courtyard and garden."

4. It is clear that the above appraisal is heavily based on the building's List Description rather than thorough assessment of the building itself. It is also

relevant to note that the building has not been visited by the authors of the report. Fullamoor Farmhouse is not publicly assessable or clearly visible from surrounding public realm and the owner, Jaqi Mason, was not contacted regarding a site visit onto her property.

5. With regards to the setting of this asset, the report summarises:

"To the north the farm's drive meets Abingdon Road which runs east-west and to the north of the road the landscape takes on the character of a suburban park at the entrance to Culham Science Centre... The land to the north of the farm does not form part of this setting relationship and does not contribute to the significance of the asset."

6. It then concludes that Fullamoor Farmhouse should be scoped out of the assessments given that: *"The Site does not form part of the asset's setting. The farmland setting of the asset ends at the existing Abingdon Road on its north side."*
7. This is a clearly incorrect assessment and one which would not have been made had the farmhouse been actually visited. While it is accepted that the road forms a boundary to the north of the farmhouse's curtilage and that there is limited visual relationship with land to the north, this does not mean there is no relationship between the farmhouse and this area or that other aspects of its setting bar 'farmland' contribute to its significance. The relationship between the farmhouse and land to the north is considered in more detail below.
8. Due to the above assessment, the Cultural Heritage Desk-Based Assessment has scoped Fullamoor Farmhouse out from a full assessment. As a result of this, the listed building not being fully or properly assessed, the submitted documentation does not provide any assessment of the development's effect on the significance of this asset and no mitigation measures have been considered.

Assessment and Potential Impacts

9. Due to the recent listing date of Fullamoor Farmhouse (November 2017), the building's list description is thorough and provides a detailed assessment of the building's history and reasons for designation (i.e. its special interest and

significance). The asset's full list description can be read in full at **Appendix 1** of this report. The list description summarises the asset's significance as:

"Fullamoor Farmhouse, an C18 house with earlier origins, is listed at Grade II for the following principal reasons:

Architectural interest:

** A multi-phase building that retains a significant proportion of fabric from its principal stages of development, which pre-date 1840; * The north/south range retains timber framing, and so has the potential to provide evidence of the date and the vernacular tradition for this type of construction; * The early plan forms remain legible and clearly illustrate the development of the building, reflecting the changing modes of use of domestic buildings from the C17 onwards.*

Historic interest:

** The high-quality construction of the east/west range may reflect the prosperity of the farm during the mid to late C18, and so has the potential to contribute to our understanding of the historic agricultural economy of the region."*

10. When dealing with the setting of heritage assets, advice contained within Historic England guidance (The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3, 2nd Edition, 2017) advocates a stepped approach as follows:

- Step 1: Identify which heritage assets and their settings are affected
- Step 2: Assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated
- Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it
- Step 4: Explore ways to maximise enhancement and avoid or minimise harm

- Step 5: Make and document the decision and monitor outcomes
11. Step 1 involved identifying Fullamoor Farmhouse as an asset potentially affected by the proposed development. Moving to Step 2 of the methodology, while it is clear that it is the farmland setting of Fullamoor Farmhouse (to the south) which most contributes to the significance of the asset and the ability to appreciate that significance, land to the north of Abingdon Road also contributes. The contribution land to the south of the farmhouse makes to the asset's significance is fully explored within a separate document produced by Keevill Heritage Ltd in March 2018, which is provided at **Appendix 2** of this report.
 12. With regards to the asset's setting to the north, while this part of the setting has been heavily altered through the introduction of the science park and other built form, key elements of the setting which contribute to the significance of Fullamoor Farm and allow its significance to be better revealed include:
 - The area's overall green character. While altered, the immediate land to the north of the curtilage of Fullamoor Farmhouse possesses a green and generally open character with existing built form to the north well concealed (**Figures 2 and 3**). This allows a retained rural character to the approach to the listed building.
 - The retained historic route which provides access to Fullamoor Farmhouse. The road itself, while more urbanised than it would have been historically, forms an important part of the asset's setting being the original access route which retains a degree of historic longevity (**Figure 4**).
 - Historic links between Fullamoor Farmhouse and land to the north of Abingdon Road. Information contained within the Keevill Heritage Ltd report confirms that historically the extent of land owned by Fullamoor Farmhouse extended to both the north and south of the Abingdon Road (**Figures 5 and 6**) This arrangement only changed in the late 20th century, following the subdivision and sale of the farm.



Figures 2 and 3: Views east and west along Abingdon Road at the junction with Fullamoor Farmhouse's access

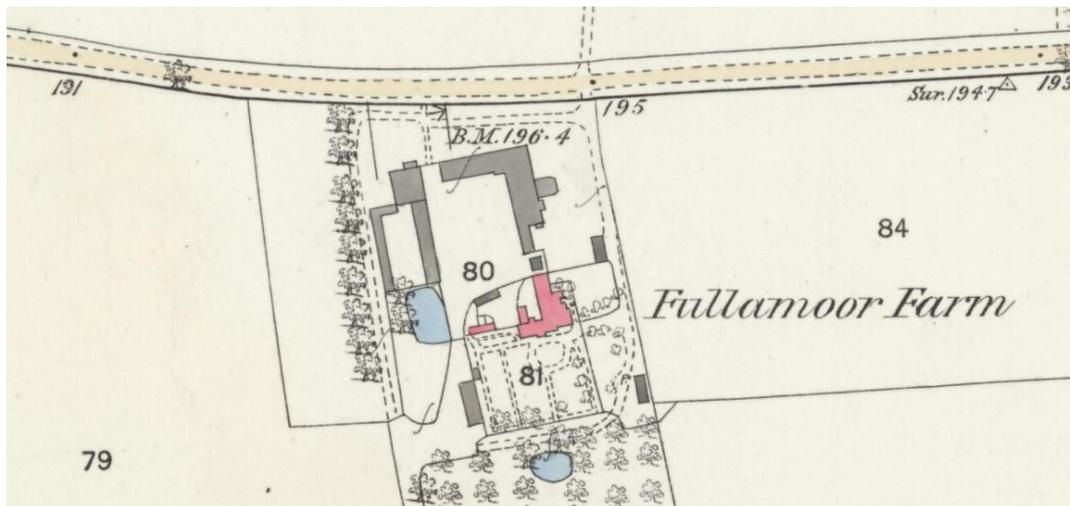


Figure 4: 1881 Ordnance Survey map (surveyed 1878) showing the historic access arrangements to Fullamoor Farmhouse which remain present on site today

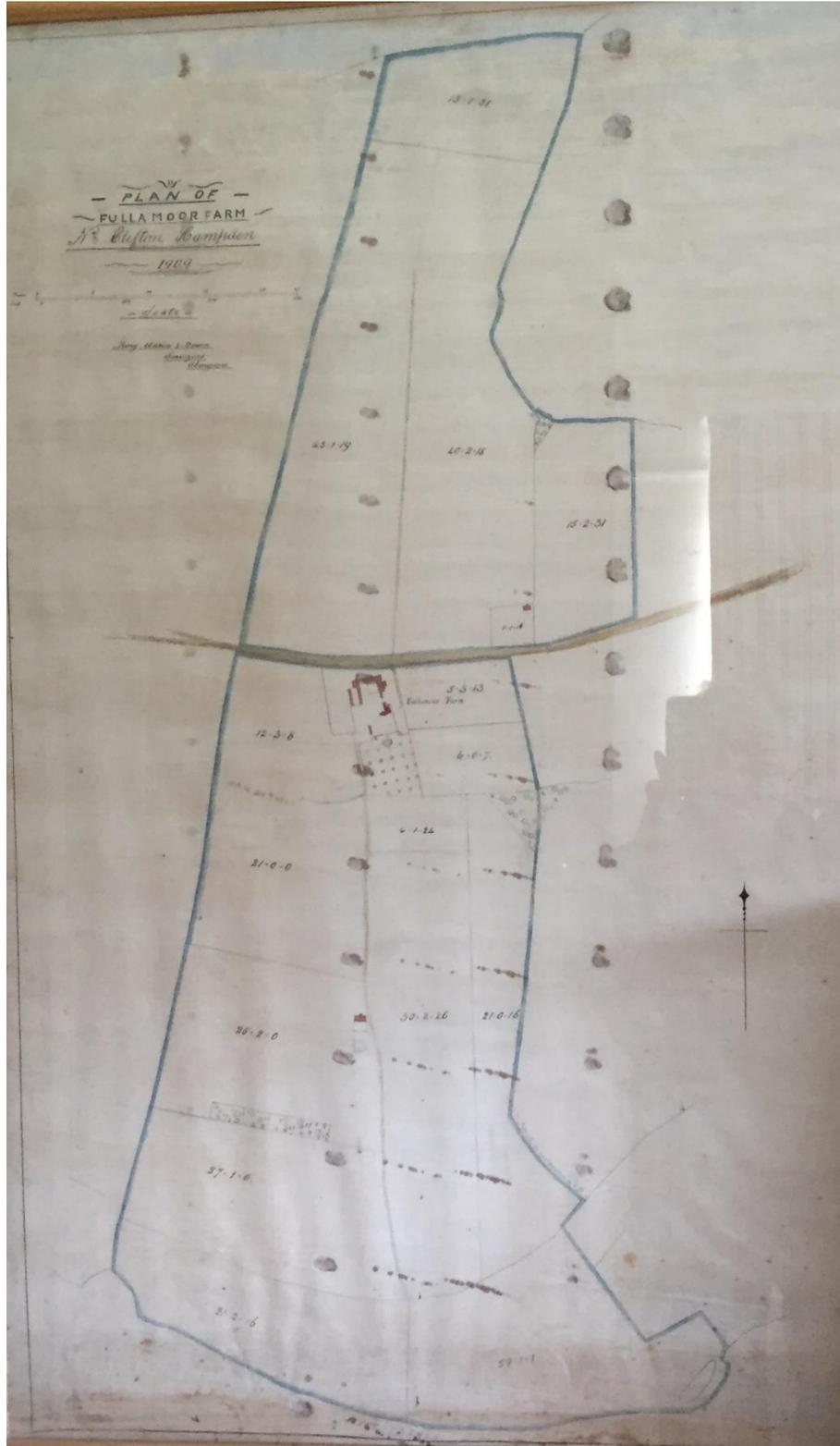


Figure 5: 1909 Estate Map of Fullamoor Farm demonstrating the extent of land within the farm to the north of Abingdon Road

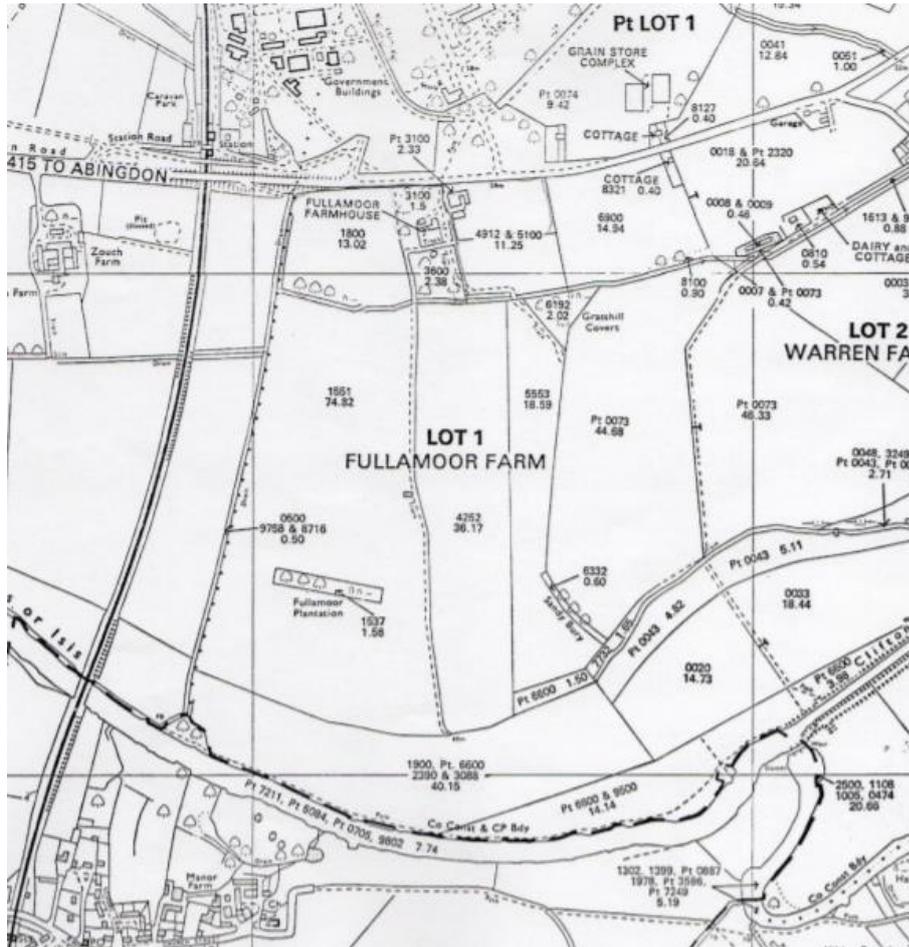


Figure 6: Mid 1980s auction plan showing the extent of Fullarmoor Farm (Lot 1) which included land to both the north and south of Abingdon Road

13. The proposed development would result in a notable change to the setting of Fullarmoor Farmhouse to the north. These effects can be summarised as:

- A marked increase in urbanisation to the north of the farmhouse;
- A subsequent reduction in green character to the north of the farmhouse;
- Increased levels of activity and light to the north of the farmhouse and potential increases in noise levels all of which would affect the current tranquil and rural character of the farmhouse and its setting; and
- The loss of the original access to the farmhouse. The new road would result in the existing and historic alignment of Abingdon Road becoming a cul-de-sac serving the a small number of properties.

14. Turning to Step 3 of the methodology, the change to the primary and historic route of the listed building alongside increased urbanisation, activity, lighting and (potentially) noise on land directly north of it have a clear potential to result in harm to the significance of the listed building. Any harm is likely to be relatively limited and within the lower end of less than substantial in NPPF terms. However, due to the inadequacies of the submitted heritage documentation, a full assessment properly understanding impacts has not been undertaken and ways in which the harm could be minimised or mitigated (Step 4 of the methodology) have not been considered. Ways to minimise the harm and mitigate the effects could include a variety of proposals such as:

- Changes to the road design. This could, for example, include a reduction in lighting, use of noise reducing surfaces, dropping of the levels of the roundabout or the use of bunding etc.
- Additional landscaping along the north boundary of the farmhouse which could help screen the road and reduce any sense of increased activity, vehicle movements and lighting effects.
- Alterations to the design of the retained access Fullamoor Farmhouse to provide the road with the character of a country lane to better relate to the asset's rural past and to avoid the access being used for parking by users of the Culham Science Centre.

Summary and Conclusion

15. Overall, based on the available information submitted as part of the application and following the application of professional judgement after a site visit, it is concluded that the proposed development would result in less than substantial harm to the significance of the grade II listed Fullamoor Farmhouse through a change within the asset's setting. Whilst any harm is likely to be on the lower end of the less than substantial scale, it should be minimised wherever possible and this could be achieved through minor changes to the scheme. In accordance with paragraph 202 of the NPPF, the harm identified as part of this assessment should be weighed against the public benefits of the scheme.

16. Given the differing assessments presented there is a question regarding the robustness of the submitted heritage documentation. With the provisions of Section 66 the Planning (Listed Building and Conservation Areas) Act 1990 in mind, and given the differing assessments, we would urge the Local Planning Authority to carefully consider heritage impacts. In particular, we would urge the Local Planning Authority to consider potential ways in which the effects on the significance of Fullamoor Farmhouse, a designated heritage asset, could be appropriately minimised and mitigated.

Sara Davidson BSc MSc IHBC

6 January 2022

Appendix 1: Fullamoor Farmhouse List Description

Statutory Address: Clifton Hampden, Abingdon, OX14 3DD

The building or site itself may lie within the boundary of more than one authority.

County: Oxfordshire

District: South Oxfordshire (District Authority)

Parish: Clifton Hampden

National Grid Reference: SU5335595099

Summary

House, probably originating in the C17, with a major enlargement in 1769, a Victorian extension, and subsequent additions.

Reasons for Designation

Fullamoor Farmhouse, an C18 house with earlier origins, is listed at Grade II for the following principal reasons: Architectural interest:

* A multi-phase building that retains a significant proportion of fabric from its principal stages of development, which pre-date 1840; * The north/south range retains timber framing, and so has the potential to provide evidence of the date and the vernacular tradition for this type of construction; * The early plan forms remain legible and clearly illustrate the development of the building, reflecting the changing modes of use of domestic buildings from the C17 onwards.

Historic interest:

* The high-quality construction of the east/west range may reflect the prosperity of the farm during the mid to late C18, and so has the potential to contribute to our understanding of the historic agricultural economy of the region.

History

Fullamoor Farmhouse is a multi-phase building, originating, probably, in the C17. The Victoria County History states that the farmhouse dates from the late C18, however, the building fabric suggests earlier origins: the north/south range of the farmhouse appears to have originally been a two-cell, timber-framed building, and there is evidence of a ladder hatch to the attic, suggesting that the central stair may be a later insertion. This range was encased in brick in 1769, evidenced by two date inscriptions. Similarity in the style and form of brickwork suggests that the east/west range is contemporary with the 1769 encasement of the north/south range; this is supported by the 1786 estate map, which clearly shows these two main ranges.

The estate map shows ancillary agricultural buildings adjoining the north/south range of the house, and there were further agricultural buildings to the north-west. On the 1830 1" Ordnance Survey, Fullamoor is named Clifton Farm. The late-C19 and early-C20 Ordnance Survey maps show the development of the farmstead; by the time of the 1972 map all of the C18 farm buildings have been removed, leaving only the farmhouse, which remained in use as the principal farm residence until the 1990s. There is a heavily-altered range to the north-west of the farmhouse, possibly once a cartshed, which was present by maps of the late C19, and the garden walls to the south also appear to date from this period. Sections of the walls have been rebuilt, and openings have been inserted, though the general layout survives. There is a small, square-plan, late-C19 structure with a pyramidal roof built into the north-east corner.

The grey-brick-faced south-eastern extension is first shown on the 1878 map; a large modern conservatory (excluded from the listing) has been built on the south elevation. The main porch, and the outshuts on the west elevation were present by 1878, though have been heavily altered. An undated aerial photograph, probably mid-C20, shows a pitched porch on the southern elevation of the east/west range; on a photograph taken in 1980, this had been removed. There has been internal reordering to the east/west range, including the removal and repositioning of the stair and reconfiguration of the first floor.

Details

House, probably originating in the C17, with a major enlargement in 1769, a Victorian extension, and subsequent additions.

MATERIALS: constructed from red brick laid in Flemish bond, with some elevations including blue brick headers. A section is built in rubble stone in the earlier part of the building, and one elevation of the Victorian addition is built in grey brick. Roofs are covered in clay tiles and there are brick chimneystacks.

PLAN: the building has two main ranges forming an L-shaped plan, and various outshuts and additions have been built on the north and east sides. The first phase of the building appears to be that which is orientated north/south, and which meets the east/west range at the south-east corner; there is a Victorian addition at the junction of the two. There are various single-storey outshuts on the east elevation of the north/south range, and double-height additions on the north elevation of the east/west range.

EXTERIOR: the north/south range is single storey with a tall attic, with a pitched roof and central chimneystack. The west elevation has two windows to the ground floor; they are wide with segmental-arched heads, and form the stylistic basis for those found elsewhere on the building. All windows are modern replacements, replicating the earlier glazing pattern. There is brick storey band, and two dormers – that to the right being much larger – to the attic. The north gable end is constructed from rubble stone at ground-floor level with brick above, indicating where it was once enclosed by ancillary agricultural buildings, as shown on the 1786 map. An external brick stack (not original) has been removed from the gable end, leaving scars in the brickwork and exposing bricks inscribed 'EC 1769' and 'EL 1769'. The east elevation of this range has been built upon in various phases; two lean-to outshuts have been linked together as part of the C21 reconfiguration.

The south elevation of the east/west range is a polite composition: it is of two storeys with an attic, symmetrical, with a central doorway with wide, segmental-arched windows to either side on both floors, and a narrower pair of casements above the door. There is projecting brick storey band, as on the northern range. There are two pitched dormers to the attic. The doorcase and door are modern. The northern elevation of this range is dominated by two gabled extensions, heavily altered; that on the right has a modern double-height oriel window lighting the

stair. To the right of this is the original elevation of the east/west range, which has a wide, segmental-arched window to each floor, as per the south elevation.

At the south-east corner is the Victorian extension. On the south elevation it is visible only at first-floor level, owing to the addition of the conservatory (excluded from the listing); it is built in grey brick and has a large pitched dormer, with a wide window with a hood moulding. The east gable end is in red brick; it is blind and has an external stack.

INTERIOR: on the ground floor of the earlier range there is some evidence of a timber frame, which has been replaced by, or encased in, the brick elevations. In the study, the floor-frame to the attic is exposed: there is a deep spine beam supporting roughly-hewn joists. A timber at the south-west corner of the room suggests there may have been a ladder hatch to the attic, and hence the stair, which rises between the two ground-floor rooms, may be a later insertion. The drawing room, to the south of the stair, was the only room to be heated in this part of the building; the chimneybreast remains, and has a reproduction chimneypiece. The spine beam is exposed in this room, though the rest of the floor frame has been boarded over. Upstairs, parts of two curved principal roof trusses are exposed, as is the wall plate and purlins.

The east/west range has been reconfigured from its original plan of two rooms with a central stair. On the ground floor, the stair hall and eastern room have been opened up to create a large kitchen, with the stair repositioned in the hall to the north. In the sitting room, to the west, the floor frame is exposed, and is made up of roughly-hewn timbers, previously plastered over. There is a cellar, reached by well-worn brick steps, beneath this room. On the first floor, originally two rooms, the fireplaces have been removed, and a bathroom has been inserted into the former stair hall. In the attic the queen post trusses are exposed, and have been adapted and infilled to form two attic rooms accessed by a central stair. The easternmost of these rooms has tightly curving studs beneath the deep purlins.

Sources

Books and journals

Llewellyn, Sheila, *The View from the Bridge*, (2000)

Websites

'Parishes: Clifton Hampden', in A History of the County of Oxford: Volume 7, Dorchester and Thame Hundreds, ed. Lobel, Mary (1962), pp 16-27. British History Online, accessed 4 September 2017 from <http://www.british-history.ac.uk/vch/oxon/vol7/pp16-27>

Other

Surveys and Plans of the Estates of Robert Hucks Esq of Aldenham in the County of Hertford (16 - Fullamore Farm, Clifton-Hampden, Oxford), 1786, ref no DE/Am/P1, held at the Hertfordshire Archives and Local Studies centre, Hertford

Appendix 2: Keevill Heritage Ltd Report (March 2018)

Fullamoor Farm, Clifton Hampden, Oxfordshire

The setting of the Grade II listed farmhouse

National Grid Reference SU 53355 95099 (for the farmhouse)



Figure 1: Fullamoor Farmhouse seen from the south

Graham D Keevill
Keevill Heritage Ltd
For Ian and Jaqi Mason
March 2018

Fullamoor Farm, Clifton Hampden, Oxfordshire: The setting of the Grade II listed farmhouse

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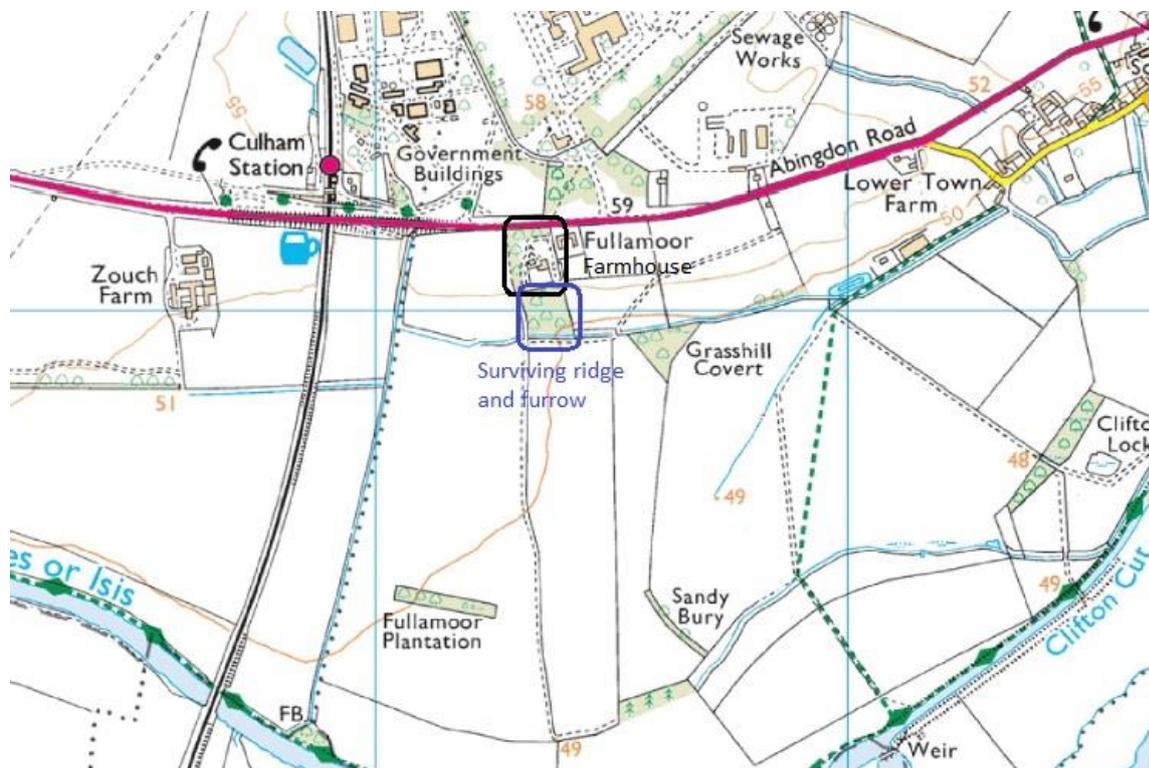


Figure 2: The location of Fullamoor Farmhouse, to the south of the A415 Abingdon Road. Culham Science Centre (developed within a World War II air base) lies to the north of the road and east of the railway line. Ordnance Survey data Crown Copyright 2018. All rights reserved. Licence number 100051221.

Graham Keevill is a senior heritage professional with more than 35 years of experience in the assessment, analysis and protection of the historic environment. He has been a full Member of the Chartered Institute for Archaeologists since 1985, and was elected as a Fellow of the Society of Antiquaries in March 2018. He works regularly with (often for) Historic England, and is the Cathedral Archaeologist for Rochester, Salisbury, Christ Church Oxford, and Blackburn; at each of these he provides a full range of advice on archaeology, historic buildings, landscape issues, and the setting of all of these (individually and/or in combination). He also carries out commissioned work for English Heritage, Historic Royal Palaces and the National Trust, among many other clients in the public, church and private sectors. His consultancy practice, Keevill Heritage Ltd, is based in Didcot, Oxfordshire.

Executive summary

The historic character of a place is the group of qualities derived from its past uses that make it distinctive. This report studies the inter-relationship between Fullamoor Farmhouse (a Grade II listed building) and its surrounding landscape to draw conclusions on the importance of the locality to the building's setting. The report is designed to assist decision makers, applicants and other interested parties, with regard to the statutory obligation to have special regard to the desirability of preserving listed buildings and their settings, in accordance with the good practice advice provided by Historic England.

The report uses a combination of archaeological and historical evidence, along with aerial photographs dating from the 1930's to the present day, to build up a picture of the long history of land use in the area. This long historical picture shows that the landscape surrounding the farmhouse has developed in distinct stages over several millennia and has rarely been a static entity. This is a dynamic process which continues to the present day.

The landscape provides an important historical setting for the farmhouse, and provides the framework for exceptionally fine vistas from and to the building in a wide arc on its south side. The report concludes that this setting to the south is particularly vital for a proper understanding and appreciation of the Grade II listed farmhouse as well as being important in its own right. This landscape is a fragile resource, and is the subject of several development proposals which could cause irrevocable and irreversible harm to it, and which should continue to be resisted to avoid similarly irreversible harm to the farmhouse's setting.

1 Introduction

Mr and Mrs Ian and Jaqi Mason are the owners of Fullamoor Farmhouse. The curtilage of the latter includes gardens, terraces and paddocks on all sides of the house. They have commissioned this report to provide an independent assessment of the historic development of historic and present landscape around the farmhouse (particularly to the sides and south front), as these are important features in the setting of the listed building. The report studies the inter-relationship between building and landscape, because the two are mutually important contributors to the visual quality and character of the other: the landscape and views are the setting for the farmhouse, which is in itself an important focal point in and feature of views. Research and assessment concentrated on the area immediately around the farmhouse and on its south side to the River Thames; this was the core of the historic farm, extending to c 368 acres. Warren Farm, immediately to the east and part of the historic Fullamoor estate until 1995, extended the estate by a further c 266 acres. Together these farms occupied virtually the whole area bounded by Clifton Hampden village to the east, Abingdon Road to the north, the railway embankment to the west, and the River Thames to the south. The estate also extended to the north of Abingdon Road, and this area has also been part of the report's remit. Figure 3 is taken from a mid-1980s sale brochure for the farm estate, and shows the extent of the Fullamoor and Warren Farm holdings.

Sources used in the study included the Heritage Gateway for archaeological information, while some past archaeological studies of the area related to proposed developments were accessed online via the county council's planning portal. The National Heritage List was accessed via the Historic England website for information about designated heritage assets. Historic maps were examined, principally the Ordnance Survey 25 inch and 6 inch map editions from the later 19th century onwards, and the Victoria County History provided an excellent historical summary of Clifton Hampden (accessed via

the British History website).¹ Historic aerial photographs at the Historic England Archive Centre in Swindon were an especially important component of the research, both for information on archaeological sites and the historic development of the farmland since World War II. All aerial photographs within a 1km radius of the farmhouse were examined. Some of the earliest examples are from the 1930s by Major George Allen: these specifically covered the area around Fullamoor Farm, partly because of the Bronze Age barrow cemetery at Fullamoor Plantation that he recognised and photographed. These images are available online via Ashmolean Museum's website.² Finally site visits were made in December 2017 to examine the surroundings of the farmhouse and assess views from it.

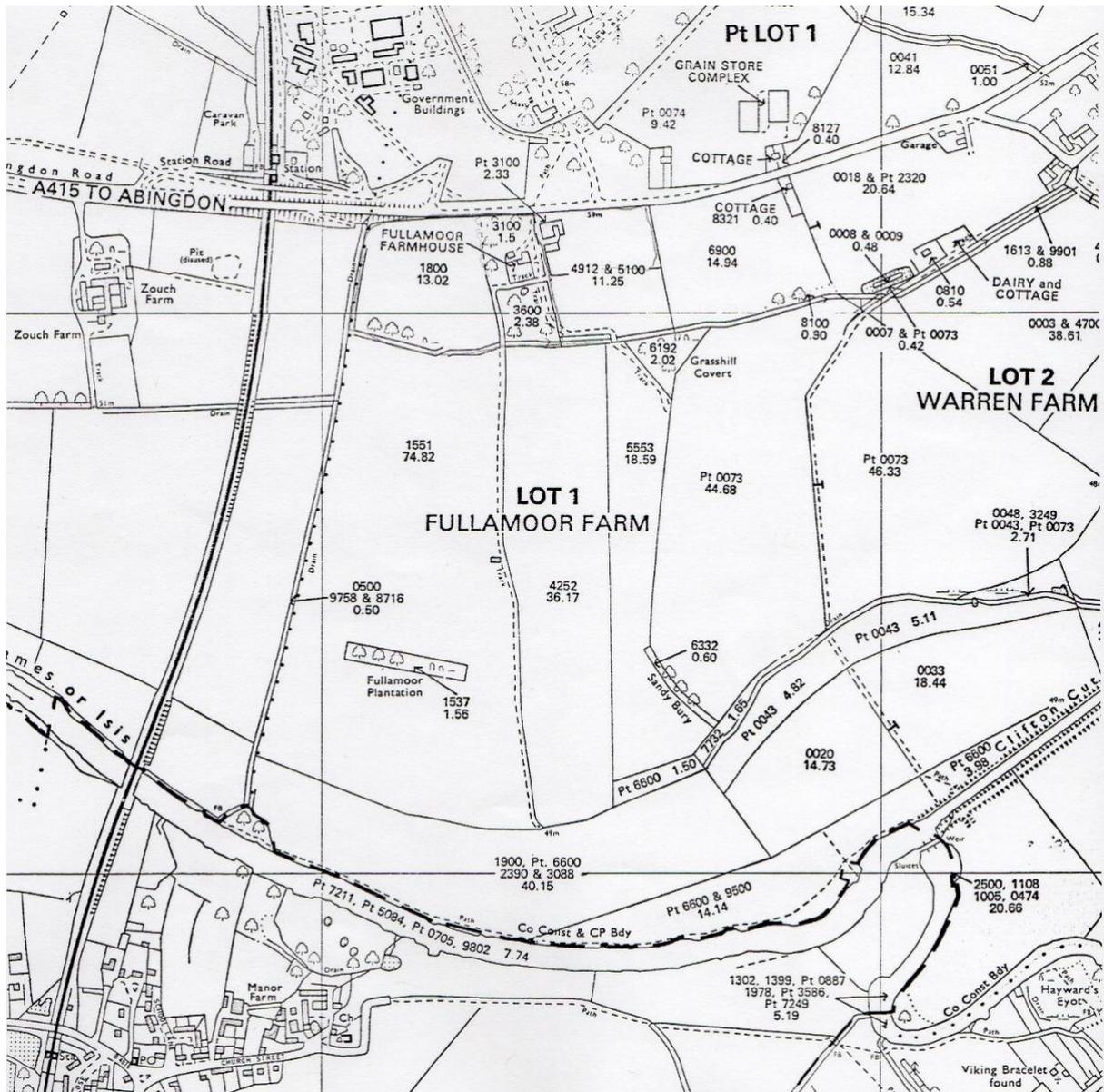


Figure 3: The extent of Fullamoor Farm (Lot 1) and Warren Farm (Lot 2) in the mid-1980s.

¹ <http://www.british-history.ac.uk/vch/oxon/vol7/pp16-27>

² <http://britisharchaeology.ashmus.ox.ac.uk/aerial-photos/aerial-photos.html>

1.1 The setting of and views from the farmhouse

The farmhouse enjoys a rural setting just beyond the west edge of Clifton Hampden village. The house is on a flat area running along the south side of the A415 Abingdon Road: the ground slopes markedly away towards the River Thames 1.2km to the south, giving dramatic and impressive views across a wide landscape arc from south-west to south-east (Figure 4). Assessment of features in the view suggests that this was no accident, and that the position of the farmhouse had been chosen with great care. The Didcot-Oxford railway line lies approximately 460m to the west of the house, on a raised embankment (see Figure 2). The railway is obviously a 19th-century insertion into the setting of the farmhouse. It is prominent in views to the west. Shelter belts and veteran trees largely screen views to the east, although there are good vistas in this direction from the terraced walk at the south end of the rear garden and the paddock beyond it.



Figure 4: Panoramic view looking south from the farmhouse, with Grasshill Covert in the background on the left and Fullamoor Plantation behind the trees just to the right of centre.

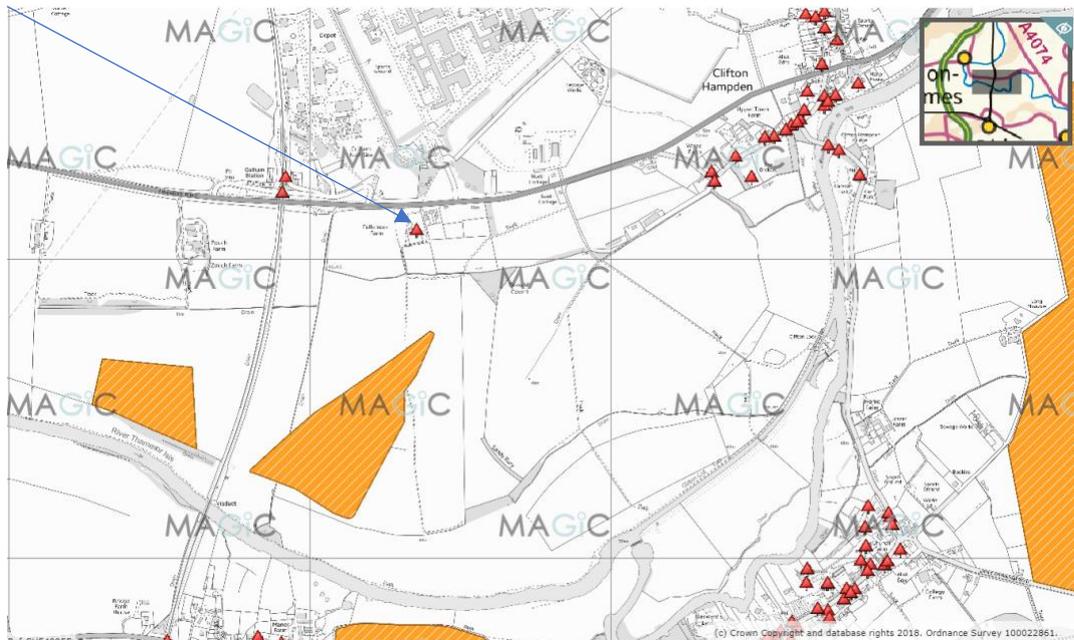


Figure 5: Extract from magic.gov.uk mapping showing the location of the listed farmhouse (arrowed) and the two Scheduled Monuments to its south and south-west.

Fullamoor Farm lies to the south of Culham World War II aerodrome, now an international scientific research establishment, on the opposite side of the A415 Abingdon Road. A shelter belt of trees along the north edge of the road screens the science park from views within the house's curtilage. Geologically, the farmhouse sits on bedrock of the Gault Formation (Mudstone, formed in the Cretaceous Period between 101-113 million years ago) overlain by drift deposits of the Summertown-Radley Sand and Gravel Member (Quaternary, formed up to three million years ago). The bedrock changes to Lower Greensand (Sandstone) with overlying Northmoor Sand and Gravel where the land falls sharply away a short distance to the south of the house. The Gault Formation resumes further towards the Thames, again with the Northmoor Sand and Gravel above it. The river itself is also on the Gault, overlain by Alluvium (Clay, Silt, Sand and Gravel).

Fullamoor Farmhouse is a Grade II listed building (Figure 5; national heritage list number 1449039). It was designated on 16 November 2017. It is perhaps surprising that it had not been listed before this, as the house is clearly a historic building of considerable character and interest. It probably originated in the 17th century, as a timber-framed two-cell building. This was extended substantially in 1769 (there are dated graffiti on the south elevation of the east range), when brick was used to encase the old structure and build the new. It was extended again in the Victorian period. There is a detached former agricultural building immediately to the west of the house (converted to domestic use by the current owners in 2012), not directly included in the listing but within the curtilage and therefore covered by the designation. The list description is provided in Appendix 1. Figure 1 shows the front (south) elevation, while Figure 6 shows the north frontage.



Figure 6: The north frontage of the farmhouse, with the east wing to the left.

The surroundings of the farmhouse contain several other designated heritage assets (see Figure 5). There are numerous listed buildings in Clifton Hampden village, and two at Culham railway station. Two Scheduled Monuments (sites protected because of their archaeological importance) are near the farmhouse: a Bronze Age round barrow cemetery at Fullamoor Plantation c 375m south of the house (national heritage list number 1421606), and an extensive settlement site a short distance to

the west of this beyond the railway embankment (national heritage list number 1059789), c 900m south-west of the house.

2 The historic development of the landscape around the site

The development of the historic landscape can be adduced in a number of ways. Firstly, cropmarks visible on aerial photographs evidence provide clear and ample evidence for early settlement and ritual activity in the area. Major Allen's 1930s photographs of the Fullamoor Plantation barrow cemetery appear to have been the first recognition of this site. Remarkably, the barrows continue to show strongly on aerial images, showing that the ring ditches defining the barrows have survived through centuries of arable agriculture. Other cropmarks clearly represent settlement areas and associated trackways. These cannot be dated from the aerial photographs alone, but their form suggests a later prehistoric or Roman origin. Apart from the Scheduled site, examples are known to the south-east and east of the farmhouse, including in the fields immediately to the east of the farm's former barns. Examples of the aerial photographs are given in Figures 7 and 8.



Figure 7: Top - Allen's aerial photographs AA0620 and AA0213, taken on 26 June 1934 and 12 July 1933 respectively. AA0620 clearly shows round barrows and other features at Fullamoor Plantation (the farmhouse is just out of the picture at top left); the other photograph shows a rectangular enclosure in the centre of the field to the right of the barns (Allen suggested that this was a Roman feature), with ridge and furrow surviving in the next field to its south. The bottom image, from 2013, also shows the barrows near the Plantation (NMR 27794/1).



Figure 8: The same field next to the farm's old barns photographed by Allen in 1933 seen in 1989 (top) and 1990, with remarkably clear cropmarks. These continue south-west towards (probably into) the paddock south of the farmhouse, and clearly pre-dated the medieval ridge and furrow field system as well as the Abingdon Road. Images and NMR 4453/77 (top) and NMR 4608/20.

Other evidence for prehistoric and Roman activity comes from dedicated archaeological fieldwork. A watching brief during the excavation of a new Thames Water pipeline across Fullamoor Farm in 1991 revealed prehistoric features associated with the barrow cemetery near Fullamoor Plantation, as

well as a Roman track or causeway leading from there down towards the River Thames (Booth, Boyle and Keevill 1993, 106-115). Geophysical surveys and excavations by Thames Valley Archaeological Services in 2013 recorded extensive numerous archaeological features across a wide area of the land at Fullamoor/Warren Farm, some of it comprising dispersed evidence for general activity in the landscape, but with clear Iron Age/Roman enclosure/settlement concentrations immediately to the north of Clifton Cut (ie land parcels 0020 and 0033 on Figure 3; Dawson 2013 and Taylor 2013). It is clear that the landscape around Fullamoor Farm was under extensive use during the Bronze and Iron Ages, and into/through the Roman period. This included burial monuments, settlement areas, and agriculture.

The historic landscape comes into sharper focus in Anglo-Saxon, medieval and later periods. Fullamoor Farm lies within parish of Clifton Hampden, in the historic Hundred of Dorchester (VCH 1962). The parish boundary with Culham to the west does not seem to have changed since the latter was surveyed in AD940 (VCH 1962, Blair 1998). Clifton means ‘farmstead on or near a cliff or bank’ and is of Saxon origin (Mills, 1998). The Hampden element may have been added when Miles Hampden was Lord of the Manor in the 1530s, perhaps to distinguish the village from Clifton Ferry on the opposite side of the river, which was then in Berkshire. Clifton Hampden was not listed separately in the Domesday survey of 1086, being accounted as part of the Dorchester Hundred generally. The village and its lands were dominated by the open-field agricultural system throughout the medieval period, and well into the 18th century. Traces of ridge and furrow still survive (see below), linking the present landscape with its medieval past. The name *Fullyngemorefurlonge* is recorded in 1408 (Llewelyn 2000, 118, 281), and refers to the land immediately west of the current farm house. It suggests a very long pedigree for the farm.

The medieval open fields were inclosed by Robert Hucks in 1770, when four very large farms (in county terms) were established (VCH 1962). Fullamoor was one of these (the remaining three farm houses were all in the village itself; *ibid*), though the architectural evidence for its earlier origin perhaps suggests that the house (and thus probably the farm as a whole) already existed by the 1770s. The earliest county maps such as Saxton’s of 1574 and Morden’s of 1695 are too schematic and lacking in detail to be of use in assessing the historic development of the landscape, but Davis’s 1797 map of Oxfordshire shows the field boundaries to the south of Fullamoor Farm very largely as they survive today. The field pattern therefore seems to belong to the Inclosure period, although it also seems to have incorporated elements of the medieval land use pattern. An area of ridge and furrow survives immediately to the south of the farmhouse, for example, and aerial photographs show that more existed until recent times (see Figure 7, and below). A wide strip of land along the north bank of the Thames was meadowland until the late 20th century, almost certainly having been in that usage during the medieval period. Figures 9-14 present map and aerial photographic evidence for the form of the historic landscape, with brief commentaries on each map.



Figure 9: An extract from Richard Davis’s 1797 county map of Oxfordshire showing the field pattern to the south of Fullamoor Farm. The division between meadow/pasture and arable is shown very clearly. It is interesting to note that Davis seems to show the direction of ploughing in the arable fields – this reflects the direction of the surviving and former ridge and furrow. It is possible that the field boundaries are remnants of the earlier system.



Figure 10: Extracts from the Ordnance Survey maps of 1878 (25 inch to the mile - right) and 1883 (6 inch to the mile – top) showing the overall layout of the farmstead and its land. Note that all the agricultural buildings lay to the north of the farmhouse (the present barns to its east were not built until after 1914). The three plantations at Grasshill Covert, Sandy Bury and Fullamoor Plantation were already in existence and seemingly well established. There was a small orchard to the south of the house (this field retains medieval ridge and furrow).





Figure 11: Extracts from the Ordnance Survey maps of 1912 (25 inch to the mile - right) and 1913-14 (6 inch to the mile - top). The barns to the east of the farmstead had still not been built (see Figure 8, which shows that they were extant by 1934). There had been some changes to field boundaries since the turn of the century but otherwise the landscape had changed very little.





Figure 12: US military aerial photograph taken on 13 December 1943, with construction of Culham airfield under way. Fullamoor Farm features prominently. There are hints in this and other aerial photographs of the time that some areas of former ridge and furrow fields had only recently come under deep ploughing. The land alongside the River Thames, however, was still very much under pasture as managed meadowland. It remained so until the 1970s, but the 1980s sale particulars (and contemporary aerial photographs) show that all but a narrow area (Weir Field – Pt 6600 & 9500 on Figure 3) had recently come under the plough – see also Figure 14. Photograph reference US/7PH 6822 7006.



Figure 13: Fullamoor Farm photographed on 12 February 1952. There had been no substantive post-war changes. Photograph reference RAF/540/673 15636 3344.



Figure 14: Aerial photographs taken in 1975 (left) and 1989 (right) with the Fullamoor Plantation barrow cemetery visible – but also demonstrating the change from meadow to arable cultivation between these dates. Photograph references 5394/29 823 97 (left) and 5394/49 4453 80.

Surviving historic landscape features include a small pocket of the once much more extensive medieval ridge and furrow open fields in Fullamoor Orchard immediately to the south of the

farmhouse's gardens. This orchard can be seen clearly on the early OS editions and several of the aerial photographs. Figure 15 shows the orchard today, with the ridge and furrow still prominent and well preserved. Hedgerows, plantations and veteran trees, paths/tracks and the overall pattern of field boundaries are also all of demonstrably historic origin, marking a clear continuity of land use while also acknowledging modern changes in agricultural tenure and practice. The small area of surviving meadowland alongside the River Thames already mentioned falls into this same pattern. Figure 16 presents a modern aerial photograph of the farmland, showing how the landscape still closely resembles that shown in the 18th to earlier 20th centuries.



Figure 16: The former orchard to the south of the farmhouse, where the pronounced ridges of the medieval fields are still clearly visible.



Figure 18: Modern aerial photograph of the landscape at Fullamoor Farm – compare with Figures 9-14.

The landscape to the south of the farmhouse continues to be an important part of its setting. The same used to be true of the area to the north of the Abingdon Road as well, and there are still some links there (principally with the farm buildings erected in the 1970s). As figures 12 and 16 show, however, the construction of an airfield to the north of the road during World War II, and the conversion of this into government buildings and then a science park, have wrought considerable changes on the landscape. Abingdon Road is also a busy arterial traffic route, not least for the science park but also locally between Abingdon and Dorchester on Thames. The landscape still has some value and character, but it is not as immediately important to the setting of the farmhouse as the land towards the Thames. As Figure 19 shows, planting along the Abingdon Road provides some screening of views to the north at the moment; this limits the visual impact of the Science Park on the farmhouse.



Figure 19: View looking north from the farmhouse's driveway. The Abingdon Road is immediately beyond the hedge border.

3 Significance of the farm, the farmhouse and their settings

This part of the report identifies the significance of the farmhouse, its former farm, and their setting. The assessment follows standard professional guidance, such as Historic England's *Conservation Principles*. The primary concern is not simply to say that something is important; that rarely helps. Rather, it is to define and determine a hierarchy of significance – *how* important is a site or a part of it? A simple sequence of **high** (national), **medium** (local/county) and **low** (slight) significance is used, as well as **neutral** (not important but also does not detract from a site's value) and **detrimental** (where something has a negative effect on significance) or **visually intrusive**. These assessments

cover the four *Conservation Principles* criteria of historic, evidential, aesthetic and community values of the heritage asset in question as appropriate.

Statutorily designated heritage assets such as Scheduled Monuments and listed buildings (of any grade) are by definition of national significance. They cannot be so designated unless they meet this criterion. They will usually be defined as having **high significance** because of this. Their setting (eg the context in which they are experienced and appreciated) may not have the same high level of significance, however, and requires careful assessment in its own right.

Fullamoor Farmhouse was designated as Grade II listed building in 2017. It has **high significance** for its historic, evidential, and aesthetic values. It is a private property, now in purely residential use, and as such community value is no more than **medium** (this is the lesser of the four *Conservation Principles* criteria for evaluating a building of this sort). The two Scheduled Monuments (the Bronze Age barrow cemetery at Fullamoor Plantation and the settlement site to its west) are also of **high significance** in evidential and historic/prehistoric terms, and **medium significance** for community (as important repositories of memory for the past), and aesthetic (for the aerial photographic evidence) values.

Fullamoor Farm is no longer an extant agricultural entity. The older farm buildings immediately to the east of the farmhouse were converted to domestic/residential use some years ago. The modern farm buildings to the north of the A415 Abingdon Road, and the greater part of the farmland, were sold to other local farmers early in the new millennium. Mr and Mrs Mason retain the 13 acre field to the west of the house (the Furlong mentioned in 1408); this is rented to a local farmer for grazing cattle and sheep. The farm as such is therefore of **medium significance** even though it is no longer a separate going concern, because all its elements continue in active use alongside each other within their original landscape and setting. They demonstrably represent the history of medieval, post-medieval and modern land use in this area.

The farmland around the farmhouse provides an important setting for the building and its grounds. The archaeological evidence for prehistoric and Roman settlement is of **medium to high significance** evidentially, historically and for community value. The surviving physical remains and documentary evidence for the medieval landscape are similarly of **medium significance** evidentially, historically and for community value, as well as aesthetically. It is notable that the medieval field systems can be shown to directly overlie and cut across the prehistoric/early historic landscape in some areas. This suggests that there was a degree of discontinuity between them. This is also suggested by the absence of earthwork remains at the barrow cemetery: seemingly the mounds themselves were not respected enough to be left in situ within a developing arable landscape, as was sometimes the case in the countryside. The remaining elements of the historic landscape – field boundaries, tracks and paths, and other features – are also of **medium significance** for their contribution to the setting of Fullamoor Farmhouse, and for visual/historic character of the landscape generally.

4 Views, setting analysis and vulnerabilities

The images and text on the previous pages demonstrate that the landscape around Fullamoor Farmhouse provides a clear and obviously associated historic context for the building. It may now be a farmhouse in name only, but it is clearly rooted in the long history of the land use around it. The two cannot be divorced from one another. This historic landscape is the frame for the impressive views south from the farmhouse and its curtilage today, as Figures 4 and 19-24 show. Figures 25 and 26 present views back towards the farmhouse from the landscape to the south.



Figure 19: View south-east from the farmhouse with Grasshill Covert just to the left of centre.



Figure 20: View south from the terrace walk in front of the orchard. Fullamoor Plantation can be seen to the right.



Figure 21: View south-west from the terrace walk, with the railway embankment visible in front of Didcot Power Station.



Figure 22: View south from the first-floor.



Figure 23: View south-east from the farmhouse's attic window.



Figure 24: View south and south-west from the attic window.



Figure 25: View from the farmland to the south-east of the farmhouse looking back towards it. The house is prominent in many views from the south and south-east despite the historic plantations.



Figure 26: View from the Thames Path looking north to Fullamoor Farmhouse. The building is clearly visible and prominent in this view.

The positioning of the Grasshill Covert and Fullamoor Plantation is interesting, and cannot have been accidental. Both are likely to have originated at about the time of the farmhouse's major extension in c 1769-70, and they were well established by the time of the earliest Ordnance Survey editions. The prominence of and exceptional views from the farmhouse are clear enough, but how did the plantations operate within this? At a simple level they provide focal points within views from the house, garden and terrace walk down towards the Thames. The dip slope immediately to the south of the terrace walk means that the orchard, though a valuable feature, probably would not have impeded views to any substantial degree. Could the positioning and orientation of the two main plantations have served other purposes in views? Grasshill Covert is the more substantial block, and has fared better as a feature in the modern landscape. It is closer to the house, and certainly the more prominent in views. Fullamoor Plantation is just as interesting, however, because its east-west axis so clearly cuts across longer views to the south. The earlier Ordnance Survey maps suggest that this would have been more pronounced 100-150 years ago than it is now, as more recent plantings have placed trees across this view. The simple map exercise in Figure 24 suggests that the positions of Grasshill Covert and Fullamoor Plantation was very deliberate, and subtle: not only do they frame views, but they also shield them. Grasshill Covert lies directly in the way of views south-east to Long Wittenham and Wittenham Clumps. Fullamoor Plantation does the same in views south towards Appleford. The trees may have been eye-catching landscape features: they also served to block some views and make the immediate landscape around Fullamoor Farm into a very private affair.

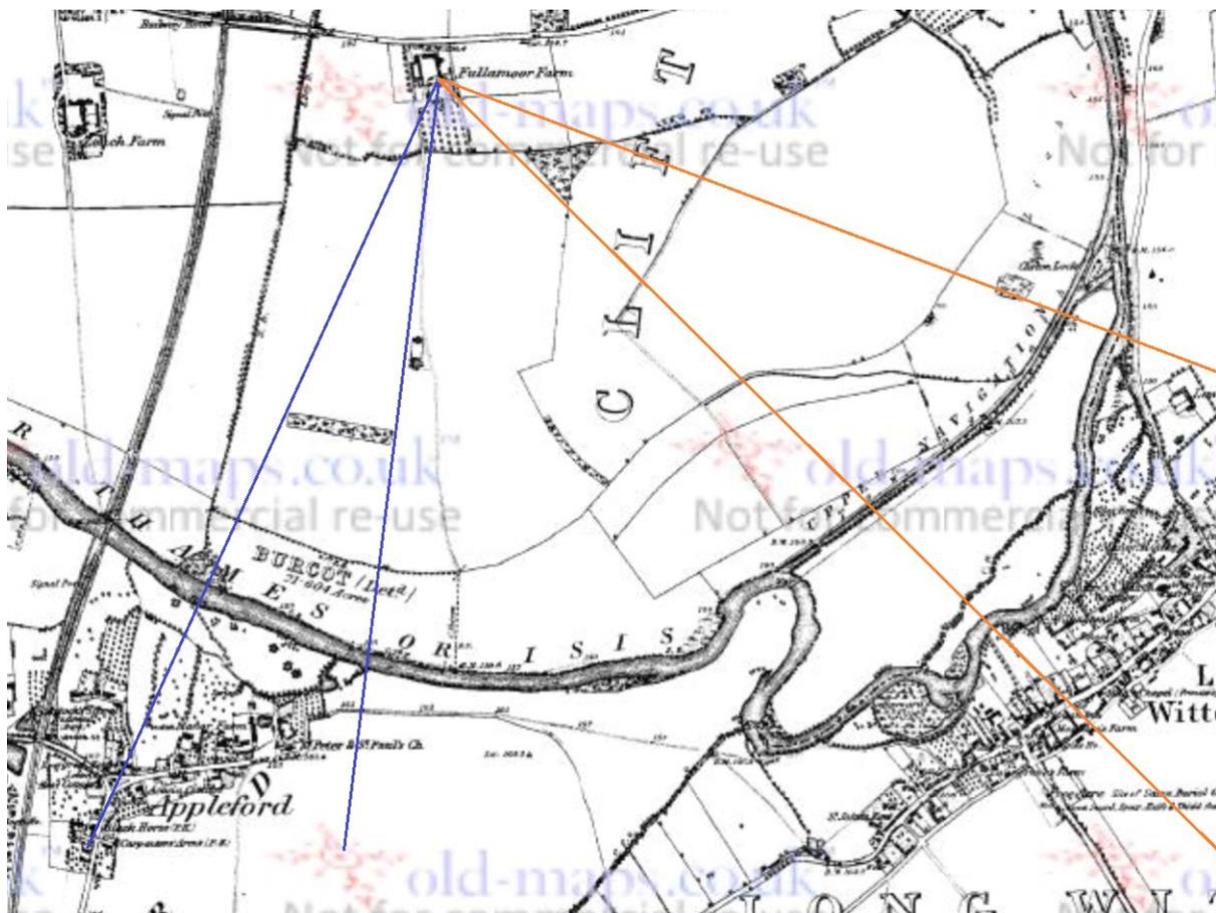


Figure 27: The 1883 Ordnance Survey 6 inch map with view cones marked looking from Fullamoor Farmhouse south and south-east, showing how Fullamoor Plantation and Grasshill Covert impeded views in these directions – especially towards Long Wittenham and Appleford.

The evidence points to a surprising degree of deliberate design in the placing of the farmhouse and tree coverts/plantations within their contemporary agricultural environment, which itself seems to

have been strongly rooted in its medieval past. It is difficult to understand why other villages should have been blocked in medium to longer views, and of course it is even harder to envisage exactly what the landscape would have looked like 200 years ago. Even so, this level of design and careful setting out would not be out of place in formal landscaped parks rather than a rural agrarian landscape. The designed landscape is an important element of the farmhouse's setting. It is an essentially private landscape, although there is some community value for walkers and other nearby residents.

Our analysis of the physical, archival and archaeological evidence demonstrates that the landscape around Fullamoor Farm presents clear evidence for development across several thousand years of human activity and land use. This includes prehistoric and/or Roman settlement, agriculture and ritual activity, medieval settlement and agriculture, and later land management through to the modern era. The landscape is not a wholly modern creation, as some have suggested, but represents a continuum of interaction between people and their environment over centuries and millennia. It is clear that modern agricultural practice has changed many aspects of the farmed landscape, but the historic (and indeed prehistoric) framework survives largely intact – with important remnants of original features such as ridge and furrow field systems, hedges and trees, and tracks/paths. It is critically important that the linkage between these features and Fullamoor Farm are recognised. The farmhouse is of course later than many of these historic features but it was built within a landscape which had evolved carefully and gradually. That process continues to this day. The historic and present landscape are inexorably and indisputably part of the setting of Fullamoor Farmhouse. Damage to either will damage the other.

Recent events have shown that the landscape around Fullamoor Farmhouse is prone to the threat of development. There have been two recent development proposals. Firstly for a new road link and bridge over the River Thames was proposed.³ This would have passed north-south through the farmland between Fullamoor Plantation and the farmhouse, running very close to the latter. There is no doubt that this would have been severely detrimental to the house and its setting physically, visually, and through noise. Secondly, major mineral extraction was proposed for virtually the whole of the Fullamoor/Warren Farm land to the south of the farmhouse (Oxfordshire County Council mineral planning reference MW.0039/16; South Oxfordshire District Council planning reference P16/S1192/CM). Despite attempts by the developer's consultant team to suggest that this would not have harmed the setting of Fullamoor Farmhouse, the destruction of the greater part of the historic landscape between the house and the Thames would plainly have caused substantial harm to the setting of the listed building, and would therefore have been contrary to the National Planning Policy Framework (especially paragraphs 132-3). This type of development would have created drastic and irreversible changes in the long and ongoing history of the landscape, and no amount of post-extraction 'restoration' could mitigate this. The historic landscape would be lost permanently. Refusal of the application was welcome.

Substantial growth of Culham Science Centre would occur if current plans by the United Kingdom Atomic Energy Authority proceed. This appears to involve proposals to build on the current grassed entrance apron. It is probably too early to assess the potential impact of the proposed development but its effect on the setting of the listed building must be considered in detail. Recently announced plans to build c 3000 new homes at Culham would also require a setting assessment for Fullamoor Farm.⁴

3

http://www.oxfordmail.co.uk/news/15188413.VISION_2033_Thousands_of_homes_and_new_100m_Thames_bridge/

⁴ <https://www.saveculhamgreenbelt.org/latest-updates/>

5 Conclusions

This study demonstrates that the landscape around Fullamoor Farmhouse is demonstrably a vitally important part of the setting of the Grade II listed house. The building and its landscape are inexorably linked by more than two hundred years of mutual inter-dependence and development. While it is acknowledged that the farmhouse no longer functions as the managerial centre of the agricultural land, it clearly sits within it, literally and conceptually. The setting of designated heritage assets such as listed buildings is recognised internationally and nationally in planning law and practice as a material factor in the consideration of planning proposals affecting them. In the United Kingdom this is now enshrined in the National Planning Policy Framework (2012). It is therefore right and proper that any development proposals within the vicinity of Fullamoor Farm must take full account of the listed building and its setting when applications are determined.

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Appendix 1: Extracts from the National Heritage List description for the farmhouse

Name: Fullamoor Farmhouse

List entry Number: 1449039

Location: Clifton Hampden, Abingdon, OX14 3DD

Grade: II. Date first listed: 16-Nov-2017

Summary of Building: House, probably originating in the C17, with a major enlargement in 1769, a Victorian extension, and subsequent additions.

Reasons for Designation: Fullamoor Farmhouse, an C18 house with earlier origins, is listed at Grade II for the following principal reasons:

Architectural interest: A multi-phase building that retains a significant proportion of fabric from its principal stages of development, which pre-date 1840; The north/south range retains

timber framing, and so has the potential to provide evidence of the date and the vernacular tradition for this type of construction; The early plan forms remain legible and clearly illustrate the development of the building, reflecting the changing modes of use of domestic buildings from the C17 onwards.

Historic interest: The high-quality construction of the east/west range may reflect the prosperity of the farm during the mid to late C18, and so has the potential to contribute to our understanding of the historic agricultural economy of the region.

History

Fullamoor Farmhouse is a multi-phase building, originating, probably, in the C17. The Victoria County History states that the farmhouse dates from the late C18, however, the building fabric suggests earlier origins: the north/south range of the farmhouse appears to have originally been a two-cell, timber-framed building, and there is evidence of a ladder hatch to the attic, suggesting that the central stair may be a later insertion. This range was encased in brick in 1769, evidenced by two date inscriptions. Similarity in the style and form of brickwork suggests that the east/west range is contemporary with the 1769 encasement of the north/south range; this is supported by the 1786 estate map, which clearly shows these two main ranges.

The estate map shows ancillary agricultural buildings adjoining the north/south range of the house, and there were further agricultural buildings to the north-west. On the 1830 1" Ordnance Survey, Fullamoor is named Clifton Farm. The late-C19 and early-C20 Ordnance Survey maps show the development of the farmstead; by the time of the 1972 map all of the C18 farm buildings have been removed, leaving only the farmhouse, which remained in use as the principal farm residence until the 1990s. There is a heavily-altered range to the north-west of the farmhouse, possibly once a cartshed, which was present by maps of the late C19, and the garden walls to the south also appear to date from this period. Sections of the walls have been rebuilt, and openings have been inserted, though the general layout survives. There is a small, square-plan, late-C19 structure with a pyramidal roof built into the north-east corner.

The grey-brick-faced south-eastern extension is first shown on the 1878 map; a large modern conservatory (excluded from the listing) has been built on the south elevation. The main porch, and the outshuts on the west elevation were present by 1878, though have been heavily altered. An undated aerial photograph, probably mid-C20, shows a pitched porch on the southern elevation of the east/west range; on a photograph taken in 1980, this had been removed. There has been internal reordering to the east/west range, including the removal and repositioning of the stair and reconfiguration of the first floor.

Details

House, probably originating in the C17, with a major enlargement in 1769, a Victorian extension, and subsequent additions.

MATERIALS: constructed from red brick laid in Flemish bond, with some elevations including blue brick headers. A section is built in rubble stone in the earlier part of the building, and one elevation of the Victorian addition is built in grey brick. Roofs are covered in clay tiles and there are brick chimneystacks.

PLAN: the building has two main ranges forming an L-shaped plan, and various outshuts and additions have been built on the north and east sides. The first phase of the building appears to be that which is orientated north/south, and which meets the east/west range at the south-east corner; there is a Victorian addition at the junction of the two. There are various single-storey outshuts on

the east elevation of the north/south range, and double-height additions on the north elevation of the east/west range.

EXTERIOR: the north/south range is single storey with a tall attic, with a pitched roof and central chimneystack. The west elevation has two windows to the ground floor; they are wide with segmental-arched heads, and form the stylistic basis for those found elsewhere on the building. All windows are modern replacements, replicating the earlier glazing pattern. There is brick storey band, and two dormers – that to the right being much larger – to the attic. The north gable end is constructed from rubble stone at ground-floor level with brick above, indicating where it was once enclosed by ancillary agricultural buildings, as shown on the 1786 map. An external brick stack (not original) has been removed from the gable end, leaving scars in the brickwork and exposing bricks inscribed ‘EC 1769’ and ‘EL 1769’. The east elevation of this range has been built upon in various phases; two lean-to outshuts have been linked together as part of the C21 reconfiguration.

The south elevation of the east/west range is a polite composition: it is of two storeys with an attic, symmetrical, with a central doorway with wide, segmental-arched windows to either side on both floors, and a narrower pair of casements above the door. There is projecting brick storey band, as on the northern range. There are two pitched dormers to the attic. The doorcase and door are modern. The northern elevation of this range is dominated by two gabled extensions, heavily altered; that on the right has a modern double-height oriel window lighting the stair. To the right of this is the original elevation of the east/west range, which has a wide, segmental-arched window to each floor, as per the south elevation.

At the south-east corner is the Victorian extension. On the south elevation it is visible only at first-floor level, owing to the addition of the conservatory (excluded from the listing); it is built in grey brick and has a large pitched dormer, with a wide window with a hood moulding. The east gable end is in red brick; it is blind and has an external stack.

INTERIOR: on the ground floor of the earlier range there is some evidence of a timber frame, which has been replaced by, or encased in, the brick elevations. In the study, the floor-frame to the attic is exposed: there is a deep spine beam supporting roughly-hewn joists. A timber at the south-west corner of the room suggests there may have been a ladder hatch to the attic, and hence the stair, which rises between the two ground-floor rooms, may be a later insertion. The drawing room, to the south of the stair, was the only room to be heated in this part of the building; the chimneybreast remains, and has a reproduction chimneypiece. The spine beam is exposed in this room, though the rest of the floor frame has been boarded over. Upstairs, parts of two curved principal roof trusses are exposed, as is the wall plate and purlins.

The east/west range has been reconfigured from its original plan of two rooms with a central stair. On the ground floor, the stair hall and eastern room have been opened up to create a large kitchen, with the stair repositioned in the hall to the north. In the sitting room, to the west, the floor frame is exposed, and is made up of roughly-hewn timbers, previously plastered over. There is a cellar, reached by well-worn brick steps, beneath this room. On the first floor, originally two rooms, the fireplaces have been removed, and a bathroom has been inserted into the former stair hall. In the attic the queen post trusses are exposed, and have been adapted and infilled to form two attic rooms accessed by a central stair. The easternmost of these rooms has tightly curving studs beneath the deep purlins.

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National Grid Reference: SU5335595099

ANNEX B – Figure 8.72p Preliminary Landscape Masterplan submitted with the original planning application



IT IS ASSUMED THAT ALL WORKS ON THIS DRAWING WILL BE CARRIED OUT BY A COMPETENT CONTRACTOR WORKING, WHERE APPROPRIATE, TO AN APPROPRIATE METHOD STATEMENT.
THIS DRAWING IS TO BE USED ONLY FOR THE PURPOSE OF ISSUE THAT IT WAS ISSUED FOR AND IS SUBJECT TO AMENDMENT.

- THE LANDSCAPE DRAWINGS ARE ISSUED FOR INFORMATION AND TO SET OUT THE MAIN DESIGN INTENT AND MITIGATION STRATEGIES.
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- A4130 WIDENING 4TH DRAFT, REVISION P06
- SCIENCE BRIDGE 5TH DRAFT, REVISION P07
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- CLIFTON BYPASS 4TH DRAFT, REVISION P08
- THE PROPOSED LANDSCAPE DESIGN LAYOUTS TAKE INTO ACCOUNT THE EXISTING UTILITIES. UTILITIES DIVERSION AND REROUTING MIGHT IMPACT THE FINAL LANDSCAPE DESIGN LAYOUTS.
- FOR INFORMATION ON EXISTING VEGETATION PLEASE REFER TO THE DRAFT ARBORICULTURIST IMPACT ASSESSMENT (AIA) GEN_PD-ACM-ELS-SW_ZZ_ZZ_ZZ-RP-AB-0002

BG2.4

REFER TO SHEET 17 FOR CONTINUATION

REFER TO SHEET 15 FOR CONTINUATION



REVISION	By	Date	Suffix
FIRST REVISION	JG MAL	17/06/21	P01
SECOND REVISION	JG MAL	25/08/21	P02
THIRD VERSION	JG MAL	13/09/21	P03
REVISION DETAILS			
	Check	Date	Suffix

Purpose of issue
FOR APPROVAL

Client
County Hall
New Road
Oxford
OX1 1ND
OXFORDSHIRE COUNTY COUNCIL

Project Title
DIDCOT GARDEN TOWN HOUSING INFRASTRUCTURE FUND (HIF 1)

Drawing Title
FIGURE 8.72P PRELIMINARY LANDSCAPE MASTERPLAN SHEET 16 OF 19

Designed	Drawn	Checked	Approved	Date
TRB	JG	MAL	AGB	13/09/21
Internal Project No. 60632497	Suitability S4	Discipline Landscape and Visual		

Scale @ A1
1:1000

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Work Package ID	Volume	Type	Number	Rev
GEN_PD-ACM-ELS-DGT_ZZ_ZZ_ZZDR-LV-0016	1	Landscape and Visual	16	P03
Originator	Location	Role		

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- KEY**
- LE1.1 AMENITY GRASS
 - LE1.2 GRASS WITH BULBS
 - LE1.3 SPECIES RICH GRASS
 - LE2.1 WOODLAND
 - LE2.2 WOODLAND EDGE/SCRUB
 - LE2.4 LINEAR BELT OF SHRUBS AND TREES
 - LE3.2 ORNAMENTAL SHRUBS
 - LE4.4 NATIVE SPECIES HEDGEROW WITH TREES
 - LE5.1 INDIVIDUAL TREE

- LE6.4 MARSH AND WET GRASSLAND
- SPECIES RICH GRASS WITH INTERMITTENT TREES
- HAWTHORN PLANTING
- POND
- RETAINED VEGETATION
- GROUNDCOVER/ SHRUBS
- RIPARIAN PLANTING
- GRASSCRETE
- LIGHTING COLUMN

INDICATIVE LOCATION OF ACOUSTIC BARRIER



Plot Date: 13 September 2021 16:06:21
 File Name: C:\P\WORKING\AECOM_DSG2_M-C\T\OS\H\GEORGE\@AECOM\COM\00131661\GEN_PD-ACM-ELS-GEN_ZZ_ZZ_ZZ-DR-LV-0016

Appendix BG2.5 'Planning on the Doorstep: The Big Issues – Green Belt'



Planning on the Doorstep: The Big Issues – Green Belt

Green Belt continues to be a huge issue for councils and communities across the country; an issue that councillors face regularly on the doorsteps of their electorate. This advice note looks at the reality of plan-making and the Green Belt, how planning process works with Green Belt issues and the potential inclusion in development plans.



Updated February 2015

Introduction

There is a tendency to see all open or green field land and particularly that on the edge of towns as Green Belt: it isn't. Some also believe the Green Belt and its 'inviolability' as a matter of law: it isn't.

Only about 13% of the land area of England is actually designated as Green Belt, and there are some quite strict purposes for land to be designated as such. Many people think that Green Belt designation is designed as a means of preventing development taking place, or of directing development away from one location towards another.

There is generally a presumption in favour of development in planning. The onus is placed on the local planning authority to provide sound planning reasons why a planning application should be refused permission. In areas designated as Green Belt, the presumption is reversed and the onus is on the developer to demonstrate (with very special circumstances) why permission should be granted. This difference makes Green Belt an exceedingly restrictive policy.

With the restrictions that Green Belt brings, local planning authorities with Green Belt in their areas and with Local Plans to prepare, have to make provision for needed development within a very sensitive context.

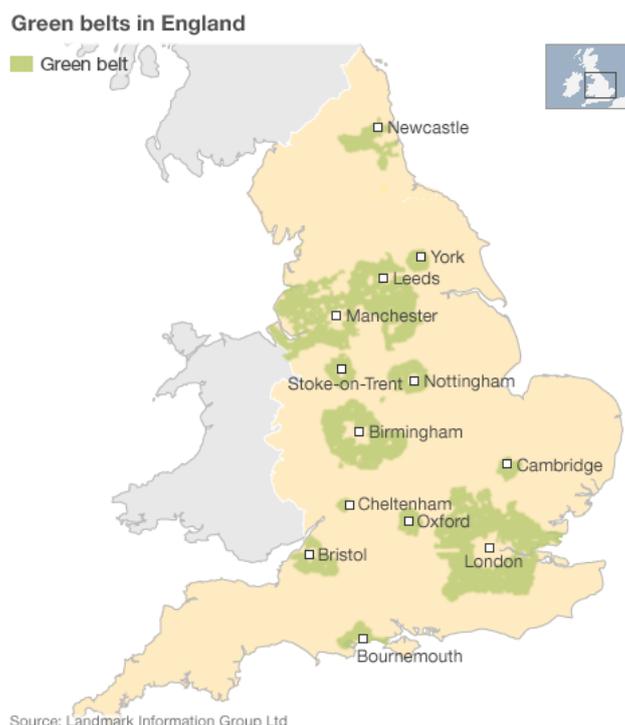
PAS has also produced a paper on [legal cases concerning green belt](#).

Green Belt in current practice

The basic concept of Green Belt was established back in 1902 by Ebenezer Howard in *Garden Cities of Tomorrow*. From the first guidance in 1955 to its current expression in the National Planning Policy Framework (NPPF) (March 2012), and the Planning Policy Guidance (PPG) there have been 'purposes' for which Green Belt has been able to be designated and used, and land can only be included in Green Belt to achieve these purposes.

The five purposes of Green Belt in the NPPF are:

- to check the unrestricted sprawl of large built up areas
- to prevent neighbouring towns from merging into one another
- to assist in safeguarding the countryside from encroachment
- to preserve the setting and special character of historic towns
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land.



There are perfectly reasonable planning objectives that are not addressed in the five purposes. Whilst the landscape around a town may be of high value, for instance, and may benefit from the restriction on development afforded by Green Belt policy, the conservation of that quality cannot be a reason to designate the area as Green Belt. The strict application of the Green Belt purposes would also mean, therefore, that the quality of the landscape of an area **should not be a consideration** when assessing the contribution of Green Belt to the fulfilment of Green Belt purposes. This could be a planning consideration in its own right when seeking a suitable location for development.

Green Belt is established by policy, through development plans prepared in the context of national planning policy. It is not established by legislation though often misconstrued as a legal designation, and is different in this respect from National Parks or Area of Outstanding Natural Beauty.

The Green Belt debate

The positive case

The use of Green Belt has prevented 'ribbon' or 'strip' development whereby a continuous but shallow band of development forms along the main roads between towns. The strongly held view that settlements should be maintained as distinct and separate places, has been served by Green Belt designation of the intervening land (or in some cases by the application of quasi Green Belt policies). Given that a lot of land designated as Green Belt is on the immediate fringe of significant urban areas, it is a positive reflection on Green Belt policy that it has helped to retain this land as open and hence as a valuable resource. The urban fringe is the nearest opportunity for outdoor recreation for large numbers of people in urban areas, if the land is publicly accessible. Land in these locations will be increasingly valuable for food and energy production in future. Such land should not just be kept open, but should be positively managed, through such initiatives as multi-functional community forests.

The negative case

It might seem odd, for instance, as the designation of Green Belt implies, that at some entirely arbitrary point in the evolution of a town, it should not grow any more. Even without any claim that the town has reached its 'right size' (something rather difficult to justify) it must be the case that places cannot meet modern needs and expectations yet remain unchanged. It would seem to be at odds with the basic concept of sustainability that future generations be precluded by policy now from using the available resources to meet their needs as they occur in their time. Most Green Belt was established in the 1950s and has not been objectively reviewed since. For planning, a practical consequence of the Green Belt and the emotions that it evokes may be that rational decisions about where development should go based on a balanced judgement of planning issues, are inhibited. The mantra is often: There can be no change to the Green Belt – look somewhere else. However the need to meet housing need means that Green Belts should not be preserved without a rational review of their purpose set against the need for change.

The big issue

The most immediate issue for the Green Belt is the maintenance of the purposes of the Green Belt set against the under-provision of housing across many parts of the country, where the capacity to accommodate sustainable development in urban areas is often insufficient to meet the housing requirement.

National planning policy makes provision for changes to be made to the Green Belt. Critically, changes to the Green Belt are made through the local plan. In order to make a change to the Green Belt boundary in the local plan there have to be 'exceptional circumstances' (NPPF para 83). Housing (or employment land need) can be an exceptional circumstance to justify a review of your Green Belt boundary.

This principle has been recently set out beyond any doubt by the Hunston High Court judgment in St Albans. This section of the judgement is worth quoting:

'Having identified the full objectively assessed needs figure the decision maker must then consider the impact of the other policies set out in the NPPF. The Green Belt policy is not an outright prohibition on development in the Green Belt. Rather it is a prohibition on inappropriate development in the absence of very special circumstances. It is entirely circular to argue that there are no very special circumstances based on objectively assessed but unfulfilled need that can justify development in the Green Belt by reference to a figure that has been arrived at under a revoked policy which was arrived at taking account of the need to avoid development in the Green Belt.'

Planning Policy Guidance

The Guidance was changed in October 2014 to address how the presence of Green Belt is taken into account in addressing the policy requirement that 'local planning authorities should, through their local plans, meet objectively assessed needs unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as whole, or specific policies in the Framework indicate development should be restricted'. The Guidance notes that Green Belt is identified in the NPPF as such a policy.

It goes on to say that 'once the need has been assessed, the local planning authority should prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period, and in doing so take account of any constraints such as Green belt, which indicate that development should be restricted and which may restrain the ability of an authority to meet its need'.

These statements are part of the PPG and guidance cannot change policy which is what should prevail. So the policy on this has not changed though the PPG; the guidance explains the policy. The additions to the Guidance have been accompanied by various Ministerial statements and considerable press coverage, and it is perhaps this that has to lead some authorities with extensive areas of Green Belt to pause and to reconsider where they are going with their local plans. The thrust of Ministerial statements as reported in the press has led to some local planning authorities considering that the constraint created by Green Belt may be a reason for the housing needs to not be met.

The PPG has not changed the approach to reviewing and changing Green Belt through the preparation (or revisions) of a local plan where there are 'exceptional circumstances'. It is still not the case that a local planning authority can expect to be able to ignore its housing needs by saying it has Green Belt, and a proper look at how the Green Belt performs against the purposes of including land in the Green Belt is clearly required.

In the [Inspector's interim report into the Cheshire East local plan](#), concern was raised with the plan's use of Green Belt land for development when there is non Green Belt land that might have been used. The Inspector appears to be suggesting some form of sequential approach whereby Green Belt land is used only after other sources have been exploited, though there is no explicit basis for such an approach in national policy. The complexity is that very many issues have to be taken into account in setting out a development strategy in a plan, within the overall context of the statutory requirement for plan makers of seeking more sustainable development.

In the 6 November 2014 report the Inspector says, 'It therefore seems to me that these are significant flaws in both the process and evidence relating to the release of land from Green Belt, particularly given the recent clarification of national guidance on the significance of the Green Belt'. The comment appears to suggest that with bar raised politically at least, the onus on the Council to explain and justify its position in relation to the Green Belt is that much greater at present.

A further change was made in the PPG in October 2014 in the way that Green Belt is referred to. Section (ID-3-034-20141006) was in the Guidance from its first formal publication and says, 'Unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the green belt and other harm to constitute the 'very special circumstances' justifying inappropriate development on a site within the Green belt'. Again some people have taken comfort in this statement, though the interesting amendment that was made to the PPG in October 2014 was to change the title above this paragraph from 'Can unmet need for housing outweigh Green Belt protection?', with the addition at the beginning of the question of the words, 'In decision taking' (Paragraph: 034 Reference ID: 3-034-20141006). This addition explicitly distinguishes application and decision taking, where development in Green belt is very rarely allowed particularly in recovered decisions (decisions taken by the Secretary of State), from the process of plan making where it is quite clearly the national

policy position that it is for local planning authorities to take a view on whether the Green Belt needs to be changed to address the development needs of the community for the plan period.

Duty to Cooperate

The current arrangements for strategic planning through local plans established by the Duty to Cooperate in the Localism Act 2011 and the soundness tests in the NPPF are relevant to the consideration of Green Belt.

The level of housing which a local plan needs to provide for is determined in part by whether there is an 'unmet requirement' from a neighbouring authority (NPPF para. 182). More generally it is said that, 'Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans' (NPPF, para. 179). Green Belt is a strategic policy and hence a strategic issue in the terms of the Duty to Cooperate, and so areas of Green Belt should be assessed by local authorities collectively. Significantly Green Belt surrounding an urban area may fall into different administrative areas. Does a neighbouring authority's non Green Belt land prevail over local Green Belt? In the absence of Regional strategies (which were a means of addressing and making decisions about these issues), some authorities are working together to resolve such matters.

Green Belt reviews

This term is used in reference to looking to see whether a change will be needed to the Green Belt; and in some cases to the actual revision of Green Belt boundaries. Any review of Green Belt boundaries should involve an assessment of how the land still contributes to the five purposes noted earlier, and take place via the local plan process.

Below we look at some ways that the five purposes might each be used in assessing the contribution of land to the Green Belt when undertaking a Green Belt review. Some of these purposes will be more relevant, or important, than others on the choices to be made.

Purpose: to check the unrestricted sprawl of large built up areas

The terminology of 'sprawl' comes from the 1930s when Green Belt was conceived. Has this term has changed in meaning since then? For example, is development that is planned positively through a local plan, and well designed with good masterplanning, sprawl?

Purpose: to prevent neighbouring towns from merging into one another

Green Belt is frequently said to maintain the separation of small settlements near to towns, but this is not strictly what the purpose says. This will be different for each case. A 'scale rule' approach should be avoided. The identity of a settlement is not really determined just by the distance to another settlement; the character of the place and of the land in between must be taken into account. Landscape character assessment is a useful analytical tool for use in undertaking this type of assessment.

Purpose: to assist in safeguarding the countryside from encroachment

Presumably all Green Belt does this, making the purpose difficult to use to distinguish the contribution of different areas. The most useful approach is to look at the difference between urban fringe – land under the influence of the urban area - and open countryside, and to favour the latter in determining which land to try and keep open, taking into account the types of edges and boundaries that can be achieved.

Purpose: to preserve the setting and special character of historic towns

This purpose is generally accepted as relating to very few settlements in practice. In most towns there already are more recent developments between the historic core, and the countryside between the edge of the town.

Purpose: to assist in urban regeneration by encouraging the recycling of derelict and other urban land

With this one, it must be the case that the amount of land within urban areas that could be developed will already have been factored in before identifying Green Belt land. If Green Belt achieves this purpose, then all Green Belt does so to the same extent and hence the value of various land parcels is unlikely to be distinguished by the application of this purpose.

On this basis the types of areas of land that might seem to make a relatively limited contribution to the overall Green Belt, or which might be considered for development through a review of the Green Belt according to the five Green Belt purposes, would be where:

- it would effectively be ‘infill’, with the land partially enclosed by development
- the development would be well contained by the landscape eg- with rising land
- there would be little harm to the qualities that contributed to the distinct identity of separate settlements in reality
- a strong boundary could be created with a clear distinction between ‘town’ and ‘country’.

The purpose of a review is for the identification of the most appropriate land to be used for development, through the local plan. Always being mindful of all of the other planning matters to be taken into account and most importantly, as part of an overall spatial strategy.

Sustainable development needs to be considered here. It is a matter of law that, ‘any person or body engaged in the preparation of Local Development Documents must exercise the function with the objective of contributing to the achievement of sustainable development’ (2004 Planning Act). Similarly reporting on the environmental implications of reasonable alternatives is a statutory requirement of plan making, and Green Belt is not an environmental matter.

Sometimes, based on what is now understood about accessibility, trip lengths, and the use of appropriate travel modes for instance, the most sustainable locations for development may well be in Green Belts. The only relevant statement in National policy on the relationship between sustainable development and Green Belts is, ‘when drawing up or reviewing Green Belt boundaries, local planning authorities should take account of the need to promote sustainable development’ (NPPF para. 84).

This leads to the view that to justify the use of land in the Green Belt for development through the local plan, an assessment needs to take account of sustainability issues - such as accessibility and environmental assets - and an assessment against Green Belt purposes to be combined with a comprehensive assessment according to other issues. A common interpretation of the policy position, though not one expounded in the NPPF or the Planning Practice Guidance is that where necessitated by the development requirement, plans should identify for development of the most sustainable locations, unless outweighed by effect on

the overall integrity of the Green Belt according to an assessment of the whole of the Green Belt according to the five purposes.

Safeguarded land

There is a particular feature of Green Belt policy that arises from the combination of the wish for permanence, and yet the inevitability of having to find land for development through development plans. This is the idea enshrined in policy, that changing Green Belt boundaries should only be necessary once in the plan period. The land taken out of the Green Belt under this policy provision but not to be used for development in this plan period is 'safeguarded land'; protected from development proposals arising in the meantime by policies with similar force to Green Belt.

These principles are in the NPPF (para 85): local planning authorities

- should 'satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period'
- 'where necessary identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt, in order to meet longer term development needs strategy well beyond the plan period'.

Identifying safeguarded land is another requirement of a Green Belt review therefore. One challenge for authorities is that there is no guidance on how they are to interpret the policy, nor (to date) any consistent pattern discernible from local plan examinations. In some cases local authorities seek to identify safeguarded land in Green Belt changes over and above the calculated development requirement for the plan period, but there are certainly cases where the issue is effectively ignored by the planning authority and examining inspectors alike.

Summary

Discussions about Green Belt are often controversial and challenging. We recommend local authorities try to reduce the challenge by:

- giving clear and correct information about Green Belt to remove misunderstanding
- making the consideration of Green Belt in the context of proper planning for sustainable development for the whole community
- trying to avoid allowing Green Belt to establish a special, mythical status – through setting it alongside the use of agricultural land, increasing risk of flooding and effect on valuable landscapes in deciding where development is to be provided
- to get informed debate from communities on the issue and for councillors to show strong leadership.



This PAS publication was researched and written by Peter Brett.

Appendix BG2.6 'Matter 3: Green Belt' (City of York Website)

**MATTER 3
GREEN BELT****1 Introduction**

- 1.1 Some thirty years ago, the Department of the Environment published a booklet entitled *'The Green Belts'*¹. It stated that the primary purpose of the York Green Belt was "to safeguard the character of the historic city which might be endangered by unrestricted expansion", a purpose which has been reaffirmed, throughout the subsequent years, by Ministerial Statements, Local Plan Inspectors, and by numerous Inspectors' on Appeal. The fact that the Secretary of State, under the provisions of SI 2013 No. 117, specifically retained the two RSS policies relating to the need for the York Local Plan to safeguard the special character and setting of the historic City attests to the fact that this remains the key consideration when determining not simply where the detailed Green Belt boundaries should be drawn but also what is the most appropriate development strategy for the York Local Plan.
- 1.2 There are six historic towns within England which have a Green Belt whose primary purpose is to safeguard their special character and setting. Of those, however, York is unique not only in terms of the fact that it is the only one whose inner Green belt boundaries have never been defined, but it is the only one of the six which sits wholly within an encircling ring-road. From many stretches of this route, one can see the Minster tower and the edge of the main built-up area over the surrounding farmland and, as result, gain an appreciation the scale and landscape setting of the historic city. Moreover, York is the only one of those Cities where it is possible to obtain views of its Minster from so many different locations on the arterial approaches to and around the circumference of the City (in some cases up to 15 to 20 miles away). Appendix A and B, which reproduces two figures from the *York Central Historic Core Conservation Area Appraisal* [Doc. SD104], illustrates this point.

¹ *The Green Belts*, Department of the Environment, HMSO 1988

2 The approach to defining the Green Belt boundaries

2.1 Question 3.2

Paragraph 1.1.1 of the Council's "Approach to defining York's Green Belt" Topic Paper (TP1) [CD021] says "York's Local Plan will formally define the boundary of the York Green Belt for the first time." How has the Council approached the task of delineating the Green Belt boundaries shown on the Policies Map?

2.1.1 The approach which the Council has used to define the detailed Green Belt boundaries around the City has been logical, appropriate and proportionate. Whilst Historic England has some disagreements with the authority regarding which specific areas around the City contribute to its special character and setting, about precisely where some of the detailed Green Belt boundaries have been defined, and considers that a number of the sites that are currently proposed for development are inappropriate, nonetheless, the overall methodology the Council has used to establish the boundaries of the Green Belt is supported.

2.1.2 In order to be able to define the detailed boundaries of a Green Belt that is likely to fulfil its primary purpose, it is first necessary to identify those elements which contribute to the York's special character and setting. This the Council has done in its excellent '*Heritage Topic Paper*' [Doc. SD103]. Having established these, what it terms, 'Principal Characteristics' and 'Character Elements', the Authority has then used this analysis to identify which currently-undeveloped areas outside the built-up areas of the City and its surrounding settlements contribute to each of those components. This has formed the basis for establishing not only where the detailed Green Belt boundaries should be defined, but also the overall development strategy of the Plan.

a) Is the approach taken in general conformity with those parts of the Regional Spatial Strategy for Yorkshire and Humber ('the RSS') that have not been revoked, namely Section C of Policy YH9, Sections C1 and C2 of Policy Y1, and the Key Diagram of the RSS insofar as it illustrates the RSS York Green Belt policies and the general extent of the Green Belt around the City of York?

2.1.3 As has been set out above, the approach used by the Council to define the Green Belt has been based on a good understanding of the elements which contribute to the special character and setting of the historic city. This is a key prerequisite for any strategy seeking to conform with the requirements of the two retained RSS Policies. In this respect, therefore, it is considered that the overall approach has had due regard to the

requirements of Policy YH9 and Y1C and, as far as is possible, reflects the illustrations of those Policies in the Key Diagram.

b) How has the need to promote sustainable patterns of development been taken into account?

2.1.4 In producing this Local Plan, the City Council faces the not-inconsiderable challenge of trying to reconcile meeting the Objectively Assessed Needs of an extremely prosperous and dynamic City with that of safeguarding the historic character of one of the finest and most important historic settlements in England, a city where both its compactness and surrounding landscape setting are key aspects of what make it such a special place.

2.1.5 In the context of York, therefore, whilst concentrating development in and around the main built-up area of the City or its surrounding settlements may, theoretically, result in developments that are well-related to existing services and facilities, in many of those locations such developments run the risk that they threaten many of the elements which have been identified as contributing to the City's special character.

2.1.6 NPPF Paragraph 8 makes it clear that, in order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system and that *"the planning system should play an active role in guiding development to sustainable solutions"*. Developments which threatened the special character or setting of York would not be delivering sustainable development in terms of the environmental role of sustainable development. The overall development strategy, therefore, has been designed to reconcile meeting the OAN in a manner consistent with that of meeting the primary purpose of its Green Belt.

c) With regard to Paragraph 84 of the Framework, how have the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary been considered?

2.1.7 By identifying those elements which contribute to the special character and setting of the historic City, the Council has been able to ascertain to what extent channelling development towards the existing urban areas within the Green Belt would be compatible with defining a Green Belt whose primary purpose is to safeguard its special character. It has

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 Historic England

concluded that it would not be possible to identify sufficient land in such locations whilst retaining those areas which need to be kept permanently open in order to safeguard a number of key elements which contribute to the City's special character and setting. As a result, the Plan has sought other solutions of accommodating its development needs.

2.1.8 We have no comments to make regarding the extent to which it may or may not be possible to accommodate a proportion of the development needs in the neighbouring local planning authorities beyond the outer Green Belt boundary.

d) How do the defined Green Belt boundaries ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development and/or include any land which it is unnecessary to keep permanently open?

2.1.9 By limiting the amount of new development in locations beyond the main built-up areas which would threaten its primary purpose, the defined Green Belt boundaries will assist in ensuring that the OAN are met in a manner consistent with the spatial principle of '*conserving and enhancing York's historic and natural environment*' that is set out in Policy SS1.

2.1.10 In terms of fulfilling its primary purpose, the proposed Green Belt boundaries do not include any land which it is unnecessary to keep permanently open.

2.2 Question 3.3

Will the proposed Green Belt boundaries need to be altered at the end of the Plan period? To this end, are the boundaries clearly defined, using physical features that are readily recognisable and likely to be permanent? What approach has the Council taken in this regard?

2.2.1 We have no comments to make regarding the probability of whether or not the Green belt boundaries will need to be altered at the end of the plan period.

2.2.2 However, it is of concern that the Council has only identified land sufficient to meet the needs of the Plan area up to 2038 (Policy SS2). This date is only five years after the end of the Plan period. Paragraph 79 of the NPPF states that "... *the essential characteristics of Green Belts are their openness and their permanence*". A Green Belt which might need to be amended only five years after the end-date of this Local Plan does not

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appear to have the degree of ‘permanence’ expected by national planning guidance.

- 2.2.3 In terms of whether or not the boundaries are clearly defined, with the exception of the area on the south-eastern side of the City around the University, the Green Belt boundaries (as identified in Annex 4 of the Addendum to Topic Paper TP1 (March 2019) [Doc. EX CYC 18]) do follow clearly-defined physical features and, in that respect, are likely to endure.
- 2.2.4 Of the sites where the Council considers there are exceptional circumstances which warrant removing them from the Green Belt, although there are a number of locations where Historic England considers that the extent of the site as allocated would result in harm to the primary purpose of the Green Belt, even in those cases, the proposed boundaries are considered to follow clearly-defined physical features and, in that respect, are likely to endure.

2.3 Question 3.5

Overall, are the Green Belt boundaries in the plan appropriately defined and consistent with national policy in the National Planning Policy Framework, and is the Plan sound in this regard?

- 2.3.1 With the exception of the area on the south-eastern side of the City around the University, the Green Belt boundaries (as identified in Annex 4 of the *Addendum to Topic Paper TP1* (March 2019) [Doc. EX CYC 18]) do follow clearly-defined physical features and, in that respect, are consistent with national planning policy

3 Exceptional circumstances

3.1 Question 3.6

Paragraph 83 of the National Planning Policy Framework is clear that Green Belt boundaries should only be altered in exceptional circumstances. It appears that the Plan proposes to ‘release’ some land from the Green Belt by altering its boundaries. In broad terms:

- c) What is the capacity of existing urban areas to meet the need for housing and employment uses?
- 3.1.1 There is some capacity within the existing urban areas to accommodate a proportion of the City’s housing and employment needs. The vast majority

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of locations where such development might take place have been identified as Strategic Sites, housing allocations (under the provisions of Policy H1) or employment sites (under the provisions of Policy EC1). The yield from a number of these locations, however, is constrained to some extent by the need to ensure that any development is likely to be compatible with the appropriate conservation of the many and varied elements which contribute to the historic character of the City. These considerations extend not simply to the character and setting of its wealth of designated heritage assets (as detailed on page 30 of the *Heritage Topic Paper*) but also its extremely-important archaeological deposits together with the large numbers of non-designated assets. The need to ensure that the City's skyline and the key views and vistas across the City (particularly those of the Minster) are not harmed, also limits the extent to which housing might be provided through increasing the heights of the buildings on these sites.

- d) Is there any non-Green Belt rural land which could meet all or part of the District's housing and employment needs in a sustainable manner (having regard to any other significant constraints)?

3.1.2 Given that the inner Green Belt boundary, for the most part, is defined tightly around the edge of the existing built-up area and that the outer boundary extends up to, and beyond, the edge of the Plan area, there do not appear to be many areas of non-Green Belt land that could meet the City's development requirements.

4 The approach to identifying land to be 'released' from the Green Belt for development

4.1 Question 3.7

How has the land proposed to be removed from the Green Belt been selected? Has the process of selecting the land in question been based on a robust assessment methodology that:

- d) reflects the five purposes that the Green Belt serves, as set out in Paragraph 80 of the Framework, particularly that of preserving the setting and special character of the historic city (in answering this question, we ask that the Council refers specifically to the 'wedges' of Green Belt that would be created, for example those between the main urban area and Sites ST7 and ST8):

**MATTER 3
GREEN BELT**
Historic England

- 4.1.1 In terms of the purpose of preserving the setting and special character of historic towns, Historic England would broadly endorse the approach the Council has used (although, not necessarily, its application). To evaluate the impact of the sites which it was proposed to be removed from the Green Belt, the Council used the elements identified in the 'Heritage Topic Paper' within its 'Heritage Impact Appraisal' [Doc. SD101] as a framework against which to assess each of the individual sites where growth might be accommodated. However, as will be noted from the Historic England responses to the Sustainability Appraisal (and the comments in respect of Matter 1 Question 1.7) we do have some reservations that the original 'Heritage Impact Appraisal' was never updated in response to the Reg.18 Consultation comments and, in addition, have concerns about how the Sustainability Appraisal reached its conclusions about the likely impact which some of the proposed development sites might have upon the historic environment.
- 4.1.2 Historic England would also take issue with the Council's assertion that the sites which have been identified for removal from the Green Belt 'have been done so without damage to its primary purpose' [Topic Paper TP1 Addendum (Mar. 19), Paragraph 7.116]. As can be seen from Historic England's representations to the Submission Plan, there are a number of sites which, if developed as proposed, would be likely to cause considerable harm to some of the elements identified as contributing to the special character and setting of the historic city and, therefore, to the primary purpose of the Green Belt.
- 4.1.3 As will be noted, Historic England has are considerable concerns about the proposal to establish 'wedges' of Green Belt between the existing built-up area of the city and Sites ST7 and ST8. Such a proposal would be likely to result in a form of development in both of those areas which would harm several elements that contribute to York's special character and setting.
- e) is in general conformity with RSS Policy Y1, which aims to protect the nationally significant historical and environmental character of York, including its historic setting, the need to safeguard the special character and setting of the historic city and to protect views of the Minster and important open areas; and
- 4.1.4 In general terms, as has been set out above, it is considered that the way by which the land to be removed from the Green Belt has been identified is in general conformity with the RSS Policies and has had due regard to the need to safeguard the special character and setting of the historic city, to protect views both of the Minster and its important open areas.

MATTER 3
GREEN BELT
 Historic England

However, in the case of a number of individual sites, Historic England considers there are a few which, if developed as is currently proposed in the Plan, would result in harm to certain aspects of York's special character and setting and, therefore, run contrary to the intentions behind RSS Policies YH9 and Y1C.2.

- f) takes account of the need to promote sustainable patterns of development?

4.1.5 See comments in Paragraph 2.1.4 et seq above.

4.2 Question 3.10

Overall, is the approach to identifying land to be 'released' from the Green Belt robust, and is the Plan sound in this regard?

4.2.1 The overall methodology by which land had been identified for release from the Green Belt is, for the most part, robust, but is deficient in a number of counts:-

- (a) Firstly, as Historic England made clear in its representations, the maps in the *Topic Paper TP1 Addendum* did not accurately reflect the work that had been undertaken as part of the *Heritage Topic Paper*. In particular it failed to include all the land which contributes to regulating the size and shape of the urban area (and thereby the compactness of the city), which contributes to the wider countryside setting of the historic City, or the land which contributes to preventing the coalescence of the main built-up areas with the surrounding settlements. As a result, in certain parts of the City, the Authority's evaluation of the impact which the 'release' of land from the Green Belt might have upon its primary purpose does not accurately reflect the likely harm that the loss of these areas and their subsequent development might have upon York's special character and setting.
- (b) Historic England would take issue with the assertion that the sites which have been identified within the general extent of the Green Belt '*have been done so without damage to its primary purpose*' [Topic Paper TP1 Addendum (Mar. 19), Paragraph 7.116]. As can be seen from the representations submitted by Historic England to the Plan, it is considered that there are a number of sites which, if developed, would cause considerable harm to elements which

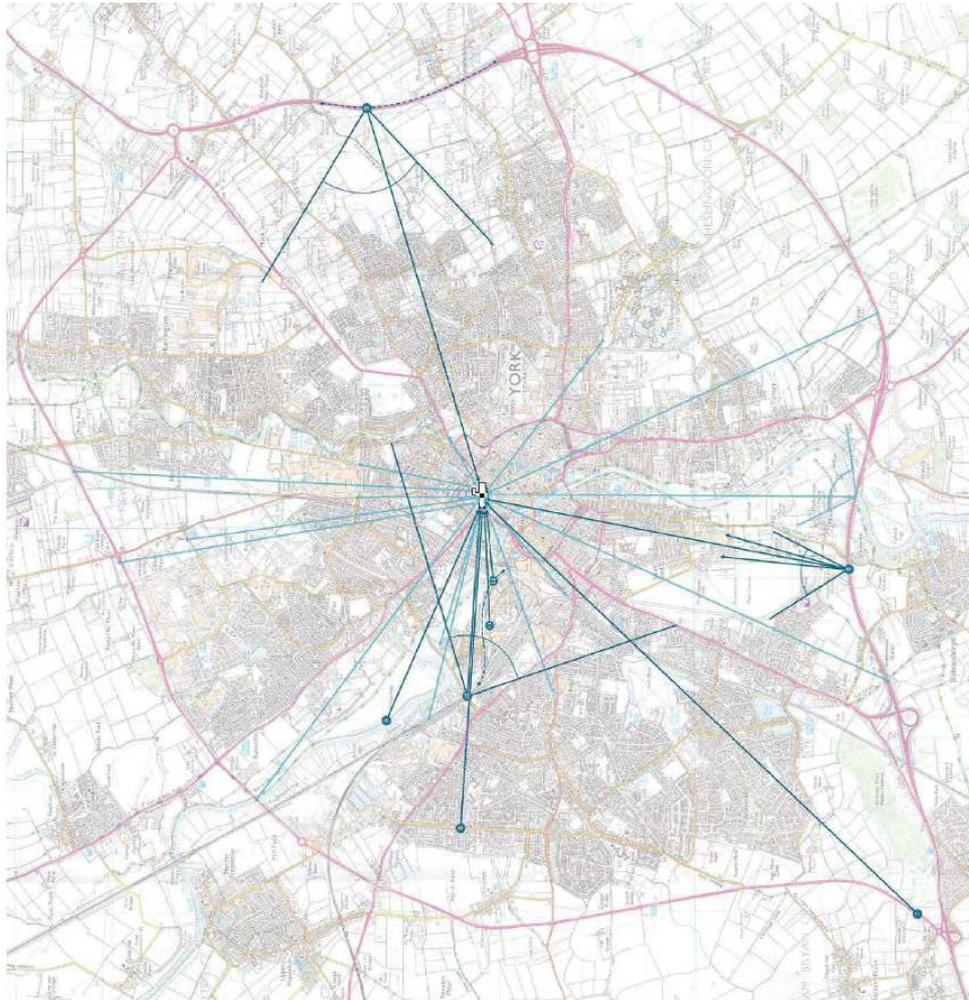
MATTER 3
GREEN BELT
Historic England

contribute to the special character and setting of the historic city and, therefore, harm the primary Green Belt purpose.

- (c) Historic England would also take issue with the assertion that the *'consequential impacts on the purposes of the Green Belt have been ameliorated and reduced to the lowest reasonably practical extent'*. As can be seen from Historic England's representations, there are a number of sites where an alternative proposal would reduce the harm that the current allocations would cause to the primary purpose of the York Green Belt

**Appendix A:
Extract from the York Central Historic Core Conservation Area Appraisal**

City-wide views



Key Views

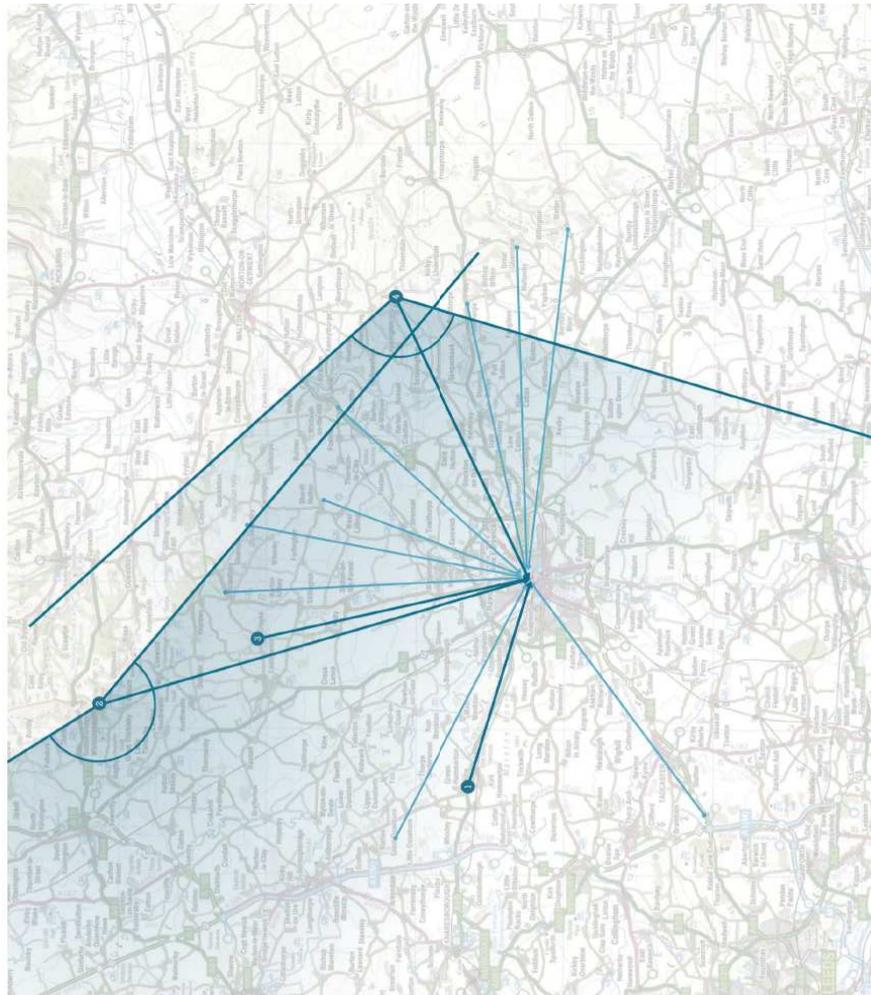
- Fixed with focal point
- Dynamic
- Dynamic with focal point
- Panorama
- Panorama with focal point
- Dynamic panorama
- Dynamic panorama with focal point
- Key View reference number

Other Views

- Minster

**Appendix B:
Extract from the York Central Historic Core Conservation Area Appraisal**

Long-distance views



- Key Views
- Fixed with focal point
- Dynamic
- Dynamic with focal point
- Panorama
- Panorama with focal point
- Dynamic panorama
- Dynamic panorama with focal point
- Key View reference number
- Other Views

Appendix BG2.7 Sustainable Growth of Cathedral Cities and Historic Towns

THE SUSTAINABLE GROWTH OF CATHEDRAL CITIES AND HISTORIC TOWNS



for English Heritage

by

Green Balance with **David Burton-Pye**



October 2014

NHPP 2A1 & 6B1: The Sustainable Growth of Cathedral Cities and Historic Towns**English Heritage reference:****Project 6911**

Author	Job Title	Organisation	Contact details
Richard Bate	Partner	Green Balance	towns@greenbalance.co.uk tel.: 01732 811456
David Burton-Pye		(Sole trader)	info@heritageconsultancy.com tel.: 01902 743950

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The interviewees for the project, named in Appendix 1, who kindly spent a considerable time responding to our questions by telephone (for the 20 towns reviewed for their planning approaches in chapter 3) or face-to-face (for the 8 case study cities);

Consultees who responded with suggestions for the methodologies worthy of study and places where particular principles had been applied; and

Seminar attendees on 28th July 2014 who contributed comments on the draft report.

Front cover illustrations:

Methodologies for reconciling growth with heritage

Oxford: View cones	Cambridge: Urban intensification
Lichfield: Historic Characterisation	Cambridge: Cambourne new settlement
Chester: Design response to historic environment	

Green Balance
Providence Cottage
Upper Green Road
Shipbourne
Kent TN11 9PL
Tel./fax.: 01732 811456
Email: towns@greenbalance.co.uk
Web: www.greenbalance.co.uk

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SUMMARY

This report investigates the effectiveness of local plan-making in protecting England's heritage at the scale of the character and setting of smaller cathedral cities and historic towns. It explores how current policy and practice address potential tensions between meeting local development needs and giving proper weight to conserving the special qualities of historic settlements.

The first of three principal topics reviewed is the scale of development anticipated in historic towns. A web-based study of fifty historic towns covered by up-to-date development plans was supplemented by interviews with development management staff in their local planning authorities. The data identified show that only modest development is expected in most smaller settlements (under 35,000 population). Otherwise there is no relationship between the size of historic towns and the scale of proposed housing, retail, commercial or infrastructure development. This applies both to development anticipated in the short term (measured by unimplemented permissions) and in the next 5-7 years (measured by commitments in adopted Core Strategies). The majority of planned housing and commercial development, which is particularly space-consuming, is expected on greenfield sites, broadly equating with urban expansion rather than land recycling. No reliable differences are apparent between historic towns in different regions. The heritage interest in towns does not appear to be a determining feature in shaping the type, quantity or location of new development.

The second aspect of the research is a review of the weight given to whole historic towns in the plan-making process and to these policies in practice. Twenty historic towns are examined, each covered by Core Strategies adopted since the publication of the National Planning Policy Framework in March 2012. All relevant heritage policy documents were studied, all Development Plan Documents and their Sustainability Appraisals, and the saved policies from earlier development plans. Telephone interviews were then conducted with the local authority Conservation Officer for each town and with an experienced representative of the leading voluntary sector body in each town concerned with heritage and planning issues.

The findings show that policies in most towns are supported by an adequate or good heritage evidence base and that policies in most former Local Plans provide some basis for heritage planning at the whole town scale. However, new Core Strategies contain insufficiently detailed heritage policies to ensure satisfactory outcomes in relation to other policy pressures, though many do mention the protection of the settings and characters of historic towns. Local policies, such as Area Action Plans, can provide more detailed heritage policies where development is planned in a heritage setting, though experience in taking up the opportunities is variable. Sustainability Appraisals also vary greatly in quality, often failing to provide sufficient conclusions or recommendations to capitalise on the evaluation work. Few Core Strategies had more than limited impact on local heritage strategy: continuity from past practice was prevalent. Likewise, the impact of the National Planning Policy Framework had been modest, with noticeable rebalancing between growth and heritage only in one case.

The key finding across the twenty towns is that the cultural approach of councillors to heritage is critical. The economic wellbeing of towns is councillors' primary concern everywhere, though this is interpreted differently from place to place. Councillors could take views ranging from heritage being beneficial to a town's distinctiveness and economy to it representing a burden and a drag on investment. Attitudes affect the numbers of conservation staff employed, evidence commissioned, policies adopted and decisions taken, all reflecting the relative priority given to heritage. In practice, heritage considerations are having some impact on the scale of development promoted through plan-making at historic towns, but this is secondary to the determination of both central and local government to provide the necessary homes, jobs and facilities needed by a rising number of households. There is some relationship between good heritage policies and good heritage outcomes, but the weight given to heritage policies varies: some policies may be aspirational, whereas in other authorities voluntary organisations successfully spurred councils to take existing heritage policies more seriously. Good heritage policies are necessary, but neither an end in themselves nor sufficient to secure positive results for historic towns.

The principal topic studied in most detail was the third: a report on the methodologies used for reconciling growth with the interests of historic settlements, concentrating on good practice examples illustrating the methodologies available. Whether these are heritage evaluation tools or established planning tools, to be useful they must be adapted to apply at the urban scale within the land use planning system. They are not exclusive, and in many towns and cities more than one is in use. Nine methodologies were chosen and reviewed in their practical application in eight cities. Each methodology is reviewed briefly, explaining its principles, how it functions, selected documents which review it, and examples of places where it has been applied. Greater detail is reserved for the case studies, each presented as appendices to the report, covering the following methodologies in the chosen cities:

- World Heritage Site in Bath;
- both urban intensification and new settlements in Cambridge;
- design response to the historic environment in Chester;
- Green Belt in Durham;
- historic landscape characterisation in Lichfield;
- view cones in Oxford;
- protection of setting in Salisbury; and
- urban extension in Winchester.

None of the case studies demonstrated a perfect solution and all had blurred aspects in practice. Lessons learnt are identified, the main message being that each settlement aiming to capitalise on the findings should choose the methodologies appropriate to its context.

The report comments on heritage-related issues identified across all case study cities: the share of local growth taken by each city; the evidence base available and used for planning purposes in each case; and the number of Conservation Officers employed in each city. Additionally, cross-cutting issues were identified in some cities but not others, each of which were locally significant and would merit further attention: the need for co-operation in cross-boundary planning issues; the unintended consequences of local government reorganisation; the impacts of providing student accommodation; the need to adhere to establish policies when local authorities develop their own land; and the limits to development in historic towns and cities. The report ends with 18 recommendations.

CHAPTER 1

THE PROJECT

Aims and objectives

1.1 English Heritage commissioned this project in spring 2014 to have a better evidence base on the effectiveness of local plan-making in protecting the character and setting of smaller cathedral cities and historic towns. There were two main aims:

- 1) to understand the extent to which current policy and practice is meeting local development needs while giving proper weight to the core planning principle of conserving heritage assets in a manner appropriate to their significance; and
- 2) to understand not only how development is impacting on historic places, but also to identify and disseminate information on how local planning authorities should reconcile meeting their assessed development needs with protecting the character and setting of their historic places.

1.2 The objectives of the project were:

- i) To provide a national overview of the threats which urban extensions and peripheral growth pose for the heritage significance of the smaller cathedral cities and historic towns. To identify types of development proposals prevalent at the current time and likely trends over the next five to seven years.
- ii) To examine how much weight is being given to the need to safeguard the character and setting of smaller cathedral cities and prominent historic towns in the plan-making process.
- iii) To consider how the special character of smaller cathedral cities and historic towns in their settings can best be conserved while provision is made to accommodate the future development needs of these settlements. This might involve consideration of local plan processes, methodologies, design approaches, use of existing or modified forms of protection, and other approaches/ideas.
- iv) To look at measures local authorities can take to ensure that they give proper weight to the protection of the significance of their cathedral cities and historic towns. To consider the effectiveness of Green Belt designation and see if there are other established designations that can be used to identify the value of undeveloped land around settlements.

Background

1.3 The cathedral cities and historic towns of England are among the country's most treasured and attractive places: they form an important part of the identity of England, and figure prominently in images of 'Englishness'.

1.4 These places are often also thriving contemporary centres of population, economic activity, education, religion and administration, with well-established infrastructure. They provide a wide range of services, not just to their own populations but also to their predominantly rural surroundings. Many cathedral cities and historic towns are seen as desirable places in which to live or work precisely because of their present special character. Their status makes them obvious locations for growth, notably through the identification in emerging local plans of new housing and employment land in urban extensions, recycling of urban land and peripheral development.

1.5 Against this backdrop, these forms of development may have a major impact on the appreciation of the special character or significance of some smaller cathedral cities and principal historic towns. Concern is often focused on the impacts which proposals would have on the historic relationship between a city or town and its landscape setting. This concern is especially acute where the town is focussed on one prominent building, such as a cathedral, major church or castle, which was designed to dominate its surroundings.

1.6 Such concerns arise from an appreciation of the value and attractiveness of these places as they are at present. Many are also important as tourist destinations, with their historic character therefore being of direct value in terms of employment and economy. It could be very damaging to the long-term economic interests of these places if their special character is harmed by poorly-considered new development.

1.7 The research need is therefore in essence to examine how local authorities are considering the growth needs of cathedral cities and historic towns against the need to protect these settlements and their settings. The evidence gathered is needed to help inform the debate about proportionate responses to planned development.

1.8 The analysis tries to measure the present and assess the future, not dwell too much on the past. Past changes to the character of historic towns usually cannot be undone easily, though the experiences can be instructive for the future. Where recent experience is relied upon, the project tries to assess whether that is a guide to the future. The National Planning Policy Framework (NPPF) sets out an 'environmental role' for the planning system which requires it to "contribute to protecting and enhancing the built and historic environment", so this project contributes to a progress review on the NPPF so far as heritage at the whole settlement scale is concerned.

1.9 Our starting point is that growth and change are inevitable in our historic places and this inherently need not be viewed with undue alarm: it is often the opposite risk – of economic decline, with its decay, loss of use and risk of demolition of heritage property, and deterioration in the atmosphere of a place – which poses the more immediate threat to some historic towns. The atmosphere of historic towns also changes with the age, even if the townscape alters little. Two of the principal causes of this are people and vehicles. For example, the advent of mass tourism over the last few decades has transformed the experience of places like Canterbury and Stratford-upon-Avon, while the money brought in has nurtured the maintenance, recycling to new uses and continual improvement in the physical fabric of the heritage of these and many other historic towns. Equally, the growth in traffic over the decades has progressively strangled some historic towns, while others

have been improved radically by the pedestrianisation of large areas and elimination of cars from their centres.

1.10 The difficulty remains to reconcile growth with heritage: the requirements of rising numbers of households against the reasonably fixed stock of heritage. This is also a matter of seeing the wood as well as the trees. There are established expectations of changes that may or may not be made to listed buildings, but there are few expectations of how whole historic towns and cities should change. Individual historic places and their local authorities are working this out for themselves afresh in each case. The results can be highly successful or upsetting. This study does not offer a blueprint, but it does provide some background evidence on what is happening in selected historic towns and cities, and it does review ideas that others may feel worth trying too.

Report structure

1.11 The starting point for the study, in the Brief, was that all towns assessed should be:

- in the population range 10,000-160,000, to cover towns and smaller cities; and
- outside built-up metropolitan areas, so that urban growth patterns under investigation are not significantly affected by neighbouring settlements.

1.12 Chapter 2 addresses objective (i). Within the resources of the project, a national overview of development pressures comprised a review of experiences with growth prospects in a sample of 50 historic towns and cities. The scale of unimplemented planning permissions on greenfield and brownfield sites provided an indication of the current level of growth anticipated for development for housing, retailing, commercial development and infrastructure. Developments in the same categories were identified from approved plans to indicate intended growth patterns over the next five to seven years. Information was gathered from local authority development plans, their websites and by telephone interviews with development management staff. The results are largely quantitative and presented in charts.

1.13 Chapter 3 responds to objective (ii). This provides a detailed review of how whole town heritage (character, townscape and setting) has fared through the forward planning process in twenty historic towns and cities across eighteen local planning authorities. All places were covered by post-NPPF adopted Core Strategies. This enabled some comparison of previous forward plans (old-style Local Plans and Unitary Development Plans) and their effectiveness with the new types of Plan (post-2004) and their prospects. The review includes the evidence base, the policies, the weight given to policies in practice, the Sustainability Appraisals, the political significance of towns' heritage relative to other issues, and the changes in policy and practice which can be attributed to the Core Strategy preparation process and to the NPPF. Information was gathered from local authority documents, their websites and by telephone interviews with both Conservation Officers and representatives of local voluntary heritage organisations.

1.14 The central feature of the project is a commentary on the methodologies which local authorities can use to try to reconcile urban growth with settlement-scale heritage. Chapter 4 outlines the available methodologies identified. It introduces detailed cases studies in

Appendices 3 to 10 which report on good practice in the use of nine methodologies across eight cities. These case studies derive from site visits, analysis of relevant documents and in-depth face-to-face interviews with local authority staff (Conservation Officers and Development Plan Managers) and representatives of local voluntary heritage organisations.

1.15 Chapter 5 summarises each of the eight case studies. It also reviews key background information obtained from all case study cities to identify points of compatibility and difference. These cover the share of local growth taken by the case study city; the evidence base in support of practice in each case; and the numbers of Conservation Officers available. The chapter finishes with a commentary on heritage-related issues which were found to arise in some (though not all) cities. This focuses on cross-boundary planning issues; the effects of local government reorganisation; pressures for student accommodation; and development on local authorities' own land. It finally raises some questions around the development limits to historic towns and cities.

1.16 The report concludes with 18 recommendations.

CHAPTER 2

DEVELOPMENT ANTICIPATED IN 50 HISTORIC TOWNS

2.1 The first objective of the project was “To provide a national overview of the threats which urban extensions and peripheral growth pose for the heritage significance of the smaller cathedral cities and historic towns. To identify types of development proposals prevalent at the current time and likely trends over the next five to seven years.”

Research method

2.2 The aspiration to investigate development pressures in as many historic towns and smaller cathedral cities as possible was constrained by practicalities to fifty settlements. This number was intended to be sufficiently large to identify trends but without consuming a disproportionate amount of the project budget. A comparative study between historic settlements and ‘non-historic’ ones was precluded by resource limitations and by the difficulty of controlling for the many possible reasons for variations in development activity.

2.3 The selection of settlements for study was governed by the following criteria (in addition to the basic ones for the project that all towns should be in the population range 10,000-160,000 and outside built-up metropolitan areas):

- (i) in order to be reasonably sure about likely development over the next few years, settlements should only be chosen if located within local planning authorities which have adopted Core Strategies under the Planning Act 2004 (i.e. they are not dependent on out of date growth intentions in plans from the previous forward planning system);
- (ii) there should be a reasonable spread of settlements around England, enabling some elementary regional comparisons.

The project steering group made the final selection of settlements for study. Particularly in some regions the choice reflected the limited number of adopted plans as at March 2014. The towns studied are listed in Table 1, together with basic information about them.

2.4 A distinction was drawn between development pressure and actual development. Many settlements in economically buoyant areas are subject to development pressure, but it is not necessarily the case that planning authorities will always wish to accommodate that pressure exactly where it arises. Actual development anticipated is more relevant to this research than is pressure for development. On this basis, future change as set out in development plans was chosen as a superior basis for review than planning applications.

2.5 The objective is expressed in terms of peripheral growth around historic towns, but the wider intention of the project is to review also the impact of development within historic towns. The opportunity was therefore taken to investigate not only total quantities of development anticipated but also development planned for greenfield and for brownfield sites (broadly equating to peripheral growth and urban intensification respectively).

2.6 The project set out to obtain information for each town on:

- housing, retail, commercial and infrastructure development; split between
- land allocated for development on greenfield sites and brownfield sites; and

Table 1 Historic towns and cities studied for the scale of their development pressures

Town/city	Local authority	Region	Population
Ely	East Cambridgeshire	East of England	19,090
Wymondham	South Norfolk*	East of England	13,587
Woodbridge	Suffolk Coastal	East of England	11,341
King's Lynn	King's Lynn & West Norfolk	East of England	46,043
Bury St Edmunds	St Edmundsbury	East of England	41,113
Bedford	Bedford*	East of England	87,590
Braintree	Braintree	East of England	41,634
Witham	Braintree	East of England	25,353
Colchester	Colchester	East of England	119,441
Newmarket	Forest Heath	East of England	20,384
Huntingdon	Huntingdonshire	East of England	23,937
St Ives	Huntingdonshire	East of England	16,384
North Walsham	North Norfolk	East of England	12,463
Beccles	Waveney	East of England	13,868
Newark-on-Trent	Newark & Sherwood	East Midlands	37,084
Stamford	South Kesteven	East Midlands	19,701
Grantham	South Kesteven	East Midlands	41,998
Market Harborough	Harborough*	East Midlands	22,911
Oakham	Rutland	East Midlands	10,922
Retford	Bassetlaw*	East Midlands	22,023
Whitehaven	Copeland*	North West	23,986
Lancaster	Lancaster	North West	48,085
Kendal	South Lakeland	North West	28,586
Ulverston	South Lakeland	North West	11,356
Penrith	Eden	North West	15,181
Henley-on-Thames	South Oxfordshire*	South East	11,494
Hastings	Hastings	South East	91,053
Newbury	West Berkshire	South East	38,762
Winchester	Winchester	South East	45,184
Oxford	Oxford	South East	159,994
Deal	Dover	South East	30,555
Fareham	Fareham	South East	42,210
Dorking	Mole Valley	South East	17,098
Ringwood	New Forest	South East	13,943
Tunbridge Wells	Tunbridge Wells	South East	56,500
Exeter	Exeter	South West	113,507
Taunton	Taunton Deane	South West	60,479
Tiverton	Mid-Devon	South West	19,544
Bridgwater	Sedgemoor	South West	41,276
Tavistock	West Devon	South West	12,280
Harrogate	Harrogate	Yorkshire & The Humber	73,576
Ripon	Harrogate	Yorkshire & The Humber	16,363
Thorne	Doncaster	Yorkshire & The Humber	11,840
Northallerton	Hambleton	Yorkshire & The Humber	16,832
Dudley	Dudley*	West Midlands	79,379
Shrewsbury	Shropshire	West Midlands	71,715
Bridgnorth	Shropshire	West Midlands	12,315
Ludlow	Shropshire	West Midlands	10,511
Stourport-on-Severn	Wyre Forest	West Midlands	20,112
Leek	Staffordshire Moorlands	West Midlands	19,624

* Non-responding authorities; also South Lakeland and Exeter were unable to supply extra data.

- unimplemented planning permissions of each development type (also split between greenfield and brownfield in the case of housing development).

2.7 The information on unimplemented permissions was chosen as the best indicator available on ‘development proposals prevalent at the current time’ for the purposes of the objective. This is likely to be available in principle from local authority annual monitoring reports or other records held by planning authorities. For an assessment of ‘likely trends over the next five to seven years’, attention was paid to Core Strategies, allocations plans, area action plans and proposals used by local planning authorities. The future trajectory for the supply of housing is much more closely defined in planning policy than the supply of other development types. The project therefore aimed to identify annual proposed housing land supplies 2015-2020, so far as the planning policies and data recording of local authorities allowed. This would provide a consistent method for comparison between towns. Not all aspects of the data could be fully resolved within the scope of this project. In particular, ‘windfall sites’ (sites which are not allocated in any development plan but which unexpectedly become available for development and are permitted, usually for housing) can make an important contribution to overall dwelling supplies in some authorities. The inclusion or exclusion of an allowance for windfall sites is not always clear. The result is that generally speaking the contribution of brownfield sites is likely to have been somewhat understated in the results obtained.

2.8 The project aimed to identify development prospects specifically for each town rather than for each authority as a whole. Some development plans facilitated this whereas others did not. Core Strategies without allocations to the local level were less satisfactory than allocations plans and area action plans in this respect. Advice was taken from planning staff where necessary.

2.9 The project was also able to standardise the rate of housing development across all 50 towns by allowing for the different populations of each town. Information is not readily available on the dwelling stock in each town, but population data are more accessible¹. Other development types could in theory be standardised in the same way, though this could give a false impression of relevance particularly for retailing. For example, occasional major retail development may be making good a deficit, rebalancing between towns, or accompanying growth, rather than indicate anything useful related to historic town size.

2.10 The information required was taken initially so far as practicable from documents available on local authority websites. Where this was unavailable in the detail required, approaches were made to the development management staff. In the event, all local authorities had to be contacted by telephone. Complete or partial responses were obtained for 40 towns with only 9 authorities (10 towns) unable to provide any data (though with an unfortunate concentration affecting three of the five towns in the north-west region). However, the spreadsheet generated for all the data still contains many blank entries due to plans being silent on the issues and information being unavailable from authorities. The presentation of results has therefore erred on the side of caution, and not assumed that

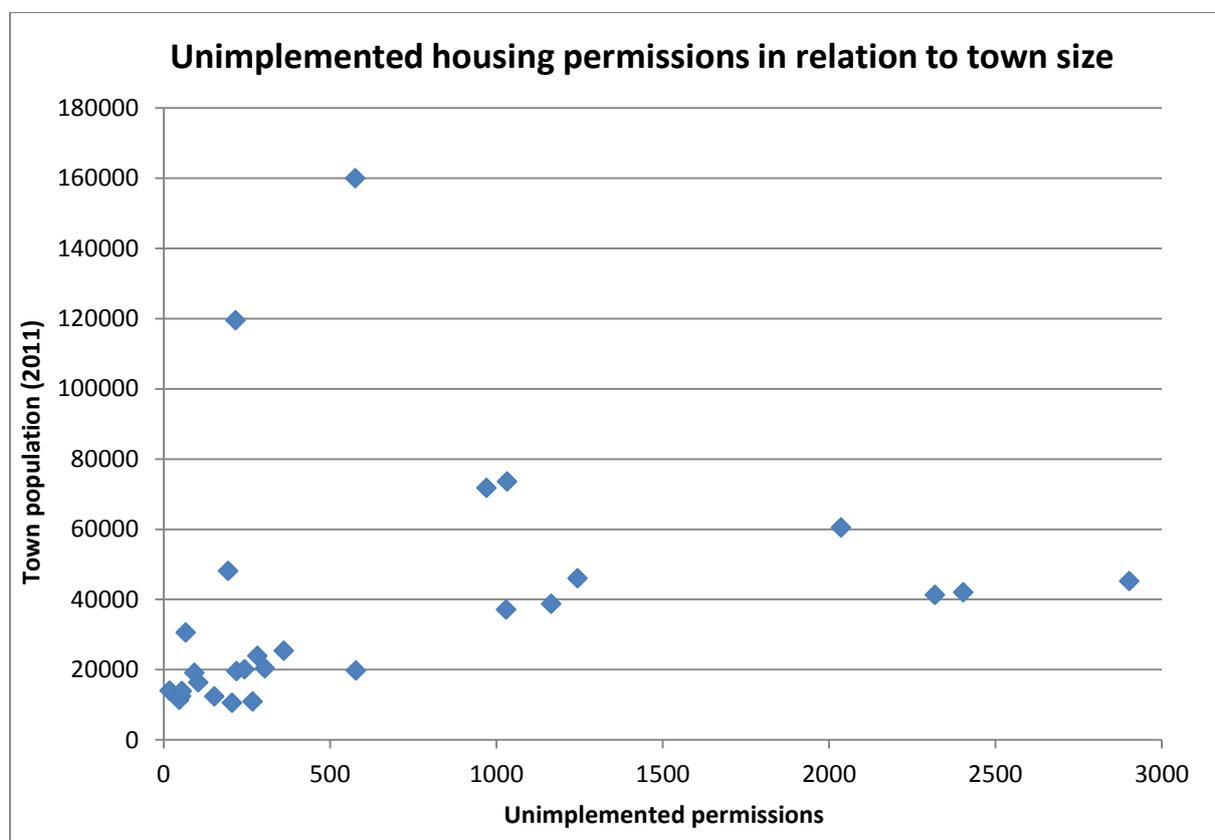
¹ Data were taken for the purposes of this part of the research from www.lovemymtown.co.uk, which provides figures from the 2011 Census.

these are zero entries. This particularly affected the findings on unimplemented planning permissions. Footnotes provide more information where needed. All figures refer to units of development rather than to numbers of permissions granted.

Housing development

2.11 The current prospects for housing development can be measured by unimplemented planning permissions. Although some permissions are obtained for valuation purposes, most indicate a desire to see development proceed, subject to other circumstances being favourable. Information on total unimplemented housing permissions is reliably available for 28 of the 50 towns. In Figure 1 these are presented by size of town.

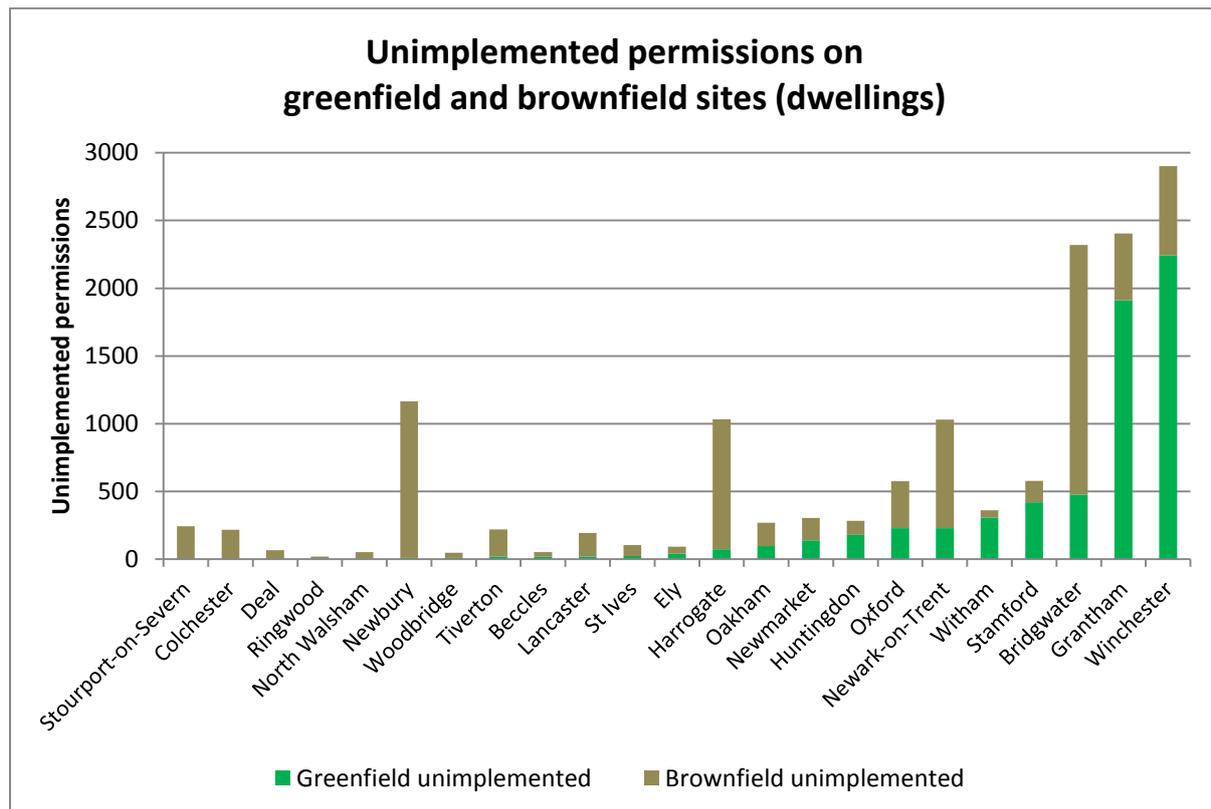
Figure 1



2.12 The data show wide variation in the scale of development immediately in prospect, from nearly 3,000 dwellings (in Winchester, largely due to a recently permitted greenfield urban extension – see Appendix 10) to negligible numbers. The scale of likely development is also highly variable in relation to the size of historic town. Whereas four towns in the 40-60,000 population range could supply over 2,000 dwellings each, Oxford (160,000) could supply just 576 and Colchester (120,000) only 216. The nine largest potential suppliers are spread across seven regions, suggesting caution should be exercised in drawing geographical conclusions. The most significant feature of the data is that all but one of the smaller towns (under 31,000 population) are in a tight group with few unimplemented permissions (under 400). This relationship between the variables probably reflects mainly the number of smaller towns in the sample, not so much their historic nature.

2.13 Data on unimplemented planning permissions for housing can be reliably distinguished between brownfield and greenfield sites at 23 towns in the sample. The results in Figure 2 are presented in order of towns with rising numbers of greenfield sites available (in the lower section of each column). This selection of towns is in part different from that used in Figure 1, usually due to different sources of information for the two purposes.

Figure 2

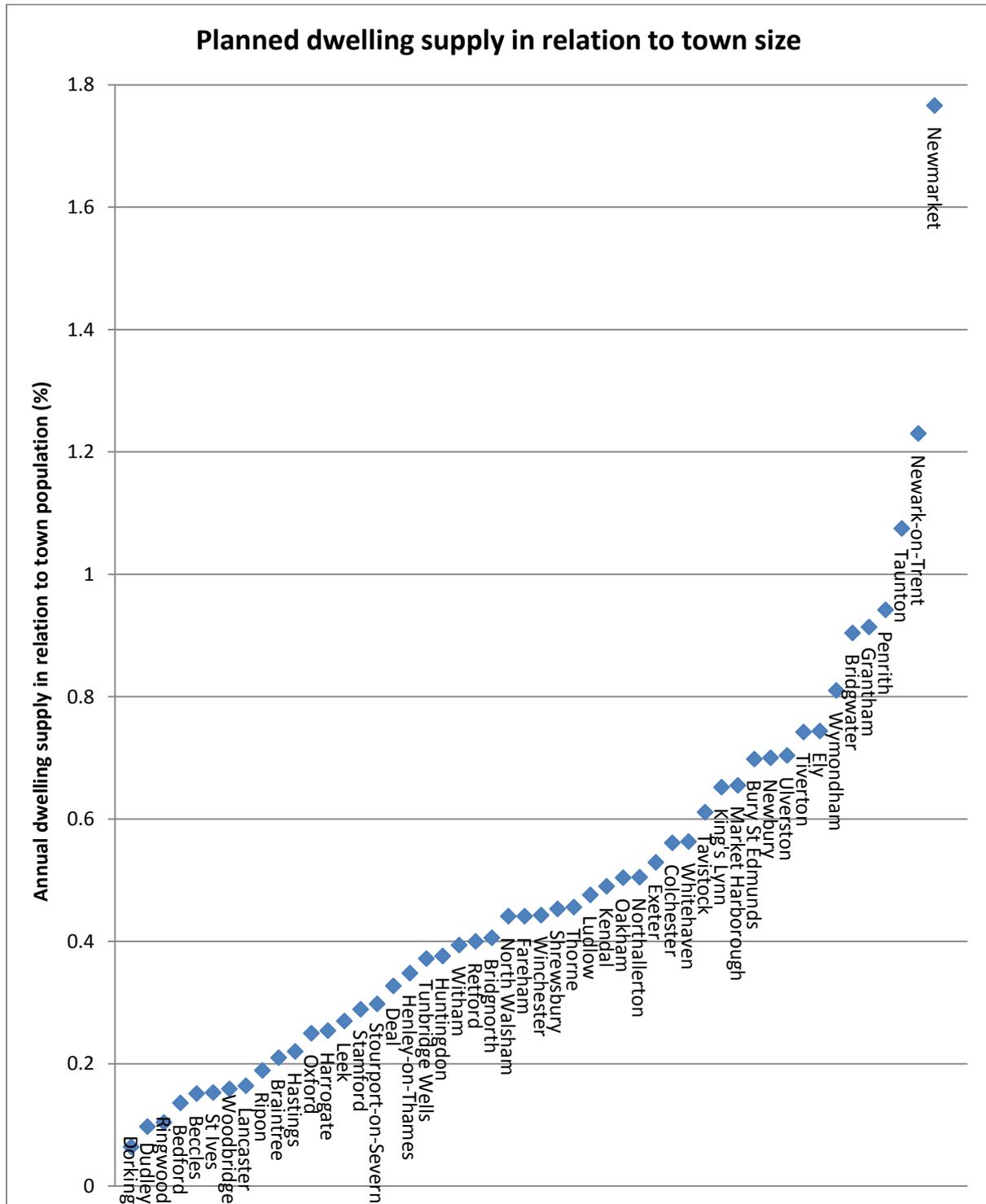


2.14 The column chart shows significant concentration of both brownfield and greenfield unimplemented permissions in a small number of historic towns. Over half the towns have unimplemented permissions for fewer than 300 dwellings. The numerous towns in the East of England with few unimplemented permissions on either greenfield or brownfield sites largely reflects their size (with the exception of Colchester). Together with Figure 1, the data suggest that major housing development is not imminent in smaller historic towns. In the larger ones, the scale of development feasible currently is highly variable: statistically there are unimplemented permissions allowing nearly 18 times the rate of development in Winchester as in Oxford, once the towns are standardised for population size, or over 30 times the rate proportionately in Grantham as in Colchester. Individual major planning permissions in a few towns are likely to be a feature in these disparities.

2.15 A similar exercise can be carried out on housing prospects over the next 5-7 years. Comprehensive information is available on total anticipated dwelling provision at all fifty towns (annually 2015-2020). In Figure 3 this is presented with the towns in ascending order

of anticipated proportionate growth: on the vertical axis, '1' means '1 dwelling every year for every 100 people in the town in 2011' (formally calculated as 'Annual dwelling supply planned for 2015-2020 x 100, divided by 2011 population'). In Figure 4 planned dwelling numbers are shown against town size.

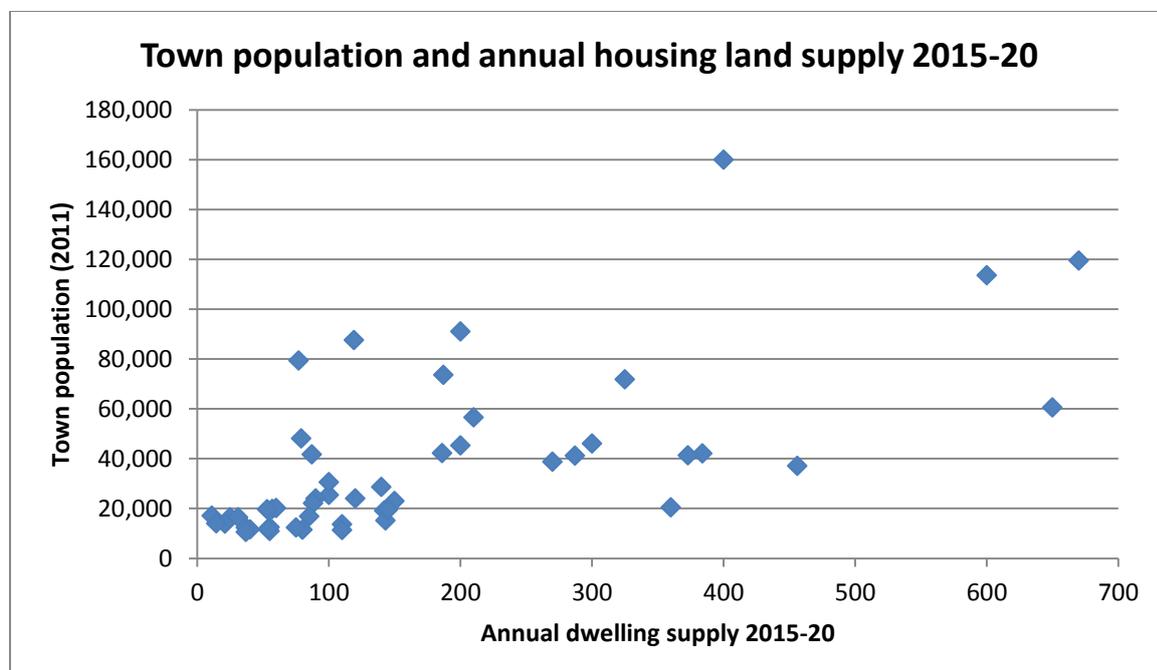
Figure 3



2.16 Figure 3 demonstrates that the scale of housing development planned in the next few years in historic towns is just as varied (in relation to towns' sizes) as with unimplemented permissions. The higher rates of planned development are often associated with urban extensions, and conversely there may be special reasons why other towns have relatively low planned development rates (e.g. Green Belt or protected landscape constraints, coasts, or closely confined administrative boundaries). The rate of planned development in Newmarket is 27 times that in Dorking after adjusting for size of population. The figures also show that proportionately towns in the West Midlands and especially the South East are concentrated in the lower rates of dwelling supply, while towns in the South West especially are concentrated in the higher rates of dwelling supply. Those tendencies do not appear to relate to town size. The data therefore hint that development expectations may be slightly greater in historic towns in the South West than elsewhere and more tightly contained in the South East, though regional sample sizes are very small.

2.17 Newark-on-Trent, Grantham, Taunton and Bridgwater all appear in the top eight providers of both planned dwelling supply and unimplemented planning permissions when adjusted for their populations. In the South East, Newbury has a higher proportionate expected rate of growth than any other town as well as the second highest supply of unimplemented planning permissions. Colchester in the East of England has a proportionately high planned rate of housing supply in marked contrast to its low rate of supply of unimplemented planning permissions.

Figure 4

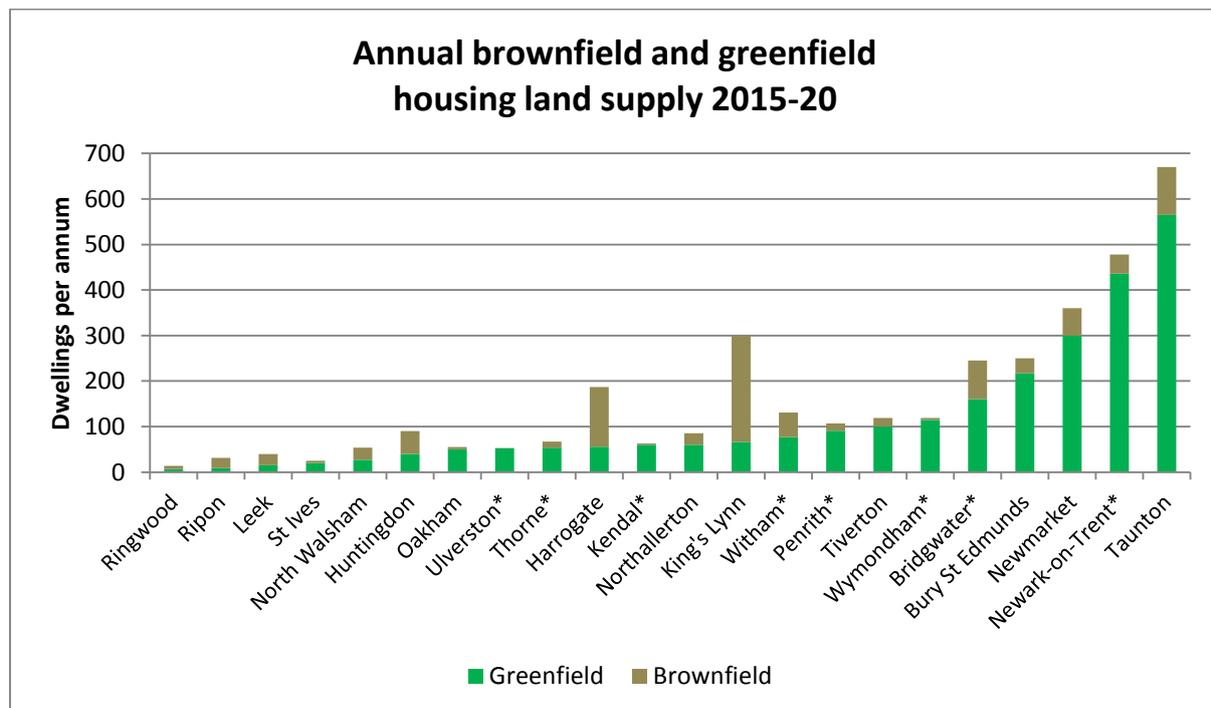


2.18 Figure 4 similarly shows that there is no clear correlation between historic town size and the planned supply of dwellings, though the concentration of towns having under 35,000 population with modest planned rates of supply repeats the picture identified for unimplemented planning permissions. Only Newmarket, a town of just over 20,000

population, has a substantially higher planned rate of housing supply (at 360 per annum), taking it to the top of the list of proportionate growth. However, Dudley and Bedford are both towns with around 80-90,000 population but have development proposals for only around 100 houses annually, which is a rate often associated with settlements one half or one quarter their size. The two largest rates of development involve building well over 600 dwellings annually, at Colchester (population c120,000) and – with twice the impact on its existing size – at Taunton (population c60,000). The wide scatter of towns around the graph cautions against drawing conclusions on trends even from this sample of 50 cases.

2.19 Information is available from 22 of the 50 authorities on the division of planned housing land supplies between brownfield sites and greenfield sites. This information was not usually stated in Core Strategies and had to be obtained from other documents, where the sum of greenfield and brownfield allocations did not necessarily sum to the Core Strategy figure. The results are shown in Figure 5, presented in order of towns with rising numbers of greenfield sites available (in the lower section of each column).

Figure 5



* The figures for these towns are derived from the same data source for greenfield and brownfield sites, although are not exactly compatible with the source used for total dwellings (in Figures 3 and 4).

2.20 The data show that proposed housing development is allocated predominantly on greenfield sites. In only three authorities of the 22 included does brownfield housing development exceed 100 dwellings per annum (Kings Lynn, Harrogate, Taunton), and in only five authorities does brownfield development exceed greenfield development (Kings Lynn, Harrogate, Huntingdon, Leek, Ripon). Windfall housing developments are likely to be omitted from the data, which would swell the brownfield component, though that omission is unlikely to change the pattern of results significantly.

2.21 Regional trends are difficult to draw from the available data. Not only do the figures vary considerably from one historic town to another, but the data include only one town from each of the South East and West Midlands (in contrast to all four Yorkshire towns and eight of the fourteen from the East of England).

2.22 Taken together, we conclude that the statistical findings on housing supply from the fifty historic towns examined show few trends. There is very considerable variation in the scale of housing development proposed either immediately or in the next five to seven years in the historic towns around the country. The scale of development anticipated at the smaller towns (10-35,000 population) is generally particularly small, both on allocated sites and through hitherto unimplemented planning permissions, though there are notable exceptions such as Newmarket. The evidence does not support the hypothesis that historic towns are necessarily facing the likelihood of substantial housing development, nor that large towns (which happen to be historic) are necessarily being expanded at a disproportionately fast rate. Greenfield allocations greatly exceed brownfield allocations for the years ahead, though the pattern is just reversed in respect of the supply of unimplemented permissions. However, the overall figures are influenced by a few significant cases. Regional trends are difficult to discern, and considerable caution should be exercised in view of the small number of towns representing each region of England. A tendency to a higher proportion of planned land allocations being made in towns in South West England is unlikely to be significant as an indicator for policy purposes.

2.23 This study has not had the capacity to investigate why each of the fifty historic towns possesses its own particular pattern of housing land supply, or the extent to which heritage is a factor in this. Nor has a review been possible of any aspirational scales of land release for housing (or other purposes), to encourage growth in areas wanting it, compared with modest allocations elsewhere in those towns aiming to resist the development of land for housing. Overall it is far from clear that the 'heritage' of the towns studied is a consistent deciding factor in explaining the observed pattern of housing land supply expected currently or in the next five to seven years. Assessments of individual towns would be needed to gauge that, rather than relying on statistical data across numerous towns (that is a subject of the twenty towns studied in chapter 3).

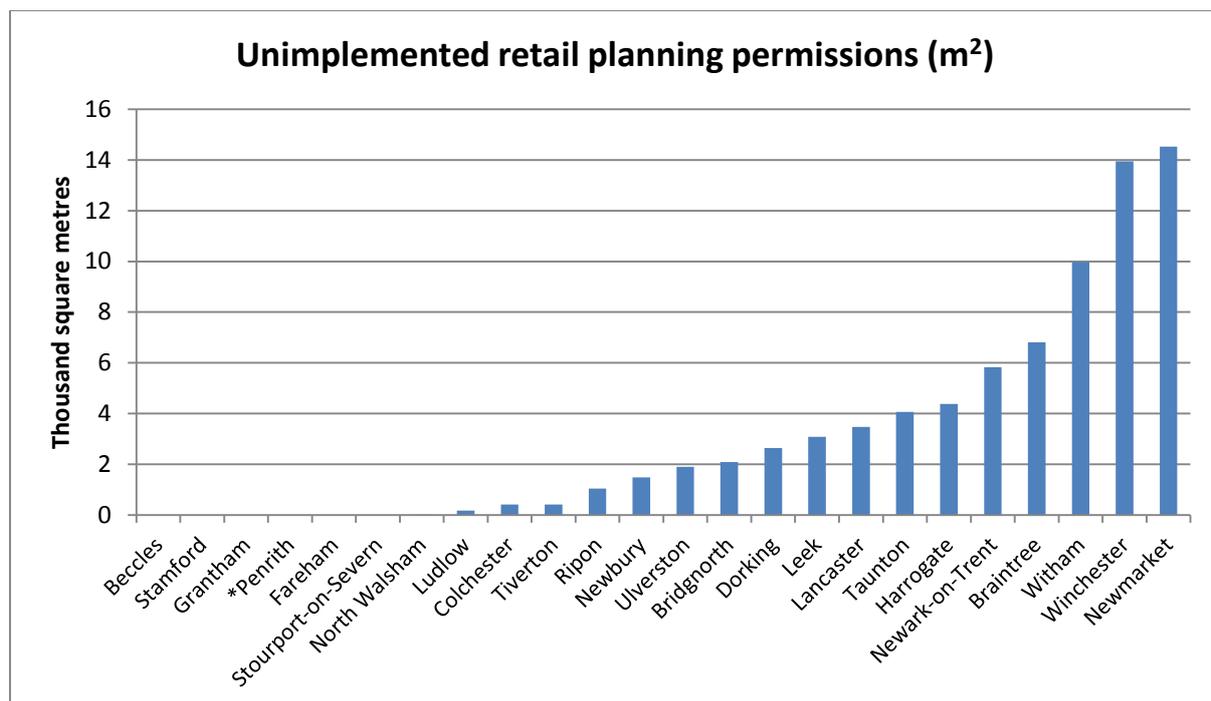
Retail development

2.24 Information on retail development was obtained from local authority monitoring reports and similar sources. There were relatively large numbers of authorities which did not respond to requests for information or did not have it readily available. On some occasions known schemes were not supported by floor area data and had to be omitted from graphical presentation. Floorspace was usually presented as a net figure where redevelopment of a retailing area was taking place. In a few towns the figures available may be known sites identified by the project, not the total figure for the category. Where floorspace ranges are offered, the higher figure is presented here. Data refer to all planned growth, not to a specific period or annualised.

2.25 Available information on unimplemented retail permissions is presented in Figure 6 from 25 towns (incl. six nil returns). Only four authorities were able to distinguish greenfield

from brownfield unimplemented sites, so this element of the analysis was dropped. Some local authorities pointed out that retail development had gone beyond the point of being land allocations and had recently been permitted or commenced on some sites. These would come on-stream shortly, effectively making them ‘current’ rather than future schemes. This applied to supermarkets in Wymondham (on 1.2 hectare site), Stourport-on-Severn, Ulverston (1900m²) and Dorking (1286m² and 1356m²); these are included in Figure 6 if floorspace information has been provided. A few other cases may have been permitted but are recorded under future proposals. The towns with the larger retail development proposals often coincide with those supporting the larger growths in housing supply.

Figure 6

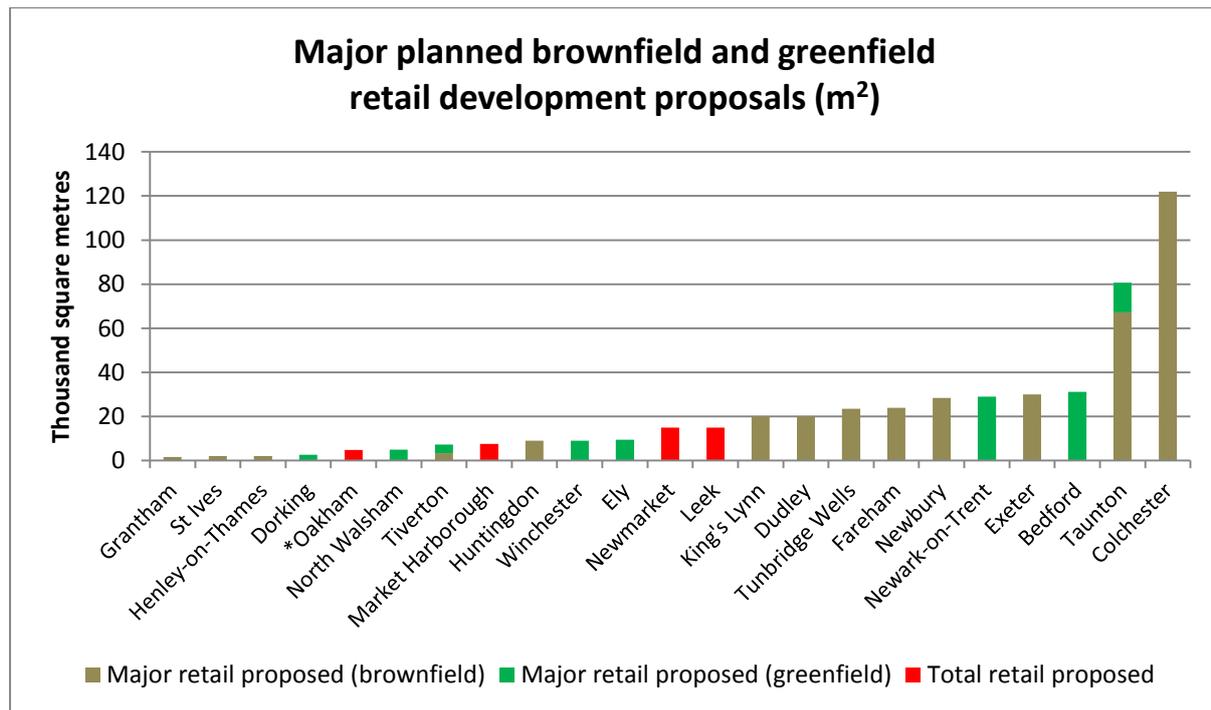


* Schemes totalling 92,800m² had recently been completed in Penrith. Permission had also been granted in Bridgwater for retailing on 4.5 hectares of land.

2.26 Planned major retail developments are recorded in Figure 7. Most of these are allocations, though in some cases the figures provided were so precise as to suggest permissions. Information was requested split between greenfield and brownfield sites. Most information related to only one category or the other: the omission from the second category was usually because the information was not available rather than because there was a known nil return, so the overall scale of future retail development may have been underestimated somewhat. For some towns only total figures were available (shown in red).

2.27 Figure 7 shows considerable variation in the scale of development proposed, led by schemes in two towns which aim to expand rapidly: Colchester and Taunton. All data provided have been included, though in some cases these clearly struggle to qualify as ‘major’ retail development schemes. No information was available from towns in the North West region and little from Yorkshire (Northallerton only). The evidence suggests that many

Figure 7



* Oakham had an additional 0.99ha allocation and Northallerton a 0.71ha allocation, both brownfield.

historic towns are looking to expand their retail offer rather than remain frozen in scale. The data show substantially more development on brownfield sites than greenfield sites, though whether this is nurturing historic town centres or challenging them would be a matter for local analysis. However, the only large scale greenfield schemes identified were in Bedford, Newark-on-Trent, and to a lesser extent Taunton, suggesting that peripheral expansion of retailing on this scale is unusual, even in association with significant urban growth.

2.28 Further conclusions are difficult to draw from the major retail proposals and unimplemented retail planning permissions identified. Major retail development has impacts on a town which last for many years, so there is a chance element in how they appear in the data: recently completed schemes would not have been counted at all, while unimplemented permissions and plan allocations reflect stages reached by schemes in this 2014 snapshot. The towns where major retailing is recorded may be focused in the wealthier towns, but this is difficult to confirm due to the quality of the data: an absence of data may indicate either a lack of activity or a lack of its availability to this project. Regional conclusions are similarly difficult to draw.

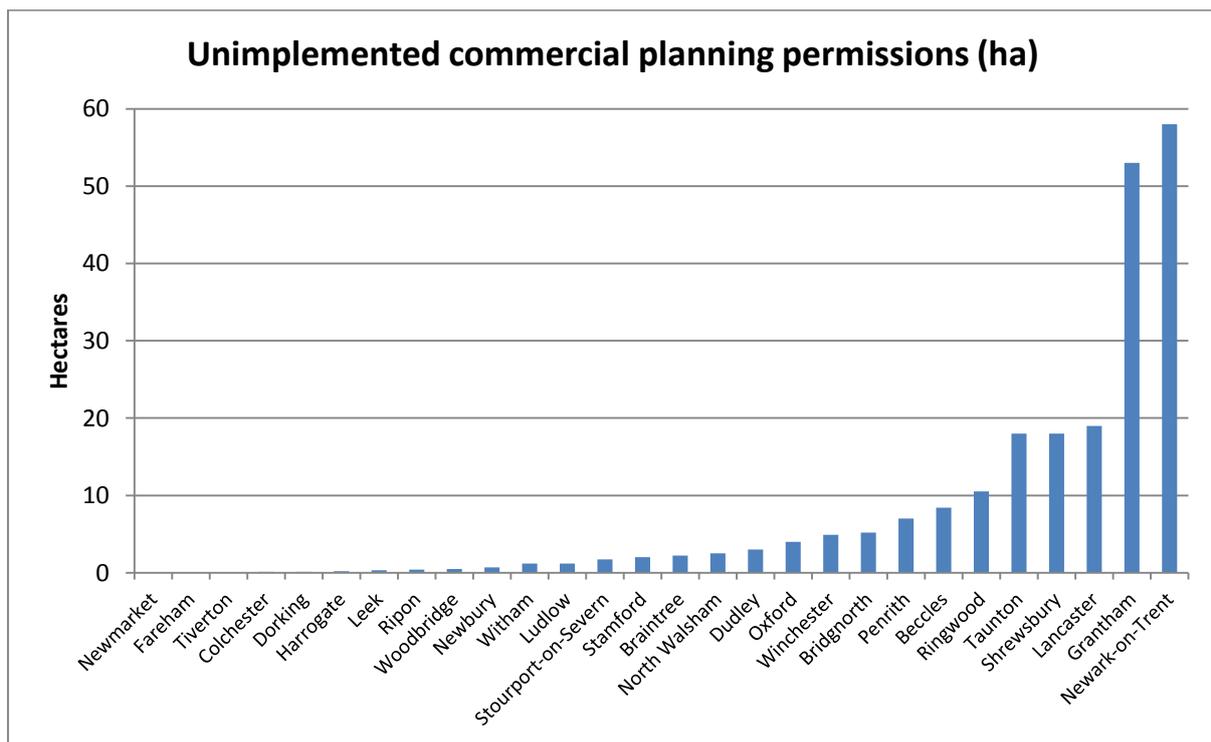
Commercial development

2.29 Information was available from 38 of the 50 towns on plans for major commercial development and from 28 on unimplemented planning permissions. The data presented is so far as practicable limited to new land allocations, and known pre-existing allocations identified in plans are excluded. This distinction is probably more reliable for greenfield allocations than for brownfield sites. Data are presented in hectares. Additional business

parks are known to be proposed in Braintree and Witham, but area figures are not available. Data refer to all planned growth, not to a specific period or annualised, and have been rounded where necessary to the nearest 0.1ha. Mixed use development has usually been included under commercial development, where this properly identifies the leading activity, though very few schemes notified to the study were identified as mixed use as such.

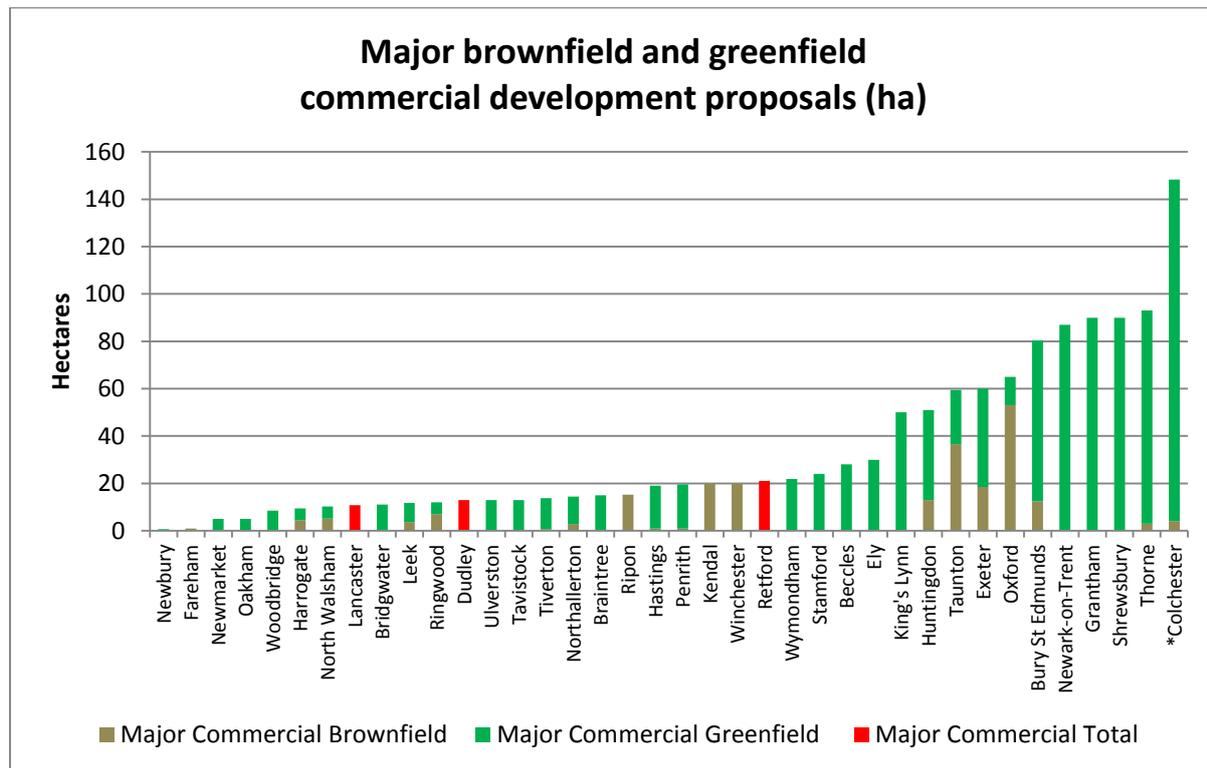
2.30 Unimplemented commercial permissions are identified in Figure 8, representing the scope for immediate development. Only two authorities were able to distinguish unimplemented permissions on greenfield and brownfield sites, so this part of the analysis was dropped. Newmarket, Fareham and Tiverton had nil or negligible unimplemented permissions, while those in half a dozen other authorities were extremely small. Figure 8 shows that only five authorities had over 10 hectares of unimplemented commercial permissions. The wide range of unimplemented commercial permissions, from nil to nearly 60 hectares, mirrors the experience with housing and especially retail developments, suggesting that there is no consistent pattern of current commercial development pressure on historic towns.

Figure 8



2.31 Figure 9 shows the major retail development proposals for which historic towns are planning. So far as practical, allocated sites already permitted have been recorded as unimplemented permissions and are included in Figure 8 alone. Local authorities were able to split allocations between greenfield and brownfield sites in 19 of the 50 towns. 16 more towns had specific greenfield allocations but the brownfield allocations were not available (and may have been nil). There were three further towns where total commercial development land was known but not the split between greenfield and brownfield sites (shown in red).

Figure 9



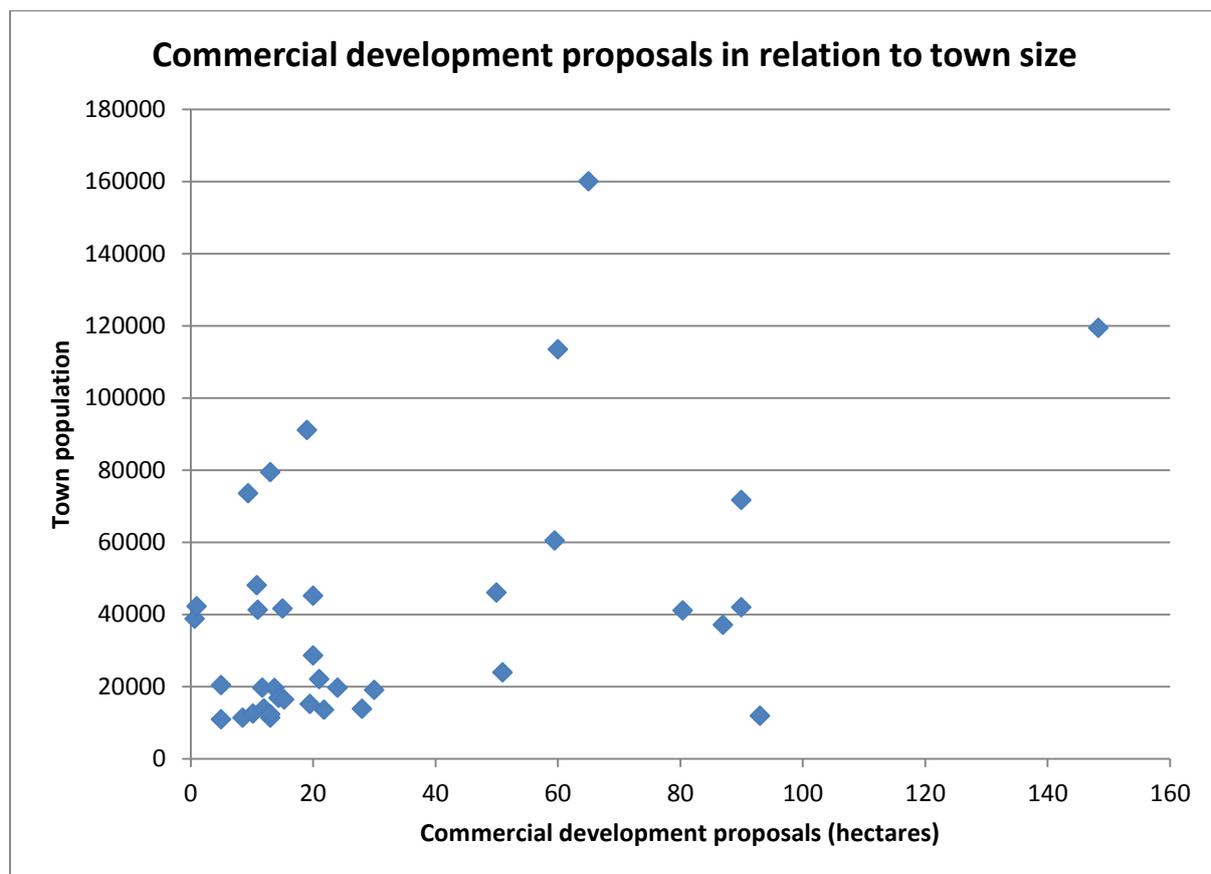
* 40,000m² of brownfield commercial development is proposed: this is likely to cover much more than 4ha.

2.32 The findings from Figure 9 show clearly that greenfield land allocations for commercial development substantially exceed brownfield allocations. The scale of these proposals varies between historic towns from negligible to over 140 hectares, with a fairly even spread between the extremes. No obvious regional trends are apparent. Thorne stands out as a particularly small town with a substantial allocation of land for commercial development. To explore that relationship in more detail, the total commercial development allocations in each town are presented in Figure 10 against the size of each town (population). This is not particularly reliable due to the potential omissions from the data of brownfield sites especially. Nonetheless, it shows that there is a very wide spread of data across the sampled towns without any clear trend. Additional data would be unlikely to alter that finding. As with housing development, most of the towns under 35,000 population are anticipating only small allocations of land for commercial development (less than about 30ha), with Huntingdon joining Thorne as an exception expecting much more.

Infrastructure development

2.33 Many towns are expecting infrastructure developments to accompany their growth plans or in a few cases to meet existing needs. On greenfield sites, sixteen towns were expecting improved transport infrastructure (principally roads), plus occasional schools, a leisure centre, a community stadium and a multi-purpose community facility. Bridgwater anticipated a new nuclear power station at Hinckley Point, a new hospital and strategic flood defences. Infrastructure planned on brownfield sites was more limited. Five towns expected capacity increases in transport infrastructure (e.g. road and junction widening, railway line reinstatement), while four expected new or relocated educational

Figure 10



establishments. No unimplemented infrastructure was apparent. There were no criteria for inclusion or exclusion from the list, so the items covered may not be compatible across all towns, but the findings do give a general impression of planned infrastructure.

Conclusions

2.34 The scale and type of development proposed in and around historic towns is highly variable. There is a core of smaller settlements (10-35,000 population) where only modest development of any kind is expected (with exceptions), but otherwise patterns in the data are elusive. Individual towns planning for substantial growth stand out in the analyses of housing, retail and commercial development. These include Colchester, Newark-on-Trent, Grantham, Taunton, Bridgwater, Shrewsbury and Bury St Edmunds. Very small sample sizes preclude reliable regional comparisons within the 50 historic towns studied, so the suggestion in the data that historic towns in the South West have slightly higher rates of planned dwelling supply is not significant for policy purposes. No other regional trends were noted, though in any event no towns from the North East met the criteria for inclusion in the sample and data from local authorities regarding towns in the North West were particularly few. Standardising the planned scales of housing and commercial developments against the size of each town confirmed the great variability between rates of development from one historic town to another.

2.35 The large majority of housing and commercial development planned for the next five to seven years in historic towns (measured by allocations identified in plans) is expected on greenfield sites. In contrast, the large majority of planned retail development affecting historic towns is proposed on brownfield sites. As housing is easily the largest user of land, followed by commercial development, the clear implication is that historic towns tend to face outward expansion where practicable, irrespective of any urban intensification proposed, and this has the potential to create conflicts with the settings of historic cores. A small majority of current housing development proposals (identified by unimplemented planning permissions) is on brownfield sites, but there is insufficient data on this issue for other development types.

2.36 The 'development pressure' facing each historic town varies greatly, whether for housing, retail, commercial or infrastructure development. The scale of development expected is not proportionate to the size of the historic towns in the sample. Other reasons than heritage are likely to be more important in explaining general patterns of observed growth. The significance of historic towns' heritage in the development choices made locally is likely to be better understood by the examination of experiences in individual cases.

CHAPTER 3

PLAN-MAKING FOR HISTORIC SETTLEMENTS

Background

3.1 An objective of the project is “To examine how much weight is being given to the need to safeguard the character and setting of smaller cathedral cities and prominent historic towns in the plan-making process.” The research has gone somewhat beyond identifying the preparation and content of plans, and has tried to assess the weight given to those plans in decisions affecting historic settlements.

Making the planning system work for heritage

3.2 The role of plans – and of planning itself – has evolved considerably over the last ten years, so responding to the Brief must be put in an evolutionary context. The Planning and Compulsory Purchase Act 2004 introduced a new system of forward planning to shape development at the local level. The pre-existing approach had involved Structure Plans prepared by County Councils (in two-tier authority areas) and Local Plans prepared by District Councils to implement and put more detail into the broad policy set out in their Structure Plan. There had also been non-statutory Regional Planning Guidance to provide a wider strategic role, with which Structure Plans were expected to conform. The new arrangements abolished Structure Plans (and much of the County Councils’ role in planning) and put regional planning on a formal statutory basis through Regional Spatial Strategies. All local authorities, including unitary authorities (who had previously prepared Unitary Plans – combining the features of Structure Plans and Local Plans), were now required to prepare Core Strategies and a suite of supporting Development Plan Documents (DPDs) as they thought fit. Supplementary Planning Documents could still be prepared, without the same scale of public scrutiny before adoption, similar to the preceding system.

3.3 The new forward planning system changed as it was put into practice, and substantial revisions were made to requirements in the Planning Act 2008. The transition from the former system to the new one took much longer than politicians had expected, and there was something of a hiatus as authorities decided whether to complete the preparation of plans started under the old system or begin afresh under the new one. Securing the adoption of a Core Strategy became a substantial undertaking, not least because of the greater emphasis in the new system on there being a thorough ‘evidence base’ to support policies. Preparing detailed DPDs, e.g. to allocate specific sites for specific purposes was often postponed, and only now, 10 years later, is this being achieved on a substantial scale across England.

3.4 On top of this procedural upheaval, the Coalition Government elected in 2010 abolished regional planning, leaving Core Strategies and their supporting documents as the only tier of planning below national policy. The numerous local authorities which have still not adopted their first Core Strategy are relying on Local Plans from the previous system, but those are becoming increasingly out of date. The Coalition also changed national policy substantially. A new all-encompassing National Planning Policy Framework (NPPF) was

issued in March 2012, subsequently supported since March 2014 by national Planning Practice Guidance. The consequences of the NPPF for forward planning were substantial, and policy towards heritage and other relevant policy areas was changed. Even those authorities which had adopted Core Strategies under the 2004 legislation now found that their forward plans needed further amendment to bring them into line with the new NPPF. Litigation around the meaning of the legislation and intentions of policy has further tended to increase the workload on all local authorities. At the same time the recession and serious cutbacks in local government staffing levels have affected planning and heritage teams, with the result that authorities are struggling to cope with their obligations. The NPPF aspiration that local authorities' plans (now confusingly relabelled 'Local Plans') should be kept up to date has seemed optimistic, even though NPPF policy can have draconian consequences for local authorities which fail to achieve this (particularly in respect of housing land supply).

3.5 The effect of this upheaval on the research has been that:

- i) the weight given to heritage in forward plans necessarily measures achievements in recent years (about 10 years was taken as the extent), which in most authorities for most of that period means plans approved under the pre-2004 forward planning system: this has largely been a study of the effectiveness of the old Local Plans;
- ii) the focus of the research is on the likely future impact of the new forward planning system since 2004, but there is only limited practical experience of putting the resulting policies into practice and plan preparation itself is still an emerging process;
- iii) only those local authorities with Core Strategies successfully found sound by their Inspectors and adopted since the publication of the NPPF can reliably be described as having up to date forward plans; scrutiny of historic towns and cities for this part of the research was therefore confined to those whose authorities had these recent plans in place – though inevitably they had had very little time to implement these plans;
- iv) the research had to address as best it could the potentially distinct impacts at the town scale of (a) adopting a Core Strategy, (b) the NPPF and (c) the economic downturn 2008-13, all of which overlapped.

Methodology

3.6 A judgment had to be reached on the number of towns to study in authorities with post-NPPF Core Strategies and the depth of study in each case, within the research budget. When coupled with a desire for a spread of towns around England and knowledge of those authorities with suitable adopted Core Strategies, the Steering Group agreed that 20 authorities would be an appropriate number. The towns selected are those listed in Table 2.

3.7 The treatment of town-scale heritage in the forward planning system was studied in some depth in each town. This comprised an analysis of:

- the evidence base used to support current policy, which might comprise any combination of material such as Conservation Area Appraisal, Historic Characterisation, Landscape Character Assessment, Design Guidance and studies of individual towns;
- the treatment of the character and setting of the selected towns in local planning policy, centred on the old Local Plan policies (particularly the Saved Policies from them which have been applied in recent years) and including the use made of the evidence base

already identified; in some cases Supplementary Planning Guidance comprised both evidence base and policy;

- the weight given to these planning policies in planning decisions affecting each town, relative to other priorities in the authority;
- the policies in the adopted Core Strategy and any other Development Plan Document (DPD) relevant to the character and setting of the selected towns;
- the treatment of the selected town’s heritage and setting in the Sustainability Appraisal of the Core Strategy and of any other DPD;
- the effect of the transition from Local Plan to Core Strategy, identifying any changes in heritage policies or in their relationship with other policies since the previous Local Plan;
- the political significance of town heritage in comparison with other issues as indicated in the local authority’s Corporate Strategy or equivalent statement;
- any change to the way in which the selected town’s heritage is treated which can be attributed to the National Planning Policy Framework.

Table 2 Towns studied for their plan-making processes

Town	Local authority	Relevant Development Plan Documents	Date of Adoption
Berkhamsted	Dacorum Borough Council	Core Strategy	Sep 2013
Chelmsford	Chelmsford City Council	Core Strategy & Development Control Policies	Feb 2008
		Core Strategy & Development Control Policies (Focused Review)	Dec 2013
		Chelmsford Town Centre Area Action Plan	Aug 2008
Chesterfield	Chesterfield Borough Council	Core Strategy	Jul 2013
Folkestone	Shepway District Council	Core Strategy	Sep 2013
Hastings	Hastings Borough Council	Local Plan	Feb 2014
Henley-on-Thames	South Oxfordshire District Council	Core Strategy	Dec 2012
Ilkeston	Erewash Borough Council	Core Strategy	Mar 2014
Leek	Staffordshire Moorlands District Council	Core Strategy	Mar 2014
Newbury	West Berkshire Council	Core Strategy	Jul 2012
Selby	Selby District Council	Core Strategy	Oct 2013
Stowmarket	Mid Suffolk District Council	Core Strategy	Sep 2008
		Core Strategy Focused Review	Dec 2012
		Stowmarket Area Action Plan	Feb 2013
Taunton	Taunton Deane Borough Council	Core Strategy	Sep 2012
		Taunton Town Centre Area Action Plan	Dec 2008
Thame	South Oxfordshire District Council	Core Strategy	Dec 2012
Thornbury	South Gloucestershire Council	Core Strategy	Dec 2013
Wellington	Taunton Deane Borough Council	Core Strategy	Sep 2012
Whitehaven	Copeland Borough Council	Core Strategy	Dec 2013
Wigan	Wigan Metropolitan District Council	Core Strategy	Sep 2013
Winchester	Winchester City Council	Core Strategy*	Mar 2013
Woodbridge	Suffolk Coastal District Council	Core Strategy & Development Management Policies	Jul 2013
Wymondham	South Norfolk District Council	Core Strategy**	Mar 2011
		Core Strategy (Revision)**	Jan 2014

* Joint with South Downs National Park Authority

** Joint with Broadland District Council and Norwich City Council: Greater Norwich Development Partnership

3.8 Documents required for analysis were usually obtained from local authority websites, though some had to be supplied by the authorities concerned. Information and views on the way in which the documents were used and interpreted, and the weight given by officers and councillors to heritage issues, were obtained by telephone interviews. The intention was to interview the Senior Conservation Officer in each local authority and a suitable representative of the voluntary sector body in the selected town which usually made the most substantive comments on heritage and planning issues (e.g. responses to consultations on development plans and comments on planning applications affecting heritage). This was broadly successful, though occasionally other policy staff were interviewed instead (or as well), and in a few cases there was either no voluntary sector body active on heritage issues in the town (Wellington, Ilkeston and Thornbury) or a representative of a suitable body refused to contribute to the research. A list of interviewees is provided in Appendix 1.

The evidence base on the heritage character and setting of the selected towns

3.9 The heritage interest in a town and its setting can only be reflected properly in policy if this has been articulated clearly at the outset. The study therefore examined the documentary evidence that each authority had available to it to assess the character and setting of the selected towns. A judgment was taken on whether or not to include in the assessment various documents which were marginal by virtue of their age or relevance. A few documents which did exist appeared to be little used. The results are listed in Table 3.

Table 3 Documentary evidence base by category (with dates published)

Town	Conservation Area Appraisal (incl. policies and management proposals)	Landscape Character Assessment	Historic Characterisation (incl. Extensive Urban Surveys)	Urban Design Guidance	Town Study
Berkhamsted	2004 & 2014	SPG 2004		2011	SPG 2004
Chelmsford			2006		
Chesterfield	2006	[2003]			2009
Folkestone	2005, 2011, 2013				2011
Hastings		2010	[2010]		
Henley-on-Thames	2005	SPG 2003		2008	
Ilkeston	2009	2003			2007
Leek	2013	2008	2010		2011
Newbury			2003		2013
Selby		1999			
Stowmarket	2011				2001 & 2008
Taunton	2007ff (4 of 10)	2011		SPD 2008	
Thame	2006	SPG 2003, 2009		2008	2014
Thornbury	2004	2005			
Wellington	2007	2011			
Whitehaven	2009	2011	2009		SPD 2012(2)
Wigan	2010		2012		
Winchester	2003	1994, 2000, SPG 2004	1998, 2004		1998, 1999
Woodbridge	SPD 2011	2008	2008	[2008]	2003 (part)
Wymondham	2001 & 2012	[2001 & 2012]	2009	SPD 2012	

Square brackets indicate that the document appears to be barely used for purposes relevant to this research

3.10 Table 3 shows that 15 of the 20 selected towns had Appraisals of their Conservation Areas and that 15 were covered by Landscape Character Assessments. There were specific studies of all or part of 11 towns which included a heritage element, 9 towns had Historic Characterisations or Extensive Urban Surveys to call upon and 6 had urban design guidance. All towns had at least one study available. The evidence base for preparing policy and for making planning decisions was for the most part sufficient and sometimes excellent (in Berkhamsted, Wymondham, Winchester, Leek and Whitehaven). Only in Hastings was it clearly poor (and the Extensive Urban Survey of the town, prepared in 2010 and available online, is not mentioned in any planning document). A number of authorities indicated that documents had been prepared specifically to support the preparation of Core Strategies. There have certainly been numerous categories of study appearing for the first time in the selected towns since the legislation for Core Strategies in 2004, though in the case of Historic Characterisation this largely reflects the application of an emerging approach to heritage rather than necessarily being triggered by preparation of a Core Strategy.

3.11 Concerns were also raised by interviewees in a few towns that the heritage resource itself was not adequately recognised. One notable suggestion made was that many more buildings in Folkestone should be listed and that this town deserved more Conservation Areas. Another was that the Conservation Areas in Newbury needed revision and the preparation of Conservation Area Appraisals for them as they were only lines on a map from as long ago as 1971. However there was no agreed timescale to implement this.

Local Plan policies on the heritage character and setting of the selected towns

3.12 Policies on protecting and conserving listed buildings, ancient monuments, conservation areas and other designated heritage features are commonplace in development plans, particularly under the old system of Local Plans. This research examined the extent to which local authorities were able to address the wider issues of settlement character, townscape and the setting of each town and its principal buildings. For the most part this involved the use of documents in the evidence base to inform policy, though in some cases the older Local Plans were themselves vehicles for setting out policies where the supporting text rather than a separate document provided the justification.

3.13 Most authorities in recent years have been reliant on 'Saved Policies' from their former Local Plans as part of their transition to a new forward planning regime. Some of these may well have been lost when a Core Strategy or other DPD was adopted, but numerous Saved Policies often remain in place until such time as new development management policies are adopted. In only two authorities in the sample, in Chelmsford City Council and Suffolk Coastal DC, had Core Strategies been adopted in which development management policies were included (in the latter case excluding heritage policies). The remainder were waiting for a further DPD, though few of these were expected soon. Decisions have therefore been taken against a changing background as the new forward planning system takes shape, including new Core Strategies and Area Action Plans (listed in Table 2). Also relevant are policies and supporting material in any Supplementary Planning Guidance (Supplementary Planning Documents under the post-2004 regime). Documents in the evidence base noted in Table 3 will be capable of being 'material considerations' where they are relevant to a decision. Table 4 summarises the dates of the old Local Plans on

which authorities for the 20 selected towns have relied, together with relevant statutory supplementary material. In some cases the former Local Plan policies have been central to heritage-related decisions whereas in others these policies appear to have had little impact at the whole town scale, as indicated in Table 4.

Table 4 Local Plan policies and key Supplementary Planning Guidance/Documents

Town	Policies or supporting text in Local Plan apply evidence	Supplementary Planning Guidance/Documents
Berkhamsted	2004	Landscape Character Assessment 2004; Development in Residential Areas 2004 and High Street & Water Lane, Berkhamsted 2007 both superseded by Urban Design Assessments 2006 & 2011 (not SPD)
Chelmsford	1997	
Chesterfield	2006	Chesterfield Town Centre Masterplan 2009
Folkestone	2006	
Hastings	[2004]	
Henley-on-Thames	2006	South Oxfordshire Landscape Assessment 2003
Ilkeston	2005	Ilkeston Masterplan 2007
Leek	1998	Leek Town Centre Masterplan 2014
Newbury	2007	
Selby	2005	
Stowmarket	1998	
Taunton	[2004]	Town Centre Design Code 2008
Thame	2006	South Oxfordshire Landscape Assessment 2003
Thornbury	2006	
Wellington	[2004]	
Whitehaven	2006	Town Centre and Harbourside 2012 Seeing the History in the View 2012
Wigan	[2006]	
Winchester	2006	Landscape Character Assessment 2004
Woodbridge	2006*	Woodbridge Riverside Planning Brief 2003 Conservation Area Appraisal 2011 Suffolk Design Guide for Residential Areas 2000
Wyndham	2003*	Place Making Guide 2012

* Local Plans particularly influential on heritage issues

Square brackets indicate that the document appears to be barely used for purposes relevant to this research

3.14 Local authority Conservation Officers and local voluntary sector representatives were asked whether local policies for about the last ten years have been sufficient for the task of protecting the character and setting of the selected towns. Supplemented by our assessments of the policies available, we conclude that most towns have had Local Plan policies (under the former system) capable of protecting the towns in this way, sometimes with excellent policies (e.g. Woodbridge). However, Hastings was poorly covered by suitable policies and the policies were limited in Folkestone, Taunton, Wellington and Ilkeston. Respondents also identified documents other than Local Plan policies which had been instrumental in benefiting the character and settings of the selected settlements. For example, particular benefit appeared to derive from the *Landscape Character Assessment for Dacorum* in Berkhamsted and *Conservation Area Appraisals* in Wigan.

3.15 Effective protection of the character and setting of historic towns depends on the effective implementation of heritage policies. The study asked local authority Conservation Officers and local voluntary sector representatives about how effectively these policies (and indeed the evidence base) were applied to planning decisions which would affect each town's heritage. The intention was to obtain an understanding of the weight given to heritage issues over the years, prior to the publication of the National Planning Policy Framework and prior to each authority's adoption of its Core Strategy. Where practicable, views were obtained on whether:

- Conservation Officers' advice was generally accepted by planning case officers and senior planning staff;
- councillors generally followed officers' recommendations on heritage issues, and
- Planning Inspectors supported heritage interests in cases which came before them (principally through planning and listed building appeals).

3.16 Most Conservation Officers presented their professional opinions on emerging plan policies (if consulted) and on proposed developments without regard to how this would be viewed by planning staff or councillors. Most were satisfied that their advice was generally followed by planning staff (though in two of these cases the voluntary bodies suggested this was not so reliably the case and the Conservation Officers were not people who moaned!). There were, though, a small number of authorities where the Conservation Officer was insufficiently engaged in the wider planning process (usually due to shortage of capacity) to be reliably aware of how their comments were treated by case officers or the decisions councillors reached.

3.17 There was a minority of authorities where the evidence suggested that staff did not press the case particularly strongly for the protection of heritage, resulting in weak compromises, such as poorly designed modern development in an historic context. This was clearly the result of a councillor-led culture in each of the towns, in which development was strongly encouraged and was not to be impeded unduly by heritage concerns. While in one case the Conservation Officer did not appear to argue the heritage case particularly strongly, the main problem lay with other planning officers. For example, voluntary sector interests in four different towns argued that:

- Officers were generally not making enough of the adequate heritage policy to press for good developments, and lacked confidence that their advice would be upheld in Committee. The key problem is that there never seems to be pressure to get better quality design. This is unlike some other authorities where applicants know they will have to try harder.
- The Council has not taken heritage or local historic character seriously in the past and it lacks technical expertise in its planning department. There are lots of older buildings in the town which desperately need repair, but good standards have not even been required at points of conversion. There have been some dreadful decisions where officers have recommended approval of very bad schemes and councillors have approved them.
- Officers do not seem to put forward recommendations to protect heritage buildings if the councillors would be likely to refuse these.
- It is unlikely that the Core Strategy or any emerging document will deliver protection of the historic environment or high quality design because officers do not demand it and

the Council itself is less concerned with good design than achieving some form of growth at any cost.

3.18 The research identified clearly that the driving force for the majority of councillors in most towns studied was the economic well-being of their town. Many councillors were also supportive of heritage interests, but the way in which the tensions affected decisions involving town heritage varied from place to place. The key determinant appeared to be whether councillors saw heritage assets as beneficial to the town's distinctiveness and economy or as a burden and drag on investment. Most councillors generally followed officers' advice on planning applications with an important heritage element, but attitudes and political views provided the backdrop to decisions. Insight into the numerous forces being played out was offered by many different interviewees, such as:

- There is a diverse membership of the Council, with goodwill towards heritage though not a huge sensitivity. Economic growth, affordable housing and traffic are the key issues for councillors.
- Far and away the emphasis of the Council is on growth through new build, both on the edge of town for housing and in the middle to bring retail and business to brownfield sites. Heritage has been further down the list: buildings have been preserved, but the public realm has been damaged.
- Councillors do not like to appear to be taking heritage seriously, but when it comes to the crunch they do take heritage interests as a valid point of view, and do compromise on decisions to a small degree. They realise the old buildings are part of the town's attraction. They see heritage as a good thing economically, attracting visitors, and regret notorious mistakes from the past.
- Over the years, insufficient weight had been given to protecting the town's character and setting. The problem was member-led: they had a strong growth agenda, 'whatever it is', didn't ask for higher standards, and were therefore not getting the best out of developments.
- Councillors do not get training and are not very interested in heritage, certainly where this impedes development. Fundamentally, there did not seem to be a long term and positive way forward for heritage, particularly at large and difficult sites, which would have fared much better in other authorities.
- There is a wonderful resource but it is unloved by Councillors who only view it as an expense. Only the Conservation Officer knows about heritage in the planning department, so the heritage message often does not get put. Staff cutbacks mean that an already very limited capacity is now extremely thin.
- In the last year there have been 3 or 4 appeals which the Council has defended after officers had originally recommended approval but councillors had refused schemes.
- The town is heavily Conservative, but newly elected councillors tend to be more concerned with economic growth and with relaxing planning controls. On the other hand some councillors are very conscious of heritage, though the political balance has shifted slightly away from them.
- In the last year or so there have been changes to personalities involved and councillors have treated heritage better.

3.19 The reporting of Inspectors' and Secretary of State's decisions was almost entirely in favour of heritage interests, with parties struggling to think of any heritage appeals lost or

any heritage appeals at all in some of the towns studied. One Conservation Officer reported that councillors had been reluctant to hold out by issuing the refusals officers sometimes recommended, though their concerns had been allayed by good appeal decisions when they had done so. A major decision in Berkhamsted had protected the town from a large land allocation which would have challenged the town's setting and character: Dacorum BC's omission of a possible development site at Ashlyns School from the Council's Core Strategy had recently been upheld after a challenge in the High Court. Similarly in August 2014 the Secretary of State upheld a refusal by South Norfolk DC of a 70-home scheme which would have adversely affected the setting of Wymondham Abbey (even though the Council could not demonstrate a five year housing land supply): this case was pursued vigorously by the Council and seen as critical to understanding the role of the NPPF towards heritage in the town.

3.20 In addition to asking interviewees about the effectiveness of their own local policies, the study briefly compared the relationship between heritage policy and heritage outcomes across the selected authorities. The expectation was that these would be closely related so that, for example, local authorities with policies highly supportive of heritage would be those which took decisions most sympathetic to heritage. The same cultural approach would underlie both sides of the relationship. Evidence shows that this relationship usually applied in practice but that heritage policy was not a wholly reliable indicator of outcome:

- (i) As the paragraphs above show, personalities in the decision making system can have a discernible effect, and this is to some extent irrespective of policy.
- (ii) Councillors do respond to the pressure of local opinion. In Chelmsford, Hastings and Folkestone new voluntary organisations had sprung up in the last few years in part (or entirely) to tackle what they saw as their local authorities' inadequate regard to local heritage, and they presented evidence that outcomes were changing as a result (albeit usually more slowly than they would have liked). That had been separate from any change in policy.
- (iii) One local authority for a selected town with a poorer record of attention to heritage had apparently recently improved its performance on heritage issues in order to bring itself more closely into line with standards in a neighbouring authority with whom it was developing a close functional association.
- (iv) Stowmarket is a town with in our view a good evidence base and valuable heritage policies but unreliable outcomes. In 2008 a *Stowmarket Environmental Assessment* was commissioned specifically in anticipation of further major growth in Stowmarket (see Box 1). This was critical of the bland and poorly planned modern development which had engulfed the town in the recent years, and made recommendations to ensure that future development did not repeat this and tackled current deficiencies. The Stowmarket Area Action Plan adopted in February 2013 contains some excellent policies for heritage including to protect the skyline of the town on its slight ridge, with the onus on developers to enhance the town's setting and maintain distant views across the valley. An attempt was made to allocate development to places where it would do least environmental harm while remaining accessible, though the advice of the *Assessment* was not always followed: land allocations are closer to Onehouse village, employment land to the south east not constrained to the 35m contour, and land between Union

Road and Finborough Road proposed for consideration in the next review of the AAP despite the *Assessment* stating “there is little to no potential for development in this area”. The Plan accepts “The development proposals will have a major effect on the character and appearance of the land to the North and North-West of the town. Although this land may have less landscape constraints than the River Gipping and Rattlesden valleys and the designated Special Landscape Areas elsewhere, its character remains important”. In our view, adverse impacts on the setting of the town from the proposed scale of growth appear inevitable, and there is a gap between the aspirations of the heritage policies in the AAP and the likely reality of planned development.

3.21 We conclude that the evidence from across the 20 selected towns shows that in recent years most local authorities have had adequate or good evidence to shape policies and planning decisions affecting towns and their settings. The policies in most former Local Plans have provided some basis for heritage planning at the whole town scale, progressively supplemented by newly emerging DPDs under the new system. Rather than the adequacy of evidence or policies, it is the implementation of these policies which has been more variable across the selected towns. Advice from planning officers is usually sympathetic to heritage issues but not always. Councillors’ opinions on the relative weight to give to heritage varies widely, creating climates of expectation in local authorities about how much attention should or should not be paid to this subject. Councillors are generally supportive of their officers, but there has nevertheless been concern about the loss of and damage to heritage in many of the selected towns, particularly as expressed by voluntary sector interests there. It is clear that securing appropriate planning policies for the townscape and setting of towns, like other heritage, is necessary but not sufficient: corporate attitudes to heritage are a key matter which also needs to be addressed.

Core Strategy policies on the heritage character and setting of the selected towns

3.22 Policies in Core Strategies can be expected to shape the heritage character and setting of the 20 towns studied in the years ahead. The study set out to identify the relevant policies and establish whether these were up to the task. The attention given to heritage at the whole town scale in the Sustainability Appraisal of the Core Strategy was also assessed, to see how significant a role this played in the plan as a whole. This exercise was repeated for all Development Plan Documents relevant to the selected towns.

3.23 The principal difficulty in this exercise is that Core Strategies tend to avoid offering their heritage policies in any detail. Core Strategies may have as few as a dozen policies, and these are necessarily ‘high level’, presenting a Council’s general approach to issues rather than practical steps which will be taken in individual cases. The built heritage is likely to be mentioned sympathetically, and the protection of heritage interest within towns may also be mentioned, but the phraseology tends to be aspirational rather than practical, and therefore open to interpretation in individual cases. Nonetheless, Core Strategies make specific reference to protecting the settings of the following selected towns: Berkhamsted, Chesterfield, Hastings, Leek, Selby, Thame, Thornbury, Whitehaven, Winchester, Woodbridge and Wymondham. These encouraging findings show what is possible despite the limitations of Core Strategies containing only strategic policies.

3.24 Detailed heritage policies have yet to be put in place under the post-2004 forward planning regime in every town selected except Chelmsford. Elsewhere, suitable Development Management policies are awaited in a yet-to-be-adopted DPD. In some cases these have yet to be begun. As a result of the slow pace of formal plan preparation, most local authorities are relying on Saved Policies from their former Local Plans to provide the detailed policy approach to heritage, and therefore the overall policy picture has not so far changed greatly in many of them. The interviews detected some feeling that it is these policies, and not those in the Core Strategy, which have real effect in planning decisions. As an illustration of the difficulties, there is a hiatus in Hastings, where there are no worthwhile development management policies from the former Local Plan to fall back on: although the Core Strategy contains a formal commitment to the preparation of a historic environment strategy within 3 years, which is very necessary, this is not currently being promoted. Preparation of a Development Management DPD has fortunately begun which will include heritage policies. Table 5 shows the impact on heritage policies in the selected towns of the transition from the former Local Plans (and Unitary Development Plans) to the new forward planning system.

Table 5 Heritage policies in the transition to post-2004 forward planning

Town	Previous policies continued with little change	Strategic policy only provided	Reliance also on Saved Local Plan policies	New policies introduced	Former Local Plan policies cut
Berkhamsted		Yes	Yes	New 'place' strategy for the town	
Chelmsford	Yes				
Chesterfield		Yes		New town centre policy	Yes
Folkestone		Yes	Yes		
Hastings		Yes	Yes (but weak)		
Henley-on-Thames		Yes	Yes		
Ilkeston		Yes	Yes		
Leek		Yes		New policies for Leek and settings of settlements	Yes
Newbury		Yes		New policy on Historic Environment & Landscape Character	
Selby		Yes	Yes		
Stowmarket		Yes	Yes		
Taunton		Yes	Yes (but weak)		
Thame		Yes	Yes		
Thornbury		Yes	Yes		
Wellington		Yes	Yes (but weak)		
Whitehaven		Yes	Yes		
Wigan		Yes	Yes (but weak)		
Winchester		Yes	Yes		
Woodbridge	Yes		Yes		
Wymondham		Yes	Yes		

3.25 The heritage policies in Core Strategies are not the only ones which affect the future heritage interest in the selected towns. Many other policies, especially those prescribing scales of development, will also be important. Some Core Strategies explain how development is expected to proceed with regard to heritage, but others do not, so the priorities and methods of implementing policy – key to effects on the ground – may be unclear or postponed for decision on a future occasion. As one local voluntary organisation representative put it, their Core Strategy was just “a pious amalgamation of a lot of idealism which you could argue is incompatible”. Some of the selected towns had adopted Core Strategies which set out very substantial scales of growth (Taunton, Stowmarket, Wymondham, Chelmsford, Ilkeston and Thornbury) with urban edge greenfield developments in each case. At the other end of the scale, Woodbridge is expected to grow by barely 3% over the next 10 years (see Box 1). There are consequently enormous variations in the ease or difficulty with which the heritage interests in the various towns can be protected, according to the scale of development planned.

Box 1 Planned housing growth in selected towns

The population of Wymondham grew from 10,869 in 1991 to 12,536 in 2001 (13.9%) and again to 14,405 in 2011 (14.9%). The Joint Core Strategy for Broadland, Norwich and South Norfolk allocates 2,200 dwellings to Wymondham 2008-26, which will increase its dwelling stock by about one third (or approaching 20% in 2011-21). Additional employment land and infrastructure are proposed.

The population of Stowmarket grew by 14% 1991-2001 and from 15,059 to 19,280 between 2001 and 2011 (28%). The Mid Suffolk Core Strategy establishes further growth of 1,925 dwellings 2010-25, which is equivalent to around 15% growth over a ten year period.

The Taunton Deane Core Strategy allocates at least 13,000 houses and 9,500 jobs to Taunton in the period 2011-28. This would increase the size of Taunton by over one quarter in just ten years (2011 population of 60,479).

Ilkeston is allocated 4,500 dwellings for the period 2011-28, including 2,000 at a former steelworks site 4km to its south. The allocation would increase the size of the town by about 15% in 10 years (2011 population of 38,640).

The Suffolk Coastal Core Strategy 2010-27 allocates 1,520 new dwellings (excluding windfalls) to five market towns in the area, of which Woodbridge is one. Woodbridge had a population of 11,342 in 2011, so it would grow by only about 3% over 10 years if it took an equal share of the 89 dwellings annually.

3.26 It is the intention of the post-2004 forward planning system that local planning policies should be held within a folder of separate documents which together comprise the development framework for the area. Table 2 above showed that there is a range of relevant documents affecting the selected historic towns, and there can be no surprise that heritage-related policies are spread around these. The policies must be judged by their combined effect. We came to the following views:

- The Chelmsford Core Strategy policies are very sympathetic to heritage, in the context of major growth. They are compatible with the Town Centre Area Action Plan where proposals are strongly tied to the character of localised areas and based on a sound

understanding of the historic background to Chelmsford's urban form. Development opportunities are assessed against urban design requirements. Many of the proposals are Town Centre-wide, and there are frequent references to settings.

- The Mid Suffolk Core Strategy is slim with generalised policies but its objectives refer to sustaining the character of towns. This is of limited practical use for the purposes of this study, but the recent Stowmarket Area Action Plan is much more sympathetic to heritage issues.
- The Environment Policy in the Taunton Deane Core Strategy is mainly about biodiversity but contains two generalised bullet points relevant to the built environment, though these do not amount to a robust heritage policy. The earlier Taunton Town Centre Area Action Plan pays remarkably little attention to heritage, though some small entries were added under pressure from English Heritage. 2,000 dwellings are proposed in the Area, and the outlook for heritage interests is not guaranteed.
- A Core Strategy policy sympathetically addresses townscape and the historic environment of Wymondham. This is supported by an emerging Wymondham Area Action Plan which in its current draft is fairly sensitive to heritage issues. Development would satisfy Core Strategy growth levels without directly damaging the historic core.

These cases illustrate the range of attitudes shown to town-scale heritage, and especially in the Stowmarket case show the importance of considering adopted plans as a whole.

3.27 Policies in development plans are expected to be compatible with each other and also achieve broader 'sustainability' objectives. As an example, plans should be able to demonstrate that their built heritage policies will be reinforced by other policies such as for urban growth, and that collectively the policies will support wider heritage objectives such as the protection of the character of historic towns. The negative effects of draft Plan policies on the historic environment can be avoided or reduced, and the relative merits of different scenarios for development and town expansions considered. The process of Sustainability Appraisal (SA) provides the means of doing this. The study examined the SA Reports for all Core Strategies and other adopted DPDs to see whether this was done and the impact it had on policy. Table 6 presents the results for Core Strategies. It shows that Sustainability Appraisals had tried to consider the effects of Plans' policies on heritage or the historic built environment in almost all cases, and that whole town qualities of the selected towns (e.g. townscape, town character, distinctiveness, sense of place or setting) had been addressed in two thirds of them. In most cases this was achieved by a town heritage evaluation criterion rather than simply by a review of a heritage policy. Whilst these are encouraging findings in principle, there were mixed levels of attention to the topic and often weak or absent conclusions and recommendations to feed back to the Plan.

3.28 Of the Sustainability Appraisals of other DPDs, the SA of the Stowmarket Area Action Plan was notable for its attention to the town's heritage as a whole. It concluded "The highest rating was achieved against the SA objectives aiming to conserve and enhance the quality and local distinctiveness of townscape and to revitalise the town centre, which reflects the key targets of the AAP." It recommended that a particular policy should contain more detailed information about heritage assets in relevant planning applications: this was incorporated through Main Modifications (themselves subject to further SA), specifically citing the requirements of the NPPF. The SA of the Taunton Town Centre Area Action Plan was also worthwhile. This identified damage to unknown archaeology as the principal risk

Table 6 Commentaries on Sustainability Appraisals of Core Strategies

Town	No significant reference to whole town heritage or town setting in SA	Relevant CS policy on townscape or setting evaluated	Town setting or whole town heritage used as SA criterion for assessing CS policies
Berkhamsted			Town character (not setting) included in cultural heritage criterion, but not specific to Berkhamsted.
Chelmsford			Excellent evaluation criteria & adequate baseline assessment, but weak policy evaluation.
Chesterfield	Heritage included within Cultural Heritage only		
Folkestone			Exemplary heritage criterion but not applied searchingly*, and no built heritage recommendations
Hastings	Townscape embedded in 1 of 21 evaluation criteria, but analysis very weak.		
Henley-on-Thames	Growth options assessed only against sustainability objectives on high quality design & distinctiveness		
Thame			
Ilkeston			Criteria to protect built environment and heritage landscape/setting: positive outcome for heritage as identified sites have negligible assets
Leek			Criterion to protect sense of place, character of townscape, etc.: around Leek sites have little impact on heritage; development reusing heritage assets in town centre would strengthen character
Newbury	Historic environment given high priority in assessment but not town heritage		
Selby	Landscape and character only assessed generally		
Stowmarket			Some townscape evaluation as part of heritage; negative effects of town growth noted. Setting neglected.
Taunton			Thorough commentary with criteria on sense of place, distinctiveness, townscapes, heritage character, etc. but offers no conclusions
Wellington			
Thornbury			Criteria included historic character: all sites around town assessed against this.
Whitehaven		Whitehaven Town Centre policy scores highly against key conservation objective	
Wigan	Landscape character and built environment only assessed generally		
Winchester			Criteria assess city core (built heritage) and setting (character & landscape) but fairly weak findings
Woodbridge			Plan policies score highly on distinctive townscapes sustainability objective, but SA critical of retail & archaeology policy
Wymondham		Town's heritage value discussed; townscape/historic environment policy reviewed weakly.	

* Conclusion that there will be 'significant positive effect' on the baseline relies on saved policies from 2006.

from the Plan; it picked out specifically the impact of the proposals on historic assets and on the landscape setting of the town with its church towers; and it pointed to the need for good design during development. It made recommendations to overcome identified difficulties which appear to have been accommodated in a revised Plan, and English Heritage objections at an early stage of the Plan were to some extent mitigated. These examples show how the SA process is intended to operate, with changes accommodated through an iterative process of plan preparation.

3.29 Overall we conclude that Core Strategies alone contain insufficiently detailed heritage policies to ensure satisfactory outcomes in relation to other policy pressures, though they do provide a platform for aspirations to protect the settings and characters of historic towns. Other Development Plan Documents, particularly Area Action Plans, can provide more detailed heritage policies where development is planned in a heritage setting, though experience in taking up these opportunities varied. The Sustainability Appraisal process varied greatly in quality from one plan to another. SAs were often carefully structured but did not achieve the full evaluation that might have been hoped for. Some highlighted achievements and shortcomings in the Core Strategies in relation to heritage, and in varying degrees in relation to town character and setting, though others had weaker evaluations. They often failed to follow through the information obtained with sufficient conclusions or recommendations to gain the full potential benefit from the evaluation process, and the benefits were small for the scale of the undertaking. However, the better SAs showed what could be achieved.

The effects of the transition to Core Strategy policies

3.30 The experience of how heritage policy has been applied in the selected towns in recent years will only provide some guide to the future if past policies are continued into the new forward planning regime. At the same time, the preparation of new policy provided the opportunity to make changes, whether to reflect the climate of opinion towards heritage in a town or to take forward a different approach. The study enquired of local authority Conservation Officers and local voluntary sector representatives how they viewed what had happened in the plan-making process. This section presents findings on changes of policy direction in the Core Strategy process.

3.31 Table 5 showed that the process of preparing Core Strategies had tended to result in past policies on whole town heritage being continued through the Saved Policy mechanism. To expand on the findings, interviewees were asked whether the Core Strategy had aimed to change the direction of policy on the relationship between heritage and growth. In the large majority of cases the previous policy approach had been continued and there had clearly been no change of direction. In a few cases minor changes of direction were noted. However, in four authorities there had been discernible changes to the treatment of the issue and in the South Oxfordshire towns Neighbourhood Plans had taken the lead role following the adoption of the Core Strategy for the district in 2012.

3.32 In Leek the preparation of the Core Strategy dovetailed with a Leek Masterplan SPD. This was seen as an opportunity to take a different approach to heritage protection using Staffordshire Moorlands DC's comprehensive and robust evidence base. The Core Strategy

policies relating to the historic environment are not particularly detailed but are based on historic characterisation and in Leek include “protecting and improving the setting and historic character of the town”. It remains to be seen how heritage assets and the setting of Leek will be protected by the proposed Design SPD, Conservation Area Management Plans and indeed the Site Allocations DPD (which will be informed by the Landscape and Settlement Character Study).

3.33 In Chesterfield the Core Strategy made a fresh start to heritage with extra policies at the request of English Heritage. The very detailed development management policies for heritage and design in the 2006 Local Plan were dropped, though the importance of Chesterfield’s medieval street pattern and of particular views and the setting of the conservation area will remain relevant. Instead the new Core Strategy takes a different approach which is to protect heritage assets that enhance the quality of the borough and improve those that detract. A new policy advocates innovative building designs albeit that development should respect character, form and setting of the surrounding area, and another protects views of St Mary’s church with its twisted spire. Heritage-related SPDs are proposed or in preparation.

3.34 In Selby, the Council observed that prior to the Core Strategy there was a general perception that development was inappropriate in conservation areas and that listed buildings could not be altered. The Core Strategy recognises that growth can be acceptable in Conservation Areas but that new development must be well designed. This is offered as a more ‘rounded view’ which sees heritage as a facilitator of high quality new development rather than a constraint on growth. This is in the context of Selby having a positive Core Strategy policy on the setting of the Town Centre Conservation Area and Selby Abbey.

3.35 Officers in Thornbury advise that considerable attention was given in the Core Strategy to meeting growth requirements: this was at the expense of the heritage to some degree, notably at Park Farm on the north side of the town, but that this was outweighed by the need to maintain services and facilities and the benefits that these would bring to the town as a whole. Environmental protection remains an important part of South Gloucestershire’s strategy. Details are given in paragraph 3.42 as this was principally a response to the National Planning Policy Framework.

3.36 We conclude that the overall effect of the change to Core Strategies was only limited impact on heritage policy. In most local planning authorities there was no real change, with the approach adopted only adjusting to the needs of the new regime. Core Strategies are more strategic documents than the Local Plans they supersede, so some authorities took the opportunity to revise their strategic approach and move their focus away from traditional development management policies. An improved evidence base on heritage issues usually underpinned this, representing a real advantage of the new system. Most of the policy changes aimed to improve the approach to heritage and in only one authority was the primary objective to facilitate more urban growth than previously. That was spurred in part by the recently issued National Planning Policy Framework, though reflective of local needs and still in the context of a commitment to heritage protection.

The impact of the National Planning Policy Framework

3.37 The heritage towns for this analysis were selected primarily because they were located in authorities with Core Strategies which were adopted after the issuing of the National Planning Policy Framework (NPPF) in March 2012. This provided an opportunity to identify changes to policy which had been introduced specifically to meet NPPF requirements. There was an expectation that these would be important considerations facing all local authorities in future and therefore, potentially, the impact of urban growth on historic towns. A range of effects was investigated.

3.38 First, three authorities from the selected twenty had adopted Core Strategies prior to the NPPF and amended them after the NPPF. In the case of the Joint Core Strategy for Broadland, Norwich and South Norfolk, the amendments were primarily to reflect the outcome of a High Court challenge to the document, not the NPPF, and this case has been discounted. Both Chelmsford and Mid Suffolk Councils carried out Focused Reviews to update their Core Strategies to ensure compliance with the NPPF. In Chelmsford the heritage policies were barely affected and therefore carried forward. In Mid Suffolk, further detail is included on development proposals in Stowmarket, but heritage does not feature in this. The English Heritage consultation response to the Mid Suffolk draft Focused Review welcomed a reference to new development respecting historic views and assets, landscape and townscape, and that the policy now required development to make a positive contribution to local character. However, those references disappeared from the adopted policy. The overall effect was that the NPPF had no impact on updating earlier Core Strategies.

3.39 The second consideration was the response to the wording of the NPPF. It is a core planning principle of the NPPF that planning should “conserve heritage assets in a manner appropriate to their significance” (paragraphs 17 and 126), recognising that they are an irreplaceable resource and so that they can be enjoyed for their contribution to the quality of life of this and future generations. In this and numerous other statements the NPPF gives greater weight than previously to the appropriate treatment of heritage assets which do not have a national designation of some kind. Many authorities pointed out that they had made specific reference to ‘heritage assets’ in their own Core Strategies, and couched policies using that terminology. For the most part this was a matter of aligning existing local policy with national expectations rather than genuinely changing policy. Another issue arising from the wording of the NPPF had caused difficulties. An issue which repeatedly came up at planning appeals was the meaning of ‘substantial harm’ to listed buildings (NPPF paragraphs 132-133) – which should only be allowed exceptionally – and therefore the boundary between unacceptable ‘substantial’ harm and acceptable ‘less than substantial’ harm. This was unresolved. In contrast to this, another Conservation Officer reported that an effect of the NPPF had been that appeal decisions from the Planning Inspectorate had been much more consistent and supportive of heritage, including on such matters as changes to listed buildings, the importance of unlisted buildings in conservation areas, and the impact of double glazing.

3.40 One substantive effect of the NPPF is that this wording on ‘heritage assets’ has been widely interpreted to mean that local authorities should amongst other steps prepare a

'local list' of buildings which are not on the statutory list but are still locally significant. This would enable them more easily to fulfil paragraph 129 of the NPPF that "Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise." This was not investigated in detail, though authorities for the selected towns were clearly familiar with it. Those commenting had generally made little progress in the preparation of local lists. Local listing has been undertaken in Newbury and Berkhamsted (both still under review), while in Hastings the initial preparation of a list has been devolved to an enthusiastic local voluntary organisation.

3.41 The third aspect of the NPPF investigated was the local response to the way it prioritised growth in relation to heritage. The NPPF is clearly positive in its approach to both issues, so the local interpretation has an element of choice. Most authorities reported no real local change to the priorities relative to each other. However, in both Wymondham and Thornbury greater priority had been given to growth at the expense of heritage. In Wymondham it was reported that this growth agenda had been reflected in Conservation Officer advice being overridden more often in planning officers' recommendations to councillors.

3.42 The most significant consequence of the NPPF was identified at Thornbury. Here the greater emphasis on growth due to the NPPF had resulted in a major site being released at the expense of heritage to secure urban development for wider benefits. The spatial approach in the Core Strategy that allocated strategic housing to Thornbury identified the need to sustain and enhance its facilities and services in the face of competition from other retail outlets, the need to retain the town's schools and the role of the historic town centre. Thornbury Town Council too very much promoted the requirement for additional housing growth in Thornbury: the town was potentially suffering from economic and social decline and that if not addressed, as a result of the town's age and demographic profile, it would struggle to maintain key services and facilities. This point was grasped by the Core Strategy Inspector in making the overall planning balance. During the preparation of the Core Strategy a major application was submitted at Park Farm (to the north of Thornbury and now one of the sites in the town identified in the Core Strategy for growth). Subsequently, amendments to the Core Strategy provided a comprehensive explanation of why the Park Farm site was chosen in preference to others around the town. Amendments also strengthened the approach to the historic environment. Finally, a policy in the Core Strategy states that the housing capacity of the area north of Thornbury and near the Castle School will be confirmed through the completion of an Historical Environment Character Assessment which will also inform the layout and scale of development to help mitigate any possible impact on heritage values and assets. This was submitted as part of the masterplanning/application process. English Heritage accepted the mitigation measures proposed. In this way the NPPF had a direct effect on the Core Strategy, with promotion of growth being accompanied by tighter requirements to ensure that implementation respected heritage interests as far as practicable.

3.43 We conclude that the findings in the selected towns suggest that the impact of the NPPF on heritage and growth has been very modest in most local authorities, even when

Core Strategies were updated to meet NPPF requirements. Practical responses such as the preparation of local lists of heritage assets have been limited and often delayed. The biggest effects have been on the local rebalancing between growth and heritage: although this is often negligible, the Thornbury experience shows that the NPPF can facilitate a more growth-based agenda through both Core Strategy preparation and development management in individual cases.

Variation in local authority commitment to towns' heritage character and setting

3.44 The climate of opinion towards heritage in a local authority is enormously important in shaping outcomes in practice, as examples given above have demonstrated. The attitude to heritage is usually led by elected councillors as a cultural issue across a council, while recognising that individuals can take views that depart in various ways from the collective position. It can also be strongly influenced by dominant individuals (including senior planning officers) or by a history of significant past events. Some of its impact is direct, such as planning decisions to allow or refuse developments, the degree of compromise of heritage interests which authorities are prepared to allow, or the talking-up of heritage for regeneration or tourism purposes. Other effects are indirect, such as the policies which can be adopted in development plans, the level of staffing devoted to heritage, whether conservation officers are actively engaged in planning for major development sites, and the expectations for heritage which are generated in a town.

3.45 The study wanted an identifiable and comparative measure of councillors' views. This cannot be a wholly reliable exercise, but one strong indication of councillors' priorities is given in the Corporate Plan or equivalent document issued by almost every council on an annual or periodic basis. Typically a short statement of political priorities (with a commitment to everywhere being 'vibrant'!), these can be revealing by what they do and do not say. These documents were analysed in authorities covering each selected town and checked for the appearance of key words, such as 'heritage', 'historic', 'townscape', 'character' and 'setting'. The results are in Table 7. This shows that five of the eighteen authorities' corporate documents did not mention heritage issues at all. Ten more did so only very briefly or in a generalised way, and sometimes qualified their commitment. Just three gave the built heritage a significant place in their forward thinking (Winchester, Suffolk Coastal (for Woodbridge) and South Gloucestershire (for Thornbury)). All authorities emphasised economic issues as a priority, sometimes with remarkable levels of ambition.

3.46 The documentary evidence obtained and the interview results for this study gave strong hints about the climate of opinion towards heritage in each town. Paragraph 3.18 above noted briefly some of the range of attitudes which local authority councillors are perceived to have towards heritage. Taken together with the results from the review of Corporate Strategies, we conclude that the main findings are that attitudes to heritage vary widely between towns and that a commitment to the economic wellbeing of each town lies distinctly above heritage in the order of corporate priorities.

Table 7 Local authority engagement with heritage as expressed in Corporate Plans

Town	Document	No mention	Mentioned briefly	Significant issue
Berkhamsted	Corporate Plan 2012-15		Mentioned only at Old Hemel Hempstead*	
Chelmsford	Corporate Plan 2012		Awareness of sense of place but separate from prioritised growth agenda	
Chesterfield	Corporate Plan 2010-2014		Heritage assets to be better protected and enhanced	
Folkestone	Corporate Strategy 2013-18	Yes		
Hastings	Corporate Plan 2014/15-2016/17		Aims to preserve the 'best of' our heritage alongside development	
Henley-on-Thames	Corporate Strategy 2012-16	Yes		
Thame				
Ilkeston	Corporate Plan 2012-2016		Promotes development while protecting historic and built environment	
Leek	Corporate Plan 2011-2015	Yes		
Newbury	Council Strategy		Heritage and built environment mentioned	
Selby	Corporate Plan 2011-2015	Yes		
Stowmarket	Strategic Priorities 2013-14		Only mentioned when "balanced with growth"	
Taunton	Corporate Business Plan 2013-2016		Objective to deliver unprecedented levels of growth 'whilst respecting character and setting of the Borough'; heritage just noted as a 'strength'	
Wellington				
Thornbury	Sustainable Community Strategy 2008			Significance of the built environment noted + how much residents value it
Whitehaven	Corporate Plan 2013-2015		Heritage mentioned but no actions included	
Wigan	Corporate Strategy 2014-17	Yes		
Winchester	Winchester – Towards our Future, 2007**			Protection of environment key to economic prosperity, but evolve city to maintain this
Woodbridge	Corporate Plan 2005-15			Discernible priority given to heritage of built environment
Wyndham	Business Plan 2011/14		Heritage element in revitalising market towns, but not heritage-led	

* This is where Dacorum BC is spending its money; hence Berkhamsted is not mentioned.

** There is no formal Corporate Strategy. This document was prepared by Winchester Town Forum (ward councillors) and endorsed by the Council

Conclusions

3.47 The weight given to the need to safeguard the character and setting of smaller cathedral cities and prominent historic towns in the plan-making process varies greatly between towns. Heritage plays a highly significant role in shaping development in some towns but in others is set to one side. The economic wellbeing of towns is councillors' primary concern everywhere, though this is interpreted differently from place to place. Heritage may either be viewed as fostering a town's distinctiveness, attracting visitors and raising the quality of life (e.g. Winchester and Woodbridge), or be viewed as a cost burden (e.g. Taunton and Wigan). The observed differences are primarily a function of the prevailing local authority cultural attitudes affecting each town. Broadly speaking, the process reinforces itself, with numbers of conservation staff, evidence commissioned, policies adopted and practical decisions taken all reflecting the relative priority given to heritage by councils.

3.48 This pattern has not been greatly affected by the preparation of Core Strategies or other Development Plan Documents under the post-2004 forward planning legislation, or by the issuing of the Government's National Planning Policy Framework in March 2012. In the large majority of cases heritage policy is marked by continuity from the former system of Local Plans to the current system of Core Strategies. This has been reinforced by the substantial delays in the transition, due largely to suitable new development management policies not being in place, with Saved Policies from the former system therefore remaining in place. There is some evidence that the relationship between heritage policy and growth policy has changed slightly in favour of growth, following the NPPF particularly, with a specific major example in Thornbury. However, it is not clear that this is significantly different from what might have happened had the former system of regional planning been maintained, which itself would have put pressure on local authorities to provide for additional development. In view of the broad continuity of policy, the findings here may be taken as reasonably indicative of the degree to which existing planning policies can be expected to safeguard historic settlements in future.

3.49 Heritage considerations are having some impact on the scale of development promoted through plan-making at historic towns, but this is secondary to the determination of central and local government to provide the necessary homes, jobs and facilities for a rising number of households. Many of the historic towns studied are affected by proposals not just for organic growth and urban renewal but for major greenfield urban extensions and, in cases like Berkhamsted, continued increases in urban density as the price paid for maintaining the town boundary in its setting (which is also designated as Green Belt in that case). Even important historic towns like Wymondham are affected by major growth, often selected for their location, role in the urban hierarchy or availability of land, irrespective of their heritage status. In these towns efforts are usually being made to accommodate growth and change with as little damage as possible to the historic core and the setting of the town. The Sustainability Appraisal of emerging plans is in varying degrees identifying the strengths and weaknesses of policies affecting historic towns, but often much more could be achieved. The main requirement is probably to capitalise on information gathering with more robust conclusions and recommendations.

3.50 New post-NPPF Core Strategies have been supported by additional evidence bases on heritage. Although beneficial in principle, the actual policies adopted are often so vague as to be of limited use by themselves. Area Action Plans for Town Centres in Chelmsford, Stowmarket, Wymondham (emerging) and to a lesser degree Taunton have been useful vehicles for providing much-needed detailed policy to get to grips with the local tensions between heritage and urban growth. The biggest problem of this kind is in those authorities which had weak heritage policies in their former Local Plans in the first place and for whom new and effective development management policies for heritage may remain some years away, notably Hastings.

3.51 There is some relationship between the quality of evidence and the quality of policy, e.g. both are relatively poor in Hastings and Ilkeston, and both are relatively good in Winchester, Wymondham, Woodbridge and Berkhamsted. A relationship between heritage policy and outcomes for heritage similarly exists to some extent, but this is less reliable. On the one hand heritage policies can be aspirational to some degree and not put into effect with great enthusiasm, as seems to us to be the case in Stowmarket. On the other hand, councils with weaker policies can be spurred to take heritage more seriously as pressure from new local voluntary organisations in Hastings and Folkestone demonstrates (and similarly to live up to their policies, such as in Chelmsford).

3.52 Council attitudes to heritage are of central importance in explaining heritage outcomes. The evidence from the selected towns is that this is not always a direct function of local wealth. Chelmsford is a wealthy town with a poor history of treatment of its heritage (but now making amends). Whitehaven is a relatively poor town but aiming for heritage-led regeneration. Folkestone's economy was badly damaged by the loss of cross-channel ferry services but is aiming for culture-led regeneration in which heritage is playing an increasing (if modest) part. If heritage appreciation can be built into councils' value systems, then the package of good planning policies, the staff to support them and the decisions to implement them should follow more reliably.

3.53 Conservation Officers, lobby groups, English Heritage and others have worked hard to secure heritage-friendly policies in development plans, and some notable achievements have been identified in the selected towns. This is an essential part of the process of giving proper weight to the value of historic towns and their settings, but it is important that this is not viewed either as an end in itself or as the only action which needs to be taken to achieve the heritage outcomes desired of the forward planning system.

CHAPTER 4

METHODOLOGIES FOR RECONCILING GROWTH WITH HISTORIC SETTLEMENTS

Introduction

4.1 Two of the project's objectives are:

'To consider how the special character of smaller cathedral cities and historic towns in their settings can best be conserved while provision is made to accommodate the future development needs of these settlements. This might involve consideration of local plan processes, methodologies, design approaches, use of existing or modified forms of protection, and other approaches/ideas'; and

'To look at measures local authorities can take to ensure that they give proper weight to the protection of the significance of their cathedral cities and historic towns. To consider the effectiveness of Green Belt designation and see if there are other established designations that can be used to identify the value of undeveloped land around settlements.'

4.2 Both these objectives require an assessment of tools available in the planning system to protect the heritage interest of historic settlements (character, setting, significance), and it is convenient to consider them together. There is a continuum of devices available from fundamentally heritage-based ones (which need some adjustment to make them usable through the planning system) to planning tools which can serve heritage alongside other purposes. Some tools are inherently more accommodating of development than others. No one tool need be exclusive of all others: many of them can often be used at the same time, and in numerous towns and cities it is their combined influence which has the overall effect.

4.3 This review of planning tools is limited to those which can apply at the scale of the whole settlement or a substantial part of it. Within a town there will be listed buildings, scheduled ancient monuments and even large parks and gardens whose protection is expected and whose settings are important locally. However, accommodating these interests does not normally dictate the overall scale and distribution of urban development. This study therefore does not concern itself with the protection of the individual heritage asset. In reviewing impacts on individual settlements, an effort has also been made to avoid undue overlap with other overridingly important constraints on urban development patterns, such as nationally important landscape and wildlife designations which constrain development. Where this has not been entirely possible, the interaction between these constraints and heritage constraints has often been instructive nonetheless.

4.4 This chapter provides a brief review of the methodologies available at the settlement scale to help reconcile heritage with urban development. In each case it outlines:

- the principles behind the methodology;
- how the methodology functions;
- documents which review the methodology;

- the case study city where the methodology is examined in this report; and
- other locations where the methodology has been applied.

4.5 Chapter 5 addresses the same objectives of the study through a consideration of experience in eight cities around England. That chapter summarises the implementation of the nine chosen primary methodologies in those cities, with one each in Bath, Chester, Durham, Lichfield, Oxford, Salisbury and Winchester, and two in Cambridge.

Historic characterisation, including historic landscape characterisation

4.6 Historic landscape characterisation (HLC) belongs to a group of characterisation methods used to provide understanding of the historic environment. It operates at the scale of the whole landscape, and therefore wider than sites or settlements, to provide a base map for a better appreciation of the historical evolution of places and their surroundings. It provides strategic information for others to use, such as for land management purposes, guiding development and landscape change, and integrating with other aspects of landscape evolution such as nature conservation, the visual landscape and green infrastructure.

4.7 Characterisation is map-based and aims to identify landscape types as they appear today. These are based on historic processes, land use and appearance. Landscape types are built up from information at the local level on a scale appropriate to the locality. This could be from the scale of a few fields (or distinct areas with other boundaries) and their associated buildings to substantially larger uniform areas. Characterisation typically derives mainly from desk-based media such as historic maps, air photos and other land-based survey data such as habitat surveys and ancient woodland inventories. Results are presented digitally using a Geographical Information System base. The evolution of the methodology is described in Aldred, A. and Fairclough, G, 2003, *Historic Landscape Characterisation: taking stock of the method*, English Heritage and Somerset County Council, and an outline of the concept is in Fairclough, G., 2005, *Boundless horizons: Historic Landscape Characterisation*, English Heritage.

4.8 Characterisation as an information provision process is usually followed by a second step offering a strategy for the conservation and management of each landscape type. This can identify the sensitivities of the landscape types to change, and therefore the opportunities for improving the distinctiveness of landscapes, the risks which change could pose, and the means of implementing change in ways which most suitably reflect an area's historic evolution. Initially a rural exercise, the technique has been extended into urban areas where townscapes can be identified. At the town scale the HLC method merges into historic area assessment (see www.english-heritage.org.uk/historicareaassessment), where the purposes of analysis tend to be development-related.

4.9 Of all the methodologies studied, historic landscape characterisation is the most fundamentally heritage-based. The insight it gives into the strategic historic background to an area must be adapted for planning purposes. Historic landscape characterisation can be used both in the preparation of development plans and to advise on the determination of planning applications. A handbook on *Using Historic Landscape Characterisation* (Clark, J,

Darlington, J and Fairclough G, 2004, English Heritage and Lancashire County Council) has a chapter devoted to spatial planning which shows how the methodology can be used, with many examples. It advises that HLC is used to gauge the likely impact that development will have upon the landscape, by assessing whether proposals are in keeping with the historic character of the area and whether they have an impact on any of the key cultural attributes. The method can also contribute to Environmental Impact Assessments and help identify the archaeological potential in gaps in Sites and Monuments Records.

4.10 A range of examples illustrate how HLC can be used in historic towns. The first HLC study was carried out in Cornwall in 1994. Here the methodology has since been expanded, notably through *The Cornwall and Scilly Urban Survey, 2005* which took the process through characterisation studies of nineteen towns. The report of the work said of characterisation:

“Characterising the historic environment of each settlement will produce a valuable dataset on the historic fabric, archaeological potential and townscape character of the historic town. This information can certainly be used as a conventional conservation and planning tool to define constraints, as a yardstick against which to measure new development and policy proposals and as the basis of well-founded conservation management, restoration and enhancement schemes and policies.

More importantly, however, characterisation also reveals the essential dynamic factors underpinning each settlement's character. Regeneration planning which is informed and inspired by these elements can take a much more sure-footed and proactive approach to creating beneficial change, both reinforcing and enhancing existing character and ensuring that new developments are better integrated into the existing urban framework, more focused and ultimately more successful.”

4.11 Other examples of using HLC for planning purposes include the *Aylesbury Environs Study* (Green and Kidd, 2005, Buckinghamshire County Council Archaeological Service). Aylesbury has been identified as a suitable location for major long term growth and development to 2021 and beyond. At a broad level the study examined suitable locations for major development around the town assessing the impact that expansion would have upon the environment. Character areas were identified and combined with information from the Sites and Monuments Record and other environmental designations. The number and quality of each heritage component were assessed in each area and given a rating relating to their sensitivity and capacity to accommodate development without significant change or loss of historic character. These ratings were Negative, Neutral or Positive. Sensitivity to change is derived by cross-indexing the scale of impact with the importance of the asset affected.

4.12 English Heritage has developed a more detailed characterisation technique through the Extensive Urban Surveys (EUS) programme launched in 1992. This is part of a national programme of surveys of the archaeology, topography and historic buildings of England's historic towns and cities, supported by English Heritage and carried out by local authorities on a county-by-county basis. The original purpose of the programme was to help local authorities in England to implement Planning Policy Guidance Note 16 on Archaeology and Planning. Now, projects include characterisation of the historic environment as a whole and contribute to wider aims, such as the planning of regeneration and conservation initiatives.

Details of EUS coverage are available through the Archaeology Data Service website at <http://archaeologydataservice.ac.uk/archive>. English Heritage is currently promoting a national programme which includes amongst its aims influencing local planning policy and encouraging the integration of urban historic characterisation into the wider process of managing the urban environment. *From Markets to Metroland – The Buckinghamshire and Milton Keynes Historic Towns Project* describes its approach as going beyond heritage designations such as listed buildings and conservation areas to a comprehensive analysis of the urban environment in its entirety including above and below ground archaeology. The project uses a wealth of information to generate ‘Historic Urban Character Zones’ where the significance of its heritage is assessed. Significance is addressed via English Heritage’s Conservation Principles which review the four heritage values (evidential, historical, aesthetic and communal) and mapped for each character zone showing heritage values as High, Medium/High, Medium, Low/Medium and Low. The project will be used as part of the evidence base for local plans, to inform positive strategies for the conservation and enhancement of towns, in the review of conservation area appraisals, the production of neighbourhood plans, informing development management decisions, management of the archaeological resource, and as a cultural resource for learning and enjoyment.

4.13 Historic landscape assessment is a methodology applicable to planning which provides evidence of the impacts of proposed developments on the historic landscape. This is carried out without the benefit of a full characterisation, but similarly examines the time-depth of the landscape to identify heritage which matters at the landscape scale (and also at the asset scale). It can typically incorporate the settings of assets and settlements and important views in or out of settlements that might be changed by development. Important in this assessment is the identification of development effects, so that planning authorities are informed of the degree of risk in proceeding with particular developments, scored against issues such as archaeology, designed landscapes and settlement settings. There are various examples available of the application of this methodology, such as *Historic Landscape Assessment for the Wiltshire Core Strategy* (Land Use Consultants, 2012, Wiltshire County Council).

4.14 A good practice example of the application of both historic landscape and historic area characterisation (the latter via Extensive Urban Survey) was reviewed as a case study in the city of Lichfield, where it was used to select areas for development around Lichfield and to structure individual schemes (Appendix 7). More information about this can be obtained from Lichfield District Council and a summary of its role has recently been published by English Heritage (Boffin, D and Roberts, D, 2014, *Conservation and design in land allocation*, Conservation Bulletin Issue 72, pps. 40-41). Within the case study cities, historic landscape characterisation has also informed the planning process in Winchester and historic landscape assessments have been carried out for recent development plan purposes in Salisbury and Durham.

Skylines

4.15 Many historic towns and cities have at least one tall building, typically a church or castle, that is often of outstanding importance to the identity of the settlement. Tall buildings which project above the rest of the buildings of the settlement are often

appreciated both from nearby, where they aid navigation around the town and act as a reminder of a principal feature, and from afar, where they help establish the identity of the whole settlement and the silhouette offers a reassuring grandeur. A desire to protect the qualities which existing tall heritage buildings offer to historic settlements has inspired methodologies to maintain the principal viewing opportunities.

4.16 The common feature to them all is a constraint on new developments in certain locations which would block out the viewing opportunities, either by directly impeding a vista or by marring the backdrop. This is in effect a constraint on inappropriate taller new buildings. Some local authorities have adopted planning policies which set out the objectives and empower themselves to restrict development on a case by case basis.

Others have adopted policies which offer progressively more detail on matters such as:

- the taller buildings to which the policy will apply;
- the height of buildings which will be allowed (e.g. in particular zones, by reference to height above ground or above Ordnance Datum, or with reference to exceptions);
- the viewing positions or broad areas to benefit from the policy;
- the viewing channels to be kept open;
- the views out from the settlement to be protected.

Some of these policies may well be suitable for use in tandem rather than just alone. There is a review of selected modern practice in section 3 of *Review of the Salisbury Central Area '40ft rule' policy* (Chris Blandford Associates, 2008, for Salisbury District Council). English Heritage has also published a report *Seeing the History in the View: A method for assessing heritage significance within views* (Land Use Consultants, 2011). This has a slightly wider remit than skylines, but is still highly relevant for addressing the opportunities and difficulties which planning authorities face when wishing to protect important views from inappropriate intrusion.

4.17 View cones are a planning tool for identifying clearly on a map the splay of a view from a specific viewpoint which the planning authority wishes to maintain (or ideally improve). The objective is to avoid intrusions vertically into the view at least to the extent that the subject of the view – typically the town's historic core seen from some distance – is not impeded. The width of the splay will reflect the current opportunities (perhaps with sides constrained by existing structures or by woodland) and the benefit it offers (so that intrusions are restricted only into part of a panorama). A narrow view cone is in effect a viewing corridor, typically from a vantage point to a particularly valued tall structure. Substantial structures which frame such views may even be considered beneficial rather than intrusive. A view cone policy will necessarily be accompanied by a policy restricting in principle the height of structures which will be allowable within it.

4.18 View cone policies have been adopted at least in Bristol and Oxford. The Cambridge Local Plan of 1996 had a view cones policy, though this was dropped in the next review of the Plan adopted in 2006. The view cones policy in Oxford is examined as a good practice example in Appendix 8. The City Council's policy in Oxford is currently (mid-2014) under review with the assistance of English Heritage, the Oxford Preservation Trust and the wider public through consultation.

4.19 There can be more broad-brush efforts by planning authorities to preserve the visual setting of historic settlements, particularly where the scope for viewing a town or city is not limited to specific sites but widely spread. For example, from amongst the towns studied in chapter 3 there are prominent cases such as the protection of:

- the setting of Wymondham and its Abbey from intrusion through a large arc to the west of the town;
- views to the twisted spire of Chesterfield church in the town’s hilltop location viewed from the surrounding countryside;
- the valley setting of Berkhamstead in the Hertfordshire countryside;
- the setting of Taunton – particularly its church towers – seen from the surrounding hills.

In some cases substantial areas of land may need to be kept free of development to protect the setting of a town or a key building within it. This can shape the direction in which a whole town may or may not suitably grow.

4.20 A case study of good practice in protecting a setting at an urban scale is Salisbury, Appendix 9. Here the setting of the city with the country’s tallest cathedral is currently defended through the planning system by a policy which marks on a map a large area around the city in which inappropriate development will not be allowed in the setting. This is accompanied by a separate policy limiting development in the city centre to 40ft in height, which not only reinforces the character of the city’s 13th century irregular grid layout but also serves to emphasise the great height of the cathedral and protect its immediate setting.

4.21 Cambridge is another case study city with planning policy to control building heights, in that case in both in the historic core and the rest of the city. The setting of other case study cities has been crucial to their identities and therefore protected by policies to control development. In Bath, the idea of setting is vital to the containment of the World Heritage Site, where development would otherwise spill out into the surrounding countryside. Here a Supplementary Planning Document has been prepared specifically on *City of Bath World Heritage Site Setting* (Bath & North East Somerset Council, 2013). Similarly, the containment of Winchester within the green hillsides rising up in most directions around it is vital to the town’s identity and has therefore been a key feature of city planning for decades. Salisbury, Bath and Winchester lie within bowls surrounded by hills and offer a highly visual experience where there are views both in and out for everyone to enjoy. English Heritage has published guidance on *The Setting of Heritage Assets* (2011). This is primarily devoted to small scale heritage assets, but acknowledges the principle of settings at the urban scale, and the importance too of townscapes as the setting for individual buildings and the context shaping new urban design.

Urban intensification

4.22 The preferred location in planning terms for urban development in most towns and cities, historic or otherwise, is land within the urban area which has fallen into little or no use, known as ‘previously developed land’ or simply ‘brownfield sites’. Urban land is continually available for recycling as existing uses cease and new ones materialise, and this is particularly pronounced in older urban areas which tend to have a much more mixed pattern of land uses than large urban areas built in a single campaign. Finding urban land to redevelop is therefore not a matter for a one-off search but a continually arising aspect of

the evolution of an urban area. The difficulty faced by many towns is that the rate at which brownfield land becomes available may be less than the rate at which new development is needed to house and sustain the nation. In economically buoyant areas the market will usually provide sufficient pressure for urban land not to remain vacant or underused for long. However, in historic towns the quality of the townscape and local character often ride on the outcome of the land recycling process, and great attention needs to be paid to the scale, massing, height, materials, design and treatment of the public realm associated with the new development.

4.23 Urban land recycling often provides the opportunity through good design to secure more development on a plot than did the structures that preceded it. More intensive use is made of the space available. In principle this can be sound: towns and cities need to adjust themselves for the present generation, and development can bring in new ideas, new people and new investment to support the heritage. Equally the risks are obvious too. When should intensification stop, because it is changing the physical character of a place into something it did not wish to become? How far can good building design and urban layout postpone the risk of character change? When does the volume of activity and intensity of use of the historic core of a town become a threat to its character rather than a benefit? Who decides, and how, that a town is for the most part full?

4.24 These challenging questions are not new, and methodologies have been developed to grapple with them. The principal tool has been the urban capacity study. This was extensively used in urban areas around the country to assess housing capacity after the Government publication *Tapping the potential – Assessing urban housing capacity: Towards better practice* in 2000. This had no particular reference to historic towns but did encourage local planning authorities to maximise the capacity of their urban areas to accommodate housing and suggested where to look for the opportunities. How far the process could be taken without causing problems remained unclear. More recent and valuable work focussing on the impact of housing on heritage interests has been published by English Heritage (Land Use Consultants, 2014, *Evaluating the impact of housing development on the historic environment*).

4.25 The concept of urban capacity for housing has been extended to the more comprehensive interest of environmental capacity. The study *Environmental Capacity in the East Midlands* (Hallam Environmental Consultants, 2008, East Midlands Regional Assembly) concluded that definitive answers cannot be given on how much development can be accommodated in an area without causing an unacceptable decline in environmental quality. This is due to a lack of detailed environmental data and lack of scientific tools for analysing potential change resulting from development. The heritage element of environmental capacity has received some attention, notably in *Environmental Limits for the South East* (Levett-Therivel, 2010, South East England Partnership Board). This pointed out that capacity can only be assessed if the current condition and sensitivity to change of the historic environment as a whole is better understood. It questioned the idea of environmental limits to change in the heritage sector, preferring the flexibility of 'capacity' and the adoption of a precautionary approach to any change which brings risks to the heritage. Even so, there are significant uncertainties in identifying capacity, made more problematic by the pace and scale of change that so many towns and cities face. The report

provides (in Appendix I) a useful commentary on the dilemmas, while inevitably struggling to provide solutions.

4.26 The capacity study approach has been applied with adjustments to historic towns. In particular urban heritage was a key issue facing the *Ely Environmental Capacity Study* (LDA Design, 2001, East Cambridgeshire DC). The Ely study considered historical development, visual character and distinctiveness and made no real distinction between townscape and landscape as the latter ‘infiltrates into the city’ with one borrowing character from the other. Extensive planning designations protect Ely’s historic character, while the landscape setting is also covered by a variety of designations, mainly relating to nature conservation. Key variations in townscape character arise from historical development, variations in landform and the alignment of principal roads. The study also identified ‘Quintessential views’ which are regarded as distinctive, dominant and arresting, and referred to approach routes and departure sequences because “they impact on one’s appreciation of the distinctiveness of the place”. The analysis of all combined factors demonstrated that a substantial area of landscape performed a significant role in creating the setting of the city. It also pointed out that whilst distinctiveness could be undermined by inappropriate planning and design, the distinctive qualities of the city and its setting could be enhanced by careful attention to landscape planning which could provide opportunities to enhance the capacity. The assessment identified four sites north of the city as areas having landscape capacity for future development subject to site development issues, and another to the west subject to detailed feasibility study.

4.27 The importance of good design in historic places has been advocated in *Power of Place: The future of the historic environment* (English Heritage, 2000) and in the *Building in Context Toolkit* (CABE and English Heritage, 2001 now updated via a new website - <http://www.building-in-context.org/>). Power of Place highlighted that people place a high value on the historic environment and see it in its totality, rather than as a series of individual sites and buildings. It recommended the promotion of good design that enhances its context to create a rich historic environment for the future. The toolkit was produced as part of a training programme to help raise standards of new development in historic areas and was part of a suite of initiatives and programmes that also led to the establishment of design review panels. These small multidisciplinary groups of leading professionals offer detailed design advice to provide an independent, expert assessment of significant architectural proposals.

4.28 For good practice case studies, the present analysis turned to two historic cities constrained by Green Belt designation preventing their outward sprawl and therefore with a strong interest in making the most of urban land recycling, but in ways sympathetic to their vitally important heritage. Cambridge was examined as a city with a strong commitment to urban intensification as part of its response to a major demand for urban growth (Appendix 4). Bath and Oxford are two other case study cities facing similar pressures and inclined to a similar response.

4.29 The other case study city chosen was Chester, to examine the extent to which high quality design can smooth the evolution of a heritage city facing substantial development pressures. Over the years Chester has placed considerable weight on the design quality of

new development as a means of absorbing new development in an acceptable manner into a city with a substantial mediaeval core and still surrounded by its city walls. Chester was also the city chosen to explore a methodology for assessing the environmental capacity of historic cities. The report prepared for the City and County Councils, English Heritage and the (then) Department of the Environment, *Chester – The future of an historic city* (Building Design Partnership, 1994) is discussed in the case study (Appendix 5). Winchester is another case study city which has aimed to use high quality design as part of its solution to sustaining the local economy without development spreading out into its surrounding area.

Urban extensions

4.30 The outward expansion of existing settlements has been the standard response to growth pressures over the centuries. Most cities can trace their expansion with new housing and industrial quarters added progressively and bequeathing the pattern of neighbourhoods from different periods remaining today. For many towns the pressures of development now suggest that a further urban extension is the obvious – perhaps only obvious – course to follow if the scale of demand is sufficiently high.

4.31 There are tensions in how best to achieve suitable urban extensions everywhere but especially in historic towns. To avoid them becoming ‘just another housing estate’ there is often enthusiasm to plan them with a range of facilities to give them separate identities. This can assist the historic core of towns too if it enables needs to be met without adding undue pressure to the limited services which can be supplied from the historic centre. Conversely, urban extensions treated that way risk becoming suburbs unconnected from the historic centre culturally as well as physically, so a settlement’s sense of place is eroded. Concentrating commercial activity in a historic core can aid renewal and avoid the risk of the town’s centre of gravity being lost.

4.32 Winchester is a city which has reluctantly embarked on an urban extension, but in doing so has deliberately emphasised tying the extension into the fabric of the existing city in order to retain the character and spirit of the place as a whole. The case study (Appendix 10) describes the process of acclimatising to major change in a city which has valued its compactness, the dominance of its historic core and its setting. Urban extensions also loom large in the development planning of other case study cities: Salisbury, Lichfield and especially Cambridge. There are various studies advising on how to develop urban extensions, and numerous masterplans to evaluate, but little appears to have been written on the qualities needed in extensions specific to important historic towns.

New settlements

4.33 Free-standing new settlements are not planned as remote housing estates (though that can be the fate of smaller planned villages) but to be as self-sufficient as practicable. They will be planned not just with their own shopping, healthcare and education infrastructure but with employment opportunities, greenspace, social facilities and much more so that they can become fully-fledged towns as soon as practicable. Rather than just a dormitory, the aim is to integrate new settlements into the wider settlement hierarchy.

4.34 So far as historic towns and cities are concerned, satellite new settlements offer the chance for a fresh urban start that minimises the pressure of development and numbers of people on the historic core. The intentions today are somewhat different from the programme of post-war new towns promoted around Britain in which population was decanted from cities to new settlements beyond the new Green Belts encircling those cities. A new settlement promoted today as part of the response to an historic city's burgeoning growth is likely to be located within ready travelling distance of the mother city, recognising that higher order services need to be available to the new settlement's residents. Building a free-standing new town to the point where it is large enough to provide most of its own services takes decades not years. In these circumstances, and necessary in the modern age, much more attention is paid to rapid high capacity transport facilities to give the new settlement access to the outside world: the cost of this can easily shape the locational choices available.

4.35 There is only one realistic good practice case study available of a new settlement relieving pressure on the historic core of a city, and that is Cambridge (Appendix 4). Even here the new settlement programme (there are currently four under construction or planned) is conceptualised as part of a growth strategy more than a means of protecting the historic core, though the consequences are the same. A number of other case study cities believe themselves to be full or nearly so, and in some cases have been able to divert some growth pressures elsewhere (Winchester, Bath, Chester), but none has actively promoted a new or greatly expanded existing settlement as part of the solution to its development needs. It is unsurprising in these circumstances that new settlements barely feature in reviews of how to relieve development pressure on historic towns and cities.

Urban containment

4.36 Urban sprawl has a bad image: 'could be anywhere' development spreading out of a town centre for miles, followed by breaks in the built-up area which become progressively wider and blur the distinction between town and country. A town concerned for its identity would surely insist on a more compact layout and control its urban edge, bringing people into the life of the town and making the centre as accessible as practicable. Historic towns and cities face not only these challenges but significant additional issues which make containment still more important to them:

- if the town were to expand greatly, the pressure of the extra people and traffic could overwhelm the historic core, leading to either unacceptable change to the historic fabric or a loss of function of the historic core as other areas fulfil that role instead;
- the setting of the town seen from the surrounding area could be eroded or lost, removing historic and culturally valuable viewing locations and diminishing the opportunities for people to appreciate their historic town;
- green infrastructure often links historic towns to their surroundings and is highly appreciated, but its extent can be directly or indirectly threatened by peripheral development;
- a town's character is affected by its scale: continual outward growth (which can include the absorption of neighbouring villages) can eventually transform a town into a city, so constraints on outward growth help to protect an historic town's identity.

4.37 The principal planning mechanism to achieve urban containment and prevent sprawl is Green Belt, a designation on a map having an inner boundary at or close to the urban edge and an outer boundary at some distance beyond, with very strict controls over the types of development allowable in the designated area. The National Planning Policy Framework reaffirms (paragraph 80) longstanding policy that Green Belt serves five purposes:

- “• to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

The fourth of those purposes was an important consideration in the designation of Green Belts around cities such as Bath, York, Chester, Oxford and Cambridge.

4.38 Green Belts have been one of the most successful planning policies and widely appreciated by the public if not by developers. Since the boundaries of most Green Belts were fixed, mostly in the 1970s and 1980s, the policy of allowing development within them only in ‘very special circumstances’ has largely been upheld: certainly there has been little expectation amongst developers that permission will be granted, and so challenges to the policy have been relatively few (apart from a period between 1984 and 1989). Green Belt boundaries have been relaxed from time to time, though, when development plans have been reviewed, typically to accommodate development needs that could not easily be met in other preferred ways (such as on brownfield sites and through urban land recycling).

4.39 Challenges to relax Green Belt boundaries have been made as much around historic cities as anywhere else, sometimes promoted by local authorities themselves. For example, an attempt by Chester City Council in 1988 to release over 1,000 acres of Green Belt land for unspecified housing and industrial development was eventually stopped by the Secretary of State in 1990, and proposals by Cheshire County Council through its Structure Plan to release over 800 acres from the Green Belt around Chester were again rejected by the Secretary of State, Michael Heseltine, in July 1991. In response to the Examination Panel’s report, Mr Heseltine’s statement said:

“10.4 The Panel were not convinced that a proposed large scale release of Green Belt land was compatible with preserving the historic character of Chester... they considered the County Council had not shown beyond doubt that there was no other way of achieving the levels of development proposed, and that release of Green Belt land might put the historic character of the city at risk. The Panel considered that release of Green Belt land on the scale proposed would not be appropriate and recommend that a more thorough examination should be carried out of the likely consequences for the character of the City.

10.10 The Secretary of State considers the balance between growth and conservation, and the purposes of the Green Belt around Chester to be matters of national importance as well as local concern. He considers the Panel have carefully examined the relationship between the historic city and its Green Belt, traffic and land

provision. The Secretary of State accepts the Panel's advice that there is a need for caution whenever any strategic release of land in Chester is considered....".

4.40 Many historic towns and cities are not surrounded by Green Belt and therefore rely on other local planning policies to prevent inappropriate outward urban expansion. Chief among these from those examined in case studies is Winchester, which has still largely managed to hold its urban boundary. Without a designated Green Belt the task of urban containment is harder, but clearly not impossible.

4.41 Durham has been chosen as a case study of urban containment (Appendix 6). The Green Belt around Durham was established relatively recently, in principle in 1999 and in detail in 2004. This was to a large degree in support of the protection of the Durham Castle and Cathedral World Heritage Site and therefore strongly heritage-related. It has provided an opportunity to examine what a new Green Belt was expected to achieve and how it has performed, albeit that half the period since designation has been taken up by a recession that significantly constrained investment. Many other case study cities are also surrounded by Green Belt, and this has been a contributory issue in examining their efforts to reconcile growth with heritage (Bath, Cambridge, Chester, Lichfield and Oxford).

World Heritage Site

4.42 The World Heritage Convention 1972 provides for the identification of World Heritage Sites for their Outstanding Universal Value, under the auspices of UNESCO. This Convention has not been adopted into UK legislation, so the protection of World Heritage Sites (WHS) depends on Government policy. For land use planning purposes, this is set down in the National Planning Policy Framework, though there is no single paragraph devoted to them or explaining their significance. Rather there are expectations including: that 'substantial harm' to a WHS should be 'wholly exceptional' (132); that development within them should "enhance or better reveal their significance" (137); and that "loss of a building (or other element) which makes a positive contribution to the significance of the... World Heritage Site should be treated either as substantial harm... or less than substantial harm, as appropriate... [for which there are different policy responses], taking into account the relative significance of the element affected and its contribution to the significance of the... World Heritage Site as a whole" (138). In practice, World Heritage Sites are more actively supported by the Government and the expectations within local authorities responsible for them are high.

4.43 The City of Bath is the only entire historic settlement in the UK inscribed as a World Heritage Site. It is as an 18th century ensemble based on earlier Roman Baths that it gains its status. With the whole of the city affected and with protective actions expected, the operation of the planning system in the City is significantly affected. However, there are no specific planning powers in any WHS (unlike Conservation Areas or National Parks, for instance), so the existing available planning powers have to be applied to the cause of the WHS. Fortunately, Bath has a large Conservation Area and its entire periphery is designated as Green Belt and three quarters of it as Area of Outstanding Natural Beauty. The good practice case study of Bath (Appendix 3) shows how this arrangement has worked in practice. This has wider implications, first for other, smaller WHS in parts of cities (Durham

Castle and Cathedral, Canterbury and Maritime Greenwich) and secondly for the use of planning powers in equivalent ways even where a WHS has not been designated.

Conclusion

4.44 This chapter has not set out an exhaustive list of methodologies for tackling the tensions between heritage and urban growth at the whole settlement scale, but it has presented the main ones. Other existing planning tools such as Conservation Areas have a role to play, but arguably fall short of classification as a methodology (even when accompanied by a Conservation Area Appraisal). Landscape-based methodologies (such as Landscape Character Assessment) can contribute to settlement planning and therefore to heritage settlement planning, but for practical purposes historic landscape characterisation has been taken as the more appropriate starting point for current purposes. Finally, the new system of Neighbourhood Development Plans is emerging, and as its practice expands there may well be more examples to draw on of the scope for using this methodology at the small settlement level. Early indications particularly from Thame in South Oxfordshire suggest that growth and heritage can be integrated by this means.

CHAPTER 5

OVERVIEW OF THE EIGHT CASE STUDY CITIES

Introduction

5.1 The project set out to examine good practice examples of methodologies used to reconcile urban growth with heritage in historic towns and small cathedral cities. Examples of nine methodologies were chosen, applied in eight cities, as explained in chapter 4. The case studies of the cities of Bath, Cambridge, Chester, Durham, Lichfield, Oxford, Salisbury and Winchester are presented in alphabetical order in Appendices 3-10.

5.2 This chapter performs three functions:

- explaining the background to each case study and their principal findings;
- reviewing a series of heritage-related issues across all the case study cities; and
- identifying cross-cutting heritage-related issues which arose in selected cities.

The opportunity has been taken in the latter two functions to include relevant experience from the twenty historic towns studied for their experience with forward planning (see chapter 3).

5.3 Reconciling growth with the heritage of some of our finest cities is not an exact science. There are loose ends and blurred issues in all cities, so the case studies paint a snapshot of progress in 2014 as interpreted by the researchers. The constraints on the project inevitably limited both the depth of study and the scope for cross-referencing with others the views expressed by interviewees to the researchers, so misunderstandings may remain. A key feature of the project was face-to-face interviews and site visits in order to obtain the best possible insight into local realities. In each case study city the objective was successfully met to speak as a minimum to the lead Conservation Officer and the Planning Policy Manager in the local planning authority and to a leading representative of the local voluntary sector having familiarity with planning and heritage issues. The researchers are immensely grateful to them all for sparing considerable time and tackling difficult issues. This report respects the confidentiality of opinions fairly offered (a special matter for local government staff who have duties as employees as well as professionals) while benefiting from the thrust of the arguments put.

5.4 Superimposed on the evaluations have been the rapidly changing circumstances during the recent years in which activity was being assessed. The major economic downturn from about 2008 to 2013 after a prolonged period of growth had markedly different effects in the different cities. Wealthy cities such as Winchester noticed little real change in the level of development pressure, while at the other end of the spectrum even the otherwise thriving city of Durham, set in an extensive area of low land values, suffered significant temporary cooling in investment. With simultaneous changes in the forward planning system and national planning policy (described in chapter 3), there was a challenge to pick out the impact specifically of heritage objectives in the observed pattern of activity.

Case study summaries

5.5 The methodologies and the case study cities were selected in principle by the project Steering Group following discussion with the researchers. In some cases the choice was easy (such as new settlements around Cambridge and World Heritage Site in Bath), but in other cases there were numerous candidates to choose from (such as urban containment by Green Belt, which surrounds many cities). Issues which shaped the choice of cities for study included requirements for:

- sufficient local development pressure so that the reconciliation with heritage interests would be worthy of study;
- a reasonable geographical spread of cities around England so that any unintended economic or cultural biases could be avoided (or at least identified); and
- free-standing settlements rather than those embedded in conurbations where urban boundaries were close to or even merged with adjacent settlements, to avoid the risk of substantially complicating the analysis.

The methodologies studied and the choice of cities as good practice examples are explained briefly in chapter 4.

5.6 The following case study summaries outline the issues faced by each local planning authority and how these were tackled, and suggest the lessons and transferable advice which emerged from them.

Bath

5.7 The outward growth of Bath is probably more constrained by nationally important environmental designations than any other city. Like many it is surrounded entirely by Green Belt. It is also surrounded on all but its south-west side by the Cotswolds Area of Outstanding Natural Beauty. Above all it is inscribed as a World Heritage Site (WHS), where part of its attraction is as a city with an impressive setting within its surrounding hills. The urban boundary is often not only clear but readily apparent from within the city. The desire to maintain the green setting applies not only to avoiding outward sprawl so that the city's identity is not lost from inside, but also to maintaining the attraction of the sudden surprise which Bath offers when approached over the crest of the ridge from outside. There is a clear expectation that Bath will need to meet its urban development requirements within its boundaries so far as practicable. However, planning for development is challenging due to the WHS status across the whole city and the expansive area of the Georgian core where change is inevitably likely to be very limited.

5.8 In response to development pressures Bath and North East Somerset Council has been relatively fortunate in having sufficient previously used land now available for reuse that it can generally meet its housing and other requirements for the next few years. Other sites have also been found within the city to contribute to meeting needs without undermining WHS purposes. The results have been enshrined in a Core Strategy recently adopted by the local planning authority. Sufficient land is being made available so that Bath meets its share of the local authority's obligation to supply housing (see Table 8 below). The preparation of this Strategy was nevertheless a major task, not least because of disputes over modest land releases proposed on the city fringes. While urban land recycling will no

doubt continue, Bath faces the question whether this will in future be on a scale sufficient to meet the development requirements of a city this size. If not, the likelihood is that other parts of the Council area, whether beyond the Green Belt or even within it, may be asked to increase their contribution to Bath's needs. Adjacent authorities may also need to be asked, though of course the Green Belt and AONB extend into some of those areas too.

5.9 The World Heritage Site designation is a badge of excellence that has both commercial and heritage benefits, so maintaining the quality of Bath's environment is seen by most parties as a shared responsibility. This has real potential to be a reproducible outcome, even in the absence of WHS designation, in historic towns and cities where a high quality built heritage is appreciated by commercial interests to be a benefit rather than a cost. Allied to this has been the application of WHS standards to the whole city, not simply in the Georgian core. This has enabled the local authority to insist everywhere on high standards of design and materials (for example) rather than only in the Conservation Area. This is a virtuous circle, raising expectations of developers and therefore of what is proposed. It reinforces the message in the National Planning Policy Framework about the merit of good design, and is a benefit which historic towns and cities everywhere should try hard to emulate. It is important to appreciate that the achievements in the Bath WHS have been without any special extra planning powers as the designation confers none, so other authorities should not be put off from trying to do the same. The WHS Management Plan was prepared as a partnership effort and provided a mechanism for bringing viewpoints together to commit to practical improvements in Bath. This was not controversial but helped to build agreement about how to reconcile development with heritage, amongst other purposes. Other towns and cities could readily adopt the same approach in search of similar benefits, even if not underpinned by the formal requirements of an inscribed World Heritage Site.

Cambridge

5.10 Cambridge is a fast-growing city, yet it retains at its heart an outstanding historic core in a very liveable environment. Outward expansion is constrained by a tight-fitting Green Belt (though this was itself redrawn less than ten years ago to facilitate urban extensions), and there is a wide appreciation of the green feel to the city provided by green fingers from outside (primarily the River Cam), green spaces within Cambridge and ease of access to the surrounding countryside. Constraints on expansion have helped to protect the historic core from pressures of over-use, but sustained growth in recent years, and the likelihood of this continuing, have demanded a more proactive response through the planning system.

5.11 Urban extensions continue to be planned for, often spreading into the surrounding local authority of South Cambridgeshire DC which encircles the city. Research and commercial development are also being promoted on the city fringes, to some extent relieving pressure on the centre. The other response of the City Council to development pressure is to encourage urban land recycling. In effect this is urban intensification because replacement development is usually at higher density and of much higher value than what went before. The City Council has sought to manage the intensification process by taking a design-led approach: only physically sympathetic schemes will be permitted. Minimum

densities are not even mentioned. Control is exercised in part by restrictions on the height of development across the whole city, which protects both the historic core and the suburbs, but with allowances for taller buildings in appropriate locations. The effect of this response is that the taller structures allowed (usually housing-dominated mixed use developments) and the more urban large renewal schemes are gradually transforming Cambridge from a market town to a city in feeling, but with the historic core barely altered.

5.12 Meanwhile the growth pressures of the subregion based on Cambridge have prompted the solution of free-standing new settlements. South Cambridge has many villages but no large town. Some of those villages have recently been expanded, but this is now viewed as a much lower priority. Also, attempts to expand a ring of settlements further away from Cambridge in other local authorities have caused their own difficulties with transport capacity and road congestion. New settlements served by high capacity new transportation systems are now the preferred option. A new town to the north-west called Northstowe is now at the point of starting following a delay caused by the recession, with the guided busway to serve it already in place (extending from Cambridge to St Ives and Huntingdon). A large new village at Cambourne is nearly complete (though an expansion of it is now planned), and another is proposed adjacent to it at the former Bourn Airfield, both of them served by a new dual carriageway road running west from Cambridge. Another longer term planned new settlement is at Waterbeach on a former airfield to the north-east of Cambridge, where relocation of the existing railway station could serve both the existing village and the new town. The formal position is that these new settlements will meet the housing and development needs of South Cambridgeshire, but the effect of the close relationship with Cambridge is that subregional pressures are being removed from the historic city and met remotely.

5.13 A principal message from growing cities like Cambridge is to take a very positive attitude to development, expecting it to happen and making it good. High expectations for all aspects of design, clear policies and extensive pre-application discussions with developers help to achieve good development, but these must be supported by staff with the design skills to recognise and require the necessary standards, and therefore the process must be properly resourced. Heritage buildings and their surroundings should be planned-in to developments from the outset, not treated as a problem. A message from Cambridge is also that urban intensification will work best for heritage by aiming for the most appropriate scheme for a site, rather than by deliberately focusing on raising densities.

5.14 New settlements take a long time to plan and develop. Their success depends on a clear vision, clear principles, genuine partnership working and interventions to support the intended evolution of the settlement. A team of people based in the planning authority dedicated to the project is needed to make this happen, and they must insist on the standards set for the settlement being implemented. New settlements are therefore a longer term solution to a continuing growth requirement, not a short term fix to a gap in housing supply.

5.15 Cambridge also demonstrates the enormous importance of co-operation between local authorities where development issues cross administrative boundaries. The long period of shared vision and co-operation between Cambridge City and South

Cambridgeshire District Councils is an object lesson in subregional planning, the one recognising that its development needs cannot be met entirely within its boundary and the other keen to co-operate with the authority providing most of the employment and services for its residents. Political differences need not be a barrier to pragmatic solutions.

Chester

5.16 The historic core of Chester is really only appreciated ‘upon arrival’. Yet the Green Belt designated around the city was clearly intended to fulfil one of a Green Belt’s main purposes – namely to preserve the setting and special character of historic towns – and it appears to have been successful in this aim. In this context, the main issue for the planning system to address is preserving the historic character of the city which is strong and diverse and includes extensive Roman remains, the city walls, the unique medieval timber framed “Rows” and the elegant Georgian and Victorian streets set within the broad sweep of the River Dee. Chester plays a crucial role in the economic well-being of a wider region and maintaining its primacy as a commercial and retail centre is an important element of its Core Strategy. In order to achieve this, the city has to meet growth targets and this is proposed via a series of strategic allocations including a housing site that involves releasing land from the Green Belt within the ring road.

5.17 An important element of the local authority’s approach to reconciling growth with heritage has been to promote high standards of design in new developments. In the city itself, urban intensification arising from redevelopment of brownfield sites could threaten its character but a number of well-designed schemes incorporating the conversion of historic buildings and a mix of traditional and contemporary architecture are creating a new townscape that, by and large, respects the city’s historic character. This success is probably assisted in some measure by the generally prosperous nature of both the city and county.

5.18 A notable issue arising from the case study is the potentially ‘transitory’ nature of architectural styles and taste. Within the city centre there are some large mid-late 20th century redevelopment schemes notably the Grosvenor Centre and the area around the Market Hall as well as numerous examples of contemporary ‘infill’ developments on smaller sites. In terms of aesthetics and appearance several of these have always had a completely different character to the grain and scale of the old city yet at the time of their construction they were praised as fine examples of modern design well suited to their context. Now, a mere forty or so years later, their scale, materials and appearance are viewed in a very different light and the (not unrealistic) hope is that their proposed replacements will follow the lead set by more recent schemes that are genuinely innovative in their design whilst preserving and enhancing the city’s character. In this respect, the various reports on conservation and design published over a long period of time for Chester are apparently bearing fruit. Unfortunately a strong note of caution needs to be included in that hugely experienced conservation staff have recently retired and it remains to be seen how the cuts in local authority budgets (and the reorganisations that are an inevitable corollary of them) will affect staff resources. In a city as important as Chester it is vital that suitably experienced staff are appointed to fill the void.

5.19 Two points raised in this case study are worthy of wider consideration. First, in a buoyant economic climate, planning authorities feel themselves able to take a much more robust approach in their negotiations with developers either in terms of the scale of proposals or the overall quality of design. When markets are depressed it is much harder to achieve this as there is a fear that if pushed too hard, developers will simply walk away from a scheme. It would be interesting to learn if this view is also held elsewhere and it is potentially a topic worthy of further consideration.

5.20 The second issue arises from Council's publication of a document entitled the *Chester One City Plan*. This refers to a "mosaic of opportunities, which when brought together should deliver so much more as a coherent whole than individual interventions will ever achieve independently.... It is the culmination of an appraisal of the current development proposals, project briefs and strategy documents that focus on individual aspects of the cities areas and policies. This document sets the overarching vision and direction of travel for the city, under which all projects must sit." By implication the city feels that its Core Strategy alone — for whatever reasons, is either incapable of addressing these matters or an inappropriate vehicle through which to do so. This should surely be addressed so that democratically-based forward planning policies can pursue the vision.

Durham

5.21 Durham is a compact city dominated by its World Heritage Site Cathedral and Castle on a peninsula overlooking the River Wear. An important part of the Outstanding Universal Value of the Site is its setting and the character of the city in which it sits. Durham is a particularly 'green' city which includes green fingers of land extending close to the city centre via a series of parks, meadows and playing fields, and this close relationship between open space and buildings is a notable feature of the city. Its character and setting are major determinants of the city's capacity to accommodate additional housing. However, Durham is an island of prosperity in the county, so there is pressure for growth in and around the City.

5.22 A key response to these development pressures was to establish a Green Belt around Durham in the 1999 Structure Plan partly to safeguard the special character of the city and its setting. Another strand of the Structure Plan was that a Green Belt would encourage development at some distance from the city and assist regeneration of former mining villages affected by the closure of the coalmining industry. The City of Durham Local Plan fixed the Green Belt boundaries in 2004.

5.23 Broadly speaking, this Green Belt policy has been successful notably in protecting Durham's heritage, in encouraging urban regeneration and in promoting development in the mining villages (which otherwise would have been most unlikely to happen, particularly with the reduced public sector funding that once enabled the provision of new employment facilities there).

5.24 However the political climate changed in 2009 with the establishment of a new unitary authority for the whole of the County of Durham which sees the city as the principal economic asset of the sub-region where development can assist the regeneration of the

whole county – which includes some of the most deprived areas in the country with extremely low house prices and land values. In order to achieve this, the new authority proposes to release 23 acres for employment and sufficient land for about 4,000 houses from the Green Belt around Durham. The Council has sought to remove the least sensitive land in relation to protection of the historic city, and during autumn 2014 an Inspector will address the options at the Examination of the submitted Local Plan.

5.25 The lessons from Durham are dependent on the outcome of the Examination. Most of the Durham Green Belt is proposed to remain in place, but the new policy approach places a reduced emphasis on the Green Belt as a means of protecting the City and the World Heritage Site. Nonetheless, the Supplementary Planning Documents prepared for each of the major sites set the parameters for development and include references to the heritage assets concerned – including the Cathedral and Castle. Durham's Green Belt is recent and may be treated by some parties as less permanent than other Green Belts (though there is no policy basis for that view).

5.26 The enlargement of the university at Durham brings concomitant pressures to accommodate increased numbers of students either in purpose built blocks – whose design needs careful resolution through close attention to urban design principles – or in student lettings which can affect the local housing market and have physical impacts on the traditional housing stock. These are clearly sensitive issues that raise concerns amongst the local population, though this issue is not unique to Durham and is one the council is seeking to address.

Lichfield

5.27 This small cathedral city in Staffordshire provides some interesting approaches to reconciling growth in a historic place. The city's skyline is defined by the cathedral's unique arrangement of three spires plus the spires of another two churches, and by and large its largely medieval street pattern is still discernible. The city is just 16 miles from Birmingham and faces considerable growth pressures. In the short term, the District Council is still to adopt its Local Plan and meanwhile does not a five year supply of land for housing. Developers have tried to seize this opportunity by submitting planning applications on land not proposed for allocation in the plan. Looking ahead, in order to accommodate its growth targets Lichfield is proposing to rely on some release of land from the Green Belt, although one of its strategic sites lies to the east of the city, beyond the West Coast mainline that forms the Green Belt boundary. The city lies in a shallow bowl and potentially the proposed housing sites could affect its setting.

5.28 Two principal methodologies are employed in Lichfield to minimise such impacts. Firstly site allocations have been guided by a county-wide Historic Landscape Characterisation which helps to identify the potential impact of development on the historic environment. Then at a more detailed scale Lichfield (along with all other historic market towns in Staffordshire) has been the subject of an Extensive Urban Survey which provides more information via a Historic Environment Characterisation of the city.

5.29 Secondly, the city has taken a proactive approach to urban design and negotiations with developers through a well-established and successful system of pre-application discussions and the preparation of jointly agreed development frameworks which set out the broad principles to be followed on individual sites. This has led to some high quality housing schemes on the fringes of the city where dwellings sit in well-landscaped sites with a public realm designed to create or maintain vistas that focus on the cathedral spires. This has proved beneficial and has resulted in some positive outcomes. Within the city too there are some notable new developments with award winning status, but almost inevitably some of this modern contemporary architecture has not found universal favour.

Oxford

5.30 Oxford, with its world famous dreaming spires, faces a complex set of interrelated issues. The city is under considerable pressure for growth from a range of sources. This includes the pressures on the transport system that arise from large scale commuting both by residents travelling out of the city to work in London and by employees travelling into the city to work, many of whom cannot afford to live there with house prices amongst the highest in the country (and hence the shortage of affordable housing is also an important issue). The world famous university wishes to expand its research facilities within the city and increasing numbers of students require accommodation within easy reach of the colleges.

5.31 At the same time, Oxford's administrative boundaries are closely drawn around the city itself. The open land that does exist is largely covered by Green Belt, much of which comprises flood plains (which also have ecological importance), all of which combine to constrain where housing can be accommodated. The city and its surroundings comprise a historic core lying on the plains of two rivers surrounded by a number of hills. Within the city, the height, spacing and architectural qualities of the spires and the skyline that they create are of particular significance and this has been recognised in the planning of the city for over 50 years.

5.32 Although the city's Core Strategy proposes some strategic allocation of land for housing and employment uses, the constraints are such that Oxford's growth targets can only be met if land outside the city's boundaries is released for development. It is therefore reliant on cooperation with neighbouring authorities but it is not clear that this is happening with sufficient vigour to resolve the development pressures in the Oxford subregion.

5.33 The principal methodology used in Oxford to protect the special qualities of the historic core and their enjoyment from the surrounding area is 'View Cones' to protect existing views of the city. Because of Oxford's topography, views of the city skyline are spread over a wide area, and the cones are essentially a series of viewpoints, beyond the city, from which its skyline can be seen. From these viewpoints, lines are drawn to the spires that can be seen from that point and within the resultant triangle (or cone) development must comply with certain requirements including height limits. This is a much simplified description of a highly sophisticated planning tool which employs numerous criteria in its application and consideration of whether or not development proposals are acceptable.

5.34 The methodology has changed over the years and a new view cones study (at the time of writing) is out for consultation. It seems that the concept does not have universal support and there appear to be opposing views. At different ends of a spectrum one opinion is that they are too simple and take a purely geographic approach from a restricted number of locations and at the other end, an opinion that they are over complicated and difficult to implement and understand.

5.35 In addition to the methodology, the case study highlighted the contrasts between the exquisite townscapes of the best parts of the city and the extremely poor buildings and public realm presented only a few minutes' walk away are harsh and stark. One fairly recent development was so harshly criticised that an independent review was commissioned to examine the City Council's handling of the case, and partly as a response to this a Design Review Panel has now been established in Oxford which should address shortcomings in the consideration of proposals.

Salisbury

5.36 The mediaeval planned town of Salisbury is dominated by its Cathedral, which has the tallest spire in England. The city is set in the valleys of five rivers with watermeadows to the south and surrounded by low hills. There are some outstanding views to the Cathedral both along the valleys and from the hills, and the spire is a landmark presence within the built-up area. The views therefore help define what is special about Salisbury. The variety of directions from which the Cathedral can be viewed poses a challenge to locating new development unobtrusively. Wiltshire Council, like Salisbury District Council which preceded it until 2009, is keen to bring investment to the city to reinvigorate the local economy, including new housing development to stimulate the labour market. Given the limitations of development capacity within the city, there was an extensive search during the preparation of the South Wiltshire Core Strategy for suitable peripheral areas to accommodate this development.

5.37 The local authority's policy background is clear. Since the 1960s Salisbury has operated a '40ft rule' through planning policy in the city centre, limiting the height of new buildings which would otherwise rise above the mediaeval town or challenge the majestic Cathedral. This has ensured that distant views to the Cathedral remain impressively unsullied by nearby urban development. The policy has been applied consistently and effectively, with considerable public support outweighing any suggestion that taller developments might be allowed. The greater challenge for urban growth has been to sustain the range of locations from which views to the centre can be enjoyed. Policy adopted in the South Wiltshire Core Strategy has emphatically protected the main viewing areas through a policy "to ensure there would be no detriment to the visual quality of the landscape" supported by an area marked on the Proposals Map showing where it applies. A landscape assessment and an Historic Environment Assessment helped to identify development areas which minimised impact on the setting of Salisbury. The emerging Wiltshire Core Strategy, which will supersede that for South Wiltshire, maintains the principle of protecting the setting, but through a policy which applies to all sensitive skylines in Wiltshire and without the aid of map showing where it will apply around Salisbury.

5.38 The experience in Salisbury with a tall buildings limitation suggests that Councils can successfully apply restrictive planning policies over prolonged periods of time for the benefit of heritage in historic towns. Evidence and policies need to be applied on a day-to-day basis to be effective and to be seen as essential by developers. Public support can be obtained and a culture of expectation can apply widely so that challenges to policy are minimal. This can be achievable provided sufficient land is still found for development. Any necessary assessment of possible sites for development should be commissioned as early as possible for the purposes of plan preparation. Landscape and historic environment assessments commissioned during the process of preparing a new Core Strategy for Salisbury were critically important to justify appropriate policies for reconciling growth with the setting of the city. If these had been carried out somewhat earlier there would have been less need for later revisions to a number of strategic urban development site allocations in the plan.

Winchester

5.39 Winchester is a compact city in the Itchen Valley in Hampshire with the chalk downs of the South Downs National Park rising immediately to the east. Other low hills surround the town offering fine views over the city noted for its tree cover. Approaches on all the radial routes which converge on Winchester's core bring visitors to sharply-defined urban edges. Residential suburbs focus around the radial roads without the feeling of urban sprawl, and between these are green wedges which draw the countryside into the city. Retailing and urban services have been retained within the city, and the urban edges generally kept free of lower value activities which often detract from other towns. The city's enormously valuable heritage has been extensively studied, including its place in the landscape and appreciations of what makes Winchester special. Winchester City Council has long pursued a policy of urban land recycling as a means of accommodating development, together with fitting in modest developments within the urban edge when opportunities arise. This has aimed to preserve the setting of the city, its clear edges and green spaces, its atmosphere and the views in and out of the city. However, insufficient provision was being made to meet the scale of development now required, and for over 15 years the city has been considering its options for growth and change.

5.40 The chosen response has been a major urban extension to the north of Winchester. The idea was first proposed as a fall-back option in the Hampshire County Structure Plan adopted in 2000 to be used if other land supplies proved insufficient, but the momentum built thereafter. The City Council has faced this prospect with some reluctance and with considerable uncertainty caused by a continually changing strategic planning policy background at national and regional level. The selected site is on land comprising a green finger into the city, but out of view of the historic city despite being very close to it. Extensive studies have established this this would be the least damaging location for such an extension. A new urban edge is to be created, and the aim is to help incorporate the extension into the city (similar to other residential areas just beyond the centre). Permission for the scheme has been granted.

5.41 Given the numerous constraints on development around Winchester, deciding which of these mattered most was important. When faced with difficult development options, authorities need to be clear what it is that really is special, not only in the proposed

development area but in the city as a whole. What aspects of the landscape should the urban extension most respect, and how can this best be done? The Winchester experience also shows that planning for a major scheme like an urban extension can be achieved most effectively if the authority works closely with others so that they too respect the town: not just the developer but agencies such as the Highways Authority. The transparency of the City Council's proposals and engagement over the years were appreciated, even by those who took other views. The authority found, unsurprisingly in retrospect, that even where development will take place that will compromise historic landscape setting, constructive discussions with the developer through the whole process can result in a scheme that better reflects the characteristics of the town or city and achieves more benefits.

Review of significant heritage issues as they apply in all case study cities

5.42 The case studies individually describe how local authorities have used different methodologies to respond to the growth pressures they face. Greater understanding of their activities and an improved context can be provided by making comparisons of them all against important heritage considerations. This section therefore reports for each city:

- the share of local growth being taken by the city;
- the evidence base available and used for planning purposes; and
- the Conservation Officers available.

Proportion of local growth taken by case study cities

5.43 Each case study city is taking a share of the development needed in its local authority area. Housing requirements are the principal aspect of development in all areas, needing substantially more land than any other type of development. The proportion of housing growth allocated to each city can be compared with the current scale of residential development (measured as population) in each local authority. This gives a measure of local authority response to the development pressures and opportunities which each city faces. The results are given in Table 8, using population figures derived from the 2011 Census and housing figures for the years ahead taken from local authority development plans (figures may change in plans not yet adopted).

5.44 The administrative boundaries of Oxford and Cambridge City Councils are drawn particularly tightly around their urban areas. In places the built-up areas extend slightly beyond the administrative area into neighbouring authorities. In these cities the planned level of growth is entirely allocated to the city. Elsewhere, the case study city lies within a larger administrative area, and the local authority has choices about how to distribute needed urban growth. Table 8 shows the results of those choices.

5.45 Table 8 shows a spread of strategies. Bath is proposing to take exactly its 'fair share' of the local authority area's development in relation to its current size, and the same is nearly true in Chester. The only allocation of housing significantly below the city's share of existing development is in Winchester, seven percentage points down. This is further evidence of the severe difficulty that Winchester faces in reconciling urban growth with its heritage, as the allocation to the city already includes the 2,000 dwellings in the urban extension reviewed in Appendix 10.

Table 8 Case study city shares of housing development within their local authorities

	Bath	Cambridge	Chester	Durham	Lichfield	Oxford	Salisbury	Winchester
2011 population of city ¹	95,000	145,818	86,011	47,785	32,877	159,994	² 48,327	45,184
2011 population of LPA ¹	176,000	123,867	329,608	513,242	100,654	151,906	³ 116,000	116,595
City share of 2011 population	54%	n/a	26%	9%	33%	n/a	42%	39%
Additional dwellings in plan period city	⁴ 7,020	⁵ 14,000	⁶ 5,200	⁷ 5,220	⁸ 3,912	⁹ 8,000	^{2,3} 6,060	¹⁰ 4,000
Additional dwellings in plan period LPA	⁴ 13,000	⁵ 14,000	⁶ 22,000	⁷ 31,400	⁸ 10,030	⁹ 8,000	³ 9,900	¹⁰ 12,500
City share of housing growth	54%	100%	24%	17%	39%	100%	61%	32%

Sources

1. From www.lovelytown.org.uk
2. Figures include Wilton as well as Salisbury
3. Source: South Wiltshire Core Strategy, adopted February 2012
4. Source: Bath & North East Somerset Core Strategy, adopted July 2014
5. Source: Cambridge Local Plan 2014: Proposed Submission, July 2013
6. Source: Cheshire West & Chester Local Plan Submission Document, December 2013
7. Source: County Durham Plan Pre-Submission Draft Local Plan, October 2013
8. Lichfield District Local Plan Strategy Submission document with modifications, January 2014
9. Source: Oxford Core Strategy 2026, adopted March 2011
10. Source: Winchester Local Plan Part 1 Joint Core Strategy, adopted March 2013

5.46 The other three cities are allocated a disproportionately large share of housing growth in relation to their current size. Prior to local government reorganisation in 2009 which affected Salisbury (Salisbury District Council being merged into a larger Wiltshire Council) and Durham (the City Council being merged into a larger Durham County Council), each of the three cities was the largest settlement in its authority. The allocations are not necessarily surprising as there is some limited experience of large amounts of growth being handed to already large settlements, on the basis that this is more 'sustainable', irrespective of heritage issues (though there is no evidence of a pattern to this: see paragraph 2.22 above). Greater protection can then be given to villages and small towns where even modest numbers of dwellings could involve disproportionate growth or change in the character of the settlement. This appears to be the case in Lichfield District Council, where the largest amounts of development have been allocated to the most sustainable and accessible locations: Lichfield has railway stations on both the west coast mainline and a local line. Amongst the 20 towns studied in chapter 3 the same factor appeared to affect the development allocated to towns such as Stowmarket and Wymondham (as well as in those authorities where single towns covered a large fraction of their local authority areas).

5.47 The relatively large allocations to Salisbury in the South Wiltshire Core Strategy adopted in 2012 and to Durham in its submitted Local Plan, however, are deliberate. In Salisbury, the local authority aims to attract more people to the city to stimulate investment notably in employment. In Durham the city is viewed as the economic powerhouse of the

subregion where the plan submitted for examination concentrates growth in order to benefit its surrounding area of weakly-performing former coalmining towns and villages. In both cases the marriage of the growth intended with the heritage interests of the city has been challenging, as Appendices 6 and 9 explain.

5.48 The overall impression from the figures is that heritage has rarely been a key consideration in the selection of a housing allocation to a city. Only in Winchester is there clear evidence that heritage has influenced the allocation, with some evidence for it in Oxford. Note that the local authorities covering Bath, Chester and Cambridge all expect to meet their 'objectively assessed need' for housing within their authority boundaries, whereas the allocations adopted in Oxford would not.

Evidence base for forward planning in the case study authorities

5.49 Table 9 presents information on the documentary evidence available to the authority covering each case study city to assess the character and setting of the city. This is presented on the same basis as Table 3 for the 20 historic towns reviewed in chapter 3, though the documents are listed in footnotes as well as identified by their date in Table 9.

5.50 Table 9 shows that most local authorities have a range of heritage information available to inform their planning decisions. However, the striking feature of Table 9 is that in 2014 three of these important historic cities have no Conservation Area Assessments (Bath, Chester and Oxford) and in two more the emerging draft CAAs have yet to be formally adopted (Durham and Salisbury). This suggests that the opportunities offered by Conservation Areas are far from being fully realised, and that these local authorities are relying on other mechanisms to provide appropriate handling of urban change in their historic cores. For example, the characterisation work in Chester may well cover much of the likely content of a Conservation Area Appraisal.

5.51 Nonetheless, the fact that five out of eight major historic cities studied do not have adopted Conservation Area Appraisals does raise important questions which require further investigation on a national scale. Why are they prepared for some historic towns and cities but not others? Under what circumstances do they offer few benefits? Can the benefits which they offer be achieved by other means? Are the costs of preparation disproportionate to the benefits? Should they be abandoned? What features should they contain to maximise the benefits they offer? Does Conservation Area status confer too few benefits in principle to justify Conservation Area Assessments everywhere? Is the preparation of Conservation Area Appraisals seen as a low priority and if so, why?

Conservation Officer staff in the case study authorities

5.52 Many of the local authority officers interviewed for this study, both in the case study cities and covering the 20 historic towns reviewed in chapter 3, commented that limitations on Conservation Officer staff numbers were constraining the activities they wished to undertake. Conservation staff had not been immune to the cutbacks in local government expenditure during the recession, but there were concerns that the loss of even one member of staff had in some cases substantially curtailed involvement. In some

Table 9 Case study cities' documentary evidence base by category (with dates published)

Town	Conservation Area Appraisal*	Landscape Character Assessment	Historic Characterisation	Urban Design Guidance	Town Study
Bath		SPG 2003 ¹ Part 2006 ²		[2010] ³	2005 ⁴ 2011 ⁵ SPD 2012 ⁶
Cambridge	2006 ⁷	2003 ⁸		2012 ⁹	2002 ¹⁰
Chester			2012 ¹¹	2012 ¹²	1994 ¹³
Durham	Draft emerging	2008 ¹⁴	2013 ¹⁵		2006 ¹⁶
Lichfield	1999 ¹⁷ , 2010 ¹⁸		2006 ¹⁹	2007 ²⁰	
Oxford		2002 ²¹	2012 ²²		
Salisbury	2012 (draft) ²³	2008 ²⁴	2009 ²⁵	SPG 2006 ²⁶	2008 ²⁷
Winchester	2002 ²⁸	1994 ²⁹ , 2000 ³⁰ , SPG 2004 ³¹	1998 ³² , 2004 ³³		1998 ³⁴ 1999 ³⁵

Notes

* Includes Conservation Area policies and management proposals

Square brackets indicate that the document appears to be barely used for purposes relevant to this research

- 1 Rural Landscapes of Bath and North East Somerset: A Landscape Character Assessment
- 2 Landscape and World Heritage Study of the Potential for an Urban Extension to the S/SW of Bath
- 3 Bath Building Heights Strategy (not adopted)
- 4 Bath City-wide Character Appraisal
- 5 World Heritage Site Management Plan 2010-16
- 6 World Heritage Site Setting
- 7 Cambridge Historic Core Appraisal Conservation Area Appraisal
- 8 Cambridge Landscape Character Assessment
- 9 Guidance for the application of Policy 3/13 (Tall buildings & the skyline) of the Cambridge Local Plan 2006
- 10 Green Belt Study
- 11 Chester City Centre and Approaches Characterisation Study
- 12 Chester One City Plan – Manifesto for Contemporary Design
- 13 Chester: The future of an Historic City
- 14 County Durham Landscape Character Assessment
- 15 County Durham and Darlington Historic Landscape Characterisation
- 16 World Heritage Site Management Plan 2006
- 17 Lichfield City Conservation Area
- 18 Lichfield City Conservation Area Appraisal
- 19 Staffordshire Historic Landscape Characterisation
- 20 Residential Design Guide
- 21 Oxford Landscape Character Assessment
- 22 Central Oxford Historic Urban Character Assessment
- 23 City of Salisbury Conservation Area Appraisal and Management Plan Final Draft
- 24 Salisbury District Landscape Character Assessment
- 25 Salisbury Historic Environment Assessment
- 26 Creating Places: A guide to achieving high quality design in new development, Salisbury DC
- 27 Settlement Setting Assessment
- 28 Winchester Conservation Area Project 2003
- 29 The Hampshire Landscape
- 30 The Hampshire Landscape: A Strategy for the Future
- 31 Winchester District Landscape Character Assessment
- 32 Hampshire Historic Landscape Assessment
- 33 Historic Landscape Character Assessment (in *Winchester District Landscape Character Assessment*)
- 34 Winchester City and its Setting
- 35 Future of Winchester Study

authorities the capacity now existed only to perform the minimum statutory functions associated with the job, such as responding to applications for listed building consent.

5.53 The issue of staff availability was examined on a consistent basis across the eight case study authorities, and the results are presented in Table 10. The area of responsibility covered by Conservation Officers may not be comparable where staff have responsibilities not only in the city but in the surrounding area too. The numbers are often indicative rather than rigidly accurate, reflecting staff memories and local knowledge rather than any formal examination of employment records. Other reasons why the figures may not be strictly comparable with each other are indicated in the comments section. Presenting the staff levels against comparable measures of workload has not been practicable for this project.

Table 10 Change in no. of Conservation Officers in case study cities (full time equivalent)

City	Number of Conservation Officers about 5 years ago	Number of Conservation Officers in spring 2014	Comments
Bath	5	3	Three planners are being given limited training in Conservation
Cambridge	4	<3	Manager now devotes less than full time to Conservation
Chester	7	2	Establishment reduced from 7 to 4 at local government reorganisation
Durham	9	7	Numbers difficult to judge due to local government reorganisation in 2009
Lichfield	2	1.6	Excludes part of team manager's time
Oxford	12	7	Team includes archaeology, trees and biodiversity staff
Salisbury	3	2	
Winchester	3.75	3.25	Staff have extra responsibilities now

5.54 A clear feature of Table 10 is how few Conservation Officers are currently employed in some of England's most important historic cities, even allowing for the inaccuracies inherent in the figures. These findings are broadly in line with national findings on expert advice on the historic environment, design and place-making available to local authorities, which show that the number of staff providing conservation advice dropped by 33% between 2006 and 2013 (*A fifth report on Local Authority Staff Resources*, July 2013, Association of Local Government Archaeological Officers, the Institute of Historic Building Conservation and English Heritage). Voluntary sector organisations were frequently seriously concerned about the adequacy of staff levels, which generated particularly animated views. In at least one case there was a view that the cutbacks to Conservation Officer staff had been a deliberate political act to play down the conservation role. Officers tacitly seemed to accept in some cases that there were not enough staff to do the job satisfactorily. Interviewees identified a wide range of difficulties in consequence, aside from staff morale:

- staff who retired or took maternity leave might not be replaced, leaving authorities exposed with wholly inadequate professional cover;
- casework had to be compromised to handle the scale of the workload;
- matters other than casework often had to be neglected for long periods or put to one side completely, e.g. on conservation areas;

- outside consultants would be used for conservation studies instead of in-house staff, which was not always successful as they sometimes had inadequate understanding of the locality to do a good job;
- salaries offered were too low to attract candidates of the calibre and status required for senior planning and conservation posts;
- Conservation Officer expertise was being sold to the authority's property services arm: this brought in money to the Department but took time away from other priorities;
- some town planners were being given modest training in conservation issues, but this was a poor substitute for properly trained and qualified Conservation Officers.

5.55 The structures within which Conservation Officers work are important as well their numerical strength. Local authority interviewees were therefore asked whether heritage had senior representation amongst planning officers and whether there was sufficient engagement of heritage staff with councillors.

5.56 In the majority of local authorities heritage was represented well enough at senior officer level, either by the head of heritage services holding a senior post or by chief and senior officers being supportive of conservation objectives. However, there were two cities where supportive structures had been lost in internal reorganisation, so that heritage was now a minor activity in a structural backwater.

5.57 There was a similar pattern with access to councillors: Conservation Officers in the same two cities which had suffered from internal reorganisations also had no direct access to councillors (e.g. there was no Heritage Champion and other members were not interested). However, there were Conservation staff in other authorities who also did not have access to councillors. In contrast, staff in three authorities spoke positively about member involvement in conservation.

5.58 The findings from the case study cities broadly reinforce the conclusions drawn from the 20 heritage towns studied in chapter 3: the cultural approach to heritage, driven by councillors, has a significant bearing on conservation staff and the scope for their role to be fulfilled thoroughly. However, the position has been reached where none of the cities studied has sufficient staff in place to achieve conservation outcomes to the standards they aspire to (though the scale of the deficiencies varies). In our view this is not a matter of aspirations always exceeding resources, but a real issue with identifiable shortcomings resulting. This is a direct consequence of staff cuts (often from an already low base) and associated budget constraints.

5.59 In our view, there has been a remarkable loss of perspective in a few authorities. All the historic cities studied now depend on a significant tourist industry, in some cases underpinning the local economy. This brings in prodigious wealth in some cases, all the more important when the local authority is itself a significant local landowner. This wealth is generated fundamentally by the physical environment and especially the built heritage. The maintenance of this built heritage and the avoidance of direct damage to it or inappropriate change to its context is the task of a tiny group of individual Conservation Officers in each city, yet their numbers and sometimes their status and ability to do their job are sometimes being undermined. Over a period this will increasingly put at risk the fabric

and especially the atmosphere and enjoyment of historic cities. The paltry savings on modest salaries seem wholly misplaced in relation to the benefits on offer from retaining and augmenting Conservation staff. The costs would be barely detectable in relation to the wealth which the historic environment brings to these cities. This is a matter to which historic cities have clearly not given much thought, even in those which realise that heritage is good for the economy rather than a drag on it. Partly behind this is perhaps an undercurrent of feeling, detectable in many administrations, that historic buildings and their surroundings are simply 'there' and look after themselves. Changes on the ground do not register strongly from one year to the next, but over time they do. By then it may be too late, with inappropriate uses allowed in the wrong place, vistas compromised, shoddy materials and design becoming only too apparent, and people with the drive to stem the tide strangely absent.

Cross-cutting heritage issues in the case study cities

5.60 Some influences on local authorities' efforts to reconcile growth with heritage arose in interviews in a small number of cities only but appeared to be significant there. These were not topics built into the interviews, and so have not been studied systematically, but they were matters which some interviewees or the researchers found important. This section comments on them, as follows:

- cross-boundary planning issues;
- local government reorganisation;
- student accommodation;
- development on local authorities' own land;
- development limits in historic towns and cities.

Cross-boundary planning issues

5.61 The development needs of some of the case study cities will not reliably be met in future without compromising important heritage unless the local authorities responsible obtain co-operation in the development process from neighbouring authorities. This is a direct consequence of the likely scale of future growth in relation to the boundary of the authority and the capacity of the historic city. It is not a measure of simple resistance to development in principle in the historic city.

5.62 The greatest difficulty is faced by Oxford, a city with a tightly drawn administrative boundary and substantial development pressures. A Strategic Housing Market Assessment carried out across Oxfordshire (G L Hearn, March 2014, Oxfordshire County Council) concluded that the housing need in Oxford for which provision needed to be made was 1,200-1,600 dwellings annually. This contrasts with the Core Strategy adopted by Oxford City Council in March 2011, based on earlier assessments of reasonable supply opportunities against anticipated housing need, which fixed planned supply with the city boundary at 8,000 dwellings over the period 2006-26, i.e. just 400 dwellings annually. Scope for the provision of related urban development such as schools, healthcare facilities, employment and other infrastructure are likewise constrained by the administrative boundary of the city.

5.63 The two other case study cities constrained by tightly-drawn administrative boundaries are Cambridge and Bath. Bath has a recently adopted Core Strategy in which housing supply is planned to meet objectively assessed need within the authority area, and the City of Bath is taking its fair share of this (see Table 8), while Cambridge City Council is similarly proposing to meet housing need within its area in its Core Strategy submitted for examination. In both cases, however, the long-term continuation of current proposed rates of development is in our view unlikely to be capable of being fulfilled without discernible or possibly significant impact on the heritage of those cities.

5.64 In the case of Cambridge, the housing market and development patterns are already operating in effect on a subregional basis, largely contained within the areas of Cambridge City Council and its neighbour South Cambridgeshire District Council. Here, substantial growth associated with the city is formally attributed to South Cambridgeshire and is proposed to be met within that District: a joint examination of the Councils' Core Strategies is taking place in 2014 in recognition of the close functional relationship between them. An important feature of planning in Cambridge, noted in the case study in Appendix 4, is the close co-operation between the two councils over the scale, locational priorities and practical implementation of development. This is making a significant difference directly and indirectly to the City Council's ability to protect its historic core (and the District Council's ability to tie its employment, service provision and transport infrastructure to its housing provision).

5.65 Whereas Cambridge is benefiting greatly from cross-boundary co-operation between local authorities in the subregion, Oxford is not. We are advised that Oxford City Council's neighbours are broadly reluctant to take on the city's growth requirements within their own areas. In Bath the need for such co-operation was found unnecessary in deciding the council's recently approved Core Strategy, though this cannot be assured when that Plan is next revised. There is a clear need for historic cities to articulate their development needs and explain when these would be better achieved in neighbouring areas to protect nationally or locally important heritage interests. Neighbouring authorities are under a Duty To Co-operate (under the Localism Act 2011) so that development can be co-ordinated across administrative boundaries. Inspectors of development plans will need to be alert to the heritage dimension of this co-operation. The matter would be facilitated if the Government improved the arrangements for town planning on a 'larger-than-local' basis, to ensure that wider public interests can be satisfied when co-operation falls short of agreement.

Local government reorganisation

5.66 Three of the case study cities were affected by local government reorganisation in 2009. In each case this has had discernible unintended consequences for the heritage of these cities. The changes were:

- Salisbury was affected when Salisbury District Council merged with other authorities to form Wiltshire Council;
- Durham was affected when Durham City Council merged with other authorities to form Durham County Council;

- Chester was affected when Chester City Council merged with the Boroughs of Ellesmere Port & Neston and Vale Royal to form Cheshire West and Chester Council.

5.67 At the time of reorganisation Salisbury District Council was well-advanced in preparation of the South Wiltshire Core Strategy and this proceeded to adoption in February 2012. This will remain in place until superseded by the Wiltshire Core Strategy for which an Examination was held in 2013. A single Plan for the whole of Wiltshire inevitably signals changes and the dilution of the priorities set specifically in Salisbury District and for its principal settlement, the city of Salisbury. The centre of gravity of decision-making moved to the Council's main offices in Trowbridge. Councillors in Salisbury have nevertheless been supportive of protecting the setting of the city and sensitive to heritage issues: this is critical for the way the city looks, and the historic townscape has been the key to what makes the town special. It is understandable that councillors elected elsewhere in the new Wiltshire Council should feel less attachment and commitment to Salisbury. A Design Forum organised by Salisbury District Council to advise members on the design aspects of new developments was abolished by Wiltshire Council.

5.68 The case study of Salisbury in Appendix 9 describes an important change to planning policy which will affect the setting of Salisbury as a direct result of the Core Strategy for the district area, the South Wiltshire Core Strategy, being replaced by a Core Strategy for the whole of Wiltshire. A local policy firmly committed to ensuring there will be no detriment to the visual quality of the landscape setting of Salisbury (and Wilton), reinforced by an area to which this applies defined on the Proposals Map, will be replaced by a more general policy capable of applying to towns across Wiltshire. Developers will be less clear about what is expected of them, so deliberate or inadvertent challenges to the objective will be more likely. Implementing the new policy in Salisbury will be achievable, though it will be more time-consuming and will rely on more careful evaluation of development proposals by Conservation Officers and planners, at a time of resource limitations. This carries greater risk.

5.69 The City of Durham is the jewel in County Durham. The new Durham County Council has taken a different view from the former Durham City Council about how that jewel should serve the public interest. Whereas the City Council had a strong commitment to maintaining the setting of the city as a priority, the County Council has identified a pressing need to take bolder steps to support the economy of the wider county, parts of which continue to suffer badly from the closure of the coal mining industry. The new Council wants the economic beacon of Durham to burn brightly for the benefit of the whole County, and this involves a change of direction from the City Council in relation to development in and around Durham. The Green Belt introduced by the City Council is now proposed to be relaxed in places to accommodate additional development. This matter will be considered at an examination of the County Council's Core Strategy in 2014. The planning function in the Council is geared to supporting economic development and the emphasis on the wider setting of the City of Durham is being reduced.

5.70 Prior to local government reorganisation, Chester City Council had a boundary where Green Belt designation constrained the outward growth of the city and opportunities for development were relatively limited. The incorporation of a wider area into the authority

covering Chester had a different effect from that in Durham. The new Council now had a wider choice of sites within its boundary which could accommodate development beyond the Green Belt. In principle this could take some pressure off the historic core of the city.

5.71 Overall, local government reorganisation can set in motion changes which have consequences for heritage. As 'efficiency' is a key motivation for reorganisation, the inevitable restructuring of posts and establishments can lead to a reduction in the numbers of experienced and qualified Conservation Officers. Heritage issues are unlikely to be a primary determinant of the form which local government takes, but the experiences of Salisbury, Durham and Chester suggest that greater consideration needs to be given in advance to the nationally important heritage of such cities so that appropriate safeguards can if necessary be put in place. Of greater importance than the technical aspects of how the planning system and conservation powers will be applied is an appreciation of the political consequences of reorganisation for heritage at the local level. Raising the importance of heritage at an early stage may help to establish more reliable ground rules for heritage in the operation of the reorganised councils.

Student accommodation

5.72 All the case study cities except Lichfield and Salisbury are university cities. Most of them are experiencing or expecting rising student numbers, and this creates a demand for additional student accommodation. Students can sometimes be accommodated on the university campus but, equally, blocks of student flats may be placed on sites acquired within the host cities. Universities generally cannot meet all their student accommodation needs in purpose-built premises, and the result is students occupying rented houses which would otherwise be available to more permanent households for owner-occupation or long-term lettings. Student 'quarters' arise in most university cities, initially driven by houses suited to multiple occupation and then reinforced as non-student households move out and students come to dominate particular streets and areas. These areas typically become associated with noise, activity at antisocial hours, limited maintenance and deteriorated gardens and surroundings. Historic cities are no different from others in these respects.

5.73 Rising student numbers can be a particular problem in historic cities. In places already struggling to reconcile heritage with development, student accommodation can represent competition for space. Some of this is completely beyond planning control: there is nothing to prevent buy-to-let landlords providing a service to students, for example. Also wealthy parents may buy property on the open market for their student offspring, which can have unexpected impacts on markets for new property (e.g. acquisition of new flats in central Bath particularly by Chinese investors on this basis). Some universities like Bath and Bath Spa may be able to accommodate some additional students on campus, but others cannot. The research identified particular pressures in Cambridge, Chester, Durham and Oxford.

5.74 The expansion of Cambridge University and Anglia Ruskin University's Cambridge campus can be felt in the town. In addition to schemes within College grounds in recent years, 1,250 flats targeted at the student market are currently under construction near the

station (at some distance from both Universities), clearly in competition with alternative occupants in the City Council's promotion of urban land redevelopment.

5.75 Cheshire West and Chester Council is supporting the provision of specialised student accommodation through Policy SOC3 *Housing mix and type* in the submitted Local Plan, provided this is in appropriate, accessible locations convenient for the facilities at the University of Chester. However, the Chester Civic Trust argues that insufficient attention has been paid to the practicalities and consequences of accommodating 13,000 students in Chester. For example, they consider the redevelopment of a former Travelodge hotel for student accommodation at Delamere Street inappropriate. Also the proposed redevelopment for student accommodation of the car park on St Martin's Way opposite the Crown Plaza hotel was too large and likely to have damaging effects on the historic buildings off City Walls road and on views into the city on approaches from the west, south-west and north.

5.76 In Durham, there are currently about 15,300 students studying in the city, representing a particularly large proportion of residents (see Table 8) during term time. Students are therefore integral to the local economy but also cause seasonal demand. Over half these students live in properties around the city rather than in purpose-built accommodation, which has a significant impact on the local housing market. The University owns the Castle and many properties in the Conservation Area in the city centre, on the one hand exercising responsibility in managing this property but on the other affecting the dynamics of the city. The number of students is expected to grow further to 17,100 by 2020, but purpose-built accommodation is expected to keep-up with the growing requirements.

5.77 There is continuing pressure to build student accommodation for the two Universities in Oxford. This is arising both within College grounds (e.g. this year at Merton College for university postgraduates rather than for its own needs and at Exeter College) and within the wider city. The student accommodation built at Roger Dudman Way attracted a particularly high level of criticism for its impact on the views of Port Meadow (Figure 11). However, in a notable response, this led to an independent review of the Council's handling of the decision. Subsequently, an Oxford Design Review Panel was established by the City Council in partnership with the Commission on Architecture and the Built Environment (at the Design Council) to "ensure that there is a consistently high standard of design for significant built environment projects, embedding best practice into the planning process at this exciting stage of Oxford's development. The ODRP will consider a broad range of projects, including housing, infrastructure, civic buildings and the public realm, promoting consistency in design as the city develops." This is potentially an important step forward to address perceived shortcomings in existing processes.

5.78 Voluntary sector representatives interviewed in all six university cities volunteered (unsolicited) their concern about the impact of student accommodation in one way or another. The principal concern was that 'studentification' of 'their' cities is an issue they feel is not addressed adequately. In addition some referred to a degree of disengagement by the universities in recognising the combined effects of growth in student numbers, the

associated need for accommodation, how this affects the older stock, and the distortion that this can have on the local housing markets and housing stock.

5.79 The Universities are powerful local institutions in all cities, with their own aspirations for the facilities and accommodation they seek, and local authorities are alert to the benefits which students bring as well as the problems. Nonetheless, there are heritage-related issues which Councils need to address in addition to the widely-experienced problems of impacts on local housing markets. These include impacts of students on townscape character, especially in Conservation Areas, the design quality of new accommodation, and the visual effects of new accommodation on townscape, vistas and skylines. The taking over of streets as rented accommodation is beyond planning control, but the regulation of new accommodation is well within it and should be given greater attention. More fundamentally, there appears to be no forum for discussing the principle of whether, to what extent or how particular universities should be allowed to expand their campuses in historic towns and cities. Universities for the most part are state-funded bodies where the state is entitled to expect a more prominent ethos of respect for the local heritage to be built into universities' strategies.

Figure 11 Flats at Roger Dudman Way, Oxford



View from the village of Wolvercote across Port Meadow to the north-west of the city. The flats at Roger Dudman Way, to the right of centre, have been heavily criticised.

Development on local authorities' own land

5.80 Development by local authorities on their own land was generally found to be unremarkable. However, in a few cases concerns were expressed in interviews that the local authorities responsible were undertaking schemes without showing exemplary standards in keeping to the usual local development policies. Although not a widespread problem, some councils were said to be less keen to apply heritage-related policies constraining development on their own land than on other developers' land. This resulted in buildings with a scale and massing out of character with their surroundings and in some cases adversely affecting the setting of key buildings. The approach risked undermining the

effectiveness of the policies and the general acceptance of them. Specific cases in Lichfield (Figure 12) and Taunton are noted below.

5.81 Policy T33 of the Taunton Deane Local Plan 2004 provides that “Development which would detract from the distinct character and attractiveness of Taunton's skyline will not be permitted”, with specific reference to the town’s dominant church towers which are visible from several viewpoints. However, in the Firepool regeneration scheme in Taunton, on the Council’s own land, development was permitted to a greater height than would normally be acceptable. When built the scheme will be very visible from the railway and elsewhere and have some screening effect on the heritage of the skyline. The decision has led to other taller buildings being proposed on higher ground, and the long-established policy on height limits in Taunton is under threat.

Figure 12 Development on local authority-owned land, Lichfield



Local organisations expressed concern about the scale and massing of this development on Lichfield District Council-owned land which has obscured views of the spires from a very public viewpoint.

Development limits in historic towns and cities

5.82 Interviewees in some of the case study cities, as well as in some of the historic towns reviewed in chapter 3, argued that their settlement was effectively ‘full’ and should not be asked to accommodate substantially more development. There is clearly a serious issue facing some historic settlements about the pace of change they should absorb and their overall capacity to go on doing so indefinitely. The evolutionary process is marked by change and growth in historic settlements, but has the time come for some of them to

accept that limits have been reached and future evolution must be within a more limited context?

5.83 A review of this is beyond the scope of the present study, though questions have been firmly raised in some places. The idea that there is a physical threshold to future development beyond which decline in the character of a place sets in would have to confront numerous theoretical and practical problems. Some of these are set out in Appendix I of *Environmental Limits for the South East* (Levett-Therivel, 2010, South East England Partnership Board). Values change, of course: some historic settlements were no doubt considered ‘full’ 50 or 100 years ago when they were much smaller. The future holds something different from the past, but should the character of a place be locked-in at a particular date, or should it be allowed to evolve further? How do heritage values tie in with other objectives for the life of towns and cities? Can change be controlled to a lesser, more manageable rate than at present, or carried out in ways which are less likely to challenge the distinctiveness of a place? Are the alternatives to continued evolution of existing historic settlements better or worse (and who says)?

5.84 Amongst the case study cities studied for this project, Winchester and Oxford were those with the most immediate claims for this issue to be addressed, at least in relation to the amount of growth they are currently expected to accommodate (see paragraphs 5.43-48 above). Likewise, some of the historic towns studied in chapter 3 are urgent candidates, such as Berkhamsted and Woodbridge. This is a debate which needs further attention.

Commentary

5.85 The objective when identifying methodologies for reconciling growth with heritage in eight case study cities was to illustrate good practice. The cases show that there is indeed much to report from all of them which is successful and offers lessons for application elsewhere. However, cities are complex places and pure examples of undiluted excellence are aspirational. All the case studies had blurred aspects of policy and practice. The cases also showed that the best solution – the best methodology for reconciling growth with heritage – is a matter for local choice depending on circumstances. A Green Belt would not resolve Salisbury’s challenges just as View Cones would not tackle Chester’s. There is scope, though, for more than one methodology to be used at the same time. For example, Green Belts to contain urban sprawl are typically associated with urban intensification, and especially in these circumstances (but elsewhere too) a sound design response to the historic environment can be critical to good practice.

5.86 The message from the case studies is therefore that there are plenty of approaches in policy and practice which can help to conserve the special character of smaller cathedral cities and historic towns in their settings while provision is made to accommodate the future development needs of these settlements. Giving sufficient weight to these approaches has often required perseverance from heritage interests. Helping the right outcome from a heritage point of view is best achieved by co-operation, gathering public support, sticking to clearly established heritage principles and policies, and taking a positive view about what can be achieved. When heritage is seen as a benefit rather than a problem, the reconciliation with economic development becomes easier. Part of this

process is to make a real effort to find ways of accommodating necessary development. That can be more easily said than done, though, as many towns and cities are approaching or feel themselves already to have reached the limits of their development.

5.87 The case studies, like the study of 20 historic towns in chapter 3, have shown that methodologies alone will not resolve the growth pressures which historic places face. There are vitally important underlying matters that must be resolved at the same time. The key one is the need for a properly resourced Conservation and Design service in local government. Only if there are enough professionals to pursue the objectives will there be any hope of achieving good results. Cutbacks in local government and prioritisation of statutory obligations, although understandable, have not served local heritage interests well and this needs to be tackled as a priority. The other essential matter to address is cultural. The level of interest in heritage amongst local councillors needs to be sufficient in order to set up the circumstances where reconciliation between growth and heritage is a realistic proposition. It is from elected members' priorities that flow key choices about matters such as: which policies to adopt, how energetically to apply them, the number of Conservation Officers to employ, and the expectations imposed on all other parties from officers to developers. There is scope for a virtuous circle in which high standards generate goodwill towards both heritage and development, add value to investment and inspire improvements to the built environment. This needs to be nurtured, as there is plenty of evidence that it will not come automatically.

5.88 Finally the evidence from the case studies is that heritage is not in a silo but integrally linked to wider issues and should be addressed as a corporate issue in local government. The chosen case studies identified matters such as student accommodation, cross-boundary planning and local government reorganisation to be more awkward than had been expected and having unexpected consequences for heritage. There clearly remains a substantial debate to be had about how much growth some historic towns and cities can take and how it should be provided.

RECOMMENDATIONS

Local councillor engagement with heritage

1. The research has demonstrated that the single most vital issue affecting the attention to the historic environment in relation to growth pressures is the cultural approach of the local authority. From this follows decisions about: the policies to adopt, decisions on planning applications, the size of historic environment and design team to employ, the proactive work on heritage undertaken, and the attention which developers are expected to pay to heritage issues. English Heritage should increase its efforts to impress upon local authorities and Government the vital place which the historic built environment of towns and small cathedral cities has in the life of their residents and of the country.
2. From interviews it was clear that there were a number of underlying opinions among elected members and senior planning officers which should be challenged in responding to recommendation 1, including that:
 - the historic built environment can look after itself;
 - historic buildings are a cost rather than a benefit; and
 - heritage gets in the way of investment rather than adds value to it.
3. The study found that there was a largely missed opportunity to promote the historic environment in local authority Corporate Plans. These documents show a direction of travel for local administrations that can anchor more specific proposals through the planning system and through other local choices (e.g. appointment of Heritage Champions). English Heritage should encourage local authority councillors to consider including suitable local heritage objectives as one of the priorities in their Corporate Plans.
4. The research clearly demonstrates that the historic environment at the whole town scale can be difficult to reconcile with urban development where a local authority's administrative boundaries are tightly drawn. Particularly in these cases, active co-operation should be sought by councillors and their officers with nearby authorities to address the issues, modelled on the approach in the Cambridge sub-region.

Conservation Officers

5. Local authorities responsible for the management of England's important historic places should ensure that they have adequate expert advice available in historic environment (building conservation/archaeology), design and place-making. Having sufficient expert advice is the most important practical step that can be taken to reconcile the protection of heritage at the whole town scale with the needs for urban growth. The study has shown that the practical capacity of local government staff to pursue strategic or innovative approaches in support of heritage has been diminished by reduction in service levels so that there would be little prospect of other bold initiatives being successful without this recommendation being satisfied first.

Development Plans

6. This study has shown that three out of eight important historic cities analysed as part of the project do not have Conservation Area Appraisals (CAAs) or Management Plans, and that two more have not yet adopted them. This is in contrast to a study of 20 historic towns which found that three quarters did have CAAs and that this was the most popular form of evidence available on the local built heritage. An evaluation of conservation areas is needed to understand the reasons why Conservation Area Appraisals and Management Plans are undertaken in some historic towns and cities but not others, and whether any further encouragement is needed through amendment of Government policy and guidance and advice from English Heritage.

7. The study found that many local planning authorities had adequate or good policies for protecting the character, townscape or setting of historic towns, but that the degree of compliance with these policies when making planning decisions was variable. Local authority monitoring systems should include detailed reviews of the compliance of planning decisions with the heritage policies in their adopted plans.

8. The research found that in some authorities the sustainability appraisal of local plans did not adequately consider the impacts on the historic environment. English Heritage should therefore promote its advice (revised in July 2013) *Strategic Environmental Assessment, Sustainability Appraisal and the Historic Environment* to emphasise to local planning authorities how to secure greater benefit from the Sustainability Appraisal (SA) of development plans, in order to bring all authorities up to the standards of the best. SA reports should be expected to:

- use evaluation criteria to identify the impacts of development plans on heritage at the scale of individual settlements (character, townscape, setting);
- reach clear conclusions which exceed simple description;
- offer recommendations on how development plans should be improved.

9. Local planning authorities containing historic settlements should prioritise the adoption of NPPF-compliant local plan core strategies. This is a key requirement in being able to plan successfully for growth while protecting the environment. The study found that a significant number of local planning authorities had not yet achieved this. Local authorities should additionally prepare and adopt development management policies for heritage, in order to meet the requirements of paragraph 126 of the NPPF on heritage and the need to have a positive heritage strategy. The study shows that numerous authorities remained reliant on saved policies from former Local Plans which were in some cases insufficient and out of date. Detailed policies were also required because newly adopted policies in Core Strategies were often not specific enough to be capable of implementation in ways which reliably benefited the historic built environment.

10. Local planning authorities should prepare 'local lists' of heritage assets of value locally, as part of their evidence base for the historic environment, with clear policies for their general conservation and enhancement. This would help authorities to achieve the policy intentions of the National Planning Policy Framework.

11. Interviews with both planning authority staff and third sector representatives have helped demonstrate that local authorities were responsive to local efforts to encourage heritage to be taken more seriously, and that local voluntary bodies were an effective way of improving local authority performance on heritage issues. English Heritage should provide information and advice suited to use by local-based voluntary groups supportive of their heritage.

12. The study found that though there were many examples of well-designed new developments in historic areas, there were also cases of missed opportunities and over-developed sites. Local authorities need to be encouraged to take an active approach to requiring high quality design in new development throughout whole historic towns and historic cities. Not only is this consistent with the National Planning Policy Framework, but this study has shown that good design of developments and the public realm generates a virtuous circle which raises standards, expectations, attitudes to development and the quality of schemes within the historic environment.

Methodologies for reconciling town-scale heritage with urban growth

13. This study suggests that there are no methodologies demonstrably better than others, though methodologies can often be used together for greater benefit than single methodologies. Local authorities should be encouraged to pursue methodologies for reconciling heritage with growth which are appropriate to their local circumstances.

14. The potential for using Neighbourhood Plans as a methodology for reconciling heritage with growth at the town scale should be investigated when more of these Plans have been adopted.

15. Local authorities need to be alert to, and English Heritage should press for, heritage constraints to be given greater weight than at present in the allocation of growth requirements, especially housing, to different settlements as part of the local authorities' development allocations in their local plans.

16. In any further local government reorganisation, consideration should be given to any unintended consequences for heritage and how to address them. This will help to continue appropriate recognition of the importance of the historic environment in the operation of the new authorities.

17. A mechanism is required to establish the best interests of historic towns and cities when universities and colleges are considering expansion of their student numbers. The transitory student population can generate adverse cumulative impacts on the character and appearance of historic town and city conservation areas and on public amenity, particularly through significant expansion of student accommodation and other facilities. These need to be addressed alongside the educational and economic benefits from additional student numbers in historic towns and cities. Establishing the public interest amongst the competing issues requires co-operation between the institutions themselves and the interests represented in government by the Departments of Education, Communities & Local Government and Culture Media & Sport.

18. English Heritage, working with other representative bodies, should oversee a debate on the capacity of historic towns and small cathedral cities to accommodate projected levels of urban growth into the foreseeable future, and the necessary responses to the issues raised.

APPENDIX 1

INTERVIEWEES

Case study consultees

Face-to-face interviews were held with the following people:

Bath

LA Heritage: Tony Crouch, City of Bath World Heritage Manager, Bath & NE Somerset Council

LA Policy: Richard Daone, Planning Policy Team Leader, Bath & NE Somerset Council

Third Sector: Caroline Kay, Chief Executive, Bath Preservation Trust

Cambridge

LA Heritage: Glen Richardson, Urban Design & Conservation Manager, and Christian Brady, Conservation Officer, Cambridge City Council

LA Policy: Sara Saunders, Planning Policy Manager, Cambridge City Council (interviewed by telephone), and Jane Green, New Communities Programme Officer, South Cambridgeshire DC

Third Sector: Carolin Gohler, Chief Executive, Cambridge Past Present and Future

Chester

LA Heritage: John Healey, Senior Conservation Officer, Cheshire West and Chester Council

LA Development Management: Fiona Edwards, Head of Development Control, Cheshire West and Chester Council

Third Sector: David Evans, Chairman; Martin Meredith, Secretary & Treasurer; and John Tweed, Architect and Trust member, all of Chester Civic Trust.

Durham

LA Heritage: David Sparkes, Principal Design and Conservation Officer, Durham County Council

LA Policy: Gavin Scott, Area Team Leader, Durham County Council

Third Sector: Roger Cornwell, Chairman; Richard Hird and Tim Clark, all of City of Durham Trust

Lichfield

LA Heritage: Dan Roberts, Urban Design and Conservation Manager, and Debbie Boffen, Senior Conservation Officer, Lichfield District Council

LA Policy: No Policy Officer was available for interview

Third Sector: John Thompson, Chairman, Lichfield Civic Society

Oxford

LA Heritage: Nick Worlledge, Head of Heritage and Specialist Services; Katherine Owen, Senior Conservation Officer; and Clare Golden, Head of Development Control, Oxford City Council

LA Policy: Sarah Harrison, Development Policy, Oxford City Council

Third Sector: Peter Thompson, Chairman, Oxford Civic Society

Salisbury

LA Heritage: Jocelyn Sage, Conservation Officer, Wiltshire Council

LA Policy: David Milton, Development Manager, Wiltshire Council

Third Sector: Richard Deane, Development Committee Secretary, Salisbury Civic Society

Winchester

LA Heritage: Alison Davidson, Head of Historic Environment, Winchester City Council

LA Policy: Steve Tilbury, Corporate Director – Operations, Winchester City Council

Third Sector: Richard Baker, City of Winchester Trust

Historic towns in authorities with post-NPPF adopted Core Strategies

Telephone interviews were held with the following people:

Berkhamsted

LA Conservation Officer: James Moir, Conservation Officer, Dacorum BC (and also Laura Wood, Core Strategy leader, Dacorum BC)

Third Sector: Laurence Handy, Planning Committee chair, Berkhamsted Town Council

Chelmsford

LA Conservation Officer: Michael Hurst, Conservation Officer, Chelmsford City Council

Third Sector: Malcolm Noble, Chairman of both Changing Chelmsford (Community Interest Company) and Chelmsford Civic Society

Chesterfield

LA Conservation Officer: Jacob Amuli, Conservation Officer, Chesterfield BC (and also Alan Morey, Strategic Planning and Key Sites Manager, Chesterfield BC)

Third Sector: Bryan Thompson, Chairman, Chesterfield Civic Society

Folkestone

LA Conservation Officer: Alison Cummings, Design and Conservation Officer, Shepway DC

Third Sector: Richard Wallace, Chairman, Go Folkestone

Hastings

LA Conservation Officer: Jane Stephen, Conservation Projects Manager, Hastings BC

Third Sector: André Palfrey-Martin, Secretary, Save Our Heritage (Hastings)

Henley-on-Thames and Thame

LA Conservation Officer: no-one available

LA Development Plans: Beryl Guiver, Planning Policy, South Oxfordshire District Council

Third Sector: the third sector at both Thame and Henley-on-Thames would have been the Town Clerks at the respective Town Councils, but neither responded to approaches

Ilkeston

LA Conservation Officer: James White, Conservation Officer, Erewash BC

Third Sector: there is no suitable third sector organisation in Ilkeston

Leek

LA Conservation Officer: did not respond

LA Development Plans: Ruth Wooddisse, Senior Planning Officer, Staffordshire Moorlands DC

Third Sector: Mike Stapleton, Chairman, Leek Civic Society

Newbury

LA Conservation Officer: no-one available

LA Development Plans: Bryan Lyttle, Planning and Transportation Policy Manager, West Berkshire Council

Third Sector: Anthony Pick, Vice Chairman, Newbury Society

Selby

LA Conservation Officer: no-one available

LA Development Plans: Andrew McMillan, Policy Officer, Selby DC

Third Sector: Michael Dyson, Chairman of Selby Civic Society and Chairman of Selby District Council

Stowmarket

LA Conservation Officer: Paul Harrison, Conservation Officer, Mid Suffolk DC

Third Sector: Jon Pattle, Stowmarket Society

Taunton and Wellington

LA Conservation Officer: Diane Hartnell, Heritage Lead Officer, Taunton Deane BC

Third Sector: Brian Murless, Somerset Industrial Archaeology Society

Thornbury

LA Conservation Officer: did not respond

LA Development Plans: Rob Levenston, Planning Policy

Third Sector: There is no suitable third sector organisation in Thornbury

Whitehaven

LA Conservation Officer: no-one available

LA Development Plans: Chris Hoban, Planning Policy Officer, Copeland DC

Third Sector: there is no suitable third sector organisation in Whitehaven

Wigan

LA Conservation Officer: Ian Rowan, Wallgate Townscape Heritage Initiative and Conservation Officer, Wigan MBC

Third Sector: Anthony Grimshaw, Wigan Civic Trust

Winchester

LA Conservation Officer: Alison Davidson, Head of Historic Environment, Winchester City Council (face-to-face interview)

Third Sector: Richard Baker, City of Winchester Trust (face-to-face interview)

Woodbridge

LA Conservation Officer: Roger Scrimgeour, Senior Design and Conservation Officer, Suffolk Coastal DC

Third Sector: Neil Montgomery, Chairman of Planning Group, Woodbridge Society

Wymondham

LA Conservation Officer: David Edleston, Conservation Officer (Design Architect), South Norfolk DC

Third Sector: Irene Woodward, Chair of Environment Committee, Wymondham Heritage Society

APPENDIX 2

CONSULTEES ON METHODOLOGIES

Royal Town Planning Institute: Andrew Matheson (Policy and Networks Manager), with responses also from Phil Turner and Liz Wrigley
Royal Institution of Chartered Surveyors: James Kavanagh (Director of RICS Land Group)
Royal Institute of British Architects: Anna Scott-Marshall (Head of External Affairs)
Planning Officers Society: John Silvester (Communications Manager), with response also from John Walker (Westminster City Council)
Landscape Institute: Paul Lincoln (Director of Policy and Communications), with responses also from Stephen Russell and Kate Bailey
Historic Towns Forum: Noel James (Director)
Association of Small Historic Towns And Villages: John Shaw (Director)
Urban Design Group: Robert Huxford (Director)
CABE@Design Council: Kathy MacEwen (Head of Programmes)
Council for British Archaeology: Mike Heyworth (Director)
Campaign to Protect Rural England: Neil Sinden (Director of Policy and Communications)
Town and Country Planning Association: Hugh Ellis (Head of Policy)
Society for the Protection of Ancient Buildings: Matthew Slocombe (Director)
Institute of Historic Building Conservation: James Caird (Consultations Co-ordinator)

APPENDIX 3

BATH CASE STUDY

Special qualities

Bath is a city of 95,000 people in north-east Somerset. The whole City of Bath was inscribed as a World Heritage Site (WHS) in 1987. The reasons for inscription, or attributes of Outstanding Universal Value, can be defined as:

- 1 Roman archaeology;
- 2 The hot springs;
- 3 Georgian town planning;
- 4 Georgian architecture;
- 5 The green setting of the city in a hollow in the hills;
- 6 Georgian architecture reflecting 18th century social ambitions.

The city is largely contained within the bowl of hills surrounding it, often with open green space beyond the built-up area running up to the skyline when viewed from the city. The WHS boundary follows the municipal boundary of the former Bath City covering most of the developed area and some greenspace beyond. The setting of the WHS takes in the surrounding area where change would affect the WHS. The objective is to constrain not only the outward sprawl of Bath but encroachment by development round about which would affect the experience of suddenly entering the city close to its edge. Undeveloped green fingers enter the city from the hills, almost to the centre at some points, providing a remarkably rural feeling for a city of this size, enhanced by the tree-cover within the built-up area. The River Avon carves a valley between hillsides essentially to the north and south, providing a route followed by the railway, Kennet and Avon Canal and major roads. Development focused initially in the valley and then spread up the hillsides.



'.. for the Eye to distinguish the particular Buildings of the City ... such as would View them more distinctly must ascend to the Summit of Beaching Cliff', said John Wood, 1763: part of Georgian Bath from Beechen Cliff



Widcombe Hill is a green finger of undeveloped land approaching the centre of Bath from the south east.



The Royal Crescent, seen from Beechen Cliff, highlights its green space context, with open space in front, an approach golf course behind, and undeveloped countryside on the steeper slopes of Primrose Hill above

The World Heritage Site designation

The UK signed the 1972 UNESCO World Heritage Convention in 1984. This committed it to identifying, protecting, conserving and interpreting its World Heritage Sites and passing them on to future generations. There is no legislation on World Heritage Sites in the UK, so implementation of the purposes of designation is left to other mechanisms and is a matter of policy and practice rather than legal obligation. To a very considerable extent it is the land use planning system which provides the vehicle to protect the City of Bath World

Heritage Site (WHS). The vision and strategy for the future of the WHS comes from the *City of Bath World Heritage Site Management Plan 2010-2016* prepared by a partnership body (the WHS Steering Group) and published by Bath & North East Somerset Council. This describes the WHS and explains its significance, sets objectives, reviews the issues it faces, and sets out a substantial action plan for implementation. The Council also employs a World Heritage Manager to promote this.

Protection for the WHS in planning policy is provided nationally principally by the National Planning Policy Framework (NPPF). This requires that great weight should be given to conservation, and aims to ensure that ‘substantial harm’ to a WHS “should be wholly exceptional” (paragraph 132). Development involving ‘less than substantial harm’ “should be weighed against the public benefits of the proposal, including securing its optimum viable use” (paragraph 134). As well as the level of harm, consideration should be given to the relative significance of the heritage asset affected (paragraph 138). This policy has been effective so far in Bath insofar as inappropriate sites for housing have not been released within the WHS area even though the Council had a shortage of land against the ‘five year’s land supply’ policy in the NPPF prior to the recent adoption of its Core Strategy. Acceptable sites have been released for housing instead either within the city or elsewhere in the Council’s area.

The statement of Outstanding Universal Value omits many features in Bath which are of national or local importance, especially the Victorian contributions including the railway and canal. Proposals affecting such features are therefore addressed for their wider effect on the WHS, but are otherwise decided according to other planning policies. Separate designations in law or policy overlie the WHS designation, addressing a range of different issues which are nonetheless relevant to the WHS. These include:

- nearly 5,000 listed buildings (from all periods) of architectural or historic importance;
- a Conservation Area covering two thirds of Bath, recognising its ‘whole place’ value;
- the Bath & Bristol Green Belt surrounding Bath on all sides, to contain urban sprawl;
- the Cotswolds Area of Outstanding Natural Beauty, surrounding the city on its north, east and south sides, in recognition of its landscape quality; and
- 9 entries in English Heritage’s list of Registered Historic Parks and Gardens.

Each designation has its own policy in planning practice, and it is implementation of these policies which for the most part achieves the intended protection of the WHS. Local planning policy does include a policy to prevent harm to the qualities of the WHS or its setting, and this has been used 430 times as a reason for refusing planning applications since the policy was adopted in October 1987. However, it does not appear to have been used alone, without reasons for refusal which apply other policies at the same time. The power of a WHS planning policy by itself has therefore not been tested in Bath, though there have been no decisions by Inspectors or the Secretary of State to allow appeals where the WHS was included in grounds for the Council’s refusal of permission. Of some surprise was the decision in 2008 not to call-in the Western Riverside proposed development (see below): that was held to be not of national significance or sufficiently controversial, despite prompting a visit to Bath by a UNESCO delegation.

The development challenge

There is a constant challenge to balance the conservation of historic, cultural and natural assets of global significance with the needs of an entire living city. On a day-to-day basis, most of the development pressures facing the WHS are for small-scale change. At the same time, there is wide recognition that incremental modest change can seriously erode the quality of the Georgian fabric and the public realm, and so must be strictly controlled both by decisions on planning applications and by effective enforcement action against unauthorised developments. The risk to this aspect of the heritage derives mainly from changes by the Government affecting planning control. First, cutbacks in funding for staff have reduced the number of specialist Conservation Officers in Bath, with the scale of enforcement activity also being at risk. This directly affects the staff time available for finding the best solutions for Bath's heritage. Second, legislation has been relaxed on development which may lawfully be carried out without any express permission at all from the local planning authority ('permitted development rights'), so more smaller-scale projects, including conversion of offices to homes, can now proceed in any event. The prospect of further relaxation has been announced in the 2013 Budget.

The main decisions about the scale of development which should take place, where it should go and its form are taken through the forward planning system. The Bath and North East Somerset Local Plan adopted in October 2007, has been the development plan for Bath until it was recently replaced by a new type of plan under the Planning and Compulsory Purchase Act 2004: the Bath and North East Somerset Core Strategy. This new plan had taken longer than any other plan in England to be approved following the date of its submission for Examination, in part reflecting the difficulty of reconciling Bath's growth with its WHS status. Bath is a compact city with relatively small areas of suburban development and has limited options available for development without conflict with other established policies.

Virtually no change is expected within the Georgian core. Elsewhere, Bath is fortunate to have available at present some significant opportunities for accommodating growth within its boundaries, despite its global heritage significance. This comprises principally a former industrial area known as the Western Riverside, which has been vacated by industry, and sites within the suburbs of the city being made available by the Ministry of Defence. There is also some scope for expansion on the campuses of the University of Bath and potentially at Bath Spa University (which lies outside the WHS but within its setting). The local authority is growth focused but still proud of its WHS status. Heritage is not seen as an obstacle to growth but as an incentive for high quality, contemporary development that reflects today's needs. As a result, the Council has proposed to build about 7,000 new homes at Bath between 2011 and 2029. This would give Bath a significant proportion of the Council area's growth without any reduction for heritage purposes. More intensive use of urban land is expected, outside the Georgian core, so that an additional 1,150 dwellings can be built there to contribute to the 7,000 required.

Change in the setting of Bath

The only previous spilling-over of development beyond the hills encircling Bath was some years ago at Twerton. This would almost certainly not be allowed now, but was a decision of its time. Pressures remain for peripheral expansion, but the combined designations of World Heritage Site, Green Belt and (for three quarters of the edge) Area of Outstanding Natural Beauty (AONB) have dampened expectations considerably. Development pressures have instead largely leapfrogged the Green Belt to settlements such as Peasedown St John to the south west.

The emerging Bath & North East Somerset Core Strategy has examined at length the options for development on Bath's fringes. Since November 2013, the proposals have included release of land for 300 dwellings at Odd Down (to the south of Bath) and 150 dwellings at Weston (to the north-west). These 450 dwellings represent just 6% of the city's commitment to housing land supply, a far smaller fraction than on the periphery of most large historic towns. Nonetheless, these sites are fiercely contested. Odd Down is on a plateau site abutting the WHS and on the edge of fine countryside to the south, while development at Weston would continue housing development a little further up already developed hillside. Both sites are in the Green Belt and AONB. The Inspector Examining the Core Strategy ruled that development should proceed at Odd Down but not at Weston, principally because the impact of development proposed at Weston on both the WHS setting and the Cotswolds AONB did not outweigh the benefit of development of this scale.



Looking south from beside Lansdown Lane: part of the Weston site proposed by the Council for release for housing lies beyond the first hedgerow

Previous pressures for release of land for urban development may return in future. The Duchy of Cornwall has twice proposed the release of land for an urban extension at Newton St. Loe, beside the A4 trunk road to Bristol on the west side of Bath, while in 2005 the draft Regional Spatial Strategy for the South West considered a major urban extension on the south-west side of Bath (i.e. the one quarter not designated as AONB, including Newton St. Loe). Technical evaluations concluded that the whole area had low capacity to absorb development. The implication is the City of Bath is already struggling to accommodate

significant further development on greenfield sites without serious breaches of policy constraints, and that the potential for urban land recycling away from the Georgian core will depend on sites unexpectedly becoming available. After the current round of development, that may well not be on the scale needed to meet the future needs of the city's population.

With this in mind, and to provide evidence to support the emerging Core Strategy, the local authority commissioned a Supplementary Planning Document (SPD) *City of Bath World Heritage Site Setting*. This was initially prompted by the Regional Spatial Strategy proposals in 2005 and was published after considerable research and effort in August 2013. It contains a wealth of information describing the setting and where it is, what is important about this, and how impacts affecting the setting should be addressed. It provides extensive information on aspects of the significance of the WHS, including landscape and townscape character, views, historical significance and historical associations, all of which should be taken in to account when considering the impacts of development proposals in or affecting the setting of the built-up area. The SPD specifies a process for assessing the overall significance of the effects of proposed development or other change on the WHS (combining an assessment of sensitivity and the magnitude of the effects), addressing the WHS's Outstanding Universal Value, authenticity, integrity and significance. In this way, the 'setting' of the WHS is not defined on a map but is guided by any change proposed. The SPD process is thereby an alternative to delineating on a map a buffer zone around the WHS (the more usual approach encouraged by UNESCO). The Inspector at the Core Strategy Examination endorsed the WHS Setting SPD approach and placed substantial weight on its methodology, information and conclusions. The value of this resource for informing decisions of all kinds in and around the city is plain to see, especially as it is a statutory planning document.

The missing policies

The heavy branding of Bath as a World Heritage Site gives the city a certain caché. This is supported by the Council, the business community and the conservation sector. Nonetheless, some potential conflicts between growth and conservation remain unresolved. Within the city a key omission is a Conservation Area Appraisal, which would complement the Setting SPD. This would provide characterisation and identify qualities (including views out) which would in turn assist development management and provide better explanation of small-scale issues to businesses and others in the central area. On the one hand the omission is surprising in view of the outstanding importance of the area internationally. On the other hand, the amount of work that would be involved in preparing it, especially in a period of serious cutbacks in staff, makes this understandable.

The section of the NPPF on conserving and enhancing the historic environment focuses on the appropriate sympathetic treatment of 'heritage assets', clearly extending the scope of what should be valued beyond that which is statutorily listed or designated to other structures and features. Many local authorities have been prompted in response to prepare a 'local list' of heritage assets, but there is no such list in Bath. With the vast number of listed buildings in the city already, the Council has some reluctance to focus on others which are unlisted, perhaps fearing that this would impede growth and adaptation. The issue was thrown into sharp relief when a proposal to demolish an unlisted building near the bus

station gathered a petition of 11,000 opponents. However, unlisted buildings are an important contribution to the overall quality of the city, not only in the Conservation Area, and the considered management of this resource could contribute to the ongoing maintenance of the quality of the WHS.

The case for preparing a strategy on tall buildings has arisen notably at the Western Riverside site, where there was controversy over buildings planned for 8-9 storeys in high density development. A UNESCO delegation to Bath in 2008 had identified 'aggressive development' as a risk to address, partly as result of this proposal, and in response to this the Council commissioned a report *Bath Building Heights Strategy* (Urban Initiatives, September 2010, Bath & NE Somerset Council). The WHS Management Plan reports that this study of tall buildings in Bath was intended to be taken forward as a Supplementary Planning Document "to ensure that it becomes a practical planning tool" (paragraph 5.2.22). However, the completed study was not adopted in this way. It still provides useful evidence to inform determination of planning applications and the allocation of development sites within the city, and it will help establish design principles in the Council's forthcoming Placemaking Plan (part of the new style Local Plan) currently being prepared. The problem remains that there will be insufficient formal policy context on the next occasion a tall building is proposed. The associated issue of urban design for new developments would also benefit from city-wide attention instead of a case-by-case approach, and the Placemaking Plan will address this.

Finally, the Council has not got to grips with its approach to contemporary architecture in the World Heritage Site. There have been significant contemporary developments which were controversial at the time of decision but have now largely been accepted, such as the Thermae Bath Spa and the rear extension to the Holborne Museum. However, such cases retain the ability to generate enormous public interest, and a framework for addressing these could be valuable. The Council already has in place an Urban Regeneration Panel which studies the design of larger schemes, offering one means of taking this forward.

Outcomes

Bath and North East Somerset Council is a supporter of economic growth both as an authority and as major landowner in the city, while the Bath Preservation Trust leads a formidable array of conservation bodies in the city. This could be a recipe for a war of attrition between development and heritage, but the World Heritage Site provides a focus around which the parties can largely agree. All parties increasingly understand how the Outstanding Universal Value of the city plays out in relation to development proposals, and the WHS Management Plan explains the approach that is needed. With UNESCO taking a keen interest in how one of its few global city-scale Sites fares, there is a feeling of local shared responsibility for heritage often lacking elsewhere. All this has been a valuable context for managing growth.

There is some consensus that the WHS designation has achieved two significant benefits. First, by taking a 'whole city' approach, the Council has been able to insist on high quality design standards and a consistent approach to materials everywhere in the city and not just in the historic core. Attention has been paid to landscape setting and containment at the

whole city scale. Second, but for the designation, there would probably have been discernibly greater development on the urban edge of Bath, and perhaps more assertive development in the centre.

Specific outcomes can rarely be tied to the WHS designation, mainly because it is supported by no legislation of its own and its purposes are given effect largely through the planning system. The physical intentions have largely been achieved to date, but it has been the more familiar mechanisms of Listed Buildings, Conservation Area, Scheduled Ancient Monuments, Green Belt and Area of Outstanding Natural Beauty that have delivered the main results. For example, not a single listed building has been lost in recent years. There is however some fear that purely policy-based mechanisms without the backing of statute could be set aside in a moment of political trauma, losing World Heritage Sites completely (by the UK withdrawing from the World Heritage Convention), or eroding Green Belts (for which there is already some evidence in development plans around England).

Bath has been fortunate to have available sufficient brownfield sites for redevelopment to meet the bulk of its development obligations in the current round of forward planning. This may not recur, so the options for development in future will need revisiting. There has already been some use of the safety-valve of development beyond the Green Belt instead of within Bath to meet housing land obligations. Another possibility, not yet deployed, is to invite neighbouring authorities – notably Wiltshire Council – to accommodate more development to meet Bath's needs. If development pressure builds within the city, there is scope for conservation interests to purchase key sites to keep them green, but that cannot be a strategy everywhere for responding to the pressures of growth.

Lessons learnt

World Heritage Site inscription has posed the question across Bath 'what does this designation mean for us'. The responses have generated some cohesiveness of purpose to which different interest groups can subscribe, particularly on a whole city approach to landscape setting and design standards while accepting a significant rate of growth. The Management Plan was not controversial, even on its approach to reconciling growth with heritage, probably as a result of being a partnership effort. This could provide inspiration to other authorities looking for city-wide coherence of purpose, even in the absence of a WHS designation.

The World Heritage Site has been a label of quality for the City of Bath. Bath continues to perform very well economically. Designation has been instrumental in persuading doubtful councillors and other opinion-leaders that protecting heritage is good for business rather than a cost burden which drains away developer interest. This should inspire more heritage-led regeneration.

High quality design is now widely recognised in Bath as an important component of change, sustaining the quality of the whole city and offering more of a benefit than a cost. Other historic towns and cities should be able to take the same approach, as this is not dependent on World Heritage Site designation. Rather it is in line with Government policy in the National Planning Policy Framework.

Overall the World Heritage Site designation has been a real benefit to Bath and successfully used in a number of ways, but the journey is not yet complete. Difficult issues such as policy approaches to tall buildings, unlisted structures, design coding and contemporary buildings have been found politically awkward to resolve. The lesson that heritage does not look after itself has been learnt only slowly in Bath, and there remain real constraints caused by cutbacks to numbers of qualified Conservation Officers. This is further putting off attention to issues like Conservation Area Appraisal, and there remains a sense that the edifice is fragile.

APPENDIX 4

CAMBRIDGE CASE STUDY

Special qualities

Cambridge has over 120,000 residents and is growing rapidly. Its status is finely adjusting from a market town with a world-renowned University to a city at the heart of a booming technology and science research sector on the edge of the East Anglian fens. Part of its success is attributable to the enduring quality of its outstanding historic core based on the Colleges and the city's remarkably green surroundings, which attract businesses, residents, students and tourists. Sir William Holford and Myles Wright in their *Cambridge Planning Proposals* in 1950 described Cambridge in terms as relevant today as "one of the most pleasant places on earth in which to live... The Cambridge tradition is cherished by the present inhabitants, not merely as something to be preserved but to be continued. Planners who suggest improvements must therefore be certain either that change is inevitable or that clear advantage is to be gained from it".



Rus in urbe: King's College from the Backs on a summer evening. "Even the cows in the meadow opposite seem arranged by some rustic fine-art commission", Simon Jenkins, *England's 100 best views*, 2013.

Cambridge City Council's Conservation Area Appraisal *Cambridge Historic Core Appraisal* 2006 describes the city as having a 'split personality'. "It has a very marked distinction between the vernacular buildings of an East Anglian market town and the grand buildings of the University and its Colleges, the construction of which has erased most traces of Cambridge's industrial beginnings. The absence of any significant surviving industrial buildings is therefore a key aspect of central Cambridge; instead, the major landmarks tend

to be the churches and College gatehouses.” The historic core contains over 1,000 listed buildings of which 61 are Grade I, and 8 of the Colleges have Registered Parks and Gardens. Most of Cambridge is flat, so tall buildings can aid orientation. The only ground level panorama over the central area is from Castle Hill to the north. The setting of Cambridge can be enjoyed from the River Cam as the principal green corridor running through the city, while other major public open spaces bring green fingers into the heart of the City and provide a green environment. Further out the surrounding countryside in places offers views to the city’s historic skyline, particularly from the west, and Cambridge is one of a small number of historic cities nationally for which a Green Belt has been designated primarily in recognition of its historic significance, to control the outward sprawl of the city.

Growth in the Cambridge subregion

The boundary of the administrative area of Cambridge City Council is drawn quite tightly around the city, while the inner Green Belt boundary mostly follows the urban edge. The options for absorbing Cambridge’s development requirements within its own boundaries are therefore limited. The city is also the place of work and services for large numbers of residents of the surrounding areas, principally within South Cambridgeshire District, which encircles the City, but also from further afield such as the market towns of Ely (East Cambridgeshire), Huntingdon, St Ives and St Neots (all Huntingdonshire), Newmarket (Forest Heath), Haverhill (St Edmundsbury) and Royston (North Hertfordshire). These areas



Guided Busway in use near Longstanton

all have a stake in the future of Cambridge, and Cambridgeshire County Council is responsible for transport planning to make commuting and access practicable. An innovative Guided Busway opened in 2011 largely along the line of the former Huntingdon – Cambridge railway to the north-west of the city, followed by a route from the railway station to Trumpington on the southern edge of the city.

Planning for the growth of Cambridge has long been a strongly co-operative effort between the authorities concerned. Cambridge City Council and South Cambridgeshire District Council particularly have worked closely together on a variety of planning matters over many years reflecting the close functional relationship between the tightly drawn city boundary and its rural surroundings. This includes officer and member-level co-operation on the preparation of Structure Plans, Regional Plans, existing development plans and joint Area Action Plans. Countywide co-operation includes the Joint Strategic Transport and Spatial Planning Group which was set up to oversee the preparation of new Local Plans and a Transport Strategy for the Greater Cambridge area. The local authorities in Cambridgeshire have agreed a strategic planning approach to the area, with joint position statements in 2010 and 2012 setting out the development strategy for Cambridgeshire to

follow the abolition of Regional Spatial Strategies. In spring 2013 Peterborough City Council and all the local authorities in Cambridgeshire signed a *Cambridgeshire & Peterborough Memorandum of Co-operation Supporting the Spatial Approach 2011-2031* to support the development of a coherent and comprehensive growth strategy across Cambridgeshire and Peterborough, and feed into the current review of development plans. This set out an agreed order of priorities in which development requirements in the Cambridge subregion would be satisfied:

- Within the built up area of Cambridge;
- On the edge of Cambridge;
- One or more new settlements;
- Within or adjoining market towns; and
- At sustainable villages.

The order of development priorities has changed significantly over the last fifteen years. Development in Cambridge had previously been constrained by the Green Belt. One of the effects of this was that housing development which would have taken place in Cambridge was dispersed to towns and villages beyond the outer boundary of the Green Belt such as the larger villages of Papworth and Longstanton in South Cambridgeshire. People commuted back to jobs in Cambridge contributing to congestion, greenhouse gas emissions, air quality problems and other quality of life issues, while housing affordability problems persisted in Cambridge. The strategy introduced in the 2003 Cambridgeshire Structure Plan recognised that a significant change in the approach to the planning of the city was required in order to redress the imbalance between homes and jobs in, and close to, Cambridge. It also needed to provide for the long-term growth of the University of Cambridge and Addenbrooke's Hospital, whilst minimising increases in congestion on radial routes into the city. Large land releases from the Green Belt to facilitate development on the urban edge were made through the Cambridge Local Plan in 2006 and the South Cambridgeshire Core Strategy adopted in 2007, following Green Belt reviews in 2002 by both authorities. A new town called Northstowe was also agreed between Longstanton and Oakington, north-west of Cambridge adjacent to the (then-planned) Guided Busway. The current reviews of plans in both authorities continue the current principles.

The principal effect in South Cambridgeshire was to switch effort from expanding its larger villages to planning for new settlements. Within Cambridge's city boundary, the impact was to demand substantially more development to take place, coinciding with the rapid growth supporting 'the Cambridge Phenomenon'. Both authorities wanted to retain the inherent attractiveness of Cambridge which underlies its success, embedding the historic environment within policy. As the City Council's Local Plan proposed submission in 2013 puts it: "The vision for Cambridge is of a compact, dynamic city, located within the high quality landscape setting of the Cambridge Green Belt. The city will draw inspiration from its iconic historic core, heritage assets and structural green corridors, achieving a sense of place in all its parts, with generous, accessible and biodiverse open spaces and well-designed architecture....". The competing requirements inevitably gave rise to difficult decisions about the location of development, its format and the effects of Green Belt land release on the city's setting and compact feel. This case study concentrates on the aspects of urban land recycling in Cambridge and new settlements in South Cambridgeshire.

Like most authorities in England, Cambridge City Council and South Cambridgeshire District Council have found that their planning processes are driven particularly by making provision for sufficient housing supply, doing so in a way which satisfies heavily revised national policy set out in the National Planning Policy Framework published in March 2012. Provision is expected to be made to meet 'objectively assessed housing need', which has been calculated as about 14,000 additional homes in Cambridge and about 19,000 in South Cambridgeshire during the twenty year period 2011-2031. In Cambridge this scale of growth implies an overall rate of building at 700pa compared with the average of little more than 450pa achieved 2001-2011. Each authority is committed to supplying the land needed to meet the housing requirements within its own area. This is a challenge in the City Council area due to the tightly drawn administrative boundary, the Green Belt and the constraints of the historic environment. Land must of course also be supplied for economic development, schools and a wide range of other purposes at the same time. In March Cambridge City Council and South Cambridgeshire DC submitted Local Plan reviews for examination in parallel, with close agreement between them on the scales, locations and priorities for new development.

Urban intensification

Cambridge City Council has proposed in its emerging Local Plan to build about 6,600 dwellings within the urban area 2011-31. This includes development on four small Green Belt sites (distinct from all urban extensions). This is clearly urban intensification on a serious scale: the 2011 Census dwelling stock figure for the Council area was about 48,300, indicating a growth of nearly 14% in 20 years within the built-up area. Nonetheless, the policy approach of the City Council is striking in that it does not advocate higher density development for any type of use, and the Plan rarely refers to 'intensification'. Instead, in each 'Area Of Major Change' and 'Opportunity Area' available for redevelopment within the city "The purpose is to ensure that each area can be designed with the principles of



sustainable development in mind, with appropriate densities of development, and supporting mixed uses and activity appropriate to the scale of development" (paragraph 3.24). With affordable housing too, Policy 45 is clear that "The required density on a given site will need to have regard to its wider context and other policies of this plan." Higher densities may well be achieved, but this is a consequence of what a site can accommodate, not an objective. This approach immediately reduces the potential challenge to heritage interests on any redevelopment site.

Aberdeen Avenue on the multi-award winning Accordia development on the former site of government offices, begun 2003: 40 dwellings per hectare in a range of sizes with c.105 bedspaces/ha and 30% affordable homes.

At the same time, the heritage chapter of the City Council's emerging Local Plan begins with three policies on 'responding to context', 'creating successful places' and 'designing new buildings' (continuing the approach in the Local Plan of 2006). This is a policy approach in which heritage protection will continue to be achieved by starting from a position of expecting change to happen and ensuring that this is good, rather than simply by specifying a list of changes that will not be acceptable. Policies on 'Conservation and enhancement of Cambridge's historic environment' and on other relevant issues support this. This approach requires developers to supply comprehensive information and explanation, and to review development opportunities with sensitivity, in which context is key. In the right place, large developments can be permitted provided they are judged to be in suitable form and done well. Issues like scale, public realm, open space, massing, layouts and materials are central to this. The City Council operates a thorough pre-application review process with agents and developers to clarify what is required. High quality design is strongly supported by councillors, who are also advised by an independent Conservation and Design Panel, and heritage protection has been successfully upheld at the few appeals against refusals.

Outside the historic core, some parts of Cambridge are being transformed by land recycling. The largest and most urban scheme is around the railway station, where the 'CB1' development is producing 331 residential units, 1,250 student units, over 50,000m² each of office and retail space, two hotels, multi-storey cycle park and a range of associated facilities. This will see major new interventions on the Cambridge skyline.



Apartment blocks in the CB1 development near the railway station, with the gardens too almost complete.

Redevelopment is also progressing around Newmarket Road to the east of Cambridge. This is an area that suffered from previous highways schemes and erosion of the public realm. Redevelopment provides the opportunity to correct this while introducing larger scale development than the warehouses and modest commercial properties which have grown along it in the last 40 years. The Eastern Gate Development Framework is a Supplementary Planning Document which closely shapes the changes needed, identifying heights and mixes of development, new pedestrian priorities and a greener environment. Numerous other areas are also undergoing renewal or are planned to do so.



Hoarding on Station Road outlining the CB1 scheme, outside the No. 50 redevelopment site.



Stages of redevelopment on Newmarket Road. From right to left: a commercial site ripe for redevelopment; a former warehouse site with residential use approved undergoing archaeological investigation; and a new hotel set back from the road allowing the introduction of street trees.

The sites allocated for development in the emerging Local Plan were chosen after a comprehensive review of sites (for housing through the Strategic Housing Land Availability Assessment). This included the possibility of development within the historic core, though there is little scope for this given the nature of the area and the inevitable constraints. Nonetheless, one major block of property owned by the University around Mill Lane has considerable scope for re-use, conversions and redevelopment, in a prime location overlooking the Mill Pit just yards from Queens College and St Catharine's College. The Old Press/Mill Lane Supplementary Planning Document was approved by the Council in January 2010 to establish a clear vision and appropriate context for the sensitive enhancement of

the whole area. Redevelopment will need to safeguard the architectural, historic, cultural and archaeological importance of the area.



Taking a punt? The cream-painted former library overlooking the Mill Pit and the yellow-brick club building behind it are available for demolition; this area around Mill Lane can take advantage of its setting on the river frontage within the city centre.

The City Council has paid particular attention to protecting the skyline of Cambridge. This is critical to the character of the city seen from close range and from its wider setting. The Council had a policy on view cones in its 1996 Local Plan, while the current 2006 Local Plan has a tall buildings policy that “New buildings which are significantly taller than their neighbours and/or roof-top plant or other features on existing buildings, will only be permitted if it can be demonstrated that they will not detract from [a range of interests]”. A Supplementary Planning Document explains in detail how current policy is applied. This is reinforced in the emerging Local Plan so that there would be special attention to (though not an outright ban on) developments over 19m high within the historic core and 13m outside it, reflecting the general height of surrounding properties. Taller buildings are steered to suitable sites, usually to terminate key vistas, but will only be permitted when justified and found not to harm the character or appearance of the city. A tall hotel allowed on Thompson Lane near Magdalene Bridge within the historic core (on its north side) was particularly controversial.

The City Council also operates an active list of Buildings of Local Interest, with public support. An existing policy in the 2006 Local Plan has been updated in the emerging Local Plan so that there will be a ‘presumption in favour’ of their retention. The Council considers this does protection not impede its support for urban land recycling.



More than 13 metres high – landmark buildings on Hills Road, the access route into Cambridge from the south:

Above left: Botanic House (junction with Station Road) – 8 floors

Above: The Marque (junction with Cherry Hinton Road) – 10 floors

Left: The Belvedere, Homerton, opposite The Marque – 10 floors (note also the start of the southern section of Guided Busway to Trumpington, beside the railway)

There is continual pressure for development challenging the heritage of the historic core, from the University and Colleges as well as private developers. For example, a proposal for 97 graduate student rooms on University land at Mill Lane in February 2014 was withdrawn after a City Council officers' report recommended refusal for over-development. This would have added up to two storeys to an existing Building of Local Interest, with adverse impacts on listed buildings and the conservation area, contrary to three policies. Matching existing materials could be difficult and the internal treatment was not characteristic of the building. There would be privacy concerns in some rooms, while in others inadequate lighting would cause a poor living environment for the occupants and one room had no windows at all.

New settlements

South Cambridgeshire faces a problem in how best to contribute to the subregional needs of Cambridge. The District has no large town (Sawston has little more than 7,000 people) and there is resistance to the substantial growth of numerous existing villages. Residents of South Cambridgeshire have high levels of satisfaction with their quality of life which they are keen to retain, even though growth of the villages would support improved services, especially retailing and bus services, which would make them more sustainable. The option of new settlements provides the opportunity to concentrate the provision of services. It has also been tried before in the district at both Bar Hill begun in 1967 and Cambourne begun in 1998. These new settlements have generally been welcomed by the residents moving in, and new settlements are now the preferred approach for accommodating large scale housing development. The change in priorities within Cambridgeshire was described above, and this was expressed through the confirmation of the Northstowe new town in the District's 2007 Core Strategy.

Bar Hill

Bar Hill is a new village built between 1967 and 1989 adjacent to the Huntingdon Road (A14) about 4 miles north-west of Cambridge just beyond the Cambridge Green Belt. It has nearly 2,000 dwellings and a population of 4,000 (down from over 5,000 on completion). It was planned in the late 1950s to alleviate the housing shortage in south Cambridgeshire. The village has a range of employers and a hotel, but its parade of shops has gone as a large Tesco now dominates its retail offer. Facilities include pub, library, post office, health centre, church, primary school, village hall and social club. There is an active local community with numerous societies.



Bar Hill village from Hillcrest



Bar Hill village centre

The relationship between building new settlements in South Cambridgeshire and protecting the historic core of Cambridge is indirect. The scope for outward expansion of Cambridge will become progressively limited, with the airport on the east of the city identified as the last remaining opportunity without seriously damaging the purposes for which the Green Belt was established and in turn the heritage of Cambridge. The City Council recognises in its emerging Local Plan that substantial edge of city land releases have their limits:

“Removing large sites from the Cambridge Green Belt could irreversibly and adversely impact on the special character of Cambridge.... The detrimental impacts of further large-scale major development on the edge of Cambridge were demonstrated in the Inner Green Belt Study Review 2012” (paragraph 2.29).

“The conclusion of the consideration of reasonable site options for development on the edge of Cambridge is to require development away from the edge of Cambridge to meet the remaining development needs of the wider Cambridge area. The sustainability appraisal of broad locations.... demonstrates clearly that new settlements are the next most sustainable location for growth....” (paragraph 2.30).

New settlements therefore appear increasingly likely to be the preferred mechanism for accommodating Cambridge’s further development in future rounds of strategic planning.

Cambourne



The cricket field at the centre of Lower Cambourne

Cambourne is a new village of 4,250 dwellings built since 1998 and nearing completion about 8 miles west of Cambridge immediately south of the A428. The main village centre is in Great Cambourne, which has a large Morrisons supermarket and a range of other shops, a pub, hotel and the principal social facilities. Lower Cambourne is to the west and Upper Cambourne, still under construction, is to the east. Dwellings have been built primarily by volume house builders (George Wimpey and Taylor Woodrow, Bryant Homes and Bovis Homes), including 30% affordable housing. Higher densities in Upper Cambourne give this village a very different personality from the early housing. A substantial business park is located on the north-west side of the village, with the offices of South Cambridgeshire District Council built adjacent in 2004. A fourth linked village, Cambourne West, is proposed to be developed with about 1,200 houses over the period 2016-2026. There is a thriving community with numerous sports activities and 40 clubs and societies. The specially created Parish Council is very active, employing staff, funding additional facilities, installing extensive PV panels on roofs of major buildings, and even advising other Parishes in the District. There is access to Cambridge by bus every 20 minutes, to St Neots half-hourly and less frequently to other destinations.



Supermarket at the hub of Great Cambourne village



Cambourne Business Park



Development in progress at Upper Cambourne seen from Broadway, the eastern edge of the new village

The large number of dwellings expected to be supplied in South Cambridgeshire in 2011-31 has prompted the District Council to identify two further airfield sites for development, at Bourn Airfield (now largely farmland) and Waterbeach (where a barracks is being vacated).

Northstowe

Northstowe is a new town of up to 10,000 dwellings to be built on and around the site of the disused Oakington Barracks and former RAF airfield about 4 miles north-west of the edge of Cambridge. The settlement is just outside the Cambridge Green Belt and will be kept separate from the adjacent villages of Longstanton and Oakington. The Cambridgeshire Guided Busway (CGB) defines a curved edge to the northern



and eastern side of the town. The Longstanton Park-and-Ride and a stop at Oakington are adjacent to the town, while a dedicated busway aligned through the new settlement will link to CGB, giving rapid access to Cambridge (and to St Ives and Huntingdon).

Former Oakington Barracks on the Northstowe site

Northstowe was first proposed as a location for a new town in 1998, as part of the work to inform the 2003 Cambridgeshire Structure Plan. South Cambridgeshire's Area Action Plan for the town was approved in 2007, but commencement on site was delayed by the recession. Development is expected to begin in summer 2014 following the recovery of the housing market and a £1.5bn Government commitment to upgrading the nearby A14 by 2019. The lead developer is Gallagher, working with the Homes and Community Agency (the Government's national housing and regeneration delivery agency and successor body to English Partnerships who acquired the former military elements of the site in 2006). There is an emphasis on energy and water efficiency, with priority to early provision of transport, secondary education and other infrastructure. Nearly 6,000 dwellings are expected to be built by 2031 of which 20% will be affordable. A strategically important employment area is intended, allowing for continued growth of the high technology research and development sector.

Bourn Airfield

Bourn Airfield is about 6 miles west of the edge of Cambridge. It is adjacent to the east side of Cambourne and west of the small villages of Highfields and Caldecote, south of the A428. This RAF station was closed in 1948 and the disused airfield sold for farmland in 1961. The site lies just beyond the outer boundary of the Cambridge Green Belt. The new off-line dual carriageway serving Cambourne would also provide good access to Cambridge for the new village at Bourn Airfield, with buses providing the main public transport. The village is conceived as free-standing, but is expected to include a segregated bus link through the development to Cambourne and might share higher level facilities such as its secondary school with Cambourne. The proposal here is for 3,500 dwellings with development beginning in 2022 and achieving 1,700 homes by 2031. This is thus a long term scheme where the main policy proposals will need to be developed in an Area Action Plan.



A market being held on Bourn Airfield, seen from Broadway, the road separating the site from Cambourne

Waterbeach

The proposed Waterbeach new town is located on the edge of the Fens between the A10 (to the west) and Cambridge to Ely railway line (to the east) about 4 miles north-east of the city's edge. Waterbeach village lies immediately to the south and retaining its identity will be assisted by extending the outer boundary of the Cambridge Green Belt. A constraint on development to the north is Denny Abbey (scheduled monument and Grade I listed building), originally established in a remote location and where retaining a sense of its isolated setting remains a key issue. The development site is partly brownfield and partly greenfield. It comprises a disused airfield, a barracks due to be vacated, and farmland. The scheme includes relocating Waterbeach railway station about one kilometre to the north so that it can serve both the existing village and the new town. A Park and Ride site on the A10 is also proposed, to intercept traffic north of Waterbeach, and a segregated busway to link the town to Cambridge. The A10 is at capacity and will also require improvement.



Possible site for a relocated Waterbeach railway station, on the edge of the existing village and serving the proposed new town (in the centre distance beyond the hedgerow trees).

The site is proposed for 8,000-9,000 dwellings and associated development, with comprehensive infrastructure. Housing construction is not currently proposed to begin until 2026 and would achieve only 1,400

homes by 2031. The site is expected to provide employment opportunities and is also conveniently located for the Cambridge Research Park immediately to the west on the opposite side of the A10. Waterbeach is a long term development opportunity. A full range of detailed assessments will be required and an Area Action Plan will be prepared.

Outcomes

The order of priorities for development in the Cambridge subregion, established in development plans in 2006 and 2007, has been largely successful in protecting the buildings and townscape within the historic core of Cambridge. The centre of Cambridge has barely changed since the early 1970s (apart from the construction of the Grand Arcade shopping centre), though the scale of development has affected the historic character of the wider city. There is some evidence of collateral damage from the increasing numbers of people around the city and the associated delivery vehicles, heavy use of the public realm, cycle parking problems and wear of green infrastructure. That follows more from the City Council's enthusiasm for supporting growth in Cambridge, including research companies and the major expansion of the University of Cambridge and Anglia Ruskin University, than it does from the methodologies for locating that growth.

The Council considers that development involving urban intensification in recent years has had no adverse impact on the historic core. That position is not challenged significantly, though the new hotel on Thompson Lane is an exception. The development of Cambourne has been remote from the city and had no direct impact on its built heritage. Given the likely alternative option of further urban expansion at the expense of the Green Belt, that

must count as a benefit for the historic core. The same appears likely for Northstowe. The wholly new settlements proposed at Bourn Airfield and Waterbeach, the additional village at Cambourne, and a decision to incorporate from the beginning some previously reserved additional land at Northstowe all suggest great faith in this methodology. Interested parties wish the new plans to accommodate more (or fewer) urban extensions (and the release of more or less Green Belt to match), but the development sequence and therefore the methodologies of urban intensification and new settlement construction are broadly supported.

Lessons learnt

The co-operation between Cambridge City Council and South Cambridgeshire District Council has been integral to the success of planning for the growth of Cambridge. That this has occurred over a lengthy period and overcome different political balances in the two authorities is impressive. The shared wider interest in the success of the historic city and in resolving its growth needs and problems is a critical lesson that should be widely appreciated.

Places need to be proud of their heritage. A high quality historic environment is an economic generator, and spending money to maintain it is an investment not a drag on the economy. Enhancement should make a place more resilient to pressures for adverse change. Heritage assets should be planned into developments from the outset, not treated as a problem. Visualisation techniques aid understanding of what is proposed and assist dialogue.

Heritage and urban design teams need proper resourcing. The sums involved are very small in relation to the scale of the investment being made in development. Even small cuts to small teams can have a significant impact on the scope of what can be tackled and are a false economy. Expertise is part of this equation: although staff inevitably retire, there is a real benefit in retaining expertise, in passing on collective knowledge, and in funding posts to attract high quality staff (who can afford to live in relatively expensive locations such as Cambridge). Staff resources should be sufficient so that heritage research and evaluation work can so far as practicable be undertaken in-house: outside consultants may have insufficient local knowledge or be unfamiliar with the perspective of the commissioning Council.

There should be an emphasis on quality in new development supported throughout the Council and consistently applied across the whole authority. In the case of Cambridge, the City Council has supported a *Quality Charter for Growth* prepared independently for the subregion, and has brought in independent advisory expertise with its Design and Conservation Panel. This has been supplemented by having a positive dialogue and consultation process. With developers and their agents this is at the pre-application stage to clarify what is expected and to ensure that they properly resource the development process. With the voluntary sector bodies concerned with planning and development this has built relations to ensure that good ideas and knowledge can be brought to bear on the often difficult issues.

Urban intensification will work best for heritage where it starts from a perspective of trying to secure the most appropriate scheme for a site, not from a commitment to raise density. The economic pressures are always present to over-develop sites, so good planning policies applied fairly and effectively will always be needed. A consistent emphasis on design quality, supported by the expertise to recognise and require it, will increasingly acquire the respect of all parties and the expectation that this will be essential and therefore provided.

New settlements take a long time to plan and develop, so they offer long term solutions rather than short term fixes. Making them a success and a desirable place to live depends on a clear vision, clear principles, genuine partnership working (between local government, the developers and the community), and interventions to ensure that the market functions in a way which supports the intended evolution of the settlement. There should be high expectations for and insistence on the standards to be achieved (e.g. in design, energy efficiency and affordable housing). A team of people based in the planning authority dedicated to the project is needed to make all this happen.

APPENDIX 5

CHESTER CASE STUDY

Special qualities

Chester, the ‘capital’ of Cheshire, is a city with an extremely significant history whose fabric encompasses important Roman remains, archaeological deposits, almost wholly intact City Walls, a cathedral and abbey site, the unique Rows (two storey medieval shops) and a wealth of Georgian, Victorian and Edwardian properties. Its location alongside the River Dee historically gave it prominence as a port and its canals link it to Ellesmere Port and the Midlands. The main heritage interests are focussed within the historic core of the walled city and the environs immediately beyond.

A number of routes converge on the city from Liverpool to the north, Manchester to the east, from London and the Midlands to the south and south-east, and from north Wales to the south and west. A combination of dual carriage-ways and motorways form a “ring-road” some distance from the city but cross-city traffic within this ring and on the inner ring road is limited to two river crossings – the Old Dee Bridge and the newer Grosvenor Bridge both on the south and south west sides of the walled city.



The popular public perception of Chester – black and white buildings and shopping streets

The city lies within the expansive Cheshire Plain and hence distant views are restricted. In essence the city is only seen ‘upon arrival’. The main issues of relevance to this study therefore relate to the city’s character and the impact that development proposals have upon it rather than how the city’s visual ‘setting’ may be affected by growth proposals.

Retaining the special qualities of Chester has in part depended on containing the outward sprawl of the city, a function achieved by the North Cheshire Green Belt which also protects the city's immediate, rural setting. The Chester West and Chester Local Plan submitted in December 2013 for Examination recognises this and confirms that "the Green Belt has assisted in preserving the setting and special character of Chester".

The development challenge

The submitted Local Plan refers to the comparatively low levels of housing completions achieved in the recent past. Proposed development is spread throughout the district with Chester itself to deliver 5,200 new dwellings to 2030. To achieve this land on Wrexham Road will be removed from the Green Belt to provide 1,300 new homes including affordable housing. Within the city centre, key retail and leisure proposals include the comprehensively planned development of the Northgate area of the city for major leisure and retail uses and a new theatre.

Chester Business Park (on Wrexham Road, opposite the area proposed for release as housing land) will remain a key location for existing business and office space. In addition to housing growth, employment development is proposed for Chester. The 'Chester One City Plan', a 15 year strategy to guide economic regeneration in the city, identifies Chester Central Business District as a major regeneration initiative in the north-east of the city adjacent to the railway station.

At the same time as this growth is proceeding, Strategy Policy for Chester 'Strat 3' states that "in recognition of the national and international importance of Chester as a historic walled city, any development within or on the periphery of the city centre or within the urban area should be compatible with the conservation and enhancement of the city centre and the setting of the city."

Planning background

The principal issues to be addressed in accommodating growth pressures in Chester are protection of the city's historic character and the need for high quality design. Both of these topics have been the subject of numerous, extensive and wide-ranging studies dating back over many years. It is abundantly clear is that there is no shortage of evidence identifying the city's character – the bibliography to the *Chester Characterisation Study* by Taylor Young (2012) lists no fewer than 29 reports, masterplans, design guides, development briefs, conservation area appraisals and conservation studies (and there are others).

In 1945, Charles Greenwood the Chester City Engineer and Surveyor in his plan for the redevelopment of Chester stated that "A planning scheme for Chester should aim at preserving the inner area as far as possible in its existing form and character, making such adjustments as may be necessary within its present structure".

Two decades later in 1966, Chester (along with Bath, Chichester and York) was the subject of one of the earliest reports into conservation. These reports were commissioned jointly by the Ministry of Housing and Local Government and the City and County Councils. Richard

Crossland, the then Minister of Housing and Local Government, wrote in the *Chester Chronicle* at the time of his annoyance that "Exactly the same thing is being plonked down in town after town, the same sort of supermarket beside the cathedral".

The four reports coincided broadly with the Civic Amenities Act 1967 and its requirement on local planning authorities to designate conservation areas. While this was in preparation the Government decided that the studies should be commissioned to examine how conservation policies might be sensibly implemented in these four historic towns. There were two objectives: to produce solutions for specific local problems, and to learn lessons of general application to all our historic towns. However, there was a caveat: "The councils are not committed to adopt any of the recommendations of specifically local application, nor is the Government committed to adopt the various suggestions of more general application."



Still standing – but possibly not quite reconciled with the inner ring road

One of the stated purposes in Donald Insall's seminal 1968 report *Chester: a Study in Conservation* was "to discover how to reconcile our old towns with the twentieth century without actually knocking them down", which has echoes with the issues addressed in this study.



Deans Field – a Scheduled Ancient Monument – is a sub area identified in the characterisation study as a “critical” area, of utmost importance, playing a critical role in the character of Chester overall...



... as is Abbey Street

Design and the public realm

Chester is a fast-changing city under development pressure. Like its predecessors, Cheshire West and Chester Council recognises the importance of the design of new buildings and the design of the wider built environment as central to achieving growth that respects the heritage of the city.

The principal document identifying the character of Chester and providing guidance on the context to which new development should respond is currently the Council-commissioned *Chester Characterisation Study* by Taylor Young (2012). This is an extremely detailed study. It still uses some of the criteria established by Insall in 1968 but advances in information technology and the availability of Geographic Information Systems now enable a greater degree of information to be captured and recorded.

It records the character of the built environment and natural and designed landscape as derived from its heritage and history. It focusses on the central part of the city and its key approaches and identifies 20 areas with the character of each being assessed variously as

Critical - of utmost importance, this sub-area plays a crucial role in the character of Chester overall

Positive - the sub-area contributes positively and is important to the character of the Character Area

Neutral - the sub-area elements within it and is neutral imbalance

Negative - the sub-area detracts from the character of this character area which may indicate a capacity to accommodate change and improve character.

The 20 areas are divided into a total of 140 sub-areas and these in turn are also assessed as critical, positive, neutral or negative.

Key approach routes into the city are also considered as they present important first impressions alongside well used routes. Also almost 300 buildings and structures of townscape merit are identified which are locally important buildings that are unlisted but which contribute significantly to townscape character and should be protected.

The survey methodology assesses each Character Area as Level 1 analysis, all sub-areas have level 2 analysis and the inner sub-areas have a more detailed level 3 analysis.

Level 2 analysis records the following data:

Nature of space, Street enclosure, Boundary treatment, Predominant building height, Predominant building era, Principal land use, Public realm quality, Experience, Buildings and structures of townscape merit, Key detractors, Character assessment

Level 3 analysis records additional data as follows:

Predominant materials, Predominant roofscape, Rhythm, Predominant visible condition, Shop front quality.

For buildings and structures of townscape merit the following data is recorded:

Predominant architectural styles, Building type, Predominant building height, Predominant materials, Predominant roofs cape, Architectural details, Windows, Door opening, Rhythm,

Grounds, Grounds quality, Boundary treatment, Principal land use, Indicative condition, Shop front quality.

This information is presented in detail for each character area. It is available as separate reports and is mapped and recorded so that it can be provided on a study area-wide basis. The maps that accompany the study display clear geographical patterns and show, for example that town centre land uses are surrounded by a circle of residential land and that there is a corridor of leisure use following the river. The dominant eras of development are Georgian and Victorian. Building heights present a mixed picture with generally domestic scale at the edge rising to three and four storey in the retail core.

The most significant outputs are the Character Assessments for each sub-area. Higher value areas can be seen within the City Walls and around The Cross and at the riverside. There are critical and positive sub-areas throughout the Study Area as well as negative areas. It reveals that the positive areas are in need of continuing protection.

The report's key recommendations are that conservation, policy making and development management should consider both buildings and areas. Efforts to conserve and enhance buildings and structures and manage development within their settings should focus on a hierarchy of quality and significance, at the scales of both buildings and areas. Policy making and development management within these areas should be informed by the description of the character of the Character Area and the assessment of each sub-area.

Amongst other relevant evidence on the heritage interest of Chester, design issues and how to apply these to development proposals there is a separate Topic Paper on Chester itself as a background document to the submitted Local Plan. In addition, some older development briefs (such as that for Commonhall Street) are still used as a source of reference. Documents such as the *Chester One City Plan 2012-2027* and the *Chester Public Realm Design Guide* are not Development Plan Documents but they are material considerations when deciding planning applications.

Has the city's character been preserved by contemporary development?

A recent report produced by Donald Insall Associates in 2010 *Chester One City Plan – A Design Manifesto for Contemporary Design* gets to page 15 of 39 before mentioning design and in doing so highlights that most of the determinants of the city's physical forms do not arise from "overtly aesthetic considerations".

Inevitably judgements about design, its quality and acceptability are often couched in caveats about "subjectivity" and "taste" and it seems that tastes and opinions on what is architecturally acceptable are somewhat transitory notions. The following examples illustrate contrasting opinions on the merits of significant buildings added to Chester's townscape.

Donald Insall's 1968 report *Chester: a Study in Conservation* states that "Exposed aggregate and shutter faced concrete suit Chester's face: coloured glass and plastic panels do not. Restraint is needed to prevent the anarchy of some of the latest commercial and medical

buildings... The new County Police Headquarters is one of the tallest buildings in the city to date, yet by its siting in relation to the Castle and the inner ring road, it marks and distinguishes a formerly weak approach over Grosvenor Bridge and avoids all violence to the City centre. By contrast, the tall and self-righteous block of Commerce House stands as an unrelated dominant in an otherwise low and clinging roof silhouette.... the restrained height and horizontality of the new Market Hall shows how successfully large new buildings can still be introduced into the City's very heart with good manners and integrity". It asserts "that Chester's new shopping precinct (i.e. the Grosvenor Centre) is a brilliant achievement in urban revitalisation... it exploits the 'already indoors' quality that exemplifies so much modern shopfront design [and] achieves this with consummate ease."

Taylor Young's *Chester Characterisation Study* includes Characterisation Area Assessment of Area D – The Castle – noting that "In the 1960's the Police Headquarters were built here in the form of an unloved tower block. This was replaced in 2010 by the new HQ building ... a contemporary city landmark, with a circular plan form".

Taylor Young refers to the replacement of the Victorian Market Hall with "the somewhat brutalist Forum building", assigns it a weak frontage in the townscape and landscape analysis, allocates the bus station as a negative environment with the Crown Plaza hotel as providing negative vistas. It defines the Market Area as a "Key detractor". It describes the Grosvenor Centre as having destroyed significant archaeology (acknowledging that at the time it did not have the protection now afforded to it) and destroyed the "grain" of a large area of the city which would previously have been shaped by ancient burgage plots.



The Crowne Plaza hotel dominating a negative vista

This current assessment of the former Police headquarters, the market hall and the Grosvenor Centre is in complete contrast to the plaudits bestowed upon these

developments around the time of their construction and demonstrates how opinions on contemporary architecture can change over time.



What were once considered to be appropriate responses and materials ..



... are now seen in a different light

Modern design

The current combination of historic characterisation reports, a different approach to conservation and urban design, development briefs and the planning system are helping to deliver an enhanced public realm and higher quality of design.



Redevelopment in the "'Canal Corridor' character area combines contemporary new design, re-use of existing buildings ..



... and modern recreation of traditional building forms

The Old Port Character Area has undergone extensive redevelopment. Its sub-areas are assessed by Taylor Young as Critical, Positive or Neutral with no negative elements.



The Old Port character area where canals and the River Dee meet. Scale and massing reflects traditional forms...



... whilst finding room for "fun architecture" as in this boat shaped scout hut



New apartments address the canal and public realm



Does retention of this decorative facade work in the context of the adjoining new buildings?



This is the area where officers expressed reservations about scale



The scale of the new apartments sits a little unhappily with their neighbours opposite



Some materials and detailing are questionable

Lessons learnt

There are two methodologies that have assisted in preserving the character and setting of Chester. Historically the North Cheshire Green Belt has successfully contained the city limits and ensured that expansion beyond them has been restricted. Growth targets for Chester are to some extent being accommodated in towns and villages beyond the city. This has preserved Chester's setting. Some release of land from the Green Belt is now proposed by the Council to contribute towards the area's substantial housing requirements.

Chester has been the subject of a very large number of studies and reports focussed on its heritage and history. They are detailed, learned documents that provide a wealth of evidence and advice. The latest *Chester Characterisation Study* of 2012 is extremely comprehensive. It utilises the potential of Geographic Information Systems to identify areas and sub-areas and objectively assesses and records numerous layers of information to analyse elements such as Townscape and Landscape, Heritage Assets, Key Detractors and Character Assessments.

In combination the documents provide a sound basis to inform development and redevelopment proposals and against which such schemes can objectively be assessed. The city is well aware of its international significance and seeks to maintain and enhance this eminence. New developments are driven by urban design considerations and this should assist in preserving the city's character.

Whether this is fully delivered through the local and national components of the planning system remains to be seen. It is very much a 'work in progress' and the need to produce a document as wide reaching as the *Chester One City Plan* may be a reflection on the capacity of a Corporate Strategy/Local Plan to deliver what the city aspires to.

In some areas of the city, redevelopment proposals have been extremely successful but elsewhere they still pose questions. In 'boom times' local planning authorities may be able to take a hard line in their negotiations with developers, confident that they will achieve high standards of design and an enhanced public realm. However, in a recession local planning authorities are more likely to accept higher densities and lower standards for fear that the developers will walk away. This suggests that the quality of design achieved can be a function of the prevailing economic climate, even in a high-performing economy such as Chester which is better able to weather a recession than many other places.

The design quality of some developments being permitted in Chester is still dubious. One contributory factor appears to be the loss of experienced, suitably qualified and trained conservation and design staff, even in a city of international significance for its heritage. This reinforces concerns, expressed by numerous organisations, about the ongoing effect of staff cuts on conservation teams.

Finally, growth within the city is being guided by a greater emphasis on urban design than has previously been the case and whilst, inevitably, not all developments and redevelopments meet with universal approval, there are some good examples of new design that ensure that the character of the city is generally being protected. It has been particularly interesting to note that some mid-late twentieth century buildings that had been praised in earlier conservation reports have not stood the test of time and hopefully their replacements will provide opportunities to remedy past mistakes and perceptions.

APPENDIX 6

DURHAM CASE STUDY

Special qualities

Durham is a small city of some 49,000 people in the county of Durham. Its rural hinterland has green fingers that extend in towards the fairly compact city centre which is, of course, dominated by the dramatic structures of the cathedral and castle rising on the cliff-top peninsula above the sweeping curves of the River Wear. The tower of the cathedral is visible several miles away from certain directions providing tantalising glimpses of the drama to come.



The west front of Durham Cathedral on the cliff-top peninsula above the Old Fulling Mill on the River Wear

The historic core of the city comprising the cathedral and castle was inscribed as a World Heritage Site (WHS) in 1986 in recognition of:

- The site's exceptional architecture demonstrating **architectural innovation**;
- The **visual drama** of the Cathedral and Castle on the peninsula and the associations of the site with notions of **romantic beauty**;
- The site's role as a **political statement** as one of Britain's most powerful **symbols of the Norman Conquest**;
- The physical **expression of the spiritual and secular powers** of the medieval Prince-Bishops that the defended complex provides;
- The **relics** and material culture of the **three saints** (Cuthbert, Bede and Oswald) buried at the site, and the **cultural and religious traditions** and historical memories associated with them;

- The importance of the site's **archaeological remains**, which are directly related to its history and use over time;
- The **continuity** of use and ownership of the site as a place of religious worship, learning and residence over the past 1000 years.

In combination these meet the following criteria for inscription:

Criterion (iv): "To be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history";

Criterion (ii): "To exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design";

Criterion (vi): "To be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria)".

The Durham WHS comprises the Cathedral and Castle and was extended in 2008 to include Palace Green – the space between these two.



The west walls of Durham Castle from Crossgate

The "green" nature of much of the city comprises open farmland as well as sports pitches, allotments, parks, riverside meadows and tree covered cliffs all of which give the city a very distinctive character. The city has been described as sitting in an inner and an outer bowl with views of the cathedral and castle gained from several vantage points. As with many

cities, much of the mid-late 20th century housing development beyond the historic confines is comprised of large and anonymous estates.



Allotments on Margery Lane



Extensive tree cover within the city is an important part of Durham's green character: the station viaduct from the Cathedral

The city can be considered as three areas. The northern suburbs are hemmed in to the west by the A167 road to Chester-le-Street and Newcastle which runs north/south to the west of the city, to the north by a new road (Rotary Way) running east/west from the A167 (which also gives access to a retail park) to the east coast main line, and then by the railway line itself which forms the eastern boundary to this area of the city. An undeveloped “finger” of Green Belt land known as Aykley Heads, through which the railway line runs, lies inside the physical road and railway boundaries.

The eastern suburbs are contained to the north by the A690 Sunderland Road that runs north east away from the city centre roughly following the valley of the River Wear and to the south by roads running east from the city centre. This area is bisected by the A1(M) that runs north/south. The remaining area is a triangular wedge containing the city centre and its western and southern suburbs (which includes the university colleges). This is hemmed in by Green Belt immediately east of the centre around the River Wear and then by South Road running south/west out of the city to join the A167 at the southern tip of the city.

Protecting the Durham World Heritage Site

The land use planning system at national and local level provides the main vehicle to protect the Durham WHS from adverse change. The background to this is set out in the Bath case study. The principal policy statement and evidence base for the WHS in Durham is the *Durham Cathedral and Castle World Heritage Site Management Plan 2006* prepared by Chris Blandford Associates for the WHS steering group. This plan refers to the early inscription of the WHS at Durham on the UK’s first list but that the managerial procedures and structures found at most other UK WHS had not been put in place (i.e. in 20 years) and this in itself was a key issue for the Management Plan. The Management Plan is being reviewed and the boundaries of the WHS may be extended further to include the whole of the peninsula rather than just the buildings and spaces on top. The WHS partnership employs a World Heritage Manager, and at the time of writing there is a vacancy for the post.

These policies are supplemented by planning policies in the Durham City Local Plan adopted in May 2004. Since then, there has been a reorganisation of local government so that Durham City and the other second-tier councils in County have been replaced by a single unitary authority for the whole County of Durham. The Local Plan will therefore be superseded by a new Local Plan for the whole County. This Plan has been submitted for Examination in the summer of 2014. Both the current and the emerging local plans contain policies that refer to the WHS but the emerging plan has a completely different focus to the current plan and this is explored further below.

Heritage protection Durham is provided by a range of other mechanisms. Durham is a compact city with many listed buildings outside the WHS. The Durham City Conservation Area covers a large part of the historic central core beyond the WHS. A Green Belt was put in place around the city comparatively recently in 1999, for a series of reasons including to safeguard the character and special setting of Durham City. In places, the Green Belt is very close to the historic core and proposals are addressed for their wider effect on the WHS. Each designation has its own policy in planning practice, and it is implementation of these policies which for the most part achieves the intended protection of the WHS.

The establishment of a Green Belt around Durham

Green Belts provide one element of the protection of the heritage in other case studies in this report at Lichfield, Bath, Cambridge, Chester and Oxford. However, Green Belt is the principal focus in this case study of Durham. The designation in Durham was in 1999, with the boundaries established in detail in 2004. The background to designation is well documented, and a main aim of this case study was to identify the Green Belt's impact on protecting the internationally important heritage of Durham over the last 15 years.

Suggestions for a Green Belt around Durham date back to the 1960s, continuing through Regional Planning Guidance note 7 for the North East Region in 1993 which proposed a significant extension of the Newcastle Green Belt into County Durham (rather than just Durham City), and finally came into being via the Durham County Structure Plan in 1999. In 1996, the Structure Plan Examination-in-Public Panel had proposed a larger Green Belt than had been expected, covering the whole of North Durham. North Durham was one of five sub-regions within the former County and included the areas of Durham City and Chester-le-Street.

The Durham Structure Plan set out the reasons for the new Green Belt: "A North Durham Green Belt is needed to check the sprawl of the Tyne and Wear conurbation, prevent towns in the north of the County from merging into one another, assist in safeguarding the countryside from encroachment and to preserve the setting and special character of Durham City. The Green Belt will also assist urban regeneration in the towns in the north west and east of County Durham and in the former mining villages around Durham City" (paragraph 7.4). The Structure Plan elicited representations from around 1,350 organisations and individuals, and half these related to the Green Belt.

Protecting Durham's character and setting featured strongly in the adopted Structure Plan's proposals for a Green Belt, as the following extracts show (with heritage-related material highlighted in italic). The intention was also to use the Green Belt to encourage growth in the parts of North Durham which most needed it, away from the city.

"The City provides unique opportunities for high quality employment, education and tourism development whilst *its outstanding character and setting, which enjoy international recognition, require the highest protection*. To this end, the City's special qualities should be reserved to support a higher order employment/education role with surrounding villages accommodating much of the District's housing requirements and general employment provision. The Green Belt is a key tool in delivering this strategy" (paragraph 5.22).

"In particular, *the environmental capacity of Durham City is largely determined by the need to protect the historic character and the setting of the town*. In the case of Durham City therefore, particular regard must be given to Policy 10 [see below], and the surrounding villages should continue to accommodate much of the District's new housing. In Chester-le-Street the capacity of both the town and the surrounding villages to accommodate new housing development is limited by the need to protect the remaining countryside and to avoid the coalescence of the existing built up areas" (paragraph 6.10).

“The unrestricted sprawl of Durham City northwards and Chester-le-Street southwards could result in the area of countryside between them becoming too small to remain effective in maintaining their separate character and preventing coalescence. The Green Belt in this location prevents the neighbouring towns of Chester-le-Street and Durham City from merging into one another, assists in safeguarding the countryside from encroachment and helps preserve the setting and special character of the historic Durham City” (paragraph 7.6).

“Long established planning policies have sought to protect the setting and special character of Durham City. However only Green Belt designation can ensure the permanent retention of those important open areas around the City which are vital to sustaining the outstanding, internationally recognised, environmental qualities of the City. An encircling Green Belt will secure the effective protection of the open land surrounding the City and will preserve the setting and special character of Durham City by preventing the unplanned outward expansion of the City and coalescence with the surrounding villages. The most appropriate locations for new development in the District, if it cannot be accommodated in Durham City, are the larger villages readily accessible to the City which could benefit from new investment to assist their regeneration” (paragraph 7.7).

From this it can be seen that the Green Belt was seen as encouraging the regeneration of urban areas and as a means of encouraging revival in the depressed old mining towns of north Durham. There were, of course, economic arguments against these and they were particularly pronounced, and essentially accepted, in respect of the impact of a Green Belt on the whole of north Durham (as proposed by the EiP Panel). In particular, covering the old mining villages in Green Belt was seen as killing off the only hope of securing at least some development in these settlements. The 1999 Structure Plan therefore decided upon a Green Belt extending south westwards from Chester-Le-Street to encircle Durham City.

As a close corollary to the new Green Belt, the Structure Plan’s housing proposals identified that Durham’s unique environment along with other factors had generated a demand for housing. But it also reaffirmed that *“the protection of the traditional character and setting of the City, particularly the World Heritage Site, is an overriding consideration. Excessive new housing would seriously erode the City’s environmental quality and could prejudice efforts to regenerate other parts of the County and the Region. The approach to the release of additional sites in the District is set out in Policy 10. This reflects the continuation of the existing strategy of accommodating much of the District’s housing requirements in the villages” (paragraph 8.19).*

The Structure Plan further explained that *“In the City of Durham District, the protection of the traditional character and setting of Durham City, particularly the World Heritage Site, is an overriding consideration (Policies 5, 6 and 60). Releases of housing land which would extend the built-up area of Durham City into the surrounding countryside would damage its unique character and setting. The principle of accommodating most new housing development in the District in villages around the City has worked well. It has assisted in protecting the character and setting of the City and with the regeneration of many of the villages. The larger villages are conveniently located to the City, provide a reasonable range*

of social and other facilities and are well served by public transport. There are also major employment opportunities at Bowburn and Meadowfield (paragraph 8.34).

Policy 10 then stated: “In Durham city new housing development should take the form of redevelopment, infilling or consolidation of the existing built up area. The most appropriate locations for housing development in the rest of the district are the larger villages readily accessible to Durham city.”

The adopted Local Plan of 2004

This plan was prepared in the context of the 1999 Structure Plan for Durham County and hence one of its main purposes was to define the detailed boundaries of the Green Belt that had been proposed in the Structure Plan.

The 2004 Local Plan highlighted the importance of the City’s heritage where “the special character, setting and architectural quality of the City Centre, dominated by the WHS is a marked contrast to the mineral despoliation of some of its rural parts”. This plan anticipated a stable population over the plan period, albeit with changing household formation, and its strategy for the location of new housing was to continue the policies that had operated for many years – namely “a considerable measure of restraint within Durham City and attempts to guide most new housing into the surrounding villages... to recognise its unique character and setting [which] make it physically and environmentally unable to absorb the level of housing which market forces might otherwise attract”. It did, nonetheless, include major projects such as the Princes Bishop retail development, the proposed Millennium City Project and the Walkergate redevelopments.

The Local Plan had a strong heritage and environment base. One of its two aims was “To maintain the City of Durham as an attractive place to live, work and visit through the creation of a vibrant City and District whose unique character is conserved and enhanced in ways which do not compromise the quality of the environment or the quality of life of future generations”. Heritage and environment themes permeate the plan’s strategy, policies and supporting statements. So far as Green Belt is concerned, the Plan states:

“The Structure Plan makes clear that an all encompassing Green Belt around Durham City is necessary to preserve its special character and setting which encompasses the high quality landscape and undulating topography of open land around the City along with strategic gaps between settlements. It highlights the importance of maintaining the strategic gap between Chester-le-Street and Durham City to prevent the linking up of these urban areas” (paragraph 3.10).

“The boundaries of the Durham City Green Belt include land which is vital to the character and setting of Durham City and is likely to be subject to development pressures which cannot be controlled by normal development control policies. It includes green fingers of land that penetrate the City at Aykley Heads and Flass Vale; substantial areas of high landscape value around the City, including parts of the Browney Valley and the Wear Valley; and the strategic gap to the north of the City, adjacent to the proposed Chester-le-Street Green Belt. The detailed boundaries of the Green Belt are shown on the

Proposals Map. It is acknowledged that provision should be made for particular development needs in the long term and some Areas of High Landscape Value which are capable of accommodating development of a particular type, scale and in a well designed form are specifically excluded from the Green Belt. Outer boundaries have been defined using easily recognisable features like roads and footpaths, in accordance with relevant Government Advice” (paragraph 3.12).

“It is the City Council’s intention that the green belt boundaries defined on the Proposals Map should remain permanent and unchanged beyond the current Plan period (i.e. 2006)” (paragraph 3.18).

The Local Plan defines a Green Belt around Durham which is drawn tightly around its built up areas and includes land that is close to the city centre. The purpose of the Green Belt could hardly have been more clearly stated and the Local Plan could hardly have been clearer in its focus on the character and setting of the City, while the Plan’s detailed policies gave further expression to these objectives and strategies.

The Inspector who held the Inquiry into the Local Plan came to very clear conclusions about the Durham Green Belt, (inter alia) that:

“The setting and special character of Durham derive their importance not only from direct views of buildings on the peninsula or from the intrinsic architectural or landscape quality of the town and its setting, but from the relationship between the physical size and topography of the built-up area and the open areas around it, and the glimpses from inside and outside the built-up area of both the peninsula and open land outside the City. In essence the character of Durham does not derive solely from views of the Cathedral and Castle but from the relationship between them and the actual physical size of the built-up area. For these qualities to be preserved it will in general be necessary to prevent further outward expansion of the built-up area. An increase in the physical size of the City, irrespective of any effects on views or countryside quality, would be likely to have a generally harmful effect on the character of the City. Those fingers of open space which extend right into the built-up area are of particular importance in terms of the special character of Durham.”

Broadly speaking, this Green Belt policy has been successful between 2004 and 2014 notably in protecting Durham’s heritage, in encouraging urban regeneration and in promoting development in the mining villages (which otherwise would have been most unlikely to happen, particularly with the reduced public sector funding that once enabled the provision of new employment facilities there). The position seems to be that considerable development prevented from taking the most financially attractive sites around the city was to some extent still achievable in the locations preferred by planning policy.



The approach to the city from the north: the traditional form, scale and detail of the new development on the right (Highgate) leads the eye to the Cathedral



At Highgate, the quality of materials, design and detail is continued throughout the development - rather than being confined to its 'public face' which fronts onto the main road

The emerging Local Plan

The new unitary authority (established in 2009) has completed the principal consultation on the 'Pre-Submission' version of its emerging County Durham Plan and has submitted this for Examination. This Plan has a very different focus and emphasis from the 1999 Structure Plan and 2004 Local Plan. The former Structure Plan and saved Local Plan created a tight Green Belt around the city to protect the historic city and to encourage regeneration of the encircling former mining communities. Instead the emphasis is set out in Strategic Objective 2 Durham City: *"To fulfil Durham City's potential as a regional economic asset for the benefit of the whole County, whilst respecting its outstanding historic environment and setting"*. Durham City is to be a focus of development, with strategic sites on the edge of the city totalling 247 hectares removed from Green Belt to help to achieve the regeneration across the whole County. This is in line with the policy approach of the Sustainable Community Strategy.

The role of the Green Belt is explained as follows:-

"The economic circumstances when the Durham City Green Belt was designated were different to the pressures currently being faced. Whilst the Green Belt designation was appropriate at the time and in the context that the City of Durham Local Plan was operating. The new unitary authority established in 2009 was able to have a fresh perspective on the needs of the County and able to view the area as a whole. Furthermore the economic circumstances between then and now are very different and we believe the Spatial Approach of the Plan is most appropriate to deal with the challenges we are facing now and in the future" (Submitted Plan, paragraph 4.201).

The emerging Local Plan included policies supportive of heritage, notably Strategic Objective 15: Built and Historic Environment *"To protect and enhance County Durham's locally, nationally and internationally important built and historic environment, including its wide range of buildings, sites, archaeology and other heritage assets"*. Policy 45: Durham Cathedral and Castle World Heritage Site is couched in terms of *"requiring development proposals to demonstrate that consideration has been given to their impacts"* on the WHS as the means of protecting it. *"Development will therefore need to demonstrate that opportunities have been taken to positively contribute to the WHS and its setting and that they support its sustainable management."*

Policy 6 *"identifies Durham City as a key location for new development in County Durham. The Plan therefore identifies approximately 23 hectares of employment land, 5,200 new houses and 5,800m² of new convenience retail floorspace. The Plan therefore (a) prioritises the redevelopment of land and buildings around the historic core of the City which support its key role as an employment, housing, retail and tourist centre;..."*. The Policy also states that it respects the special character of the historic centre and World Heritage Site. Development of the strategy has involved a detailed assessment of constraints to narrow the strategic sites for release to those with the lowest impact on the historic city.

Potential impact of proposed Green Belt land releases on Durham's heritage

The proposals in the emerging Local Plan involve the deletion of sites from the Green Belt at Aykley Heads, Sniperley Park, North of Arnison and Sherburn Road. These "Strategic Green Belt Alterations" were identified following a detailed assessment of constraints including landscape to ensure that the impact on Durham City's special character and the World Heritage Site was minimised. The Council's intention is that the remaining Green Belt will continue to ensure that the setting and special character of Durham City is preserved. The Examination of the Local Plan will consider the impact of the proposals individually and collectively on the purposes of Green Belt designation, including on the attributes of Outstanding Universal Value of the World Heritage Site.

Aykley Heads is the Green Belt finger of land just north of the city centre, inside the East Coast main line and adjacent to County Hall, which contains the Police Headquarters (and its replacement, currently under construction). Aykley Heads is also within the designated Area of High Landscape Value. The proposal is to remove 16.5 hectares from the Green Belt for 70,000m² of new high quality flexible office floorspace to attract national and international employers with the potential to accommodate 6,000 jobs. The emerging Local Plan states

"deletion from the Green Belt is necessary to provide sufficient range and choice of development sites to ensure it is attractive to employers. It is also the case that the existing Green Belt boundary was so tightly drawn around the City that the existing car park of County Hall is included within it. This was unnecessarily restrictive...[and] as job creation is a key objective of the Plan, Aykley Heads is seen as the best opportunity in the County to create jobs we believe that this is sufficient justification to amend the Green Belt".

In contrast the 2004 Local Plan states:

"The boundaries of the Durham City Green Belt include land which is vital to the character and setting of Durham City and is likely to be subject to development pressures which cannot be controlled by normal development control policies. It includes green fingers of land that penetrate the City at Aykley Heads and Flass Vale..."

The other three major sites are on the urban edge. The existing Arnison centre two miles north of the city centre is a District Centre with a large range of retail units. The North of Arnison site is proposed for 1,000 houses on 84 hectares off Rotary Way, where a site will also be identified for a new supermarket and petrol filling station. The emerging Plan states that this development will have:

"Clearly defined boundaries that respect and respond to the Green Belt beyond"
(paragraph 4.116).

The Local Plan 2004 stated that Rotary Way forms the Green Belt boundary and the land now proposed for development was described as being part of the strategic gap between Durham and Chester-le-Street. The Local Plan Inspector commented:

"Whilst this is certainly well located in relation to facilities and to public transport it is an area of particularly high importance in terms of the aims of the Green Belt. Decisions as to the line of the Northern By-Pass and whether or not it should be built would be unlikely to affect this, so that I would regard this as an area which should certainly be

included in the Green Belt and where it is hard to envisage exceptional circumstances sufficient to justify its removal from it for allocation and development.”



View from Aykley Heads looking east to the “outer bowl” and the eastern suburbs with the East Coast Main Line across the centre of the picture



View towards the cathedral and castle from Aykley Heads

Sniperley Park is adjacent to a locally defined Historic Park and Garden and is in part designated as an Area of High Landscape Value. 2,500 houses are proposed here on 140 hectares of land, west of the A167 near to the park and ride car park. Here, “the design of development near to Sniperley Hall and Farm will have regard to their character and setting” and will “treat any potential views to the World Heritage Site appropriately”. The Council has prepared an SPD for this and the other strategic sites and carried out detailed analysis of the impact of the proposal on the WHS, the historic city and nearby heritage assets. Also, 475 houses are proposed on 25 hectares at Sherburn Road east of the city centre.

Lessons learned

The whole thrust of the former Structure Plan, the Regional Planning Guidance and the adopted Local Plan was protection of the unique character and setting of Durham City and its World Heritage Site largely via a tightly drawn and very restrictive Green Belt. Since its establishment, the Durham Green Belt has been largely successful in preserving the setting and character of the city. The Green Belt comes close into the heart of the city and includes the green spaces that are an integral part of its character. The emerging Plan in contrast is clearly articulated, proposing to release land from the Green Belt to regenerate a deprived county. In doing so the new unitary authority seeks to minimise the impact on individual heritage assets. The Inspector examining the submitted Plan will address whether these Green Belt releases affect the setting of Durham and whether they should be allowed.

The principal lesson from Durham is therefore that at present the jury is still out on how the Green Belt should perform its role in relation to heritage. Most of the Durham Green Belt is proposed to remain in place, but the new policy approach is less sympathetic to the Green Belt as a means of protecting the City and the World Heritage Site. Nonetheless, the Supplementary Planning Documents prepared for each of the major sites set the parameters for development and include references to the heritage assets concerned – including the Cathedral and Castle. Durham’s Green Belt is recent and may be treated by some parties as less permanent than other Green Belts (though there is no policy basis for that view).

APPENDIX 7

LICHFIELD CASE STUDY

Special qualities

Lichfield is a small city in Staffordshire with a population of some 32,000. Its origins are obscure but there was a Roman fort near the present village of Wall – some two miles south of the city. Its prominence as a city coincides with the establishment of a bishopric in 669 and the first church here probably stood on the site of the present cathedral.

The settlement quickly grew as the ecclesiastical centre of the powerful Kingdom of Mercia and its development was consolidated in the 12th century when the cathedral close was fortified and the street pattern – which still survives – was laid out. It suffered in the Civil War but the damaged cathedral and close were rebuilt and in the 18th century it became a centre of genteel society and was known as a “city of philosophers”.

It expanded rapidly in the mid-late 20th century but has retained a separate identity even though it is only some 16 miles from Birmingham. The city centre contains a large number of fine historic buildings. The three spires of its cathedral are unique in England and along with the city’s other two church spires they combine to form much loved local landmarks. The medieval pools and later parks that run through the centre are an important part of its character and create an attractive setting at its heart.



The three spires of Lichfield Cathedral

The setting of Lichfield

The city is set on fairly flat ground that slopes generally from the high ground of Cannock Chase (an Area of Outstanding Natural Beauty) to the west and the valleys of the Rivers Trent and Tame to the east. It sits in a shallow bowl and although the surrounding hills and ridges are not much higher, views of the city's spires are not wholly uninterrupted and from some directions they are only seen from fairly close proximity to the city limits. Within the city a number of parks provide an attractive green corridor through the city and several new buildings achieve high quality design – while others fail to do so and have affected views of the cathedral. These are explored further in the section on Urban Design.

The development challenge

The housing requirements for Lichfield District are to deliver 8,700 new dwellings over a twenty year period from 2008 to 2028 to a hierarchy of settlements according to its spatial strategy. Lichfield itself will take approximately 32% of the housing growth (2,775 dwellings) principally through Strategic Development Allocations two of which are to the south and one to the east of the city. Development to the south (450 homes) will involve the release of Green Belt land for housing. This caused some local tensions and the Lichfield Civic Society had made representations at the examination that other land was more suitable to accommodate the planned expansion.

To the east of the city, the Green Belt outer boundary is the West Coast mainline. The land proposed for housing at Streethay (750 homes) lies beyond this and hence has no Green Belt implications. Views into and out of the city from this relatively low lying area are largely obscured by three tower blocks (which have a negative impact). The development framework to be established is the product of negotiation with council officers, based on pre-application discussions and public consultation, and will guide built development to the lower part of the site, while the higher ground (which could affect the setting of the city) will be used as open space/park.

Lichfield is currently operating in something of a planning vacuum in that the most recent Lichfield Local Plan of 1998 is out of date but a new Local Plan has not yet been adopted. The Inspector who held the Examination of the emerging Local Plan indicated in September 2013 that the Plan would be unsound unless land was identified for an additional 900 dwellings. Proposals have been put forward and consulted on, and the Council is hopeful that the Plan will be adopted in autumn 2014. In the interim period developers have tried to take advantage of the lack of a five year supply of land for housing and the uncertainty between examination and adoption of the Plan. Applications have been submitted on sites not identified in the emerging Plan and the Council has been trying to hold the line on heritage at appeals.

There are objections from English Heritage to two new sites added in the Main Modifications consultations – both south of Lichfield namely Cricket Lane and Deans Slade Farm. English Heritage has also raised an objection to an Amendment to an existing proposed Strategic Development Allocation at Fradley, some distance from Lichfield along the A38 towards Burton-on-Trent. The objections are that there is insufficient information

at this stage to determine whether the alternative proposed site allocations are sustainable in the context of national policy and the protection and enhancement of the historic environment. English Heritage had previously raised comments about the importance of protecting views to the Cathedral and the skyline and setting of the historic city. To ensure that growth to the south does not impinge on the setting of Wall Roman site (which is in the care of English Heritage) it has requested that the additional information required should be provided through a heritage impact assessment. Whilst this will provide the information that English Heritage feels is lacking, it may not address their concerns and hence their objection remains.

Previous planning for Lichfield's character and setting

The former Lichfield Local Plan 1998 was prepared in the context of the Staffordshire and Stoke-on-Trent Structure Plan which proposed 6700 dwellings for the district between 1986 and 2001. In approving the Structure Plan the Secretary of State recognised that there were constraints on meeting the full level of demand including the Green Belt, the need to protect Lichfield as a historic city and the high quality of its environment. Protection of Lichfield's character is therefore not a new consideration.

Several documents have previously informed the relationship between Lichfield's heritage and its growth: the Lichfield Local Plan 1998, the Residential Design Guide 2007 and the Lichfield City Conservation Area Appraisal 2009. In addition council officers produced a Skyline Study as an internal document in response to, and to co-ordinate, major development enquiries in and around the city centre. The subsequent effect of these policies, with particular reference to urban design issues, is considered later in this case study.

The 1998 Local Plan included numerous detailed policies relevant to the City centre related to the setting and surroundings of conservation areas, the protection of important views including those into and out of such areas, and the scale and character of buildings. There were specific policies for Lichfield, where the introduction referred to its conservation area as of national importance for historic and architectural interest. In addition there were several policies relating to specific sites and preservation of their character, as well as shopfronts and protection of views.

A Residential Design Guide was produced as a Supplementary Planning Document in 2007. This is a district-wide document but it is clear that recent developments around the city centre have adopted many of its principles. This Design Guide is cross-referenced with Regional Character Areas, the District Council's Biodiversity & Landscape SPD and Staffordshire County Council's (unadopted) Residential Design Guide.

The Lichfield City Conservation Area Appraisal 2009 is a comprehensive document which identifies several character areas, and in each of these views and vistas are identified and described.

New policy and practice

The most relevant planning policies are in the emerging new style Local Plan. Core Policy 14: Our Built and Historic Environment covers heritage assets and their setting and Policy BE1: High Quality Development addresses the provision of a high quality sustainable built environment. In addition the Corporate Plan takes a positive approach to heritage issues. Although it does not refer specifically to the setting of the city, it aims to protect heritage assets, enhance and protect the district's built environment assets, its historic environment, open spaces and local distinctiveness. It also recognises that heritage can help deliver a more prosperous district.

There has been a change of approach in drafting the conservation and design policies in the emerging Local Plan. The decision was taken to place more weight on Supplementary Planning Documents on Historic Environment and on Sustainable Development. These are well advanced and will be ready for adoption soon after the Local Plan – with links to these SPDs – is adopted.

Weight has consistently been given to housing growth and considerable numbers of dwellings have had to be delivered. The Council has long engaged in pre-application discussions and negotiations leading to an environment within which agents and developers have been appreciative of having someone to talk to about their proposals. The Local Plan is intended to be a different, more proactive policy vehicle than previously, which aims to be positive about where development can go as opposed to where it can't go.

Methodology for assessing development proposals

Lichfield has been a principal location for using historic characterisation methods to inform the choice of areas for urban development in the forward planning system and for assessing development proposals. Two main tools have been used: Historic Landscape Characterisation and the Extensive Urban Survey. Both stem from work across Staffordshire.

Historic Landscape Characterisation

The methodology was undertaken in two phases. The first phase was to identify Historic Environment Character Areas (HECAs) to provide an overview of the historic environment across the district (work having already been carried out which identified 77 Historic Environment Character Areas across the whole county). This linked the Historic Landscape Characterisations (which had also been identified for the county) with the Historic Environment Records data. The process was further informed by a general understanding of the topographic, land form and general drift geology influences upon human activity and agencies.

Phase 2 provided a more detailed Historic Environment Assessment of areas around Lichfield, Burntwood and Tamworth, identifying Historic Environment Character Zones. The HECZs are more geographically discrete than the HECAs and enable a more detailed analysis of the historic environment to be carried out. This is done by summarising the main areas of

interest and the archaeological and historic character of each zone and then using a scoring system based upon set criteria to rank them in terms of their significance.

A report was produced for each area and its summary included a short paragraph on the importance of the historic environment, an examination of the impact of medium to large scale development on that area, along with guidance or advice on opportunities to ensure the conservation and enhancement of historic environment assets.

At an early stage in the planning process this methodology identifies areas where the historic environment is a consideration when identifying the most appropriate locations for new housing development in the site allocation process. By way of examples, two such areas are described very briefly below

The principal Historic Environment Character Area for the City of Lichfield itself and south west to Wall – namely HECA 10a (containing four HECZs) – identified the Historic Environment Potential of this HECA as “High archaeological potential within the core of Lichfield and Wall. Potential in areas in between including associated with earlier settlement”. The refined HLC map for this area identifies 18 landscape categories.

South and east of the City HECA 2a identifies the Historic Character as a “Dispersed settlement pattern; predominantly 18th/19th century field systems, formerly heath and woodland” and its Historic Environmental Potential as “Potential for prehistoric and Roman sites. Well surviving historic landscape; potential within historic settlement cores (surviving and deserted) and farmsteads”.

At a more detailed level a Historic Assets Summary table is provided for the individual HECZs. This assesses and scores the following categories - Survival, Potential, Documentation, Diversity, Group Association, Amenity Value, Sensitivity to Change (to housing expansion & infrastructure for LBC) and allocates a final score to each zone. The evidence provided by the system was used to identify sites proposed for development.

Extensive Urban Survey

The Extensive Urban Survey (EUS) builds on this earlier HLC work and forms part of the national programme initiated and supported by English Heritage. The EUS provides a greater depth of information than the HLC and aims to understand the development and current historic character of the town. It has been produced for all medieval towns in Staffordshire.

It examines the setting of the town with regards to its location, its geology and topography and lists the sources used in the subsequent analysis. The context and historical development is considered in seven periods from prehistoric to the 20th and 21st century and maps 33 Historic Urban Character Areas (HUCAs). In these, it evaluates the nature and extent of surviving heritage assets, which encompasses buildings, monuments (above and below ground archaeology), place, areas, landscapes and townscapes. In doing so, it assigns values based upon the guidelines produced by English Heritage in “Conservation Principles” (2008) namely Evidential Value, Historical Value, Aesthetic Value and

Communal Value. It applies high, medium or low value to each of these to indicate the likely sensitivities of the historic environment in each of the 33 HUCAs.

The assessment of each HUCA includes a Statement of Heritage Significance, Built Character, Heritage values and Recommendations. It outlines the city as a place of pilgrimage to St Chad's shrine from the late 7th to the 16th century and as the focus of a network of roads linking London, Chester/Stafford, Burton and Tamworth since at least the medieval period. From the early 19th century Lichfield became a tourist destination for admirers of Dr Samuel Johnson.

Analysis of the plan form of the town shows possible early medieval settlement along five roads within the project area, and that the Cathedral and its Close has formed a focal point in the townscape from the early medieval period. The extant plan of the historic core was laid out in the mid-12th century and there is a good survival of historic buildings throughout the medieval streets although many of the timber framed buildings have later facades. There are six medieval religious sites (three churches, two hospitals and the Friary) and the scheduled Prince Rupert's Mound represents the physical evidence of Lichfield's role during the Civil War. The suburban extension of the core beyond the town gates possibly started from the 13th century but there are few areas of 18th or 19th century expansion and most of the town's growth occurred during the 20th century.

Urban Design considerations.

In addition to the formal methodology of Historic Landscape Characterisation, the district council places a high emphasis on urban design. Various major developments have been the subject of Design Review panels set up by a partnership of local authorities covering the southern part of the county of Staffordshire together with MADE, which is the West Midlands architecture centre, originally the regional arm of the Commission for Architecture and the Built Environment (CABE). Judgements about new buildings and developments, their aesthetic qualities, the contribution that they make to shaping places, and the quality of the environment that they create are based on established urban design principles, in order to reduce or remove matters of subjectivity and taste from discussions. Lichfield has certainly benefited from this approach over the last ten years or so.

Darwin Park (immediately west of the city centre) is a recent development originally proposed for 600 dwellings but where the demand for higher densities resulted in almost 1100 being built. This was not universally accepted and the local Civic Society noted that the number of dwellings almost doubled but with no corresponding increase in open space. Nonetheless there is a high quality of design here and an attractive public realm has created new vistas of the cathedral spires.

City Wharf faces the train station and provides a favourable impression of the city for visitors arriving by train. Within the development a mix of house types creates a high quality development where a vista to the cathedral has been incorporated into the layout.



The Oval at Darwin Park: a large new crescent-shaped building fronting onto a generous public open space at a busy road junction near to the city centre



Darwin Park and the new vista to the cathedral spires.



City Wharf: a prominent site facing the city's railway station with contemporary modern architecture



City Wharf: vista to the spires



Modern design rarely attracts universal approval but proves that contemporary architecture can sit in a historic context as with this restaurant across Minster Pool from the cathedral

Lessons learnt

Historic Landscape Characterisation (and its associated Historic Environment Character Areas) together with the Extensive Urban Survey (with its more detailed Historic Urban Character Areas) are complementary methodologies by which the sensitivity of sites to development can be objectively assessed. This is the case in Lichfield – albeit that English Heritage raised objections to two development sites that were added to the Core Strategy as a result of modifications to the plan on the grounds that their potential had not been adequately assessed. At the time of writing, this remains to be resolved and it is possible that views of the city's spires could be affected by proposed developments.

Overall, the council has a positive approach to urban design. Its practice of establishing design frameworks within which new development must sit is an encouraging and commendable practice, as is its recognition of the importance of creating new vistas to the Cathedral spires. Its acceptance of contemporary modern buildings is also notable.

APPENDIX 8

OXFORD CASE STUDY

Special qualities

This is well explained in the proud boast that opens the Council's Core Strategy, namely that "While many cities aspire to be world class, residents in Oxford know that our city is in many respects already world class. Oxford's unique heritage draws visitors from around the world. Its universities and hospitals have an internationally renowned research base and many products or services made in Oxford are known worldwide".

The oft quoted reference to the "Dreaming spires" encapsulates the very essence of how many residents and visitors alike perceive this unique city and clearly the best parts of Oxford are a match for the best parts of any city on a worldwide scale. The architectural gems that characterise the university, colleges and the streets of the historic core are indeed of very great architectural and historic interest and combine to create a townscape of high significance.

However there are elements within the city centre where the quality of the buildings and the public realm are poor and create an extremely poor impression of this world class city. Beyond the confines of the city centre large areas of twentieth century housing create undistinguished environments.



The Radcliffe Camera and All Souls

The setting of Oxford

The earlier parts of the city have an elongated form that lies very roughly north/south on either side of the two main roads that run through the city, bounded on the east by the

River Cherwell and on the west by the River Isis (or Thames) and the canal. Beyond the River Cherwell, to the east there are large areas of mainly twentieth century housing that now encompass some of the historic villages to the east and south east of the city centre. In many places the water meadows comprise a very attractive sylvan setting to Oxford and bring areas of tranquillity close to its heart. In addition to the buildings the city contains many open spaces, in the form of parks and college courts, and from many parts of the city the surrounding hills are seen from such spaces or are glimpsed between buildings.



The River Cherwell and its water meadows near to University Parks define the eastern edge of the city centre



Green spaces within and adjacent to the colleges are an integral element of the city's character as shown here at Merton College seen across Merton Green



Christ Church across Christ Church Meadow

Beyond the river valleys, the city is surrounded by ranges of hills and it is from these distant views that the “dreaming spires” are best appreciated. Artists have painted these scenes for hundreds of years and literary figures have described them in writings.

The Development Challenge

The challenges faced by Oxford are set out in the Core Strategy of March 2011 as follows.

"Oxford is part of the South East of England and it should continue to grow and develop as the focus of the Central Oxfordshire sub-region. The South East Plan indicates that growth and regeneration should be the policy focus for the Central Oxfordshire sub-region. The Core Strategy must be in general conformity with that Plan, and therefore the City Council will deliver the development required by the South East Plan. This includes a minimum of 8,000 new homes within the city's administrative boundary in the period 2006 and 2026" (paragraph 1.2.1).

All this is set in the context of a scarcity of available land. Development is restricted by policy constraints, such as Green Belt, which encircles and extends into the city, and administrative constraints arising from Oxford's tightly drawn boundaries. There are also intrinsic constraints, such as extensive areas of flood plain...; areas of nature conservation importance; and the city's outstanding architectural heritage. The latter constrains development in a three-dimensional sense, since the need to protect Oxford's unique skyline make tall buildings inappropriate in some parts of the city" (paragraph 1.3.3).

The planned provision of 8,000 homes in the period 2006-26 is substantially less than the calculated housing requirements of the city: “The Oxfordshire Housing Market Assessment indicates that Oxford will need 64,189 new dwellings over the period 2006-16 to meet projected demand. This equates to an annual average demand of 6,418 dwellings, of which 3469 would be market housing and 2949 affordable housing. Considering that Oxford currently has around 55,000 dwellings, to meet demand over a 10 year period would mean at least doubling the size of the city” (Core Strategy page 17). A more recent Oxfordshire Strategic Housing Market Assessment completed in March 2014 concluded that the overall housing need in Oxford was in the range 1,200-1,600 annually depending on assumptions, which is less than a quarter of the previous figure.

A key challenge is nevertheless to meet needs while protecting the built and natural environment and ensuring that development does not prejudice its outstanding quality. Growth needs to respect the capacity of the city to absorb change and avoid harming its architectural and historic character. Meanwhile the Core Strategy is about more than housing growth and targets and has three “planks” which are:

- reducing the need to travel.
- regeneration and the reuse of previously developed land
- meeting Oxford's housing and employment needs.

The strategic locations for development are West End, Northern Gateway and land at Barton.

(i) West End has significant opportunities to create an attractive environment. It does not currently match the city's worldwide reputation and several busy and important routes are unattractive with a poor public realm. It is a highly sustainable location and regeneration here is fundamental to the overall long-term success of the city. 700-800 new dwellings are proposed as well as additional student accommodation.

(ii) Northern Gateway's principal opportunities for development are two key parcels of land on either side of a dual-carriageway section of the A44 identified as safeguarded land in the adopted local plan. The land has low landscape value, biodiversity and historic integrity but is in a visually sensitive location. It is principally a location for employment development.

(iii) Barton should deliver 800-1200 new homes. This land is east of the Barton estate. This is important to the setting of Headington but the integrity of the landscape has been lost and landscape quality is moderate.

Tensions are also caused by the firmly held desire of the powerful and highly influential University and Colleges to retain and enhance their facilities, including research facilities and student accommodation, within the core of the city.

Previous planning policies

The importance of the city's dreaming spires has long been recognised in planning documents. The city has had a 'protected views' policy since 1962 when the then City Architect and Planning Officer observed that siting high buildings in Oxford presented particular problems because of the city's unique skyline. He identified six viewpoints, to which the 1986 Oxford Local Plan introduced another four. Building heights policies and

successive development plans for the last fifty years have established a height limit of 18.2m or 79.3m above Ordnance Datum. However in the 1990's it was realised that this was a somewhat crude approach as in practice developers were using this as a 'standard' height so although buildings were no taller than this their roofscapes were poorly articulated with long expanses of roof or cornices at this height and little variation in between.

The *Character Assessment of Oxford and its Landscape Setting* produced by Land Use Consultants in 2003 established 20 "View cones" and this is now being further refined in a new View Cones Study.

The 2006 Local Plan included the following policies:

POLICY HE.9 - HIGH BUILDING AREA

Planning permission will not be granted for any development within a 1,200 metre radius of Carfax which exceeds 18.2 m (60 ft) in height or ordnance datum (height above sea level) 79.3 m (260 ft) (whichever is the lower) except for minor elements of no great bulk. A lesser height may be considered more appropriate for buildings that have to fit into the existing townscape. If existing buildings (at, or in excess of, these limits) are redeveloped, the City Council will consider carefully whether rebuilding to their previous height is acceptable in terms of how it would affect the appearance of the existing townscape and skyline. The area covered by the 1,200-metre radius of Carfax is identified on the Proposals Map.

POLICY HE.10 - VIEW CONES OF OXFORD

The City Council will seek to retain significant views both within Oxford and from outside, and protect the green backcloth from any adverse impact. Planning permission will not be granted for buildings or structures proposed within or close to the areas that are of special importance for the preservation of views of Oxford (the view cones) or buildings that are of a height which would detract from these views. The View Cones of Oxford are indicated on the Proposals Map.

Current Planning Policies

It is notable that in this "world class city", the Historic Environment does not warrant a specific section in the new Core Strategy. It is dealt with in Section 6 of the Core Strategy entitled "Promoting Social Inclusion and Improving Quality of Life" which states that

"New development should sit comfortably within its surroundings. The best way to achieve this is through high quality design that creates attractive and pleasant spaces. Oxford contains a great wealth of historic buildings, monuments and designated landscapes within a high quality townscape and landscape character. This special interest, appearance and character should be sustained for future generations to value and enjoy. Good urban design can create safer environments and help to create a sense of place and identity".

Section 6.1 is entitled "Urban design, townscape character and the historic environment" and the relevant policy is:

Policy CS18 – Urban Design, Townscape Character and the Historic Environment
Planning permission will only be granted for development that demonstrates high-quality urban design through:

- responding appropriately to the site and its surroundings;
- creating a strong sense of place;
- being easy to understand and to move through;
- being adaptable, in terms of providing buildings and spaces that could have alternative uses in future;
- contributing to an attractive public realm;
- high quality architecture.

Development proposals should respect and draw inspiration from Oxford’s unique historic environment (above and below ground), responding positively to the character and distinctiveness of the locality. Development must not result in loss or damage to important historic features, or their settings, particularly those of national importance and, where appropriate, should include proposals for enhancement of the historic environment, particularly where these address local issues identified in, for example, conservation area character appraisal or management plans. Views of the skyline of the historic centre will be protected.

The Civic Society considers these to be weakly worded policies that are not as robust as the saved policies from the old local plan.

The NPPF advises at paragraphs 169 and 170 that local planning authorities should have up to date evidence about the historic environment and also that where appropriate, landscape character assessments should also be prepared, integrated with assessment of historic landscape character, and for areas where there are major expansion options assessments of landscape sensitivity.

Recognising the need for an up to date evidence base the City Council is preparing a Heritage Plan which will include a new View Cones Study (which is considered in more detail below), an Archaeological Action Plan, and Historic Landscape and Urban Characterisation studies.

In addition, the City Council in conjunction with Oxford Preservation Trust and English Heritage has devised its own Character Appraisal Toolkit for use by all parties involved in the development process. It consists of a survey form upon which to record

- Initial reaction
- Spaces
- Buildings
- Views
- Landscape
- Ambience
- Final Reaction
- Spirit of Place

Under the first seven of these, the user gives a value (or score) to a set of up to 10 features. For example in the section on “Initial Reaction” the user would assess Spaces, Buildings, Views, Light/Dark, Surfaces, Greenery and Landscape, Uses and Activity, Noises and Smells

and General Comments. The final section “Spirit of the Place” sums up the character of the area picking out the most significant positive and negative features of its character and appearance.

The new View Cones Study

A Heritage Plan for Oxford is being prepared in collaboration between Oxford City Council English Heritage and Oxford Preservation Trust. They view Oxford's heritage as an important resource that adds to the quality of life in many ways, providing an attractive environment, generating tourism, a catalyst for regeneration and stability in times of change. Effective management of this historic environment is a high priority. The Heritage Plan aims to bring together the existing legislative and evidence based tools required to enable informed decision-making and unlock the potential to deliver the social, educational and economic benefits of Oxford's historic environment. The View Cones Study is one of a suite of studies that will form the evidence base for the Heritage Plan. Consultation is currently taking place on a draft with a view to adoption.

The new study identifies ten view cones which form a sample of views of the city and establishes a methodology of view assessment that can be applied to other areas of the city. It also points out that planning policies alone are not sufficient to protect views and that what is required is evidence and understanding to guide sensitive management of places. It highlights the historic and artistic interest of such views (with specific reference to individual paintings or prose) and explains that similar considerations to those established by the Landscape Institute in its Landscape and Visual Impact Assessment (LVIA) methodology are used here – namely the significance of the viewer, the viewing place and the landscape in the view.

However it moves things on by reference to current parlance and outlining that the city as a whole is a heritage asset, that viewing it is a historic experience and that the landscape in which it is set comprises a set of discrete landscape blocks each with specific historical associations.

The values established in “Conservation Principles” published by English Heritage (2008) are reiterated, namely Historical Value, Evidential Value, Aesthetic value and Communal Value, and the new study explains that it is important to understand the specific contribution of each view to the significance of the city, as much as to the value of what is seen in the view. The methodology assesses the heritage value of the viewers, the viewing place and the landscape in the view respectively.

“Considering the Viewers” requires a simple statement to summarise the history of viewing and the contribution this makes to the significance of the view as a recognised and appreciated experience of the heritage assets. This is followed by a simple table setting out four considerations.

“Considering the Viewing Place” looks at both how the viewing place contributes to the significance of the heritage assets in the view and how the viewing place, as a known or potential heritage asset, gains significance from being the place from which the view is seen.

For each view it is necessary to define the viewing place and it clarifies that this may not be one point but could be a wider area with, say, footpaths running through and hence from which differing views are obtained at different points. This is followed by an assessment that considers how the viewing place contributes to the significance of the view via a series of six questions.

“Considering the Landscape in the view” is the most complex element in the analysis. For each view a brief statement should describe the key features of the view that contribute to its heritage values. Each view should be considered as a whole landscape to which constituent elements contribute in different ways. The statement should characterise the contribution of these different elements including the features that make them, and draw out how these contribute to the heritage values of the features in the view. Eight landscape features such as topography, changes in views from movement around the viewing area, green character areas, different architectural character areas, focal features, infrastructure, changeable but predictable factors such as sunlight and seasonal changes, and conditions that create particular aesthetic impacts. These form the basis for a set of 10 questions (with guidelines/examples given for each).

The study refers to the ten views in the current Oxford Local Plan but acknowledges that there are many others, such as the examples in the *Character Assessment of Oxford and its Landscape Setting* (2003), and that other views may be identified in the future.

Context

Oxford faces complex and competing issues. Its role in delivering the growth required by the former South East Regional Strategy is severely constrained by planning policy as expressed in the Green Belt, by the quality of its natural and historic environment as assessed by the Landscape Character Assessment, and by administrative constraints deriving from its tightly drawn boundaries. The Core Strategy refers to housing requirements which could only be met by more than doubling Oxford’s size in ten years, which would of course be extraordinarily challenging. There is some doubt that housing demand could ever be satisfied in Oxford, exacerbated by neighbouring authorities which are reluctant to accommodate Oxford’s growth. In addition, Oxford City Council is a Labour-controlled authority surrounded by Conservative-controlled local authorities. Oxford Civic Trust has produced its own report *Oxford Futures* (March 2014) from a series of debates that “... highlights the need for much closer collaboration and seamless coordination between the different agencies involved in strategic development in the region. We need a common vision supported by all: the basis for planning policy. We need effective mechanisms for delivery. We need leadership”.

The methodology prescribed for using the view cones appears to be comprehensive but may have shortcomings in its practical application. City Council officers describe the methods set out in the current local plan as too much of a geographic tool that takes insufficient account of cultural factors, whilst the Civic Society consider that their application is too closely constrained by lines drawn on a map, and there are important views of the city from places other than those identified by the cones. The emerging view cones study has had a long gestation period and extensive consultations have delayed its adoption and implementation.



View from the village of Elsfeld, north-east of the city



View from an early View Cone identified in 2002 near Garsington, south-east of the city. Whether the height of the BMW car factory predates this view or not, the light coloured cladding emphasises its prominence and dominates any views to the spires beyond



Oxford's Dreaming Spires from Boars Hill south west of the city. The science park building left of centre may not exceed the stated height but its form is somewhat alien to the spires.



Not far from the city centre, The Oxford University Royal Naval Unit seems to show how far the public sector commissioning process has moved away from a culture which produced the exquisite architecture of the Royal Naval College at Dartmouth



Visitors to the station may not be wholly convinced by these buildings that they have arrived at a city of learning and culture.

There are suggestions that the sophisticated planning tools available such as the Character Assessment Document and the Appraisal Toolkit are not being applied routinely or well. Planning officers need to be managed so that these are used reliably and not depend on officers' individual preferences and prejudices. Instead of proper application of policy and use of best practice tools, there are indications that officers' advice is predicated around considerations of "what will happen if this goes to appeal?" and the two competing premises of "Is this good enough to approve?" or "Is this bad enough to refuse?".

It is also relevant to consider the character of the city (as well as its setting) and how this is affected by development pressures. There is a perception amongst the interviewees that developers are pushing the boundaries particularly of the height restriction policy to see just how high they can go. There are clearly areas within the city which would benefit from change such as the areas around the station, the Westgate shopping centre and the Castle, where redevelopment proposals are progressing. However these proposals may be hard to reconcile with archaeological interest and significance.

Lessons leant

The best parts of Oxford City are exquisite and fully deserving of the accolade "world class city". But it is also clear that not far from the dreaming spires, fields, colleges and sylvan settings of the river valleys there are areas where the quality of the townscape and public

realm leave much to be desired. These may represent opportunities for improvement but sensitive archaeological interest and significance may provide another set of tensions to be resolved.

The view cones established in 1962 are the subject of current revisions – possibly indicating that they have not been as successful as originally anticipated in protecting the city’s skyline. Some of the distant views into the city have been compromised. View Cones are largely derived from considerations of landscape, but landscape is constantly changing. Views can alter dramatically over comparatively short timescales. The introduction of new infrastructure, the tree planting that often accompanies it, the removal of trees or the introduction of them all contribute to an evolving landscape and changing views. Delays in adopting the new View Cones Study (for whatever reasons) are unfortunate.

As with other authorities in the south-east, Oxford is required to accommodate significant levels of growth but, given how tightly its administrative boundaries are drawn, fully meeting its needs is likely to prove impractical within its own area. Three strategic locations are identified for the city, but the full housing requirement will necessarily require releases of land by neighbouring authorities. The City Council is preparing to make representations that these authorities are failing in their ‘duty to cooperate’ required in planning law. The inadequacy of the process of subregional co-operation on development to support the city, made worse by political differences with Oxford’s neighbouring authorities, has tellingly prompted Oxford Civic Society to prepare its own document urging greater co-operation amongst all local authorities.

Oxford Civic Society has highlighted some uncomfortable perceptions that officers’ advice in the City Council is affected by the vexed (old) axiom of “What chance have we got of winning an appeal if we refuse this application”, and insufficiently by a determination to apply policy in order to protect properly the heritage assets of Oxford.

There are indications that approved methodologies such as the Character Assessment Toolkit and the View Cones Study are not being universally and equally applied in assessing development proposals. This does appear to raise sensitive management issues but may also reflect the current pressures on local planning authorities arising from staff cutbacks and competing pressures on those remaining to achieve targets for determining planning applications within set timescales.

APPENDIX 9

SALISBURY CASE STUDY

Special qualities

Salisbury is a city of 45,000 people in south-east Wiltshire. It is located in the valleys of five rivers, principally the River Nadder and River Avon, whose watermeadows define the city's southern edge. The city was laid out on a slightly skewed grid as a planned development from the 1220s onwards. This was prompted when the city of Old Sarum, on an 11 hectare hillfort site 1.5 miles to the north, became unsuitable: it lacked sufficient water and there was a falling out between the clergy and the King's garrison. Rising from the meadows at the south end of the town is Salisbury Cathedral, built principally in one campaign from 1220 to 1258, except for its spire which followed in the next century and is the tallest in England at 404^{ft}. The Salisbury Local Plan of 2003 comments "Salisbury is perhaps the best surviving example of a medieval planned town in England. The Cathedral and Close, the historic chequer pattern and the architectural quality, variety and coherence of the buildings combine to make this a city of outstanding historic interest."



John Constable depicted Salisbury about 300 times. One of his most famous paintings, *Salisbury Cathedral from the Meadows* 1831 was painted from near this spot.

The setting of Salisbury

Low chalk hills dissected by rivers surround Salisbury, so views to the city are available both from surrounding higher ground and from river level. Likewise views out from the city are often to undeveloped hillsides which are sensitive to any built development. Many of the approaches to Salisbury are attractive as the cathedral spire first comes into view, then the edge of this quite compact city is reached and the cathedral becomes increasingly prominent. Salisbury District Council commissioned a Landscape Character Assessment of the District from consultants Chris Blandford Associates which included a *Settlement Setting Assessments* report published in February 2008. This identified elevated and level views principally to the cathedral but also to other important landmarks (mainly buildings within the historic core which would have been important 150 years ago). It also identified: approaches to the city – particularly from where the spire can first be seen; gateways – the character of the approaches where the route becomes built-up and urban; and green fingers and corridors – penetrating from open countryside into the urban fabric. The study drew out five categories of setting on a plan of the area according to the importance of their contribution to Salisbury's setting, and further highlighted areas where urban development might most suitably be located with least adverse effects on the city's setting. However, the available evidence suggests that the use of this document for planning purposes is very limited.



Salisbury Cathedral west front from the A3094 near Netherhampton, looking down the River Nadder valley



An early view of the NW approach to Salisbury Cathedral, from Stratford-sub-Castle in the River Avon valley

The development challenge

Studies by Salisbury District Council and, after local government reorganisation in 2009, by Wiltshire Council showed that the city had an aging population and needed additional population to stimulate the labour market and create a climate for economic investment. The Councils were therefore keen to focus housing development on the city. In the preparation of the South Wiltshire Core Strategy, adopted in February 2012, 6,060 of the area's 9,900 dwellings were focused on Salisbury and the neighbouring town of Wilton. It is clear from the strategic allocations, together with previous allocations and unimplemented permissions, that Salisbury has been allocated about 55% of the area's housing requirement for 2006-2026, compared with its current 39% of the area's population. There is general agreement that urban intensification within the existing built-up area of Salisbury can supply only limited amounts of housing in relation to the quantities needed, so major peripheral expansion is inevitable.

Past planning for Salisbury's setting

The value of the setting of Salisbury's historic core has long been recognised. Since the 1960s planning policies have applied a '40 foot rule' policy, generally to constrain the height of new buildings in a defined central area to a maximum elevation of 40 foot above ground level and to control the roofscape. For example, Policy D6 in the Salisbury Local Plan stated in 2003: "All new buildings within the Salisbury Central Area will be controlled to a height that does not exceed 12.2 metres (40ft), and only pitched roofs clad in traditional materials will be permitted. Decorative architectural features that positively contribute to the variety, form and character of the area's roofscape, skyline and silhouette may be allowed to exceed this height where appropriate, provided that they do not result in any increase in usable floorspace". This policy has been remarkably successful over the years, consistently applied by the local planning authority and upheld by Inspectors and Secretary of State at appeals. The result has been to sustain the traditional scale, character and townscape in the city centre, and to set off the soaring scale of the Cathedral from both near and distant viewpoints. This remains the Council's flagship policy for protecting Salisbury's setting.



Salisbury from Old Sarum (Cathedral 2 miles distant to the south), showing the impact of the 40 foot rule on development in the historic core (which is positioned mainly to the left and in front of the Cathedral)

The Salisbury Local Plan 2003 also aimed to protect the wider setting of the city by controlling development in its hinterland. Policy C7 provided that “Within the Landscape Setting of Salisbury and Wilton as defined on the Proposals Map, new development will not be permitted during the lifetime of this Plan to ensure there would be no detriment to the visual quality of the landscape and to enable allocated developments to be assimilated”. A map of the area around Salisbury showed where inappropriate development would not be permitted in order to protect the setting, providing assistance to both developers and the public. No problems implementing this policy were reported to this project.

Preparation of Core Strategies

One of the key features of Core Strategies and other Development Plan Documents prepared under the Planning and Compulsory Purchase Act 2004 is that their policies must demonstrably be supported by evidence. Considerable effort was therefore applied initially by Salisbury District Council and subsequently by Wiltshire Council to provide this. At the same time, the pressure for housing provision in Salisbury was challenging those policies which aimed to protect the city’s setting. For example, there were calls from some senior officers and members in Salisbury District Council to relax the 40 foot rule. A *Review of the Salisbury Central Area ‘40ft Rule’ policy* was therefore commissioned from Chris Blandford Associates (published August 2008) and public consultation undertaken. There was overwhelming public support for its retention, which resulted in the policy being taken forward, now as Core Policy 8 *Salisbury Skyline* in the South Wiltshire Core Strategy. Amendments were made to tighten the policy by defining the limited range of circumstances in which exceptions to the policy would be made, and these were specifically

endorsed by the Inspector examining the Strategy. This policy has also been carried forward without amendment into the emerging Wiltshire Core Strategy as Core Policy 22.

Policy C7 from the Salisbury Local Plan of 2003 and its delineation on the proposals map were also carried forward into the new system as a Saved Policy in the South Wiltshire Core Strategy, but this will be dropped when the emerging Wiltshire Core Strategy is adopted. Policy C7 is being replaced by a more general Core Policy 51. This has omitted reference to Salisbury specifically, but requires “that the following aspects of landscape character have been considered:...

- ii. the locally distinctive character of settlements and their landscape settings;...
- iv. visually sensitive skylines, soils, geological and topographical features;...
- vi. important views and visual amenity;...”.

The supporting text also refers to retaining the highly valued views of the Salisbury roofscape and spire views (paragraph 5.112) and notes that “Steep hillsides and river valleys also create prominent long views and skylines which help to define Wiltshire’s settlements” (paragraph 6.119).

The principle therefore remains available in policy for implementation, but its non-specific nature and the loss of a defined setting on a Proposals Map will leave Salisbury’s setting more exposed to testing by speculative planning applications. Therefore it will be critical that the Council can continue to demonstrate a 5 year land supply for housing in the terms now set by the National Planning Policy Framework, in order to successfully resist such speculative schemes. Proposals will also require more careful evaluation from heritage Conservation Officers, even though this will be more challenging as Wiltshire Council faces significant resource issues.

Accommodating the housing allocation to Salisbury was also challenging during the preparation of the South Wiltshire Core Strategy, reflecting the sensitive and constrained nature of the city and its setting. Four of the major allocations initially proposed by the Council were within the setting of Salisbury defined by Policy C7 from 2003: Salisbury Hospital, Odstock (1,000 dwellings), Fugglestone Red (1,250 dwellings), Hampton Park (500 dwellings) and Longhedge, Old Sarum (800 dwellings). To tackle the relationship between growth and heritage setting, Salisbury District Council and English Heritage jointly commissioned a *Salisbury Historic Environment Assessment* from Land Use Consultants (April 2009). This carefully examined the initial strategic allocation sites against a series of historic environment criteria. In all cases and another South of Netherhampton Road, Harnham (400 dwellings) the study found moderate risk relating to the ‘settlement setting’ criterion and proposed mitigating measures. Overall the Longhedge and Hampton Park sites were identified as ‘high risk’. The sensitivities of each site, the impacts of developing them and required mitigation measures were expressed for each proposed allocation site, to ensure that the recommendations of the Historic Environment Assessment could be appreciated in future. Meeting housing need will continue to represent a significant challenge, given the shortage of brown field sites and readily developable unconstrained land.

The Council dropped the site adjacent to Salisbury Hospital at an early stage. In response to the historic environment assessment it substantially drew back the housing area at

Hampton Park both to protect the setting of Old Sarum and to protect the strategic landscape setting of the northern slopes of Salisbury. It also dropped the site South of Netherhampton Road, Harnham, and removed part of the Longhedge site (reduced to 450 dwellings), with heritage being a contributory factor in these decisions. However, these last two sites remain candidates for development in future. The Inspector examining the Strategy endorsed the changes made by the Council, and the Strategy was adopted on that basis in February 2012. The outcome demonstrates that the historic environment assessment made a real difference to the process of reconciling urban development with the setting of Salisbury. Even so, this did involve some erosion of setting, though more to Old Sarum than to the historic core of Salisbury. Wiltshire Council's intention has been to continue the recently adopted plan for South Wiltshire into the wider Wiltshire Core Strategy. However the Inspector examining the Strategy is recommending that Wiltshire Council increase its housing provision across Wiltshire, and it is unclear whether adjustments will be needed in the Salisbury area to accommodate a share of this. If required, the implications this might have for Salisbury's setting are as yet unclear.

Context

Councillors in Salisbury appreciate the value of the city's setting to its attraction, both to the tourist industry and to investors, and are supportive of 'the 40ft rule' on building heights in the historic centre. A redevelopment of a large Council-owned central area site at the Maltings is proceeding with close attention to high quality and to heritage interests, including views to the Cathedral. There is less familiarity amongst officers and members about policy to protect the wider setting, though the discussions about this during the preparation of the South Wiltshire Core Strategy acted as a reminder. Local government reorganisation incorporated Salisbury District Council into a wider Wiltshire Council in 2009, moving the centre of decision-making to Trowbridge with more planning policy and priorities decided centrally. Resource limitations have meant that officers have to be more reactive and less proactive in shaping development sympathetic to heritage.

Limited resources in Wiltshire Council have delayed the preparation of Conservation Area Appraisals for the five Conservation Areas in and around the city centre. These Appraisals have been in preparation since 2007 but fortunately are now approaching adoption in 2014, though the evidence in them has clearly been available for officers to use. They contain detailed information on townscape and distinctive local views within the historic core, and will be valuable additional evidence to help protect the setting of features in the city centre. A design guide for South Wiltshire *Creating Places* is also available and as a Supplementary Planning Document has formal status in planning practice.

Outcomes

The Core Strategy preparation process involved the commissioning of both landscape and historic landscape assessments which had a real effect in adjusting the location of major new urban development allocations in relation to the setting of Salisbury, though the results were not entirely satisfactory (reflecting the highly sensitive and constrained nature of Salisbury and its setting in relation to housing requirements). Nonetheless, the visual setting of the historic core has been protected, the river valleys with their views to the

centre have been protected, and the sense of approach to and arrival in Salisbury has been maintained (except from the north, past Old Sarum). These are notable achievements in view of the scale of development required in the area. Planning practice has for decades been highly successful in limiting the heights of buildings in the central area to 40ft, thereby maintaining the historic character, setting off the Cathedral and enhancing both low level and elevated views into the city from surrounding hills. This policy is widely understood, appreciated and applied. The same cannot be said for a setting protection policy and accompanying delineated area on the formal Proposals Map which are dedicated to protecting the landscape setting of Salisbury (and Wilton). However, there do not appear to have been major breaches of that policy. The effect of downgrading this to a weaker policy in the emerging Wiltshire Core Strategy remains to be seen. There are indications that the business community increasingly values the heritage setting of Salisbury, and this may have an impact on the weight which councillors give to the matter in future.



The first sight of Salisbury Cathedral spire from beside the A345 from Andover, marred by sprawling development north of the Old Sarum airfield. Land allocated for development at Longhedge will intervene in the line of sight to the Cathedral.

Lessons learnt

The relationship between evidence base, policy and practice is important. This has been achieved best in Salisbury with the long-standing '40ft rule' to control building heights in the city centre: the policy is understood and implemented well, and a review of the evidence base for it in 2008 reinforced its merit. The experience suggests that Councils can successfully apply restrictive policies for the benefit of the heritage in historic towns, consistent with the NPPF. The provisos appear to be that effort should be made to gain the support so far as possible of relevant groups such as the business community and the third sector, and that sufficient allocations should be made elsewhere for development.

Any necessary assessment should be commissioned as early as possible for the purposes of plan preparation. Landscape and historic environment assessments commissioned during the process of preparing a new Core Strategy were critically important to justify appropriate policies for reconciling growth with the setting of the city. However, in Salisbury these came

later than ideal, necessitating revisions to a number of strategic urban development site allocations in the plan.

Evidence and policies need to be applied on a day-to-day basis to be effective and to be seen as essential by developers. Valuable parts of the evidence base on setting may be little appreciated and little used, or only commissioned and used when a revised plan requires preparation. The design guide *Creating Places*, the landscape setting study *Settlement Setting Assessments*, and the policy for protecting the wider landscape setting of Salisbury do not appear to feature regularly in decisions or advice. More frequent application of these documents and policies may well raise their status. Credibility comes from applying policy on every relevant occasion and in a consistent manner (as 'the 40ft rule' illustrates).

APPENDIX 10

WINCHESTER CASE STUDY

Special qualities

Winchester is a compact city of 45,000 people in mid-Hampshire. It is set in the Itchen Valley and closely surrounded by low hills which offer fine views over the city noted for its tree cover. The chalk downs of the South Downs National Park rise immediately to the east. In this context even the longest cathedral in Europe does not dominate its surroundings. A striking feature of the city is that approaches on all the radial routes which converge on its core bring visitors to sharply-defined urban edges. Residential suburbs focus around the radial roads without the feeling of urban sprawl, and between these are green wedges which draw the countryside into the city.

Winchester was the capital of Saxon England and a major power-base throughout mediaeval times. More recently it was largely spared bombing in the Second World War and the excesses of 1960s building development. The city retains a fine built and archaeological heritage, and “has a complex historic townscape that has been more fully studied than any other Roman or medieval town in England” (*Hampshire Historic Landscape Assessment*, Hampshire County Council, 1998).



Winchester city centre: view west from St Giles's Hill (cathedral N transept to left, police building on skyline)

Significant local authority studies of the heritage interest of Winchester at the urban scale include the *Future of Winchester Study* (June 1999), the impressive *Winchester City and its Setting* (December 1998), and the comprehensive *Winchester District Landscape Character*

Assessment which includes historic landscape characterisation (March 2004). Many of the debates surrounding the urban extension have returned repeatedly to these documents for evidence. Townscape and landscape setting have long been written into planning policy for the city.

The development challenge

The pressure for growth in affluent Winchester is considerable. It is a very popular place to live for local work, commuting and retirement, and has become an increasingly important educational centre with the expansion of Winchester University alongside the mediaeval foundation of Winchester College. It has excellent road and rail communications (the M3 passes close by and the main railway line from London to Southampton passes through), and is also an important tourist destination. As the largest population centre within the Winchester City Council area, the city is under pressure to accommodate a share of the strong growth in household numbers typical of south-east England.

Planning background

Accommodating significant urban development in or around Winchester is difficult without compromising the city's heritage and special qualities. The City Council has supported urban concentration of development, including at higher densities, where this can be absorbed without damage to townscape and historic character, though the scale of additional housing which can be provided this way has limitations. There is also considerable competition for urban space: the city is delightfully free from peripheral retail parks and the Council has been keen to keep it that way by promoting retailing and other urban infrastructure within the city centre.

Outside the city there are challenges that development should not damage the setting of the town or cause sprawling out from the compact form over the surrounding hills. Risks are losses of green wedges, of clear urban edges, or of the gaps between the city and surrounding villages. Development in such places could potentially affecting the perception of the city from its core, from its approaches and from surrounding hills. Also challenging is avoiding any worsening of traffic congestion in the core from diffuse peripheral growth. Further afield there is a determination to avoid compromising the character of the authority's area by allowing anything more than small incremental change in the many attractive villages. Fortunately for meeting the Council's housing obligations, the District area extends to the fringes of the south Hampshire growth area, with major development possible to expand settlements such as Waterlooville (mainly in Havant) and Whiteley (mainly in Fareham). However, this pressure-release valve has for some time been recognised by the Council as insufficient.

Planning for an urban extension in principle

The principle of an urban extension to Winchester being an acceptable contribution to meeting growth requirements was first established in the Hampshire County Structure Plan 1996-2011 (Review) adopted in 2000, following discussion at an Examination-in-Public in 1996. This allocated a baseline of 7,295 dwellings to Winchester District for the period

1996-2011 and in addition required land to be set aside as a reserve, if needed, in various locations around Hampshire, including for 2,000 houses in a 'Winchester City (North) Major Development Area'. The need for releasing these would be depend primarily on emerging regional policy needs. The selection of Major Development Areas (MDAs) was underpinned by an evaluation of options, published in September 1998. This covered a wide range of relevant issues, including transport, economic and environmental matters, and was based on three key strategic planning objectives:

- minimise trip distances and reduce the need to travel;
- encourage the use and provision of public transport;
- integrate the development with the existing pattern of settlement, transportation infrastructure and surrounding land uses.

The choice of north Winchester for an urban extension location was therefore based on planning criteria in relation to housing need, quite independently of heritage, townscape and landscape setting interests.

Meanwhile, however, Winchester City Council prepared the *Future of Winchester Study*, published in June 1999, which focused on development and change within a strong heritage context. This recognised the limited availability of brownfield land within the city and the substantial pressure of housing demand, concluding that "there remains the need for some carefully planned growth over the next 30 years" (paragraph 7.9), and that "pressures from outside (e.g. regional housing demand) cannot be ignored and the city should be ready to respond, either by accepting and planning for such pressures or by demonstrating why they are undesirable in Winchester" (paragraph 2.17). It also considered that protection of green spaces around the city was usually a matter of judgement rather than essential:

"maintaining green wedges/corridors should be realistically balanced with the city's community needs. Apart from the River Itchen and water meadows, which are of international ecological importance, the existing boundaries of the green wedges/corridors penetrating the city are not necessarily sacrosanct. It is their benefits and contribution to the city's character that is the most important" (paragraph 7.14).

To implement the Structure Plan, provision for the Winchester (North) development was made in Policy MDA2 of the Winchester District Local Plan Review adopted in July 2006. The Plan recognised that "at some point, continued concentration of development within the town could start to destroy the qualities that the [urban concentration] approach is seeking to protect and there will need to be some carefully planned growth". An extensive review of six alternative sites within an Area of Search had begun in 2001. That review applied fifteen evaluation criteria, two of which were heritage-related: settlement pattern (to maintain the compactness of the city and the separate identity of surrounding villages) and impact on landscape (to minimise the visual impact of development and protect features of importance to the landscape setting of Winchester). At the Inquiry in 2005 into objections to the local plan, both local organisations and developers put forward suggestions, but the objections were not upheld and the site at Barton Farm selected by the Council, fairly close to the city centre, was confirmed as a reserve site. The urban extension policy provided that development of the site would only be permitted if the Council was satisfied that a compelling justification for additional housing in the Winchester District has been identified by the strategic planning authorities.

The Winchester District Core Strategy (joint with the South Downs National Park Authority) provided land for building 12,500 houses across the District between 2011 and 2031, including 4,000 in Winchester. The Council promoted a firm allocation of 2,000 houses to Barton Farm despite a very large volume of local concern about a concurrent planning application for development of the site between 2010 and 2012 (see below). However, by the time the plan was examined in October-November 2012, permission had already been granted for the development of Barton Farm. Even allowing for the urban extension, the allocation to the City was still disproportionately small in relation to Winchester's size and requirements.

The site

Barton Farm occupies a green wedge north of Winchester city centre, bounded by the Andover Road to the west and the railway to the east. The land rises from the city towards a shallow ridgeline east-west within the site, which is capped by an impressive line of trees. Beyond, there are expansive views falling away to the north and north-west, while the tree-lined Roman Road to Andover continues to mark the western boundary. The northern boundary of the land allocated for 2,000 houses is Well House Lane, a roughly east-west minor road in a shallow valley north of the Barton Farm ridgeline. There are no views from the site, or from more distant views over it looking south, into the historic core of Winchester (though prominent buildings on the elevated Romsey Road are visible, notably the police building and, occasionally, the prison turret). The development would not therefore encroach into any of the twelve strategic views from which Winchester's historic silhouette should be particularly protected, as identified in the City Council's *Conservation Area Strategy 2003*. Barton Farm has a long history of being the most likely candidate for major housing development.



View SE over the Barton Farm (south) site towards the railway line from the ridgeline



View S over the Barton Farm (south) site from the ridgeline, police building just visible (one third from right)



View NW over Barton Farm (N) from the ridgeline, Andover Road to left, Well House Lane obscured in valley

Planning Inspectors' reviews of the Barton Farm site

(i) The site was not proposed by the Council for development in the Winchester District Local Plan adopted in 1998, though an objection was considered by the Inquiry Inspector for 450 houses on the site in his report in January 1997. This would have occupied the more visually contained land south of the ridgeline tree belt. The Inspector found no need for the additional land release proposed. On the character and setting of this part of Winchester he concluded that this was an important part of a Strategic Gap: “any change in the boundary of this gap on the Winchester side will unacceptably weaken the functions of this Strategic Gap which are vital in this area”. He continued: “Winchester is characterised by long wedges and fingers of countryside running into the City. These create the green setting of Winchester, for which the City is famous. The objection site forms one such wedge of countryside.... [which] makes a substantial contribution to the setting and character of this side of Winchester particularly when approached from the north along Andover Road. The impact of housing development on the Objection site would, in my opinion, be substantial in that it would be intrusive in the landscape and would affect the views into and over the

Objection site. It would bring the urban edge of Winchester out into the open countryside in what I consider to be an unacceptable manner thereby seriously affecting the setting and character of Winchester..." (paragraph 11.79).

(ii) The proposed allocation of an MDA for 2,000 houses at Barton Farm to implement the Structure Plan was considered at the Inquiry into objections to the Winchester District Local Plan Review, with the Inspector reporting in September 2005. In confirming the allocation as noted above, the Inspector commented on character and setting issues. He found the Barton Farm ridgeline "significantly more preferable in minimising the effect on the landscape" (paragraph 12.15.11), but only if the site extended northward to Well House Lane would the area be sufficient to accommodate the MDA. He had considerable sympathy for the views expressed by the Inspector in 1997, but concluded this was not definitive: "despite my acknowledgement of the merits of the argument, the Inspector's use of the term 'unacceptable' was a judgement made in the context of the circumstances of 1997 and the then emerging Plan.... Structure Plan Policy H4 requires the designation of a reserve MDA at Winchester City (North) and.... the land south of Well House Lane at Barton Farm would be the optimum location. Furthermore, the fact remains that any urban extension will, by definition, irrevocably change the setting of a town or city and result in a loss of countryside. And in contrast with a smaller ad hoc development confined to housing with perhaps some ancillary open space, the designation of the reserve MDA does provide a real opportunity to create a new townscape of a high quality that will make a positive contribution to the special character of Winchester." In effect, he considered development of the Barton Farm site would be damaging to the landscape setting of Winchester, but was the least-bad option and that this scale of development had been found necessary in the wider interest.

(iii) A planning application was submitted in 2004 for 2,000 houses on the site, at the time Barton Farm was emerging as the Council's preferred location for a reserve MDA. Councillors agreed with the officers' recommendation of refusal on grounds of lack of need for release of the site, and at the subsequent appeal the Inspector recommended refusal on need grounds. In a decision on 20 February 2006 the Secretary of State agreed.

(iv) A further planning application was submitted in 2010 for 2,000 houses on the site. An appeal was lodged against non-determination, though the Council indicated it would have refused the application (contrary to their officers' recommendation). The Inspector recommended approval of the appeal, but in September 2011 the Secretary of State refused it on grounds of an insufficiently compelling justification for the release of a reserve site. Heritage, townscape and landscape setting issues contributed to that decision:

- "the appeal scheme does not comply with LP policy W1 which seeks to protect and enhance the special and historic character of Winchester and its landscape setting" (paragraph 27);
- "development of this attractive, greenfield site would.... conflict with LP policy CE.5 which seeks to protect the character of the landscape and the key characteristics of Landscape Character Areas" (paragraph 33);
- "The appeal site is not designated as a green wedge, but the Secretary of State agrees with objectors that its development would alter a valued part of the setting of the

historic city of Winchester and he concludes that this adds to the conflict he has already identified with LP policy W1” (paragraph 34).

That appeal decision was successfully challenged in the High Court and remitted to the Secretary of State for reconsideration. This time, in October 2012, the appeal was allowed, with the housing benefits providing the compelling justification required to release the site and outweighing the objections. He nonetheless reiterated his previous heritage concerns and stated that “that this proposal would be detrimental to the historic integrity of Winchester” (paragraph 27).

Outcome

The promotion of an urban extension on the north side of Winchester over a prolonged period (15 years) was driven by the need for housing provision. Heritage issues at the city scale were compromised to the extent that the landscape setting of the city would have been superior without the scheme. However, the detail of the proposal was considered in great detail, including an agreement between the City Council and the developer, Cala Homes, to a layout and a design aimed squarely at creating a new modern inner suburb for Winchester comparable to others in its compactness and relationship to the city centre. Over a long period officers have worked hard to achieve a scheme sympathetic to the spirit of Winchester, and councillors too have had sufficient faith to continue promoting an urban extension rather than select other choices. A detailed design code has now been agreed, there will be a sharp urban edge, and a green wedge towards the city centre will be retained east of the railway line. More controversially, the housing will be knitted in to the radial road system by a realignment of the Andover Road through the scheme, with strict speed restrictions. The Highways Authority and Planning Inspector were persuaded of the merit of this, though the Secretary of State still considered that the proposed downgrading of the Roman Road would be detrimental to the historic integrity of Winchester. Rather than create a largely free-standing new community, effort has been put into making the extension feel like part of the city, comparable to other parts of the city.

Lessons learnt

The first key point learnt is the importance of understanding what matters in the heritage of the city: in this case, the compact form of the city, a sharp urban edge, and the feeling that housing areas are close and accessible to the city centre mattered most. These mattered more than preserving a green wedge and the landscape setting beyond, noting that this was one of the few directions for growth which did not have intervisibility with the historic core. Authorities should establish clearly what it is that really is special, not only in the extension area but in the city as a whole. What aspects of the landscape should the urban extension most respect, and how can this best be done? A second lesson is to work closely with others so that they too respect the town, such as the Highways Authority. The transparency of the City Council’s proposals and engagement over the years were appreciated, even by those who took other views. A third lesson is that even where development will take place that will compromise historic landscape setting, constructive discussions with the developer through the whole process can result in a scheme that better reflects the characteristics of the town or city and achieves more benefits.