



Department for  
Communities and  
Local Government

Mrs Elizabeth Marjoram  
19 – 20 Church Gate  
Loughborough  
Leicestershire  
LE11 1UD

Our Ref: APP/T3725/A/14/2221613

14 January 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BARWOOD STRATEGIC LAND II LLP  
LAND AT THE ASPS, BOUND BY EUROPA WAY (A452) TO THE EAST AND  
BANBURY ROAD (A425) TO THE WEST  
APPLICATION REF: W/14/0300**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs J A Vyse DipTP DipPBM MRTPI, who held a public local inquiry between 14 April and 28 April 2015 into your client's appeal against a decision of Warwick District Council to refuse outline planning permission for: residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation, on land at The Asps bound by Europa Way (A452) to the east and Banbury Road (A425) to the west, in accordance with application number W/14/0300 dated 27 February 2014.
2. On 25 July 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990, because the scheme involves a proposal for residential development of over 150 units, or is on a site of over 5 hectares, which would impact significantly on the objective of the Government to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

### **Inspector's recommendation and summary of the decision**

3. The Inspector has recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, allows the appeal and grants planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural matters**

4. 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) (England and Wales) Regulations 1999. Like the Inspector, the Secretary of State is content that the Environmental Statement (ES) complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application (IR2.1 – 2.3). The Secretary of State's consideration of environmental impacts has encompassed the assessment of cumulative effects in the ES. This includes evaluation of the potential combined effects of the proposed development at The Asps in conjunction with the effects of development of nearby areas which, at the time of the environmental appraisal, were proposed for development in the Council's 'Revised Development Strategy' published in June 2013. These nearby areas included the whole of the separate appeal site on land south of Gallows Hill (planning application W/14/0681, appeal ref APP/T3725/A/14/2229398) which adjoins the north part of The Asps appeal site.
5. The Secretary of State is in receipt of post inquiry representations that were received by the Planning Inspectorate too late to be considered by the Inspector. These are from Elizabeth Marjoram on behalf of the appellants dated 12 and 25 June 2015, both with enclosures, Ian Marriott of Warwick County Council dated 7 May 2015 and from Anthony King, Chairman of Save Warwick, dated 9 July 2015. The Secretary of State has given careful consideration to these representations, but as they do not raise matters that would affect his decision he has not considered it necessary to circulate them to all parties. Copies of the representations will be provided on request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

6. In deciding the application, 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.
7. In this case, the development plan comprises the Warwick District Local Plan (LP) adopted in September 2007. The Secretary of State considers that the development plan policies most relevant to the application are those set out by the Inspector at IR4.3-4.11.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and the planning guidance ('the Guidance') published in March 2014; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and the Historic England guidance entitled "*The Setting of Heritage Assets*" as updated in July 2015.

9. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
10. The Secretary of State notes that the examination of the emerging Warwick Local Plan (ELP) has been suspended until May 2016. He has had regard to paragraph 216 of the Framework in relation to the weight to be given to emerging plans. In regard to the first and second considerations in paragraph 216, the ELP is at an early stage and still subject to significant unresolved objections to relevant policies. As regards the third consideration in paragraph 216, as the examining Inspector has indicated that the housing supply policies in the ELP (DS2, DS10, DS20 and H0) are currently unsound, the Secretary of State is not satisfied that, in their current form, those emerging policies would fully accord with the aim in the Framework to boost significantly the supply of housing. For all these reasons regarding the three considerations listed in Framework paragraph 216, the Secretary of State attributes limited weight to relevant policies in the ELP.
11. The Secretary of State is aware of the emerging Bishop's Tachbrook Neighbourhood Plan (BTNP, see IR14.26 and preceding misnumbered paragraph). His consideration of the implications of the BTNP for this appeal decision is at paragraphs 28 -30 below.

## **Main issues**

### *Conflict with adopted development plan*

12. The appeal site lies outside the development boundary for Warwick, as defined by the LP, and in planning policy terms it lies in the open countryside. The site is not allocated for housing and general residential development in the open countryside is contrary to the policies of the LP, notably Policy RAP1 (IR.14.2). For this reason, and because of the conflict with LP Policies DP1, DP3 and DP6 for reasons given below, the Secretary of State considers that the proposal conflicts with the adopted development plan as a whole.

### *Housing land supply*

13. For the reasons given at IR14.5 –14.28, the Secretary of State concludes that the Council cannot demonstrate a robust five year supply of deliverable housing land. Consequently the Secretary of State shares the Inspector's view that, pursuant to paragraph 49 of the Framework, Local Plan policy RAP1 which directs the location of new housing cannot be considered up to date (IR14.27).

### *Heritage assets*

14. The Secretary of State agrees with the Inspector's reasoning set out at IR14.29 - 14.59 with regard to the effect of the development proposal on the special interest or significance of heritage assets. He agrees with the Inspector's finding at IR14.61 that, in terms of listed buildings, there would be harm to significance only in relation to The Aspens and such harm that there would be is minimal, and

definitely less than substantial. There would also be very limited less than substantial harm to the significance of the non-designated Asps Cottage.

15. For the reasons given, the Secretary of State agrees with the Inspector's finding at IR14.63 that the development proposal would cause harm to the significance of the Grade I registered Castle Park and, by association, the Conservation Area, albeit that this harm would be less than substantial for the purpose of the Framework. Having paid special regard to the desirability of preserving the listed buildings and to the desirability of preserving or enhancing the character or appearance of conservation areas, he has given considerable weight to the totality of harm to the settings and significance of the Castle Park Conservation Area and The Aspens.
16. In reaching conclusion on harm to heritage assets, the Secretary of State has carefully considered the cumulative impacts on those assets if he were to allow this appeal and also allow the separate appeal concerning land south of Gallows Hill. He has had particular regard to the assessment of this matter at paragraphs 17.30 - 34 of the ES and also the conclusions on heritage matters in the separate Inspector's report on the Gallows Hill appeal. That Inspector concluded that development of that site would cause limited less than substantial harm to the setting and significance of the registered Castle Park and Warwick Conservation Area. Based on the evidence before him, the Secretary of State considers that the cumulative harm would remain less than substantial if both appeals were to be allowed.
17. The Secretary of State has given careful consideration to paragraphs 131 - 134 of the Framework on the consideration of designated heritage assets in the determination of planning applications. He has applied paragraph 134 in the planning balance at paragraphs 35 - 39 below.
18. The Secretary of State has also given careful consideration to the advice of Historic England (HE), as set out in its statement on this appeal case dated March 2015. In that statement HE concluded that the appeal proposal would cause less than substantial harm to heritage assets, but still sufficient harm to merit a refusal without substantive public benefits. On these points the Secretary of State agrees with HE. HE's advisor went on to state that the sum total of the impacts led him to the conclusion that without substantial benefits for those assets the appeal scheme cannot be justified and so the local planning authority's refusal of the application should be sustained. However the reference in Framework paragraph 134 to public benefits is not limited only to any benefits for the heritage assets in question. In undertaking the planning balance in this case, the Secretary of State has weighed the totality of benefits against the totality of harm.

#### *Landscape and visual amenity*

19. For the reasons at IR14.64 – 14.85, the Secretary of State agrees with the Inspector's conclusion on landscape impacts at IR14.85. He agrees that whilst this is not a designated landscape, for the reasons given it can properly be considered as a valued landscape. Whilst the planting proposed may be beneficial, in terms of strengthening existing hedgerows and the planting of more trees, that would be as part and parcel of a significant development scheme which, of itself, would erode rather than protect the existing pastoral landscape. Given the sensitivity of the landscape hereabouts, the development proposal

would result in very substantial harm to the established character and appearance of the area, in conflict with Local Plan policies DP1 and DP3. The proposed development would be at odds with the aims and objectives of paragraph 109 of the Framework, as it would fail to protect and enhance a landscape which is of clear value, and with paragraph 126 of the Framework which, among other things, requires that new development should make a positive contribution to local character and distinctiveness. The Secretary of State attaches significant weight to this harm.

20. The Secretary of State has considered the cumulative landscape and visual amenity impacts if he were to allow this appeal and the separate appeal for land south of Gallows Hill. He has had particular regard to the assessment of this matter at paragraphs 17.14 - 26 of the ES. That assessment considered the cumulative impact of an extensive area of potential development to the south of Warwick including, but not limited to, The Asps site and land south of Gallows Hill. It was concluded that, overall, taking all other potential cumulative schemes into consideration, there would be a notable increase in built development in the local area with associated consequences for the character of the landscape, which would become much more urbanised. However, because there are no especially elevated viewpoints in the local area with commanding views across the wider countryside, the prospects of perceiving the cumulative effects from any individual point location are limited. As such, the ES considered it unlikely that any individual viewpoint assessed would experience visual change greater than the effect of views of the proposed development in isolation. The Secretary of State accepts that assessment and concludes that the very substantial harm to the established character and appearance of the area as a consequence of allowing the Asps appeal proposal on its own would not be made significantly more harmful, cumulatively, if both this appeal and the Gallows Hill appeal were to be allowed.

#### *Park and Ride*

21. The Secretary of State agrees with the Inspector's analysis at IR14.86 – 14.97. For the reasons given he agrees that there is a contradiction in the County Council supporting a virtual Park and Ride, but objecting to the conventional Park and Ride proposed. He agrees that there would seem to be significant benefits attached to a conventional scheme, particularly one that is fully funded at no cost to the highway authority for the first ten years. Thus, in as much as the scheme proposed would include a conventional Park and Ride as opposed to a virtual facility, the Secretary of State agrees with the Inspector that there is no inherent conflict with current and emerging planning policy, or the authority's transport strategy (IR14.97) in which a Park and Ride of some sort continues to be an integral part (IR14.90). The Secretary of State places significant weight on the benefits of the proposed Park and Ride facility.

#### *Traffic generation and highway matters*

22. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding traffic generation and highway matters at IR14.98 - 14.107. The Secretary of State agrees with the Inspector that the evidence demonstrates that the appeal scheme would not be likely to lead to any material harm in terms of the safe or efficient operation of the local highway network and that there would be no conflict, in this regard, with Local Plan policies DP6 or DP7. Indeed, the

evidence suggests that the scheme would have the potential to reduce traffic movements across the bridge to the south of Warwick on a scale comparable with the results presented in the 2015 *Warwick and Leamington Spa Transport Strategy: Review of Sustainable Transport Alternatives*. With regards to paragraph 32 of the Framework, which makes it clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development would be severe, like the Inspector the Secretary of State is not persuaded that those impacts could be considered as severe.

23. In reaching his conclusion on traffic and associated highway matters, the Secretary of State has given careful consideration to cumulative traffic and associated air quality and noise impacts if, in addition to development of The Asps site, the proposed development on land south of Gallows Hill were also to be implemented. The ES concluded that there would be no further cumulative impacts associated with transport or related air quality and noise matters, as the original assessments included the potential traffic data for other proposed developments in their calculations, which included the site south of Gallows Hill.

#### *Accessibility*

24. The Secretary of State agrees with the Inspector's reasoning at IR14.108-14.114. For the reasons given, like the Inspector he is not persuaded that some local facilities and services required by future residents on a daily basis would be readily accessible, particularly at times when the Park and Ride was not running and future residents would not have a real choice about how they travel. He agrees with the Inspector that there would be conflict in this regard with policy DP6 of the Local Plan which requires the provision of safe, suitable and attractive access routes for pedestrians and cyclists. He also agrees that there would be conflict with paragraph 29 of the Framework, which seeks to ensure that people have a real choice about how they travel (IR14.115). He considers that these drawbacks weigh against the proposal, and he gives them moderate weight.

#### *Air Quality*

25. The Secretary of State agrees with the Inspector's assessment of air quality matters (IR14.116-14.121) and his conclusion that the scheme proposed would, in all likelihood, result in a reduction in traffic movement through the town centre, particularly as part of the more comprehensive package of sustainable transport measures being promoted by the Council. As a consequence, like the Inspector he is satisfied that in the longer term there would be no material harm in this regard and thus, no conflict with policy DP9 of the Local Plan (IR14.122).

#### *Biodiversity*

26. For the reasons at IR14.123-14.126 the Secretary of State agrees with the Inspector's conclusion that, all in all, whilst there would be some losses/impacts, primarily from the loss of sections of the existing hedgerow, loss of existing poor quality ponds, and loss or modification of existing arable land or species poor grassland, the submitted evidence indicates that the replacement of low value habitats with woodland, meadow, new wetlands, allotment, orchards and gardens would yield a net biodiversity gain overall. Like the Inspector, the Secretary of State recognises that the new planting etc. would take time to establish, but such is the current lack of ecological interest that a net increase in interest would occur within a relatively short time frame, before the new habitats reached full maturity (IR14.127). He gives moderate weight to the net gain in biodiversity.

27. For the reasons at IR14.128–14.129 the Secretary of State agrees with the Inspector’s conclusion, subject to appropriate conditions, that no contribution for off-site improvements to biodiversity is necessitated by the appeal scheme. On that basis, he agrees that the contribution provided for does not meet the statutory tests and, as such, it fails to comply with Regulation 122(2) of the Community Infrastructure Levy Regulations (IR13.130)

#### *Loss of agricultural land*

28. The Secretary of State has carefully considered national policy at paragraph 112 of the Framework and he agrees with the Inspector’s assessment in regard to the loss of agricultural land at IR14.131 - 14.132. He accepts that the development would remove from production approximately 50 hectares of what is, for the most part, best and most versatile agricultural land. He agrees with the Inspector that this would conflict with Local Plan policy DP3, and considers that this should attract moderate weight in the overall planning balance (IR14.132).

#### *Bishop’s Tachbrook Neighbourhood Plan*

29. The Secretary of State notes the Inspector’s summary at IR14.133–14.135 of progress with the BTNP. A period of public consultation on the BTNP closed on 1st June 2015 but the Plan is yet to be submitted to the Council for a period of publicity and then an independent examination.

30. The Guidance advises that refusal of planning permission on grounds of prematurity will seldom be justified in the case of a Neighbourhood Plan before the end of the local planning authority publicity period, which as noted above has not yet been reached by the BTNP.

31. The appeal site is not proposed to be allocated for development in the emerging BTNP and so the appeal proposal conflicts with this Plan. The Secretary of State has had regard to paragraph 216 of the Framework in relation to the weight to be given to emerging plans. In regard to the first and second considerations in paragraph 216, the BTNP as a whole is at a relatively early stage in its production, there are unresolved objections. As regards the third consideration in paragraph 216 of the Framework, the Secretary of State does not find any obvious inconsistency between the BTNP and the Framework ahead of the BTNP being examined. However, for the reasons at IR14.135 - 14.136 the Secretary of State considers the relevant policies in the BTNP for the supply of housing to be out of date. For all these reasons, he attaches little weight to relevant policies in the BTNP.

### **Section 106 planning obligations**

32. The Secretary of State has had regard to the matters raised by the Inspector at IR13.1 – 13.5 and agrees with the Inspector’s reasoning and conclusions on the two Unilateral Undertakings at IR14.137-14.161. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertakings that do accord with Paragraph 204 of the Framework and do meet the tests in the CIL Regulations 2010 as amended.

## **Conditions**

33. The Secretary of State has considered the points raised by the Inspector at IR12.1 – 12.2 and the Inspector's proposed conditions set out at Appendix D of the IR. The Secretary of State is satisfied that these conditions, which are reproduced in Annex A to this letter, meet the tests of paragraph 206 of the Framework and comply with the Guidance.

## **The planning balance and overall conclusion**

34. The Secretary of State has considered the Inspector's assessment of the benefits of the appeal scheme at IR14.162-14.170 and conclusions at IR15.1-15.4, but has reached a different overall planning balance.

35. The Secretary of State considers that the proposal conflicts with the Development Plan as a whole. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, he has given careful consideration to whether there are material considerations in this case that indicate the appeal should be determined other than in accordance with the Development Plan.

36. Weighing against the proposal is, first, the very substantial harm to the established character and appearance of the area, which is a valued though undesignated landscape. The Secretary of State attaches significant weight to this harm, including cumulative effects. Second, there would be less than substantial harm to the significance of the grade I registered Castle Park and, by association, the Conservation Area. In the Secretary of State's view that harm would still be less than substantial in terms of the Framework after taking cumulative effects into account. There would also be minimal, less than substantial harm to one listed building, The Aspens, and very limited, less than substantial harm to the significance of the non-designated Asps Cottage. Having paid special regard to the desirability of preserving the setting of the listed buildings, and to preserving or enhancing the character or appearance of the Conservation Area, the Secretary of State places considerable weight on the harm identified in this case. He places moderate weight on the accessibility drawbacks of the site and moderate weight on the loss of 50 hectares of what is, for the most part, best and most versatile agricultural land.

37. The Secretary of State does not agree with the Inspector's suggestion at IR15.3 that the proposal would conflict with the economic dimension of sustainability. Paragraph 7 of the Framework states that the economic role of sustainable development involves contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation. In this case the Secretary of State considers that the lack of an adequate housing land supply in Warwick District is a key concern in terms of the economic dimension to sustainable development, and that Warwick is a place where there is a pressing need to locate development to boost housing supply.

38. Weighing in favour of the proposal, the Secretary of State shares the Inspector's view that there is clearly a substantial benefit in the provision of up to 900 homes, 40% of which would be affordable, on a site that can be developed without significant delay (IR14.163). In view of the scale of development, which would give a significant boost to the housing supply in Warwick, he gives very great weight to the housing benefits.



39. He also agrees that the Park and Ride facility would be a substantial benefit that has the potential to reduce vehicular traffic, not only in the town centre but also on the surrounding highway network, and would also help alleviate town centre parking congestion (IR14.164). He gives significant weight to the benefits of the Park and Ride facility. He also gives limited weight to the potential improvements in air quality over what would be the case without the development in place (IR14.121). The Secretary of State also agrees that the appeal scheme would bring economic benefits in terms of job creation by attracting additional workers to the area, the construction industry jobs for the build phase, the jobs to be created from development of the associated retail and service provision at the proposed local centre, and further jobs created by the additional household spend in the area (IR14.169). He gives these economic benefits significant weight. There would also be the overall benefit to biodiversity (IR14.170) which the Secretary of State gives moderate weight.
40. In view of the significant weight that the Secretary of State places on various benefits of this large development proposal, he considers that the sum of benefits outweighs the sum of harm and consequently that the material considerations in this case justify determining the appeal other than in accordance with the development plan.

### **Formal decision**

41. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for: residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation, on land at The Asps bound by Europa Way (A452) to the east and Banbury Road (A425) to the west, in accordance with application number W/14/0300, This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990. dated 27 February 2014, subject to the conditions at Annex A.
42. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
43. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

44. 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 six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

45. A copy of this letter has been sent to Warwick District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**Julian Pitt**  
**Authorised by Secretary of State to sign in that behalf**

## **Annex A**

### **Conditions attached to grant of planning permission: Application W/14/0300**

#### **Reserved Matters**

- 1) Details of appearance, landscaping, layout and scale (hereinafter called ‘the reserved matters’) relating to each phase of development shall be submitted to and approved in writing by the local planning authority before any development begins in respect of that phase. Development shall be carried out in accordance with the approved details.
- 2) The first application for the approval of reserved matters as set out in condition 1 above shall be submitted to the local planning authority within three years from the date of this permission. All subsequent reserved matters applications shall be submitted to the local planning authority for approval no later than ten years from the date of commencement of the development.
- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the approval of the first application for reserved matters, whichever is the later.

#### **Plans**

- 4) Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with the following plans: Europa Way Access Peter Brett Associates plan 28353/015/003 Rev A; and Banbury Road Access Peter Brett Associates plan 28353/015/004 Rev B.

#### **Phasing**

- 5) The development hereby permitted may be carried out in phases. No development shall take place until a phasing plan for the construction of the development as a whole has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in full accordance with the duly approved phasing plan. The phasing plan shall include a programme of works detailing location, size, timing and delivery as applicable for:-
  - (i) each phase of housing within the site;
  - (ii) the local centre;
  - (iii) the shelter belt facing the Banbury Road;
  - (iv) the Banbury Road and Europa Way site accesses;
  - (v) the Highway Works identified in condition 18 below;
  - (vi) the on-site public open space, to include (but is not confined to) a sports pitches, community orchard, allotments and play areas
  - (vii) the Park and Ride car park.

#### **Development Parameters and Mix**

- 6) The development hereby permitted shall be carried out substantially in accordance with the details described on the following plans:

Site Location Plan EDP 1871/125

Illustrative Masterplan EDP 1871/140a

Parameters Plan: Land Use EDP 1871/116c

Parameters Plan: Maximum Building Heights EDP 1871/117b

Parameters Plan Advanced Planting EDP/1871/143

- 7) An area of land measuring no less than 0.5 hectare shall be reserved for a local centre. This area of land should broadly be in the location identified on drawing No EDP 1871/116C. Any reserved matters proposal for development on this land must provide a mix of A1 and A2 and A3 and A4 and D1 floorspace, and a police post and associated off-street servicing and parking facilities, all of which shall be delivered in accordance with the phasing plan.
- 8) Prior to the commencement of development in any phase, details of the mix of type and size of market dwellings to be provided in that phase, informed by the most up to date version of the Council's "*Development Management Policy Guidance: Mix of Market Housing on New Development Sites*" shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **Design Code**

- 9) All reserved matters applications shall be informed by a Site Wide Design Code which shall previously have been submitted to and approved in writing by the local planning authority. The Design Code shall be substantially in accordance with the principles and parameters set out within the Design and Access Statement, the plans and documents listed in conditions 4 and 6 above and the Council's "*Garden Towns, Villages and Suburbs: A Prospectus for Warwick District Council, May 2012*" (or any subsequent addendum and/or approved plans/strategy available at the time). The Design Code shall include, but is not confined to the following matters:
  - Hierarchy of streets/routes/sections (including the extent of adoptable highways and associated areas)
  - Development blocks including built form and massing and relationship with adjoining development areas/blocks, including areas of transition between development parcels (including the relationship between built form and adjoining open space);
  - Building types
  - Building heights
  - The means to accommodate the parking of vehicles and cycles
  - Key spaces, open spaces and green features
  - Palette of architectural materials and details
  - Design principles for street tree planting and other structural planting landscaping areas

- Design principles for hard and soft landscaping treatments (including surfacing materials for all public realm) and proposals for their long term management
- Design principles for waste disposal and recycling
- Design principles for the colour and texture of external materials and facing finishes for roofing and walls of buildings and structures
- Design principles for street lighting and any other lighting to public space (including parking areas)
- A mechanism for periodic review, and refinement if necessary, of the approved Design Code

## **Construction**

10) No phase of development shall commence until a Construction Method Statement for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Method Statement shall thereafter be adhered to throughout the construction period for that phase. The Construction Method Statement shall include, but is not limited to, the following matters:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate;
- wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
- measures to control the emission of dust and dirt during construction;
- and a scheme for recycling/disposing of waste resulting from construction works.

11) No phase of development shall commence until a Construction and Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction and Environmental Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction and Environmental Management Plan shall address, but is not limited to, the following matters:

- pre-commencement checks for protected and notable species, with subsequent mitigation as deemed appropriate; and
- appropriate working practices and safeguards for other wildlife (dependent on further survey work) that are to be employed whilst works are taking place on site.

- 12) No phase of development shall commence until a detailed Landscape, Arboriculture and Ecological Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Plan shall include details of maintenance of all new planting. The plan shall also include details of habitat management, such as for pond, wildflower grasslands, and habitat for protected species. Development shall be carried out in accordance with the approved Plan.
- 13) No phase of development shall commence, nor shall any equipment machinery or materials for the purpose of the development hereby permitted be brought onto any phase, until all existing trees and hedges to be retained within that phase have been protected by fencing in line with *BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations*, pursuant to a scheme that shall previously have been submitted to and approved in writing by the local planning authority. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved protection measures shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

### **Energy**

- 14) No phase of development shall take place under any reserved matters consent until a scheme for that phase showing how either:
  - a) at least 10% of the predicted energy requirement of the development will be produced on or near to the site from renewable energy resources;or
  - b) a scheme showing how at least 10% of the energy demand of the development and its CO<sub>2</sub> emissions would be reduced through the initial construction methods and materials has been submitted to and approved in writing by the local planning authority.

No dwelling within that phase shall be occupied until all the works within the scheme that relate to that dwelling have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturers specifications.

### **Archaeology**

- 15) No phase of the development shall commence unless and until a programme of archaeological works has been secured in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority in respect of that phase. Development shall be carried out in accordance with the approved scheme. The details to be submitted shall include provision to be made for publication and dissemination of the analysis and recording, and provision to be made for archive deposition of the analysis and records of the site investigation.

## Contamination

16) No phase of development shall commence until the following information has been submitted and approved by the local planning authority in respect of that phase: -

(1) (a) A site investigation has been designed for the site using the information obtained from the desk-top study as identified at Chapter 10 of the Environmental Statement and any diagrammatical representations (conceptual model). This should be submitted to and approved in writing by the local planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:

- a risk assessment to be undertaken relating to human health;
- a risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected;
- an appropriate gas risk assessment to be undertaken;
- refinement of the conceptual model; and
- the development of a method statement detailing the remediation requirements.

(b) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.

(c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the local planning authority. The method statement shall include details of how the remediation works will be validated upon completion and shall be approved in writing by the local planning authority prior to the remediation being carried out on the site.

(2) Development of the site shall accord with the approved method statement.

(3) If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless an addendum to the method statement, detailing how the unsuspected contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with.

(4) Upon completion of the remediation detailed in the method statement, a report shall be submitted to the local planning authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

## **Sustainable Drainage**

- 17) No phase of development hereby permitted shall commence until details of surface water drainage works for that phase have been submitted to and approved in writing by the local planning authority, demonstrating means of disposing of surface water and associated SUDS facilities from the development, that surface water runoff would not exceed runoff from the undeveloped site and would not increase the risk of flooding off-site, in accordance with the Flood Risk Assessment dated November 2013 ref: 28353/019 and The Asps Hydraulic Modelling Report prepared by Peter Brett Associated Ref. 28353. The scheme to be submitted, which shall be based on an assessment of the hydrological and hydrogeological context of the site, shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation in relation to each phase of the development; and,
  - iii) provide 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, or any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved scheme shall be installed in strict accordance with the approved details and timetable. It shall be retained thereafter and shall be managed and maintained in strict accordance with the approved details.

## **Highways**

- 18) The development hereby permitted shall not be commenced until a Highways Agreement has been entered into with the Highways Authority to secure the design, construction and completion of the following Highway Works and their subsequent adoption as publically maintainable highway. The Highway Works comprise the works identified on the following drawings:

28353-015-003 Rev A – Europa Way Access Interim Signal;  
28353-015-004 Rev B – Banbury Road Access Indicative Design;  
28353-5501-001 – Gallows Hill Roundabout Potential Mitigation Scheme;  
28353-5501-002 – Banbury Road/Myton Road Potential Mitigation Scheme;  
28353-5501-003 – Greys Mallory Roundabout Potential Mitigation Scheme;  
28353-5501-004 – Banbury Road/Gallows Hill Potential Mitigation Scheme;  
28353-5501-005 – Europa Way Corridor Potential Mitigation Scheme.

- 19) The development hereby permitted shall not be commenced until Stage 1 Road Safety Audits, with extended briefs to include linings, for the Highway Works referred to in condition 18 above, have been submitted to and approved by the local planning authority.



- 20) Each phase of development hereby permitted shall be carried out in strict accordance with details of a scheme for the provision of onsite footpaths which link with the wider public rights of way network, that shall previously have been submitted to and approved in writing by the local planning authority in respect of that phase.

### **Park and Ride**

- 21) Prior to commencement of development, the Specification for the Park and Ride shall be submitted to and agreed by the local planning authority. Development shall be carried out only in accordance with the approved Specification which shall include, but is not limited to;
- the layout, surfacing and demarcation of a 500 space car park, to include disabled parking provision;
  - any necessary supporting infrastructure including signage, ticket machines, toilets, shelters, lighting;
  - marketing and branding, including creation and maintenance of a dedicated website;
  - the contracted operator and the contract term;
  - staffing and operational information;
  - routing;
  - timetable and operating days and hours to provide two services, one to Warwick running Monday to Friday 07:00 to 19:24 (except on public holidays) and Saturday 07:45 to 18:54, and the other to Leamington Spa Monday to Friday 07:00 to 19:25 (except on public holidays) and Saturday 07:30 to 18:55;
  - maintenance standards;
  - financial viability information;
  - long term management of the Park and Ride, including flexibility to allow for the possibility of the District or County Council to operate the Park and Ride.

### **Lighting**

- 22) No phase of development shall commence until a detailed lighting scheme for public areas in that phase, including roads and footways, has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **Fumes/Noise Mitigation**

- 23) No phase of development shall commence until a scheme for that phase, detailing arrangements to protect future residents of the development hereby permitted from traffic noise, in accordance with the mitigation measures set out in Chapter 14 of the Environmental Statement, has been submitted to and approved in writing by the local planning authority. No dwelling within a phase shall be occupied until the commensurate noise mitigation measures have been implemented in accordance with the approved details, which measures shall be retained thereafter.
- 24) Noise arising from any plant or equipment installed at any of the commercial units hereby permitted (i.e. any unit falling within Use Classes A1, A2, A3, A4 or

D1), when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) (measured as LAeq(5 minutes)). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level.

- 25) None of the commercial units hereby permitted shall be used for purposes falling within Use Classes A3 or A4 unless and until:
- (a) an odour assessment has been undertaken to assess the impact of odour arising from cooking and any proposed fume extraction system that is required to serve that unit;
  - (b) the results of the odour assessments carried out to comply with criterion (a), together with details of any necessary mitigation measures, have been submitted to and approved in writing by the local planning authority; and
  - (c) any necessary mitigation measures approved under (b) have been implemented in full accordance with the approved details.

The odour mitigation measures installed and shall be retained thereafter and shall be operated and maintained in accordance with manufacturer's instructions.

### **Fire Safety**

- 26) No phase of the development shall commence until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes in that phase, has been submitted to and approved in writing by the local planning authority. That phase of development shall not then be occupied until the scheme has been implemented in accordance with the approved details.

-----end of schedule-----

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

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Date: 23 July 2015

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY**

**BARWOOD STRATEGIC LAND II LLP**

**AGAINST THE DECISION OF**

**WARWICK DISTRICT COUNCIL**

Inquiry opened on 14 April 2015

Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west.

Appeal Ref: APP/T3725/A/14/2221613

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## **APPENDICES**

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**Appeal Ref: APP/T3725/A/14/2221613**

**Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Barwood Strategic Land II LLP against the decision of Warwick District Council.
- The application, No W/14/0300, dated 27 February 2014, was refused by a notice dated 30 May 2014.
- The development proposed is described on the application form as residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation.
- On 25 July 2014, the appeal was recovered for determination by the Secretary of State because the scheme involves a proposal for residential development of over 150 units, or is on a site of over 5 hectares, which would impact significantly on the objective of the Government to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Summary of Recommendation: That the appeal be dismissed.**

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**1. PROCEDURAL AND BACKGROUND MATTERS**

- 1.1 A pre-Inquiry meeting was held on 8 January 2015 to consider administrative and other arrangements for the event. At the meeting, it was agreed that I would visit the appeal site and its surroundings on an accompanied basis immediately prior to the opening of the Inquiry in order to provide a context for the evidence that I would be hearing. That visit was carried out on the afternoon of 13 April 2015 by minibus, following an itinerary agreed between the parties. I was accompanied on the visit by representatives for the Council, the appellant, and both the Rule 6(6) parties.
- 1.2 The Inquiry sat for eleven days (14-17 April, 20-24 April and 27-28 April 2015). At the request of some of the parties, I visited the town centre on an unaccompanied basis on the morning of 27 April 2015 to look at the traffic in the town centre during the morning peak, at a time when the schools had returned following the Easter holidays. At the end of the Inquiry, whilst it was agreed that no further accompanied visit was required, I undertook to take in views from the M40 and visit Warwick Parkway station on an unaccompanied basis. I did that immediately following the close of the Inquiry.
- 1.3 Two interested parties, Hallam Land Management/William Davis Limited (Hallam/Davis) and the Save Warwick Action Group (SWAG) sought, and were afforded Rule 6(6) status for the Inquiry.
- 1.4 Two planning obligations in the form of unilateral undertakings were submitted to the Inquiry.<sup>1</sup> Following the related discussion at the Inquiry, and with the consent of the parties, revised versions containing agreed minor amendments were submitted after the close.<sup>2</sup> The obligations are a material consideration

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<sup>1</sup> Inquiry Docs 32 and 45

<sup>2</sup> Inquiry Docs 56 and 57

and are considered in more detail later on. Also with the agreement of the parties, further information as to the basis for the calculation of the public rights of way contribution secured by one of the obligations was submitted following the close of the Inquiry.<sup>3</sup>

- 1.5 The Council's Decision Notice set out four reasons for refusal, one of which read as follows:

*'Insufficient evidence has been provided to demonstrate that the intensity and nature of vehicle movements associated with the proposed development can be undertaken in a manner which is not harmful to highway safety.'*

Following refusal of the application, further work was carried out by the appellant in consultation with the highway authority. As set out in the Statement of Common Ground between the appellant and the highway authority, that work demonstrated to the satisfaction of the highway authority that, with suitable mitigation, traffic associated with the development proposed could be accommodated with no detriment to highway safety.<sup>4</sup> As a consequence, the District Council did not pursue that reason for refusal at the Inquiry,<sup>5</sup> although others continued to have concerns in this regard.

- 1.6 Whilst none of the reasons for refusal related to the Park and Ride element of the scheme, the County Council (as highway authority) still had concerns in this regard,<sup>6</sup> although it did not seek Rule 6(6) status at the Inquiry and did not, originally, intend to appear at the Inquiry. Correspondence from the County Council (Legal Services) in March 2015<sup>7</sup> confirms, among other things, that the District Council was not in agreement with the entirety of the Highways Statement of Common Ground (signed by Mr Benison for the highway authority and the appellant).<sup>8</sup>
- 1.7 Although not anticipating appearing at the Inquiry, Mr Benison produced a proof of evidence dated March 2015. In April 2015, he also produced a pre-Inquiry Note to provide further clarification on the position of the highway authority with regard to its views on Park and Ride.<sup>9</sup> It included an overview of the highway authority's position, comments on the appellant's assessment of Park and Ride, and comments on the appellant's proofs and the assumptions made regard Park and Ride. In the event, the District Council did call Mr Benison to answer questions on the information he had provided and the queries that arose from that, and to explain the stance of the highway authority as expressed in correspondence submitted during the Inquiry.<sup>10</sup>

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<sup>3</sup> Inquiry Doc 58

<sup>4</sup> paragraph 1.1.8

<sup>5</sup> Letter dated 4 March 2015 from the County Council to the Planning Inspectorate

<sup>6</sup> More detail is provided on this below, in my conclusions in paragraphs 14.86 onwards

<sup>7</sup> Letter dated 4 March 2015 from the County Council to the Planning Inspectorate

<sup>8</sup> The areas of concern related to the reference to the favoured location for a Park and Ride being to the south of the towns and that the land at The Asps was a favoured location, and references in the document to the anticipation that the County Council would construct, own and operate such facility. It goes on to say that the Council objects to the siting of the facility as it would impact on the significance of designated heritage assets and would harm the countryside. It also indicates that the District Council would not take on responsibility for the facility, the provision of which should be addressed through the Local Plan process.

<sup>9</sup> Pre-Inquiry Note dated April 2015 appended to an email dated 8 April 2015

<sup>10</sup> Inquiry Docs 28, 31 and 42

- 1.8 I understand Gallagher Estates Limited to have requested that the decision of the Secretary of State on its appeal in relation to an outline application to develop land to the south of Gallows Hill/west of Europa Way, Warwick<sup>11</sup> is issued on the same date as his decision on this appeal. Whilst that request is opposed by the appellant in this case, the date of issue of the respective decisions is a matter for the Secretary of State in due course and is, I understand, the subject of separate representations.
- 1.9 Shortly after the close of the Inquiry, a decision of the Secretary of State relating to land at Kingsland Laines in Sayers Green, Mid-Sussex, in which he accepted the Inspector's positive findings on the planning merits but dismissed the appeal because the proposal conflicted with, and was premature in relation to, an emerging Neighbourhood Plan, was quashed by the High Court (Woodcock Holdings).<sup>12</sup> The parties to the appeal at The Asps, including the Rule 6(6) parties, were given the opportunity to provide further comments on that judgement in relation to the weight to be afforded to the emerging Bishop's Tachbrook Neighbourhood Plan, in as much as it had a bearing on the respective cases in this current appeal. The comments received<sup>13</sup> are included in my report of the cases below.

## **2. ENVIRONMENTAL IMPACT ASSESSMENT**

- 2.1 The proposed development has been subject to the formal process of Environmental Impact Assessment (EIA) under the Town and Country Planning (Environmental Impact Assessment)(England) Regulations 2011. The scope of the subsequent Environmental Statement (ES), which accompanied the planning application and which examines and evaluates the likely environmental effects of the development, was agreed with the Council in November 2013.
- 2.2 The Planning Inspectorate carried out a review of the submitted information on 29 October 2014 and confirmed that, as a whole, the ES contained sufficient data to be able assess the likely environmental impacts of the development proposed, and that it was adequate to meet the requirements of the Regulations.
- 2.3 Interested parties did raise concerns about the adequacy of the ES in terms of the impacts of the development proposed, both direct and indirect, on the historic town of Warwick as a whole, including the Conservation Area. However, I am satisfied that the ES, when considered together with the information and evidence provided during the course of the application and appeal, including the evidence given at the Inquiry, is adequate for the determination of the appeal proposal.

## **3. THE SITE AND ITS SURROUNDINGS**

- 3.1 The site and its surroundings are described in detail in the Supporting Planning Statement submitted with the planning application, the Design and Access

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<sup>11</sup> Located immediately to the northeast of The Asps: APP/T3725/W/14/2229398 Inquiry scheduled to open on 25 August 2015

<sup>12</sup> Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin)

<sup>13</sup> Inquiry Docs 59, 60 and 61

Statement, the Environmental Statement,<sup>14</sup> the officer's report to the planning committee, the Statement of Common Ground between the appellant and the Council, and in the evidence of the respective witnesses.

- 3.2 In essence, the 56.6 hectare site (approximately 140 acres) lies on the southern fringe of Warwick, some 2.5 kilometres south of the town centre, 4.5 kilometres to the south of Leamington Spa. The site, which is agricultural land laid principally to grass comprising a series of fields separated by hedges and fencing, is roughly the shape of an inverted teardrop: to the east the curving boundary is formed by Europa Way (A452), whilst to the west, the boundary follows the curving Banbury Road (A425). Europa Way and Banbury Road are main routes into Warwick. Their intersection at the southern tip of the appeal site is defined by the Greys Mallory roundabout, which provides a connection to the M40 motorway. The police have a traffic base adjacent to the site, just to the north of the roundabout, next to which is an electrical substation from where two overhead power lines head north, crossing the appeal site.
- 3.3 To the north, the appeal site is bounded by the Tach Brook and a non-operational landfill site (Turnbolls Garden) which benefits from planning permission for use as a touring caravan site.<sup>15</sup> Beyond that is further open agricultural land which is under separate control.
- 3.4 The western site boundary is inset from Banbury Road in part, to exclude a small group of buildings comprising The Aspens (a grade II listed property) and its outbuildings, Asps/Keepers Cottage, a recent, as yet unoccupied farmworker's dwelling, and Asps Cottages. To the west/north-west of the appeal site, on the opposite side of Banbury Road, is the Registered Warwick Castle Park and Garden (grade I). On the opposite side of Banbury Road to the south-west, is Park Farm.

#### **4. PLANNING POLICY**

- 4.1 The planning policy context for the development proposed is set out in the officer's committee report, at section 4 of the Statement of Common Ground between the Council and the appellant and in the various proofs. In addition to the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (planning guidance) reference was made to:

*The Warwick District Local Plan 1996-2011*<sup>16</sup>

- 4.2 At the time of the Inquiry, the development plan for the area included the saved policies of the Warwick District Local Plan, adopted in September 2007. The appeal site lies in the open countryside, outside any development boundary defined by the Plan.
- 4.3 Policy RAP1 sets out the locations and circumstances where new residential development may be permitted, in order to direct new housing to the most sustainable locations and to protect the countryside as an important local asset. The appeal site does not meet any of the specified circumstances.

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<sup>14</sup> Chapter 3

<sup>15</sup> Inquiry Docs 10 and 43

<sup>16</sup> CD 3.1 Proposals Map can be found at Inquiry Doc 18



- 4.4 Policy DP1 sets out criteria relating to layout and design which new development is expected to adhere to in order to ensure that it makes a positive contribution to the character and quality of the environment. Policy DP2 seeks to protect the amenity of nearby uses and residents, as well as ensuring appropriate standards of amenity for future occupiers of the proposed development.
- 4.5 Policy DP3 is permissive of development that protects important natural features and makes a positive contribution to the character and quality of the natural and historic environment through good habitat/landscape design and management. Among other things, policy DP4 requires that any remains of archaeological value are properly evaluated prior to the determination of a planning application and, where permission is granted, an agreed programme of archaeological investigation and recording precedes development.
- 4.6 Policy DP5 is only permissive of development that makes best use of land and buildings. Policy DP6 requires the provision of safe, convenient and attractive access routes for pedestrians, cyclists, public transport users and other users of motor vehicles. Policy DP7 seeks to avoid adverse impact from significant road traffic generation. Among other things, policy DP8 requires that parking provision does not encourage unnecessary car use and has regard to encouraging means of travel by methods other than the private car.
- 4.7 Policy DP9 is only permissive of new development where it would not give rise to contamination, including air pollution. Policy DP11 requires that new development incorporates sustainable drainage systems, with DP12 encouraging energy efficient buildings.
- 4.8 Policy SC1 resists residential development unless it makes provision for a range of sizes and types of dwelling and policy SC11 requires 40% affordable housing provision on development sites. SC4 resists development that would have an adverse impact on, or prejudice implementation of new or improved cycle and pedestrian routes, or the continuity of existing routes.
- 4.9 Policies SC12 and SC13 require contributions towards sustainable transport improvements, calculated in accordance with criteria set out in the Warwickshire Local Transport Plan,<sup>17</sup> and towards the provision, improvement and maintenance of open space, sport or recreation facilities respectively. SC14 seeks contributions towards community facilities.
- 4.10 Policy DAP3 resists development that would destroy or adversely affect sites of interest for nature conservation, geology and geomorphology. Policy DAP4 seeks to protect the special interest, integrity and setting of listed buildings, with policy DAP8 seeking to ensure that new development preserves or enhances the special architectural and historic interest and appearance of Conservation Areas, respects their setting and preserves views into and out of them. Policy DAP11 looks to protect the historic structure, character, principal components and setting of Parks and Gardens of Special Historic Interest.
- 4.11 Policy SSP5 identifies land at Greys Mallory as an area of search for the development of a bus-based Park and Ride for Leamington and Warwick.

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<sup>17</sup> CD 3.39

Other development within that area of search will not be permitted if it would be likely to prejudice the implementation of the scheme.

*The emerging Warwick District Local Plan 2011-2029*<sup>18</sup>

- 4.12 The Council's Preferred Options Paper was published for public consultation in May 2012.<sup>19</sup> The Paper confirmed the Council's intention to concentrate growth within, and on the edge of, existing urban areas, distributed across the District.<sup>20</sup> The approach identified a number of potential strategic allocations to the south of Warwick and Leamington Spa on greenfield sites, and also included Green Belt releases. The Paper identified The Asps as part of a larger strategic site.<sup>21</sup> However, having received the public consultation responses,<sup>22</sup> and taking account of a paper produced by the Council entitled '*The Setting of Heritage Assets, The Asps, Warwick*'<sup>23</sup> the site was not included within the subsequent revised development strategy.<sup>24</sup>
- 4.13 The public consultation on the Warwick District Local Plan Publication Draft<sup>25</sup> ran until the end of June 2014. The Examination into the Plan was due to commence in May 2015. That emerging Plan does not include the appeal site as an allocated site for housing.
- 4.14 Policy DS2 states that the Plan will deliver the quality and mix of homes required to provide for the Full Objectively Assessed Housing Need. Policy DS3 supports sustainable communities, promoting new high quality development, with layouts and designs that relate, among other things, to existing landscape or urban form.
- 4.15 Policy DS4 confirms that allocated housing and employment will be distributed across the District taking account of various factors. Where greenfield land is required for housing, it should be located at the edge of urban areas in sustainable locations. Policy DS5 sets out a presumption in favour of sustainable development.
- 4.16 Policy DS10 sets out the broad locations of allocated housing sites confirming, among other things, that some 3245 dwellings will need to be provided on greenfield sites on the edge of Warwick, Leamington Spa and Witnash, with policy DS11 setting out the allocated sites., the majority of which are to the south of Warwick and Leamington Spa. The appeal site is not one of those. Policy DS15 confirms that comprehensive development schemes should be provided for five specific strategic allocated sites. Again, the appeal site is not one of those.
- 4.17 Policy DS20 relates to unmet housing need arising from outside the District. If such a need is proven, then the Plan would be reviewed in consultation with neighbouring authorities.

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<sup>18</sup> CD 4.1

<sup>19</sup> CD 4.7

<sup>20</sup> Ibid Policy PO3 page 16

<sup>21</sup> Ibid Policy PO4 and Map 4

<sup>22</sup> CD 4.3 and 4.4

<sup>23</sup> CD 4.6

<sup>24</sup> CD 4.8 Map 3 page 33

<sup>25</sup> CD 4.1

- 4.18 Policy HO is an overarching policy which seeks to ensure that the Council has the right amount, quality and mix of housing to meet the Objectively Assessed Need, to ensure that new housing is in the most appropriate locations and to ensure that the required quality and mix of homes, necessary to meet the identified needs, is delivered. Policy H1 establishes the circumstances where new housing will be permitted. Policy H2 requires 40% affordable housing provision on development sites. Policy H4 requires that residential development schemes include a mix of market housing that contributes towards a balance of house types and sizes.
- 4.19 Policy SC0 requires that new development is of high quality, brought forward in a way that enables strong communities to be formed and sustained. It is also important that new development protects and enhances the historic, built and natural features that make Warwick a great place.
- 4.20 Policy BE1 is permissive of new development where it would make a positive contribution to the character and quality of the environment through good layout and design. Policy BE2 confirms that developments of more than 200 dwellings must comply with a development brief that would need to be prepared for that site and which would be adopted as supplementary planning document. Policy BE3 seeks to protect the amenity of existing and proposed residents and uses.
- 4.21 Policy TR1 is only permissive of new development where it would provide safe, suitable and attractive access routes for pedestrians, cyclists, public transport users, delivery vehicles, and other users of motor vehicles. TR2 confirms that large scale developments that would generate significant traffic movements should be supported by a Transport Assessment and, where necessary, a Travel Plan, to demonstrate practical and effective measures to be taken to avoid the adverse impacts of traffic. TR3 requires contributions towards transport improvements from development that would lead to an increase in traffic on the road network.
- 4.22 Policy HS4 requires contributions towards providing, improving and maintaining appropriate open space, sport and recreational facilities. Policy HS5 is supportive of proposals for new and improved open space, sport and recreation facilities.
- 4.23 Policies HE1 and HE2 seek, respectively, to protect the special architectural or historic interest, integrity or setting of listed buildings, and the character, appearance and setting of conservation areas, including views into and out of such areas. Policy HE4 seeks to protect the historic structure, character, principal components and setting of Parks and Gardens of Special Historic Interest.
- 4.24 Policy DM1 requires that new development makes appropriate infrastructure contributions.
- 4.25 Policies NE3 and NE4 are permissive of new development provided, respectively, that it would protect enhance and/or restore habitat biodiversity and makes a positive contribution to landscape character. Policy NE5 is permissive of development provided it safeguards the District's natural resources, including best and most versatile agriculture land.

*The Bishop's Tachbrook Neighbourhood Plan (Submission Version)*<sup>26</sup>

- 14.1 The Neighbourhood Plan was the subject of public consultation in September 2014, following which the Submission version of the Plan<sup>27</sup> was presented to the District Council for formal consultation. However, solicitors acting on behalf of the appellant issued a Judicial Review Pre-Action Protocol letter.<sup>28</sup> As a consequence, the District Council has decided not to publish the Neighbourhood Plan until the Parish Council has re-consulted under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012.<sup>29</sup> I deal with its progress, and the weight it can be afforded, in more detail later on.<sup>30</sup>
- 4.26 The appeal site lies within a rural area, outside any development or settlement boundary defined by the emerging Neighbourhood Plan. Policy BTH2 is only permissive of residential development outside settlement boundaries where, among other things, it comprises a strategic site in the Local Plan 2011-2029, or is not in the defined Area of Coalescence Protection (ACP). The appeal site is not identified as a strategic site in the emerging Local Plan and it lies within the ACP. Policy BTRE2 seeks to protect land outside the defined settlement boundaries other than where, among other things, it is in accordance with other policies, including BTH2, or unless it is a strategic site in the Local Plan 2011-2029. It also resists development in the ACP unless it is a strategic site in the Local Plan 2011-2029.
- 4.27 Paragraph 215 of the Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. I address the question of the amount of weight attributable to individual policies in my conclusions.

## **5. THE PROPOSAL**

- 5.1 This is an outline application with all matters other than access reserved for future consideration. A description of the proposal can be found in various places, including the Supporting Planning Statement that accompanied the application, the Design and Access Statement, the Environmental Statement,<sup>31</sup> the planning officer's report and section 2 of the Statement of Common Ground between the appellant and the Council.
- 5.2 In summary, permission is sought for a residential led scheme of up to 900 dwellings, 40% of which would be affordable, a small primary school, a local centre, a Park and Ride facility with up to 500 spaces, and public open space. Detailed approval is sought for the means of access from both Europa Way and Banbury Road, as shown on plan Nos 28353/015/004 and 28353/015/003 Rev A.
- 5.3 Although details of layout were not submitted as part of the outline application, an illustrative master plan (EDP1871\_140a) was submitted, informed by the constraints and opportunities detailed in the Design and

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<sup>26</sup> Inquiry Doc 37

<sup>27</sup> Inquiry Doc 37

<sup>28</sup> Appendix 14 to the proof of Mr Halman

<sup>29</sup> See letter attached to Inquiry Doc 3

<sup>30</sup> Paragraphs 14.132-14.135

<sup>31</sup> Chapter 5

Access Statement. The application sought approval for the scale parameters shown on the Parameters Plans (EDP1871\_116c and 117b). The plans set out the proposed land uses, maximum building heights and areas of open space and landscaping. Broadly, the dwellings proposed would be of two storeys and would occupy some 26 hectares of the site, with the indicative plans showing lower density development in areas fronting open space, with density increasing towards the Europa Way boundary.

- 5.4 The local centre is anticipated as including a mix of local needs convenience uses (A1-A5 and D1) within a 0.5 hectare area of the site. Some 1.1 hectares is reserved for a one form entry primary school and associated playground. School playing fields would be provided outside that zone, on an area of greenspace. The Park and Ride would occupy some 2 hectares at the southern end of the site, adjacent to the proposed Banbury Road access.
- 5.5 Approximately 12.24 hectares of public open space is envisaged, including parkland, natural areas, green corridors, allotments, three sports pitches and a community woodland. The area of open space within the centre of the site is positioned on or around the highest part of the site to minimise visibility from lower lying areas to the west and south-west. The scheme also includes almost 8 hectares of fields (approximately 100 metres deep) along the boundary with Banbury Road.

## 6. AGREED MATTERS

- 6.1 As mentioned above, a Statement of Common Ground between the appellant and the District Council was submitted (**SoCG1**). It sets out that, at the time that the application was determined, the Council could not demonstrate a five year supply of housing land. Whilst housing developments have been approved since then, at the time that SoCG1 was signed, the Council still could not demonstrate a five year supply. However, it was anticipated that it would have a five year supply by the time of the Inquiry.
- 6.2 Among other things it is agreed, in summary, that:
- the appeal site was identified in the Council's 2012 SHLAA as a site capable of accommodating almost 1000 houses to be delivered between 2019-2029;
  - the 2012 SHLAA identifies that '*only sites in sustainable locations consistent with National Planning Policy were assessed in order to avoid wasting resources assessing sites not in accordance with national policy.*'
  - the 2014 SHLAA concluded that the site was not suitable for development.
  - the submission of a planning obligation securing relevant contributions and arrangements would overcome the fourth of the Council's reasons for refusal.
  - the proposal would result in less than substantial harm to all relevant heritage assets.
  - impact on ecology did not form part of the reasons for refusal and the outline proposal is capable of delivering net biodiversity enhancement which can be secured through a management plan. No biodiversity offsetting contribution is required.

- there was no dispute in relation to flood risk, noise, pollution, accessibility, air quality, buried archaeological deposits, waste, or affordable housing.
- 6.3 There was no agreement as to whether Local Plan policy RAP1 (directing new housing) should be afforded weight, or whether the authority could demonstrate a five year supply of housing land.
- 6.4 There was no agreement as to whether matters which mitigate the impact of development can also be treated as a sustainable benefit of the scheme which may be treated as an advantage in the planning balance.
- 6.5 There was no agreement as to whether paragraph 14 of the National Planning Policy Framework was engaged.
- 6.6 A Statement of Common Ground was submitted between the appellant and Warwickshire County Council as highway authority (**SoCG2**). In summary, it is agreed:
- that the modelling produces a true representation of the network performance should the development proposed go ahead, based on agreed trip rates and isolated junction modelling, all as specified by the highway authority.
  - that the junctions are expected to operate within capacity in all model scenarios.
  - that all significant technical matters have been agreed with the highway authority and that the impact of the development on the local highway network is acceptable and can be accommodated subject to the delivery of agreed mitigation measures.
  - that a footway/cycle link will be provided to connect to Banbury Road, to be delivered as part of the on-site accessibility strategy.
  - that a contribution is required toward off-site pedestrian/cycle infrastructure to enhance facilities either along Banbury Road or Europa Way.
  - that public right of way (No W105) a grassed footpath that traverses the site, will be retained in its current position and routing as far as possible and will be upgraded to an all weather material where appropriate.
- 6.7 It also sets out that contributions towards a 'virtual' Park and Ride<sup>32</sup> are identified in the County Council's Strategic Transport Assessment Phase 4 (April 2014),<sup>33</sup> that the proposed Park and Ride accords with Local Plan policy SSP5 and that the site lies within the area of search in the emerging Local Plan (policy TR5). It is agreed that land to the south of Warwick and Leamington Spa is a favoured location for a Park and Ride and that, together with another site slightly further to the north, The Asps is a favoured location.

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<sup>32</sup> A virtual Park and Ride comprises a car park site served by an existing bus route. A conventional arrangement, such as that proposed at the appeal site, comprises a car park with facilities (including signage, ticket machines, toilets, shelters and lighting ) and a dedicated bus service.

<sup>33</sup> CD 3.40

- 6.8 At the time of signing, the deliverability and viability of the proposed Park and Ride was not agreed. It was agreed however, that the facility would support the provision of public transport for development of the site and, if it was shown to be viable, it would further reduce any impact of development associated traffic on the local highway network.
- 6.9 A Statement of Common ground between the appellant and Warwickshire County Council as Education Authority (**SoCG3**) was submitted.<sup>34</sup> In summary it is agreed that:
- the development gives rise to a need for a 26 place nursery class as part of a new one form entry primary school;
  - the school would be accommodated on a 1.04 hectare freehold site within The Asps development;
  - if the County Council were to provide the primary school instead of the appellant, it would seek an early years and primary contribution;
  - contributions are necessary for the provision of secondary school places at existing secondary schools and for the provision of primary school and secondary school special educational needs places.
- 6.10 It is not agreed however, that in determining the exact contribution required, whether it is more appropriate to use the Cost Multiplier applying at the date of the planning refusal, or the Cost Multiplier now in use by the County Council for all applications.
- 6.11 A Statement of Common Ground was submitted between the appellant and the Hallam/Davis Rule 6(6) party (**SoCG4**). Among other things, the parties are in agreement that:
- the purpose of the deep tree-lined boundary of Castle Park was, and remains, to exclude views into or out of the Park and that Banbury Road establishes a clear boundary and was specifically designed to route traffic around the Park, rather than through it as was previously the case.
  - the key setting of the eastern side of the Park is the Banbury Road, which will remain as existing.
  - whilst The Aspens, Keepers Cottage (also referred to as Asps Cottage) Turnbolls Garden and the former position of the feeder lake to New Waters contributed historically to the function of the Park, they no longer make a significant contribution to its importance.
  - the historic relationship between The Aspens and Keepers Cottage will be maintained.
  - although the fields that comprise the appeal site form part of the wider setting to the Park, they now make no significant contribution to its importance as a heritage asset, the land now being subject to the urbanising influence of the wider settlement.

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<sup>34</sup> Submitted as part of the CIL Compliance Schedule prior to the Inquiry

- the only position within the wider landscape to the east of Warwick from where the eastern boundary of the Park can be appreciated as a whole, is at the junction of New Barford Lane and the Banbury Road.
- there is no planned vista along the eastern boundary of the Park looking north towards Warwick.

## 7. THE CASE FOR THE APPELLANT

*[Edited from the closing submissions of the appellant's advocate<sup>35</sup> and oral responses to the closings of other parties. The case includes post-Inquiry comments in relation to the Woodcock Holdings judgement referred to earlier.<sup>36</sup>]*

7.1 The appellant relied on seven witnesses: Mr M Parkinson, Mr B Pinkett, Mr D McInerney, Mr Crutchley, Ms C Howick, Mr G Halman and Mr T Wigglesworth. Mr Wigglesworth's evidence was taken as read and he did not appear before the Inquiry.

7.2 The material points of the applicant's case are summarised below.

### **ISSUE ONE: Full Objectively Assessed Need (FOAN)**

7.3 Based only on demographic trends, the most recent projections in the District indicate a housing figure of around 600. Mr Gardner, on behalf of the Council takes the view that the figure should be increased by 50-60 units to take account of market signals, and to reflect similar uplifts used by Inspectors in Local Plan Inquiries.

7.4 However, demographics are only a starting point in the assessment of FOAN, as confirmed by paragraph 15 of the Planning Practice Guidance (planning guidance)<sup>37</sup> when considering '*What is the starting point to establish the need for housing.*' Once that figure is ascertained, further work is needed to establish the FOAN within a District.

7.5 The projections must be viewed critically. For example, economic growth is a matter capable of bearing on the FOAN. Mr Gardner departs from that approach, claiming that such considerations are "policy on" and so he has discounted them entirely. His approach is wrong according to the District's own evidence base.

7.6 In the SHMA update,<sup>38</sup> GL Hearn assessed economic forecasts and, while concluding that they could be volatile, particularly at a local authority level, the Study explained that;

*"The forecasts do not however take account of land supply of development constraints; or of initiatives or interventions which might stimulate economic growth (in so far as they may be different in their impact to past interventions)."*  
*... Both sets of forecasts are thus "Policy Off". They reflect Cambridge Econometrics' and Experian's respective views regarding future economic performance at the time of their preparation in 2013. Neither forecast is inherently 'right' nor 'better' – they*

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<sup>35</sup> Inquiry Doc 55

<sup>36</sup> Inquiry Doc 61

<sup>37</sup> ID: 2a-015-20140305

<sup>38</sup> CD 3.9



*simply reflect differences in the views of the two economic forecasters regarding the performance of different sectors in the economy.*"<sup>39</sup> (emphasis added)

- 7.7 The economic projections are plainly material, and should be taken into account in assessing the FOAN as recommended by the SHMA update<sup>40</sup> and the planning guidance when considering *'How should employment trends be taken into account.'*<sup>41</sup>
- 7.8 Thus, Ms Howick concludes that the 714 figure within the Draft Plan is likely to fall short of the FOAN, let alone a lower figure based only on demographic projections.
- 7.9 The SHMA update also explains<sup>42</sup> that the level of housing need will be sensitive to trends in migration and new household formation. That is echoed in the planning guidance section entitled *'Housing and economic development needs assessments'*. That section is important in explaining that:
- (i) household projection based estimates do not reflect unmet housing need or historic suppression of household formation rates;
  - (ii) they do not attempt to predict the impact of future government policies, changing economic circumstances, or other factors that might have an impact on demographic behavior;
  - (iii) accordingly, the projections may require adjustment to reflect those factors.
- 7.10 This is such a case. Demand has typically been high in the District. As a result of a booming housing market in the early 2000s most of the allocated sites came forward and, by the time of the 2006 Monitoring Report, there were only two allocations left. Thereafter, the Council did not allocate any new housing land and, from 2005 onwards, a moratorium was imposed on new windfall permissions, which remained in force until 2009.
- 7.11 Accordingly, at a time when demand in the District was high, it was suppressed by the RSS/Council's policy, which strongly suggests that there is a level of unmet need that has to be taken into account in establishing the FOAN. As Mr Barber accepted, that "top down" control no longer exists and a completely new approach to housing delivery has replaced it. It is therefore completely misguided to determine housing needs under the "bottom up" system, which is itself expressly aimed at boosting housing supply.<sup>43</sup> This approach was adopted by the Inspector who dealt with an appeal at The Laurels, Offenham<sup>44</sup> and by Ms Howick herself in her proof of evidence in relation to that appeal.<sup>45</sup>

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<sup>39</sup> Ibid paragraphs 3.6 and 3.8

<sup>40</sup> Ibid paragraph 5.6

<sup>41</sup> ID: 2a-018-20140306

<sup>42</sup> CD 3.9 paragraph 5.14

<sup>43</sup> Framework paragraph 47

<sup>44</sup> CD 7.16 paragraphs 23 and 24

<sup>45</sup> CD 9.11 paragraphs 3.40- 3.56

- 7.12 Taking a common sense approach, need and demand are interchangeable concepts. Neither the Framework nor the planning guidance precisely define housing need, except that the planning guidance offers the following;

*Need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period – and should cater for the housing demand of the area and identify the scale of housing supply necessary to meet that demand.*<sup>46</sup> (emphasis added)

- 7.13 One of the risks of failing to provide homes to meet economic growth and projected jobs is the encouragement of unsustainable commuting patterns, which is why strategies for housing, employment and other uses should be integrated and take full account of relevant market and economic signals.<sup>47</sup> Mr Gardner acknowledges that there should be an uplift to the demographic projection based on greater affordability pressures within the District, and uplifts the 600 figure to 660 to reflect 10%. The appellant considers that 15% is more appropriate in this particular area, given the past failure to satisfy demand.
- 7.14 The planning guidance also provides guidance on how market signals should be taken into account.<sup>48</sup> Again, these are 'policy off' considerations in recognition that the demographic projections cannot tell the whole story and adjustment is necessary. In this District, all indicators point to upwards adjustment of the demographic base.

- 7.15 Ms Howick's approach to FOAN is to follow these steps:

- (i) Start with the demographic evidence;<sup>49</sup>
- (ii) The 2012 Household projections (issued on 27 February 2015) are still only the starting point, the planning guidance indicating the caveat that:<sup>50</sup>

*"they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) ...."*

- (iii) The 2012 Sub-National Population forecasts resulted in an overall increase from the final SHMA conclusions of 3,800 up to 3,906 - 4004 ('2012 – based SNPP' and 'Part return to trend' respectively) as demonstrated in Figure 6 of the GL Hearn Report.<sup>51</sup> The greatest difference with the totals for the individual Districts is for Coventry – 1180 (Final SHMA Conclusion) and 1885 (2012 based SNPP). This anomaly has not been explained by anyone and is just the kind of situation that planning guidance 3-30 warns against.

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<sup>46</sup> ID: 2a-003-20140306

<sup>47</sup> Framework paragraph 158

<sup>48</sup> ID: 2a-019-20140306

<sup>49</sup> ID: 2a-015-20140306

<sup>50</sup> ID: 3-030-20140306

<sup>51</sup> CD 3.9 page 12

- (iv) Coventry and Warwickshire and SE Leicestershire Economic Prosperity Board's approach to this problem was the pragmatic one of adopting the new total (4004) but retaining 720 for Warwick.<sup>52</sup>
- (v) Essentially, Ms Howick takes the same pragmatic approach to the anomalous figures, and therefore advocates a pre-employment uplift figure of 720;
- (vi) To this must be added an employment uplift. This is not "policy on" for reasons given above;<sup>53</sup>
- (vii) The appropriate uplift should be based on Cambridge Econometrics' forecasting – which produces the figure of 825,<sup>54</sup> adopted by Ms Howick. Mr Gardner's conclusions on this were challenged in cross examination, as was his failure to apply the planning guidance advice that employment growth was policy-off.
- (viii) Mr Barber's figure of 660 (demographic base plus 10%) cannot be correct because it deliberately excludes the economic uplift the planning guidance says must be added. He would lead the Secretary of State into error if the employment uplift was to be regarded as "policy on". This approach is not consistent with the planning guidance, or with the approach of the Council's consultants, GL Hearn. The FOAN must therefore be more than 660.
- (ix) In the circumstances of an appeal where the Secretary of State knows that the FOAN will soon be subject to detailed scrutiny at the forthcoming examination, a pragmatic approach would be to proceed on the same basis that the Emerging Plan does and treat the FOAN as 714. The Council can hardly complain if this is the way in which the matter is dealt with because, as soon as the Plan is adopted, that will be how the five year calculation will be performed as was admitted in cross examination. If Objectors at the Examination are correct, the figure will in fact be higher.

### *Housing Land Supply*

7.16 There are both points of principle separating the parties, as well as differences on the potential yield of houses from a number of individual sites. So far as the individual sites are concerned, a Table has been produced which sets out those differences.<sup>55</sup> Within the Table, there are recurrent points of principle such as deliverability, viability and rate of delivery which will be examined below.

### *Housing Requirement*

7.17 There are differences between the parties as to the correct housing requirement. Those are discussed above, but the Council has sought to resile from the figure it has previously advanced, of 714, and revised this down to 660 for the purposes of the appeal. In any event, the FOAN is considerably

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<sup>52</sup> CD3.8 paragraph 2.1 Table at 3

<sup>53</sup> ID: 2a-018-2-14-3-6 and CD 3.9 paragraph 3.8

<sup>54</sup> CD 3.9, fig 12, p.20

<sup>55</sup> Appendix B to the Summary proof of Mr Barber – Inquiry Doc 27

higher as demonstrated through the evidence of Ms Howick. The Coventry anomaly has not been explained and remains as an elephant in the room.

*Buffer*

7.18 The correct buffer to be applied is 20% for the following reasons:

- (i) there has been persistent under delivery of housing over the last five years as against a low target of 395 in the years 2009-2010, and latterly, the 2012 emerging local plan target of 714;
- (ii) The lower target was artificially low and accommodated a moratorium on windfall housing that suppressed the demand within the area. Accordingly the shortfall is even more severe than the figures would suggest; and
- (iii) A reasonable timescale over which to assess housing delivery is the last five years<sup>56</sup> given that the Framework looks forward for five years in terms of housing supply. This is especially the case when the Local Plan is moving from a "top down" requirement of restraint to a "bottom up" commitment to boosting delivery. All the more so when the Plan period starts in 2011 and the Framework required the boost in supply from 2012.
- (iv) The 20% buffer is not a punishment or penalty; it simply brings supply forward to ensure delivery. This is appropriate in the light of recent failures to delivery after the moratorium;
- (v) The fact of the recession does not lead to universal use of a 5% buffer: the Framework was written with a view to boosting housing *in order* to bring the country out of recession.

7.19 The buffer is to be added to the five year requirement plus the backlog that has accrued. That approach was supported in the Hampton Lucy, and Droitwich appeals.<sup>57</sup> The simple wording of Framework paragraph 47 requires this because the buffer is to be applied to "...*their housing requirement...*" which is the housing target plus the accumulated shortfall to be addressed within 5 years. The Cheshire East decision seized on by the Council<sup>58</sup> was wrong in its analysis.

*Care Homes / Student Accommodation*

7.20 The Council makes an allowance for this type of housing within the supply. However, student accommodation need has not been considered by the SHMA, and so it would be wrong to include it within the supply to meet a separate and distinct need that has not been assessed. This is the correct approach by this Inspector and her colleagues in recent cases in the same SHMA area.<sup>59</sup>

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<sup>56</sup> CD 8.2 paragraph 48

<sup>57</sup> CD 7.8 and 7.2 respectively

<sup>58</sup> Gresty Lane, Rope Lane, Crewe Road and A500, Crewe (Appeal Decision APP/R0660/A/13/2209335) Appendix RS5 to the Rebuttal Statement of Mr Barber.

<sup>59</sup> Land north of Milcote Road, Welford on Avon, Warwickshire (Appeal Ref: APP/3720/A/14/2217495) CD7.26, and Land off Stratford Road, Hampton Lucy (Appeal Ref: APP/J3720/A/14/2215757) CD 7.8

7.21 In respect of care homes, it is fair to say that the SHMA builds in some allowance, but the Council includes it pursuant to the rationale that older people moving into that type of accommodation are likely to free up conventional housing that they previously occupied. That may or may not be true. For example, there are two types of elderly person, those who are ill, possibly suffering from dementia, who need full time care, and those in good health who remain living in their own homes. The difficulty is that the proposition relies on an untested assumptions set out in the windfall paper<sup>60</sup> which is a matter that will be examined, but has not yet been tested as part of the emerging Local Plan.

#### *Non-Implementation*

7.22 From an analysis of the expected housing completions versus actual housing completions, it is apparent that the Council has consistently overestimated expected housing completions by an average of 28.5% over the past six years. The Annual Monitoring Reports (AMRs)<sup>61</sup> demonstrates that the 10% rate is in fact conservative, given the range of under delivery of 16% - 37%. The 5% allowance included by the Council is woefully inadequate and a 10% reduction<sup>62</sup> to anticipated delivery is robust and should be applied.

#### *Specific Sites*

7.23 The appellant has applied the principles set out in the Framework, the planning guidance and the case of *Wainhomes (South West) Holdings Ltd v SSCLG*<sup>63</sup> to the sites in the Council's supply. These establish that sites in the supply should be critically assessed in the following way:

- (i) sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect of delivering housing in five years;
- (ii) a site is only considered achievable for development where there is a reasonable prospect that housing will come forward on the site at a particular point in time;
- (iii) consideration should be had to the delivery record of developers putting the site forward, and whether there is a history of unimplemented permissions; and
- (iv) it should not be assumed that sites are deliverable where they do not have planning permission or are subject to objections. To the contrary, according to the *Wainhomes* decision, "*the only safe assumption is that not all of the sites are deliverable*". That would apply in particular to Land East of Whitnash, Opus 40, land off Bembridge Close, and Grove Farm Harbury Lane (refused by the Council shortly before the close of

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<sup>60</sup> CD 3.15

<sup>61</sup> Mr Halman proof paragraph 6.67, Table 6

<sup>62</sup> see CDs 7.8, 7.14 and 7.28

<sup>63</sup> CD 8.1

the Inquiry).<sup>64</sup> There is also 'warfare' between the emerging Neighbourhood Plan and the emerging Local Plan.

- (v) the allocated sites represent the largest single point of dispute in relation to supply; the parties are apart by some 676 dwellings.<sup>65</sup>

#### *Windfall*

- 7.24 Windfalls pose a particular difficulty for the Council who place so much reliance on this unplanned aspect of housing delivery – a total of 705. To do so is wrong, given that all suitable land that can accommodate more than five houses has been allocated in the emerging Plan, and the fact the Council are considering Green Belt land for release for housing (which should be a very last resort) demonstrates the limited availability of housing land within the District. This particular tree was shaken hard.
- 7.25 Whether or not there might be objection to those sites when planning permission is sought cannot yet be known, but experience tells us that such sites are rarely universally welcomed by neighbours when they do come forward. Wainhomes indicates that sites should be discounted if there are objections. In any event, windfall sites by their nature are likely to come forward later in the Plan period. In that context, it is obvious, that the Council is wrong to rely on such a high level of windfall, broadly equivalent to the net completions within the last three years, coming forward as windfall in the next five.
- 7.26 It is unsurprising that there has been a high level of windfall in previous years, because demand in Warwick was so high and the Plan allocations were exhausted well before the end of the Plan period. That does not entitle the Council to take the same approach going forward, when they are promoting planned development in the emerging Plan.
- 7.27 Accordingly there is "no compelling evidence" that such a high level of housing will come forward as windfall development and, as such, the sum ought to be discounted from the supply. In the adjacent district of Stratford (which also had a moratorium) only 240 windfalls were argued for, but even this figure was rejected in the Welford on Avon<sup>66</sup> and Hampton Lucy<sup>67</sup> appeals. For the Council to argue at this Inquiry for almost three times as many windfalls as in the adjoining authority (240 as against 705) is plainly completely unrealistic.

#### *Viability*

- 7.28 In addition, there are a number of large sites (not referred to already) such as the Former Ridgeway School (W18) and Pottertons Portobello Works (W05), where there are clearly problems in bringing development forward. In respect of the former, the availability of the land is questionable, and on the latter, nothing has happened since November 2013, which calls into question the viability of the site.

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<sup>64</sup> Inquiry Doc 35 includes the officer's report which recommended approval. However, the recommendation was overturned by Members, who refused the application.

<sup>65</sup> Inquiry Doc 27 Appendix A - Final Draft comparison table (page 24)

<sup>66</sup> CD7.26, paragraph 45

<sup>67</sup> CD7.8 paragraph 31

*Conclusion on Five Year Supply*

- 7.29 It is telling that the Council felt that it could, on its own evidence, demonstrate only a 5.52 year supply. If windfalls are excluded there would be no five year supply. On the Wainhomes approach to Local Plan sites, there would be no supply either. Even on the Council's position, having regard to the fair assessment by the appellant of the Council's supply, the Council is unable to demonstrate even a three year housing supply. This continues a theme that has been seen in the District for five years, and one that is unlikely to improve unless a large number of consents are granted for housing development in the near future. This is an authority in denial, with a crippling need for both open market and affordable housing.

**ISSUE TWO: The weight to be given to the development plan policies and the policies in the emerging plan, including the Bishop's Tachbrook Neighbourhood Plan**

*The Local Plan Context*

- 7.30 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, this decision must be taken in accordance with the development plan, unless material considerations indicate otherwise. The Framework reinforces this approach, and highlights that the planning system is 'plan-led'.<sup>68</sup> The starting point therefore, is the Council's development plan. The policies should be individually scrutinised in order to assess what weight can be afforded to each, in accordance with whether they are 'out-of-date' and/or consistent or inconsistent with the Framework.<sup>69</sup>
- 7.31 Weight can only be given to each of the policies depending upon their consistency with the Framework.<sup>70</sup> It is material in this regard that the Local Plan was only intended to run up until 2011.
- 7.32 During the inquiry Mrs Darke admitted during cross examination that policy RAP1 is "not very up to date" and so cannot be given full weight. In XiC, Mrs Darke also commented that the policy wasn't designed to address development such as this. In any event, the policy finds itself in a Plan that has no housing requirement and so is silent on the very matter to which RAP1 was designed to relate. There could be no clearer signal that the Plan, as a whole, and the policy in particular, are out of date.
- 7.33 Policy RAP1 is the only policy with which the scheme could properly be said to conflict. However, given the admissions of Mrs Darke in both XiC and cross examination, as well as the five year housing land supply position, very little weight can be given to RAP1, because it is out of date for the purposes of the Framework, and as such, permission for the development should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

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<sup>68</sup> Framework paragraph 196.

<sup>69</sup> Framework paragraphs 14, 49 and 215.

<sup>70</sup> Framework paragraph 215 and *Anita Coleman v Secretary of State for Communities and Local Government v North Devon District Council and other* [2013] EWHC 1138 (Admin) CD 8.6

- 7.34 Even if the appellant were wrong as to the housing land supply position, RAP1 attracts little weight because:
- a. it was only intended to control development until the end of the Plan period in 2011, and as such is out of date whether there is a five year housing supply or not;
  - b. It is unable to anticipate development needs as they are now, which has caused the policy, in recent times, to be more honoured in its breach than observance. The difficulty in applying such a policy beyond the plan period is demonstrated by the number of permissions the Council itself has granted in recent times in breach of RAP1.
  - c. In essence, the Council turns the policy on and off when it suits them. Applying the policy in that way demonstrates its redundancy in the present planning context.

*Whether Framework paragraph 14 is engaged*

- 7.35 The Council agrees that the paragraph 14 presumption is engaged in this case. Relevant policies of the development plan are clearly "out of date" and the plan is silent as to the matter of housing need. This means a rebuttable presumption in favour of grant of planning permission exists. Whether the presumption is rebutted depends upon the overall balance of all relevant passages of the Framework, and whether the benefits of the scheme are significantly and demonstrably outweighed by the harm. While there is heritage objection to the scheme, for the reasons explained above, when the relevant policy and paragraph 134 of the Framework are read properly and applied to the appeal scheme, it is not shown that the presumption in favour of grant of planning permission is rebutted.
- 7.36 The absence of a five year supply is only one route into paragraph 14 of the Framework, by way of paragraph 49. The appellants are also entitled to enjoy the presumption in favour by virtue of:
- i) Development Plan policies for the provision of housing are demonstrably out-of-date, only being intended to direct the location of housing up to 2011;
  - ii) Some of the policies are either wholly or partially out-of-date in the paragraph 215 "*Colman*" sense as qualified by Lindblom J in *Bloor Homes*<sup>71</sup> i.e. the Local Plan heritage policies do not strike an appropriate balance between harm and benefit which clearly exist in the counterpart policy in the Framework at paragraph 134, as Mrs Darke accepted in cross examination, and:
  - iii) The development plan is silent as to housing need in 2015 as agreed with Mrs Darke in cross examination and as defined by Lindblom J in *Bloor*.<sup>72</sup>

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<sup>71</sup> CD 8.9 paragraph 186

<sup>72</sup> Ibid paragraphs 51 and 52



- 7.37 For decision taking, the presumption means, firstly, approving development proposals that accord with the Development Plan without delay. Mr Halman's evidence at paragraph 9.8 is that the proposal is in accordance with the Development Plan, when read as a whole, and permission should have been granted promptly by the Authority.
- 7.38 The second bullet point addresses circumstances, namely where the Development Plan is absent, silent or relevant policies are out of date. Here again the Framework is clear that permission should be granted unless '*Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or Specific policies in this Framework indicate development should be restricted.*'
- 7.39 Footnote 9 of Framework paragraph 14 sets out instances where such restrictions apply, referring to 'examples' of eight or nine specific policies, where the presumption in favour of grant of planning permission does not apply.
- 7.40 Mrs Darke originally argued that paragraph 14 was disapplied because of the heritage impact. However, Mr Leader, on behalf of the Council, expressly and formally abandoned this during her cross examination. This was the correct course of action, because in every instance given above, the relevant paragraph either identifies a specific presumption against development, or expressly disapplies the paragraph 14 presumption. The only example which in theory could require further consideration for this appeal is *h) Designated Heritage Assets*, but substantial harm or total loss is not argued for by any of the experts.
- 7.41 The injunction to 'refuse consent' in Framework paragraph 133 obviously means that where a development which would cause 'substantial harm to, or total loss of significance of, a designated heritage asset, then the paragraph 14 presumption in favour of grant of planning permission cannot apply, because it has been expressly replaced by a presumption against grant of planning permission. Again, the presumption against permission itself is rebuttable if that harm or loss '*is necessary to achieve substantial public benefits that outweigh that harm or loss.*'
- 7.42 This is supported by an appeal decision at Arnolds Way, Yatton,<sup>73</sup> which sought permission for new industrial premises which required consideration of the impact of the scheme on a Grade I listed building. The argument advanced by the Council was that as a result of footnote 9, the appellant could not rely upon paragraph 14 because specific policies in the Framework indicate development should be restricted. The Inspector rejected the argument and set out his reasoning at paragraphs 46 and 47:

*'The second point made on behalf of Wales & West Utilities (objecting) is, put simply, the policies relating to designated heritage assets in the Framework require harm to be balanced against the public benefits. If the harm caused is not so outweighed, then the presumption in favour cannot apply and that is the end of the matter. That makes perfect sense in terms of a finding of substantial harm or loss, where there is an express instruction in paragraph 133 to*

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<sup>73</sup> CD 7.7

*refuse consent, or in the parlance of footnote 9, restrict development. However, in dealing with designated heritage asset referred to above, that is not the conclusion reached. There is a need therefore for the balancing exercise in paragraph 134 to be brought into the wider balancing exercise set out in paragraph 14.'*

- 7.43 No one alleges substantial harm to the relevant assets, and as such, paragraph 134 is the operative paragraph, and the presumption in paragraph 14 continues to operate as confirmed by the Council's advocate during cross examination of Mrs Darke.
- 7.44 Insofar as anyone seeks to rely on the judgment of Mrs Justice Lang in *William Davis and others v Secretary of State for Communities and Local Government and others* 2013] EWHC 3058 (Admin), where the judge added a 'gloss' to paragraph 14 Framework, it is submitted that approach is wrong. At paragraph 37 of that judgment, Lang J ruled that at a development must be found to be sustainable before the presumption applies. It states:

*"...I accept Mr Maurici's submission that paragraph 14 Framework only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of Framework if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development."*

- 7.45 This is an incorrect interpretation of that paragraph because first, the wording of paragraph 14 itself does not support this view. The second part of paragraph 14 clearly states "for decision taking this means" and this relates to all 'development proposals' it does not qualify this with an extra test of sustainability and an additional test cannot be read into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed.
- 7.46 Second, the weight of High Court authority runs contrary to the Lang view. A number of judgments including,<sup>74</sup> Mr Justice Males at *Tewkesbury*<sup>75</sup> Mr Justice Parker in *Colman*<sup>76</sup> and Lindblom J in *Bloor Homes*<sup>77</sup>, demonstrate the correct reading of paragraph 14.
- 7.47 In the *Tewkesbury* case Mr Justice Males agreed, stating at para.20:

*'Accordingly both before and after the issue of the Framework, the need to ensure a five year supply of housing land was of significant importance. Before the Framework the absence of such a supply would result in favourable consideration of planning applications, albeit taking account also of other matters such as the spatial vision for the area concerned. After the Framework, if such a supply could not be demonstrated, relevant policies would be regarded as out of date, and therefore of little weight, and there would be a rebuttable presumption in favour of the grant of planning permission. All of this would have been well understood by local planning authorities. An authority which was not in a position to demonstrate a five year*

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<sup>74</sup> *Stratford on Avon District Council v Secretary of State for Communities and Local Government* [2013] EWHC 2074 (Admin) at paragraph 12.

<sup>75</sup> *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 286 (Admin) at paragraphs 20 and 49 (cited by Lindblom J in *Bloor Homes* – CD8.9)

<sup>76</sup> *Anita Colman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin) CD8.6

<sup>77</sup> CD 8.9

*supply of housing land, would have recognised, or ought to have recognised, that on any appeal to the Secretary of State from a refusal of permission there would be at least a real risk that an appeal would succeed and permission would be granted.'*

- 7.48 That paragraph was cited with approval by Lindblom J in *Bloor Homes* at paragraph 69, notwithstanding that Davis had been drawn to his attention. Also in that decision, Lindblom J addressed the ways in which paragraph 14 would apply to any particular matter, none of which included an additional sustainability test before the presumption would apply;

*"44. In the context of decision-taking paragraph 14 identifies three possible shortcomings in the development plan, any one of which would require the authority to grant planning permission unless it is clear in the light of the policies of the Framework that the benefit of doing so would be "significantly and demonstrably" outweighed by "any adverse impacts", or there are specific policies in the Framework indicating that "development should be restricted". The three possible shortcomings are the absence of the plan, its silence, and its relevant policies having become out of date."*

- 7.49 In the *Colman* case, Mr Justice Parker also agreed, at paragraph 5:

*'Paragraph 14 of the Framework refers to a presumption in favour of "sustainable development" as a central feature of the Framework in relation to both plan-making and decision-taking. In the context of decision-taking, the presumption in favour of sustainable development is given expression in two ways. The first is by approving development proposals that accord with the development plan. The second is to grant permission where the development plan is absent, silent or where relevant policies are "out-of-date" unless any adverse impacts of granting permission for the proposed development "would significantly and demonstrably outweigh the benefits, when assessed against policies in the [Framework] taken as a whole".'*

- 7.50 In *Dartford BC v Secretary of State for Communities and Local Government* EWHC 2636 (Admin),<sup>78</sup> Patterson J rejected the submission that a sequential approach to decision-taking was required saying, at paragraph 46:

*"sustainability" therefore inherently requires a balance to be made of the factors that favour any proposed development and those that favour refusing it in accordance with the relevant national and local policies. However, policy may give a factor a particular weight, or may require a particular approach to be adopted towards a specific factor; and where it does so, that weighing or approach is itself a material consideration that must be taken into account."*

- 7.51 Thus, three high court judges have disagreed with Mrs Justice Lang's approach. Given this, together with the clear wording of Framework paragraph 14, it is submitted that this Inspector should prefer the view that there is no additional test of sustainability included in paragraph 14 which requires a broader balancing exercise.

- 7.52 In the planning appeals context, the *Land at Pulley Lane* decision<sup>79</sup> is useful. There, it was argued by the Council in line with the *William Davis* decision that a development must be found to be sustainable before the presumption applies.

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<sup>78</sup> CD8.12

<sup>79</sup> APP/H1840/A/13/2199085; APP/H1840/A/13/2199426 CD 7.2

7.53 The Inspector rejected the argument in the following way:

*"8.20 In my view this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 does not support this view. The paragraph clearly relates to all 'development proposals' it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed. Secondly, the weight of High Court authority runs contrary to Lang J's. "The judgements at Stratford, Tewkesbury and North Devon demonstrate the correct reading of paragraph 14. Three High Court judges have disagreed with Lang J. Given this and the clear wording of paragraph 14, I consider that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14."*

7.54 The Secretary of State expressly accepted that approach at paragraph 12 of the DL:

*"Turning to the question as to whether the development is sustainable, the Secretary of State notes the arguments set out at IR8.19-8.20 in relation to the interpretation and application of the presumption under paragraph 14 of the Framework in the case of William Davis. The Secretary of State also notes the recent decision in Dartford Borough Council v. Secretary of State for Communities and Local Government and Landhold Capital Limited where Mrs Justice Patterson rejected elevating William Davis to a formulaic sequential approach to paragraph 14 of the Framework. Like the Inspector, the Secretary of State finds the relevant policies for the supply of housing are out of date (IR8.24) and therefore the presumption applied and that the evidence before them both (IR8.21-823) demonstrates that the Appeal A scheme is sustainable in terms of economic, environmental and social benefits."*

7.55 As an exposition of the operation of paragraph 14 by the Secretary of State of his own, policy, the decision and the approach within it, plainly carries significant weight. The Secretary of State clearly does not interpret the decision in Dartford as supporting an additional test of sustainability outside of paragraph 14 as paragraph 12 of the Decision Letter puts beyond sensible argument.

7.56 SWAG now relies on the recent case of *Wenman v Secretary of State for Communities and Local Government* [2015] EWHC 925 (Admin)<sup>80</sup> in which Lang J held at paragraph 74:

*"In my view, it is clear that the presumption in paragraph 14 of the Framework can only apply in favour of development which is "sustainable", as defined in paragraphs 6 and 7, and explained in the policies in paragraphs 18-219."*

7.57 However, Lang J reviewed the authorities excluding reference to the paragraph in *Tewkesbury*, where Males J referred to the rebuttable presumption and Lindblom J's clear analysis of paragraph 14 and its presumptions. Lang J's analysis fails to acknowledge that the presumption is rebuttable which means that the balance ensures that unsustainable

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<sup>80</sup> Appendices to the closing submissions of SWAG (Inquiry Doc 48)

development will fail the paragraph 14 balance and not be permitted. Like the presumption of innocence in a criminal trial, the presumption in paragraph 14 is a rebuttable one.

- 7.58 Plainly therefore, the presumption is engaged in this case. In any event, it is the appellant's case that the development complies with the Development Plan read as a whole. The application is in outline, and so any matters of design can be satisfactorily addressed through reserved matters. There is no reason why the scheme should not provide a high quality and well designed development.

#### *Neighbourhood Plan*

- 7.59 Having engaged with the Council over the failings and inadequacies, both substantive and procedural, of the emerging Neighbourhood Plan<sup>81</sup>, the Council wrote to the appellant on 10 April 2015,<sup>82</sup> and confirmed that the Neighbourhood Plan was yet to be subject to Regulation 14 pre-submission consultation. That was because despite what Councillor Bullen might think, the previous consultation was not carried out properly, as agreed with Mrs Darke in cross examination, and was unlawful. As such, the Neighbourhood Plan has not progressed beyond Step 3: Pre-submission publicity & consultation.<sup>83</sup>
- 7.60 As a result of the consultation now being undertaken, the Parish Council will have to consider any representations it receives and amend the Plan as appropriate. Accordingly, for the purposes of Framework paragraph 216, there are at the present time *no relevant policies in emerging plans* to which any weight can be attached.
- 7.61 Objection to the Plan will, no doubt, come from the Council because the Neighbourhood Plan is on an inevitable collision course with the emerging Local Plan, as acknowledged by Officers in a recent report to Committee in respect of Grove Farm.<sup>84</sup> The approach of the Neighbourhood Plan is both contrary to the planning guidance which requires Plans are brought forward in a consistent manner, and the requirement of the basic condition that the Plan should contribute to the achievement of sustainable development. By virtue of the Town and Country Planning Act 1990,<sup>85</sup> the Plan is statutorily obliged to contribute to the achievement of sustainable development. Part of sustainable development is supplying adequate housing to meet the objectively assessed need (the full legal framework is set out in the final appendix to Mr Halman's appendices and is not repeated here).
- 7.62 Although in theory a Neighbourhood Plan may come forward before an emerging Local Plan:

*"the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested."*<sup>86</sup>

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<sup>81</sup> Mr Halman Appendix 14

<sup>82</sup> Attached to The appellant's opening submissions (Inquiry Doc 3)

<sup>83</sup> ID: 41-080-20150209

<sup>84</sup> Inquiry Doc 35

<sup>85</sup> Schedule 4, paragraph 8, 2(d),

<sup>86</sup> ID: 41-009-20140306

7.63 Thus, when a Neighbourhood Plan comes forward before the Local Plan, the Authority should discuss the Plan with the qualifying body (here the Parish Council), because

*"It is important to minimise any conflicts between the policies in the neighbourhood plan and those in the emerging Local Plan."<sup>87</sup>*

7.64 The Neighbourhood Plan here does the opposite. It invites conflict with the emerging Plan, which seeks to meet the FOAN of the District on sites (eg site HO2)<sup>88</sup> that are expressly excluded by the Neighbourhood Plan and cloaked with policies to resist development. The Neighbourhood Plan, if it were adopted in its current form, literally announces that the Local Plan is unsound because it over provides for housing.<sup>89</sup> What the Neighbourhood Plan seeks to do is frustrate housing delivery and defeat the aims of sustainable development in that respect, evidenced by the recent rejection of the Grove Farm scheme. It is plainly inconsistent with the emerging Plan, and as such, on its presents terms, will be out of date as soon as the Local Plan is adopted.

7.65 The Neighbourhood Plan itself accepts a tension, as it must, with paragraph 5.3.2 of the emerging Local Plan, because it excludes sites coming forward as allocations (see for example, page 31, paragraph 8 – allocation of Sewage Farm, and page 102 paragraph 10.2.3h land south of Harbury Lane) but announces that:

*"if there should be disagreement between the Local plan and the Neighbourhood Plan, the Neighbourhood Plan requirement will take precedence."<sup>90</sup>*

7.66 Accordingly, there is no desire, as Councillor Bullen said in cross examination, for the Local Plan to take precedence as and when it is adopted if it conflicts with the Neighbourhood Plan. It is on a difference course from the Local Plan and it is impossible to see how the two documents can be reconciled.

7.67 A number of important points arise from the Woodcock Holdings judgment about the weight to be given to Neighbourhood Plans that support the appellant's case at the Inquiry that no weight can be given to the emerging policies in the Neighbourhood Plan for Bishop's Tachbrook. At present, the Neighbourhood Plan is at such an early stage that its policies can attract no weight. Notwithstanding that position, the implications of the judgement are discussed below and references to specific paragraphs have been included where appropriate.

7.68 The decision dealt with the interaction between paragraphs 14 and 49 of the Framework and how those paragraphs are to be applied to emerging plans. Holgate J considered that paragraph 49 applies to both adopted and emerging plan policies such that if there is not a five year housing land supply, then relevant policies in both plans will be rendered out of date:

*"103... It [paragraph 49] has the effect of extending the scope of the presumption in favour of development set out in paragraph 14, (a) so as to apply to draft as*

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<sup>87</sup> Ibid

<sup>88</sup> Mr McInerney Plan DM1

<sup>89</sup> Bishop's Tachbrook Neighbourhood Plan Submission Statement, p.12 (Inquiry Doc 37)

<sup>90</sup> Ibid at 10.2.3k p.104

*well as adopted development plan policies, but (b) only where a 5 year supply of housing land does not exist and (c) solely in relation to "housing supply policies"....*

*...  
106... It would make no sense to treat the "presumption in favour" as a factor weighing against, for example, a general countryside protection policy contained in a statutory development plan but not the same policy contained in a draft plan, a fortiori where the latter would otherwise attract considerable weight because it is close to being adopted."*

- 7.69 Framework paragraph 14 also applies here, because the existing Local Plan provides no up to date tested figure for the annual housing need, which is why the FOAN is relied on to measure whether or not there is a five year housing land supply (in line with *Hunston*).<sup>91</sup> Accordingly, the policies in respect of housing are out-of-date and/or the plan is "silent" as to housing need post 2011, for the purposes of Framework paragraph 14.
- 7.70 The appellant advances the case that the Council is unable to demonstrate a five year supply of housing land, because the objectively assessed need for the Housing Market Area is too low, and because the Council includes within its supply, sites that are unlikely to come forward, and place too much reliance on windfalls. Accordingly, policies that restrain housing within the Neighbourhood Plan are out of date, (including the rural area designation that applies to The Asps site) in the same way as any other policy would be by reason of the lack of supply. Regardless of the stage in the plan making process, the policy would accordingly attract limited, if any weight.
- 7.71 Even if there is a conflict with the draft policies of the emerging Neighbourhood Plan, it is still necessary to weigh that conflict against the benefits of the scheme.<sup>92</sup>
- 7.72 The sole reason given in the judgement for the Secretary of State's disagreement with his Inspector's recommendation to grant planning permission was that the proposal conflicted with the emerging Neighbourhood Plan and was premature in relation to that Plan. It was therefore necessary to consider what the scheme would be premature to:
- "134... The suggestion that an issue ought to be determined in the examination of a draft neighbourhood plan rather than in a planning appeal assumes that that issue will fall within the remit of examination. If that assumption is incorrect, then prematurity does not arise."*
- 7.73 In that case, the Neighbourhood Plan was not based on the objectively assessed need for the area because that exercise had not yet been undertaken and thus the Examiner's Report into the Neighbourhood Plan did not consider whether or not more housing land had to be considered as part of that process, or whether more houses could be accommodated in the Neighbourhood Plan area without harm. The scheme could not, therefore, prejudice an issue that did not arise through the examination of the Neighbourhood Plan.<sup>93</sup>

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<sup>91</sup> CD 8.7

<sup>92</sup> see paragraphs 80.83-84 of the Judgment

<sup>93</sup> Paragraphs 135-137

- 7.74 There is of course no requirement that the FOAN is settled before the Neighbourhood Plan is prepared; the basic conditions rather than the soundness test have to be satisfied in the preparation of a Neighbourhood Plan. If the matter is not settled, it is difficult to see how a scheme could be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development - issues that are not actually settled by the Neighbourhood Plan.<sup>94</sup>
- 7.75 Likewise, it is difficult to see how a proposal such as The Asps could be said to be premature to or prejudice the Neighbourhood Plan in this case, because:
- a. *the Council here do say they have ascertained the FOAN for the HMA;*<sup>95</sup>
  - b. *the Neighbourhood Plan disagrees with it;*
  - c. *in those circumstances, the Neighbourhood Plan itself seeks to undermine the emerging Local Plan which may well come forward before the Neighbourhood Plan is made, and seeks to frustrate the delivery of the full FOAN by avoiding delivery of that housing need within the Neighbourhood Plan area.*
- 7.76 In terms of the weight to be afforded to the emerging Neighbourhood, Plan, it is clear that the approach of the emerging Plan is inconsistent with the Framework requirement that the FOAN be met and in particular the need for “flexibility” and “to plan positively for growth”. Further there is a conflict with Framework paragraph 184 that casts very serious doubt on whether any weight can be given to the policies of the Neighbourhood Plan at all:
- “184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. **The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.** To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. **Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them.** Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.” (emphasis added)*
- 7.77 We are grateful for the Council’s indication that they consider the Neighbourhood Plan should be given very little weight and that, in line with Woodcock Holdings, if the Council is found to be lacking a five year supply of housing land, then the Neighbourhood Plan should be regarded as being out of date.
- 7.78 We disagree with SWAG that the Neighbourhood Plan should carry moderate weight. The Plan is not at a “mature stage”, but is struggling to overcome the initial hurdles of the plan making process. It stands in straightforward conflict with the emerging Local Plan and has thus far failed to progress beyond the

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<sup>94</sup> see paragraph 135

<sup>95</sup> Agreed at the recent Local Plan preliminary hearings by WDC to be a “minimum”.



initial consultation stage. Moreover, the appellant is unlikely to be the only objector to it.

- 7.79 The SWAG comments seek to justify the conflict between the emerging Neighbourhood Plan and the emerging Local Plan by reference to “strategic overlay”. If that is right, and the Neighbourhood Plan is not there to finally determine the scale location and phasing of development (because it submits to the position taken in the Local Plan) then in the same way that the proposal in *Woodcock Holdings* could not prejudice the Neighbourhood Plan, nor can The Asps do so here. That may be why SWAG does not take a point about prematurity as part of their case. The appellant agrees that prematurity in respect of the Neighbourhood Plan cannot be a reason for refusing the appeal proposals.

*Legal Framework Relating to Heritage Assets*

- 7.80 There is a statutory duty for the decision maker in respect of “development which affects a listed building or its setting” to have “special regard to the desirability of preserving the building or its setting” at section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The only listed building to which that duty could conceivably apply in this case is the Aspens, but for the reasons addressed in the heritage section, there is no harm to the asset through development in its setting.
- 7.81 With regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990, the Barnwell Manor litigation has made plain that the statutory duty is separate to the planning policy position.
- 7.82 The assessment of harm is a matter of planning judgment, but if the decision-maker finds some harm to a heritage asset, the effect of Section 66(1) is that the harm must be given considerable weight in the balance, creating a strong presumption against the grant of planning permission.
- 7.83 However, there is a sliding scale. In Barnwell, Sullivan LJ went on to say that where harm is properly assessed as less than substantial, “it does not follow that the ‘strong presumption’ against the grant of planning permission has been entirely removed” (paragraphs 28 and 29 of the judgment). Accordingly, a presumption which is “strong” in the case of substantial harm to a Grade I listed building becomes less strong in the case of less than substantial harm and where the asset is a Grade II listed asset (such as the Aspens), down to somewhere close to its strength being entirely removed. Whilst the Council places a lot of weight on the Bishop’s Tachbrook appeal decision<sup>96</sup> in this regard, the Inspector’s overall conclusion was that the village had had enough new development.
- 7.84 Section 72 is not engaged here, because the development is not proposed within a conservation area, albeit, the ‘great weight’ to be afforded to the conservation of the significance of heritage assets pursuant to paragraph 132 does not distinguish between different types of assets.

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<sup>96</sup> APP/T3725/A/14/2216200 (CD 7.12)

7.85 In terms of the Local Plan policies relating to heritage, it is agreed that they do not encompass the costs/benefit approach of the Framework in relation to such matters, and as such, are not entirely consistent with the Framework.<sup>97</sup> Mrs Darke agreed in cross examination that where policies are inconsistent, it follows that they are not up to date and can be accorded little weight. Mr Mayes did not depart from that approach and based his analysis on the policies in the Framework. That is not to say that any impact should be ignored. Rather, it needs to be weighed in the balance.

***ISSUE THREE: Whether the proposal constitutes sustainable development***

*The contribution that land to the east of Castle Park makes to its setting and significance*

- 7.86 Those resisting the scheme make the case that the land to the east of Castle Park contributes a great deal to the significance of the asset, because it is intimately related with the Registered Park and Garden, and because Castle Park was designed to allow glimpses out into the open countryside towards The Aspens.
- 7.87 That simply cannot be correct. The Objectors' case is based on a fundamentally flawed approach which attributes weight to the setting in its own right, contrary to the guidance. The setting only has value when it contributes to the asset and this is the issue which ought to be subject of analysis, not whether or not there will be change within the setting. All of the evidence as agreed by Mr Mayes in cross examination, points to successive generations, both before and after the expansion of the park in the 1780s, taking measures to obscure the Park and Castle from outside views including that of The Aspens.
- 7.88 In particular, the type of tree belt that forms a barrier between Castle Park and Banbury Road has existed since Lancelot 'Capability' Brown was commissioned in 1749 to re-model the Castle grounds in the style of the landscape movement.
- 7.89 That type of circumferential planting was typical of Brown's work, as agreed with Mr Mayes in cross examination, and was designed with the specific intent to screen what was on the outside of the Park;
- (i) *Most researchers agree that such planting was intended to form a clear boundary between Brown's parks and the wider landscape,<sup>98</sup>*
  - (ii) *Many of Brown's tree belts would have featured understory planting to further screen any views that might be had of the land outside of the park through the trees for those who were on drives around the park itself<sup>99</sup>;*
  - (iii) *After the expansion of Castle Park, the second Earl of Warwick continued Brown's theme and maintained a tree belt that can still be observed today. In term of construction of Brown's circumferential belt*

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<sup>97</sup> see CDs 8.9 and 8.6

<sup>98</sup> Dr Miele, Appendix 25, page 596/916 (internal page 17)

<sup>99</sup> *ibid*

*(which the second Earl would have seen planted and grow) his approach was not at all new. He deliberately adopted the same means of enclosing his Park, whilst at the same time expanding the area it enclosed.*

- 7.90 There is an alternative view - that of J Phibbs, who has argued that Brown's belts lacked any form of understory. However, Phibbs is a lone voice, and many of Brown's belts 'unquestionably'<sup>100</sup> had understorey planting, thereby casting doubt on the alternative argument.
- 7.91 While the composition of planting is likely to be different within and around the Park today, because many species have died away and there has been some clearance in recent times, the intention, demonstrated cartographically over a significant period, is clear.
- (i) There can be no doubt a circumferential tree belt, including coniferous trees has remained in place for hundreds of years;*
  - (ii) There is remaining evidence of understorey planting;*
  - (iii) There is no obvious gap in the trees where a cut was made in the belt to allow views out into the countryside, and there is no record of there ever having been such a view.*
  - (iv) This issue of whether views out were deliberate or accidental might be determined by reference to the listing details which, on this matter, should be regarded by Secretary of State as definitive;*
  - (v) The list entry description for Castle Park<sup>101</sup> notes that the park is "enclosed to the east by a predominantly deciduous plantation which screens the Banbury Road." (emphasis added)*
- 7.92 More specifically, there are written accounts available of the Castle Park experience that support the contention the tree belt was designed to exclude land to the east from the experience of the park, and not embrace it.
- (i) The extract from 'The Beauties of England and Wales' by John Britton, Joseph Nightingale et al<sup>102</sup> talks not only of the park being adorned with wood, but of the gravel walk being "embowered by a rich variety of evergreen foliage"; the terms used do not infer patchy planting intended to provide views out into the wider countryside.*
  - (ii) Field came to Warwick in the early 19<sup>th</sup> century, and recorded a narrative of the visit around the town and Castle, writing of the approach to the castle that "It is now inclosed; divided from the town, and shut out from the view of all its meaner building, by a screen of trees-whose rising summits."<sup>103</sup>*
  - (iii) Field also wrote of his ride through Castle Park, recording that on one side the ride is "shaded by a broad belt of young and flourishing trees,*

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<sup>100</sup> *ibid*

<sup>101</sup> Mr Crutchley Appendix 7 page 89

<sup>102</sup> Inquiry Doc 14

<sup>103</sup> Dr Miele, Appendix 16, page 461/916 (paragraph 6.10)

*among which are seen various species of evergreens and deciduous shrubs, intermingled with the oak, the beech, the ash, and other trees of the forest – exhibiting almost every gradation of tine... ”<sup>104</sup>*

- (iv) *Of the other side, he wrote “opening to the Park, delightful views are commanded, in passing, over its undulating surface.... ” Field continued, “Here, too with all the grandeur of park-scenery, are united the rural beauties of a ferme ornée; and pleasing views are caught at intervals, or rich pastures, fertile corn fields, and browsing flock and herds.” There can be no doubt that the viewers attention was focused inwards to the Park with a variety of visual experiences set out for visitors to the Castle.<sup>105</sup>*
- (v) *It has been suggested that the ferme ornée and views of agriculture relate to those outside of the park, and of The Asps. That cannot be right, The Asps was a working agricultural unit, not an ornamental farm. There can be no doubt Field meant to describe the land inside, and not outside of the tree belt. Certainly, the Aspens, was not, and could in no way be properly described as a ferme ornée.*
- # (vi) *The District Council and third parties part company in the reference to the “ferme ornée”. The Council believes the reference was to the Aspens whereas the Rule 6 Party said it was probably Barford Sheds.*
- (vii) *Field finished his account, by describing “the great charm” of the Ride being the picturesque views of the Castle itself “sometimes bursting suddenly on the eye, through an opening in the thick shades - and, at other times, displayed, in all its magnificence, before the uninterrupted sight, in the midst of the fine and richly varied landscape, of which it forms the crowning glory.”<sup>106</sup> Plainly, the Castle was intended to be the centerpiece of the Castle Park experience, not occasional glimpsed views of adjacent agricultural land, with which guests to the park would have become highly familiar on their journey to Warwick.*

7.93 Mr Mayes argued that it would have been desirable that people should be able to see into Castle Park. It might be thought, that if that were the case, deliberate gaps would have been made in the dense tree belt. Given the status of the Earls however, it is highly unlikely that views on to their land, and their carefully designed park, would have encouraged views out of the Park into ordinary and piecemeal enclosures. And why on earth plant deep cloaking belts of trees if that was the intention?

7.94 In any event, even if there were glimpses out from the park to the surrounding open countryside, the outlook and nature of the surrounding agricultural land has very much changed in the last 200 years. For the 8% of the Park’s boundary that lies adjacent to the appeal site it can be seen that The Aspens is in residential use, the very large post war fields have lost much of their historic character<sup>107</sup> and the Banbury Road is a busy route into the town of Warwick.

<sup>104</sup> Ibid page 462 of 916 paragraph 6.12

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> HLCA CD 3.49

- 7.95 The general openness of the setting to the Park has some value, and that is recognised. The loss of some of that openness will be harmful, but the harm will be minimal – the most important elements and interactions that make Castle Park special and worthy of designation will all remain - the relationship with the Castle, the historic links to Capability Brown and the Earls of Warwick, the remaining landscape features within the park, and the relationship with the Banbury Road, which of course contributes to the significance of the Park.
- 7.96 Just because the setting of a very small part of the Park to the east will change, does not therefore equate to harm to the significance of the asset itself. There will be a degree of foreshortening of the openness, but there will still be fields that will preserve the essence of openness and rural feel of the area. Moreover, the oral evidence of Dr Fryer suggests that the ambition for the park is that further planting is undertaken to better reflect the tree belt of the C18. Mr Crutchley's evidence was that such planting would be likely to increase the sense of enclosure, and so the barrier that presently exists between Castle Park and the appeal site will be strengthened, and any connection presently formed by way of glimpsed views to the open countryside beyond the boundary will be severed.
- 7.97 Council officers and Historic England have been inconsistent in their approach to change, arguing against change which might be said to affect the setting of the Park, but recommending the grant of planning permission for development within the Conservation Area<sup>108</sup> which ought to have been subjected to the Section 72 LBCAA test but which Mr Mayes (eventually) accepted in cross examination was not.

*A designed approach to Warwick*

- 7.98 It is Dr Hodgetts of Warwickshire Gardens Trust who has developed the entirely novel theory of a planned or designed approach to Warwick along the Banbury Road beginning at The Aspens that was implemented when the Park was extended by the second Earl of Warwick. She has cheerfully admitted that in the hundreds of years of scholarship that precede her own work, no one else has promoted this theory (which is flatly contradicted by the Listing details). The appellant in no way seeks to dismiss the careful research and effort that has gone into Dr Hodgetts' work, but the conclusions she draws are erroneous and unsustainable for the following reasons:
- (i) *Castle Park is for the most part, obscured along the Banbury Road, and was designed to conceal the grounds and the Castle from those traveling to Warwick. Mr Mayes agreed in cross examination that the planting would not allow views of the castle;*
  - (ii) *The main event happens at Castle Bridge – there is the view that has the 'wow factor' and reveals the Castle in all its glory to those traveling into the town. That is plainly a designed view, but will in no way be affected by development of the appeal site;*

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<sup>108</sup> Inquiry Doc 13

- (iii) *If the route from the Aspens, as claimed by Dr Hodgetts was to be a designed approach to Warwick, it would most likely have included views of the Castle along its length, or contain gaps in the boundary planting where a sense might be gained of what it is one was approaching. Instead, The Aspens would be seen as a continuation of the commonplace open countryside and irregular enclosure that was prevalent on the route from Banbury – it would not have been understood to mark the start of a ‘picturesque’ approach to the town and castle. Passengers would have had hours of seeing such countryside on their journey from Banbury.*
- (iv) *The first impression of the castle is gained from Castle Bridge, which according to Rev. Gilpin,<sup>109</sup> is the “most lasting.” It is difficult to see how the experience along the Banbury Road could begin to contribute to or compete with that grand approach at the moment the Castle is revealed. Undoubtedly, ‘Gilpin’s approach’ is the immediate context of the castle, not the wider expanse of agricultural land some distance up the road.*
- (v) *The more probable explanation is that the road was designed, only in an engineering sense, to avoid the expanded Castle Park, and ultimately marry up with the new Castle Bridge.*
- (vi) *There is no evidence the road was intentionally aligned to take in views. Once you arrive at the top of Temple Hill you gain a view of St Nicholas’s Church, but at that point you are past the appeal site, and so the proposals, as accepted by Dr Hodgetts in cross examination, would have no impact on the view. Furthermore, the road towards the Bridge represents a straight line - a luxury which the second Earl could afford as he had acquired the necessary land.*
- (vii) *In the same way, the appeal proposals will have no impact on the ‘wow’ factor view from Castle Bridge;*
- (viii) *Nor does it stand between the Banbury Road and any other heritage asset that might be seen and appreciated from it.*

7.99 Even if the Banbury Road was a designed approach, it would not automatically mean that housing development built sensitively in this location was harmful, given that the first real sense of the nearing town is at the top of Temple Hill. Reliance is placed, in this regard, on the designs by Mr Morrish for the site adjacent to Banbury Road to the north of the appeal site. By that time, a road user would be past the appeal site, and there would be no visual interaction. It is not credible to suggest that a sight of the appeal proposal away from the road and screened by a tree belt would have a continuing effect on the viewer as they moved closer to Warwick Castle.

7.100 In any event, the nature of the road has changed significantly since the C18: there is a significant amount of road infrastructure;<sup>110</sup> the listed Toll House, which now finds itself rather insensitively on a roundabout; Warwick Technology Park exerts a visual influence over the approach; and in November

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<sup>109</sup> Dr Miele Appendix 24A

<sup>110</sup> Mr Crutchley Appendix, 16 (p.152)

2009, permission was granted for the change of use of Turnbolls Garden from a landfill site to touring caravan site, and erection of associated mobile buildings.<sup>111</sup>

- 7.101 It has since been confirmed that the caravan park is to be opened in spring 2016.<sup>112</sup> That development, which is also to be adjacent to the Banbury Road, but closer to the town than the appeal site, includes various service buildings, a reception, laundry block, bar, clubhouse, restaurant, shop units, office and toilet blocks, equating to a potentially substantial change.
- 7.102 It is interesting to note that there was no objection from the Parish Council or Warwick Town Council to the caravan park. There was no hint from anyone that such a development would interfere with a historic designed approach to Warwick.
- 7.103 Finally, there is nothing in the Listing description of the Aspens or of Castle Park, to indicate they are adjacent to or form part of a designed approach. Mr Molyneux of Historic England confirmed in evidence that the purpose of the register was to identify significant features of the asset so far as they could. Despite that, and a reasonably comprehensive description of Castle Park, spanning some seven pages, the list entry description makes no mention of the proximity of Castle Park to a designed approach to Warwick. The Listing details make the opposite point that the peripheral planting shields Banbury Road.
- 7.104 If the appellant is correct, then the Council's case in respect of harm to the Castle Bridge, the lodge, the church and the Toll House fall away because, as Mr Mayes accepted in cross examination, the harm to those assets stems from their position on the designed route into Warwick, not what happens back at The Asps.

*Harm to other assets*

- 7.105 The Castle: There is acknowledged limited harm to the setting of Castle Park, but that does not then lead to harm to other wider and varied assets such as Warwick Castle, the setting of which encompasses Castle Park. That is because:
- a. *That would constitute harm to the setting of a setting, because setting is not a heritage asset.*
  - b. *There is only harm if the change adversely affects the heritage 'significance' of the asset in question, as agreed with Mr Mayes in cross examination.*
  - c. *There is no alleged harm to Warwick Castle itself;*
  - d. *Mr Mayes accepted in cross examination that there is substantial and deliberate landscape visually separating the Castle and The Asps; and*
  - e. *If permission were granted, the proposals would be less visible than a great deal of modern development that is already within the viewshed of*

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<sup>111</sup> Inquiry Doc 10

<sup>112</sup> Inquiry Doc 43

*the castle, and less so than from those locations where the Council have granted a number of recent permissions for housing development.*<sup>113</sup>

- f. *Furthermore, on 23<sup>rd</sup> May 2013, English Heritage wrote a carefully considered letter advising in a perfectly reasonable way that;*

*“There is no reason to dispute the assessment that The Asps is not the most prominent of the proposed housing allocations in views from the Castle turrets. From the photographic evidence supplied in the EDP study we feel it would be difficult to argue that there would be substantial harm to the setting of the Castle from development at The Asps. The distance from the Castle is such that I find it difficult to define The Asps as part of the ‘surroundings in which a heritage asset is experienced’...”*

7.106 Historic England now resiles from that position, in a way that echoes the partial and inconsistent treatment of this application by the Council. The Council has been inconsistent in its treatment of development and its impacts on heritage assets by:

- (i) *Resisting to the proposal on the basis it harms all heritage assets between The Asps and the Castle, while permitting ‘glamping’ development within the confines of the Registered Park and in the immediate setting of the Castle.*
- (ii) *In doing so, the Council, and in particular Mr Mayes, acknowledged the benefits arising from the proposal and found these outweighed the harm pursuant to the approach advocated by paragraph 134 of the Framework;*
- (iii) *Mr Mayes even suggested during cross examination that the development of glamping facilities would have a neutral impact on the Park, but confusingly found there would be less than substantial harm. His evidence in cross examination that any impact was ‘neutral’ was plainly to divert attention from the fact that he had not considered, or engaged at all with the section 72<sup>114</sup> duty that was of course relevant in respect of that development, but which is not in terms of The Asps;*
- (iv) *Permitting development of a caravan site and extensive site infrastructure on the Banbury Road approach to Warwick, also adjacent to Castle Park without so much as a recognition of any heritage impact;*
- (v) *Failing to acknowledge any benefit associated with the proposed Park and Ride scheme, despite having promoted it since 1998, and the current plan recognising that the scheme would provide significant economic, environmental and social benefits, particularly within the historic town centres,<sup>115</sup> and the fact that the appeal site has been an approved area of search since 2006.*

7.107 Mr Molyneux from Historic England commits the same offence as the Council, because he fails to weigh any of the benefits of the scheme, such as affordable and market housing, ecological benefits and so on, before recommending that

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<sup>113</sup> Mr McInerney Appendix DM/16

<sup>114</sup> Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>115</sup> CD 3.1, page 129 at 10.34



the scheme is dismissed as a result of harm to the historic environment. There is no sense at all that Mr Molyneux has engaged with the Framework paragraph 134 balance, and is not entitled to offer a view as to the acceptability or otherwise of the scheme as a result.

- 7.108 Mr McInerney provides two plans showing elevated views from two of the Castle towers.<sup>116</sup> Both images demonstrate that, for the people who venture to the top of those buildings, the appeal site, where it is discernible at all, will occupy a small proportion of the panorama, some distance away from the assets, and that the proposal will be seen in the context of a number of recently consented schemes, as well as the broader context of modern and historic Warwick.
- 7.109 Accordingly, just because a small percentage of the view from those assets will change, there is no indication that the appeal site adds any value to the significance of those assets, both of which derive value predominantly from a more intimate setting.
- 7.110 The Aspens and Asps (Keepers) Cottage: The Council sought to draw parallels between this scheme and the Bishop's Tachbrook appeal decision<sup>117</sup> in respect of the Aspens, a grade II listed farmhouse in a modern farm complex.
- 7.111 In that case, the Council did not object to the scheme on heritage impact grounds, but the Parish Council's case that there would be less than substantial harm was accepted. The loss of connection between the converted barn and the countryside setting was determined to be harmful, although the precise contribution of that setting to the significance of the asset wasn't articulated (see paragraphs 44 -45).
- 7.112 There are however important differences between that case and this. The Aspens is surrounded by modern agricultural buildings, adjacent to a busy A-road, and will be separated from the appeal scheme by both fields and a significant landscaped tree belt. There was no landscape barrier proposed in the Mallory Road case. There remain no physical or functional links between the Aspens and the surrounding agricultural lands, nor the Warwick Castle Estate.
- 7.113 Likewise, The Asps Cottage is in residential use and retains no links with the wider setting. The significance is to be found in its built form and relationship to Banbury Road – neither of which will be affected by the proposed development.
- 7.114 The bridge, the lodge and the Toll House: There is no intervisibility between the site and any one of the remaining heritage assets, such as Castle Bridge, or the toll house. The case in respect of those assets is based on the broader concept of the designed approach to Warwick. If the appellant is right that the line of Banbury Road owes more to pragmatism than picturesque intent, then those objections fall away.
- 7.115 In any event, a complaint about the impact of the scheme on those assets would ignore the present context of Warwick in which they now sit, and the

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<sup>116</sup> Mr McInerney Plans DM16 and DM19 appended to his proof

<sup>117</sup> CD 7.12

modern elements of the approach including the technology park and modern road infrastructure.<sup>118</sup>

#### *Conclusion on Heritage*

- 7.116 Much was made of the differences between Mr Crutchley's evidence and that of that of Jo Vallender, who originally provided advice on heritage related matters to the applicant.<sup>119</sup> As a result of Ms Vallender's unavailability for Inquiry, notice was sent to the Inspectorate prior to the exchange of evidence. Thereafter Mr Crutchley, who took over, carried out his own fresh assessment of the heritage impacts, upon which he based his proof of evidence.
- 7.117 It is not surprising then, that he arrived at different conclusions in some respect to Ms Vallender, not least because the methods of assessment were different. However, in all vital respects, there is agreement between the two experts as to the limited impact of the scheme and, in particular, despite the difference in methodology in respect of the fundamental issues (she used DMRB methods and he used the Framework) both experts arrive at similar conclusions, i.e. that the harm is limited. Neither identifies anything of greater than less than substantial harm.
- 7.118 What the Council and SWAG's analysis lacks is a sense of reality and common sense. The approaches taken are variously inconsistent, unrealistic, and ignore the modern day context of Warwick, and the important elements of the heritage assets that depend in no way on the appeal site.

#### *Optimum Viable Use*

- 7.119 Mr Leader accepted that he did not put his misconceived point to the relevant Heritage witness. The exhortation in the Framework obviously does not relate to the setting but to the asset itself as the relevant passage of planning guidance makes clear. This is a complete red herring based on a misreading of the Framework.

#### *Landscape*

- 7.120 The context for the landscape assessment of the site is important. The location of the site accords with the Council's spatial strategy in the emerging Plan of directing new development to the south of Warwick. That has the obvious advantage of avoiding the need to expand into the Green Belt to the North of Warwick.
- 7.121 The appeal site appeared in the Local Plan Preferred Options (May 2012)<sup>120</sup> as a preferred site, considered sustainable by the Council. It was part of a wider area, including land north of the Tach Brook, considered to have the potential to provide approximately 1600 homes. No material changes to the landscape context have taken place since that time to explain the Council's change of heart, but the inquiry heard that much change will be taking place to the south of the towns in coming years which makes the site more sustainable, not less.

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<sup>118</sup> Mr Crutchley Appendix AC16

<sup>119</sup> Inquiry Doc 16

<sup>120</sup> CD 4.7

- 7.122 Shortly after the site was identified in the 2012 Preferred Options Plan, the appeal site was negatively assessed by Richard Morrish Associated (RMA) for the Council,<sup>121</sup> but they also recommended that land to the north of the Tach Brook could come forward "*as long as adequate measures are taken to develop appropriate green infrastructure.*"<sup>122</sup>
- 7.123 In fact, at that time, RMA prepared an indicative master plan<sup>123</sup> that included a recommendation for a 40 metre plus woodland shelterbelt along the Banbury Road and setback to the Tach Brook corridor. At the time, it was said, that woodland planting would not only offer ecological corridors for local wildlife, but that,
- "The large woodland shelterbelts of the local landscape type offer an opportunity/ precedent for new woodland planting that could enclose development and sustain local landscape character."*<sup>124</sup>
- 7.124 It should be noted that the same shelterbelt-style planting is a feature of The Asps master plan. The contention by the Council that the same form of mitigation that was deemed acceptable (and in fact, positively encouraged) for the land north of the Tach Brook is unacceptable and unlikely to be effective at the appeal site, is both disingenuous and demonstrates a contradictory approach. Screening in respect of this site or other sites in the vicinity is not to be regarded as negative thing. It is common best practice and is to be expected. A central theme of the assessment of the effects of any proposal is that allowance is made for the proposed mitigation to take effect, as the Council made allowances for the proposed Country Park south of Harbury Lane to mitigate the effect of the consented Lower Heathcote scheme. Mr McNerney's evidence demonstrates conclusively that the proposed mitigation will be effective.

*Integration with Existing Urban Pattern*

- 7.125 Mr McNerney was frank in cross examination and accepted that the site would be better related if the development south of Gallows Hill (site 2b), were to come forward. Certainly, the 2012 RMA Study<sup>125</sup> considered that the land was not unduly constrained in landscape terms, and so there is a real possibility it will come forward.
- 7.126 He also made clear that he did not consider site 2b to be necessary to make for successful integration in landscape, social or operational terms. Nor did he accept that the site is poorly integrated from the existing and proposed new development, far from it. As is demonstrated from the aerial plan,<sup>126</sup> the proposal will undoubtedly be seen in the context of the consented Land at Lower Heathcote Farm, Harbury Lane scheme (1b), and more broadly, in the expanding context of both Warwick and Leamington. It is most certainly not an isolated rural site. Moreover, it should be remembered that the southern tip of the site remains part of the areas of search for the Park and Ride.

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<sup>121</sup> CD 3.34

<sup>122</sup> Mr McNerney Appendix DM6

<sup>123</sup> Ibid Appendix 7 and CD 3.34 Figure A1

<sup>124</sup> Ibid Appendix 9, p43

<sup>125</sup> CD 3.34

<sup>126</sup> Mr McNerney Appendix 9

Despite the Councils' position at the Inquiry, the policy is a longstanding one, and this particular site was previously considered to be the best site to deliver that facility.

- 7.127 So far as it might be said there is no precedent for development south of Gallows Hill, that simply cannot be right. Not only has RMA accepted that development could be successfully integrated south of Gallows Hill but the Council has already granted planning permission for 785 dwellings at Lower Heathcote Farm. This might be on a different axis as the Council put in cross examination, but it very obviously extends the settlement pattern southwards as far as the Tach Brook. From Bishop's Tachbrook the appeal site will not appear detached from Warwick, and will have much less of an impact than the Lower Heathcote proposals.
- 7.128 Further, the Council has granted permission for a substantial leisure development along Banbury Road. Accordingly, the "natural limit" of Gallows Hill as perceived by Mr Morrish has already been breached, and the boundary jumped. Development of The Asps however is not to be regarded as 'sprawl'. It will take place in coming years in an increasingly urbanised context, consistent with the Council's preferred direction of growth and is surrounded by a network of main roads that provide both a strong boundary to the site as well as site allocated in the emerging plan for housing development.
- 7.129 Despite the current lack of physical connectivity to Warwick, Mr McInerney is firmly of the view that that site would not be perceived as incongruous addition – much less so in future years for which the planning system should provide. It would still be perceived to be a part of the town, its residents would consider themselves part of the Warwick community no less than those who will inhabit that Lower Heathcote scheme that the Council has approved. It would also respect the separation of the town from Bishop's Tachbrook.
- 7.130 The appeal site will not be a solitary outlier on an island of its own. Not least because there will be development of the Park and Ride to the south, the caravan park to the north, and two main roads to the east and west. Moreover, the appeal site is large enough to be a Garden Suburb, according with the key attributes of the Council's own Garden Suburbs prospectus complete with its own local centre, primary school, sports pitches, play facilities, allotments, orchards, community woodland and green infrastructure, rather than acting as a bolt on.

#### *Visual Amenity and Valued Landscapes*

- 7.131 The appellant's LVIA and Mr McInerney's evidence demonstrate that The Asps has relatively limited visibility in the wider area. Mr Birkbeck agrees and this may explain why almost all of Mr Morrish's selected viewpoints (10 out of 12) lie within a few hundred metres of the site. Within that area, the site will be locally prominent from the roads in the vicinity but then it is a large development. It will not however, have a wider landscape impact and relatively few 'high sensitivity' receptor groups would be affected – only one footpath (very little used) and very few residential receptors. Mr Birkbeck acknowledges as much in his proof, recognising in his review of the LVIA that *"If the development were to be approved in general there would be a low to*

*very low magnitude of change with a moderate/minor adverse visual effect.*"<sup>127</sup>

- 7.132 There are also already detractors around the appeal site, as accepted by Mr Morrish, including the landfill site, the police depot, powerlines and major roads.
- 7.133 It has been said the appeal site is a valued landscape as per paragraph 109 of the Framework. It is accepted that there is no definition of valued landscape and that all land is likely to be valuable to someone. However if paragraph 109 is to be applied sensibly, then:

- a) *it cannot apply to all land everywhere, or land that is popular only among local people, otherwise it constitutes an injunction against all development that did not protect and enhance the land – greenfield or brownfield.*
- b) *secondly, it should be read alongside paragraph 113 of the Framework that urges distinctions to be made between the hierarchy of international, national and locally designated sites (including landscape areas)*

*“ so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.”*

- c) *the site is not designated, and neither is it a good example of the landscape character area in which it sits (agreed with Mr Birkbeck in cross examination). It is also in a poor and declining condition (agreed with Mr Morrish), with no prospect of improvement without the scheme. There is no doubt, as agreed with Mr Morrish in cross examination, that landscape enhancement is both desirable and achievable at The Asps.*
- d) *That enhancement will only be delivered as part of the appeal proposals – there is no other motivation for the landowner to spend sums upwards of £70,000 on the landscape enhancement that needs to take place - as estimated by McInerney based on his recent experience of designing such schemes.*
- e) *The new green infrastructure, which is a benefit of The Asps scheme as accepted by Mr Morrish, will encourage and allow more people to access the appeal site, wherein they will get a view of St Mary's that is not presently available to the few people who walk the public footpath through the site. The land at present, probably because of the limited access and declining condition, does not appear to be very much valued at all – undoubtedly that would change post development.*
- f) *Moreover, the scheme will create and encourage habitat diversity by adding 3.4 kilometres of hedgerow to the site that will act as a wildlife corridor. The net ecological benefits brought about by the scheme are more consistent with valued land than the present condition of the appeal site.*

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<sup>127</sup> Birkbeck Appendix 4

- 7.134 A comprehensive landscape scheme is proposed to help integrate the appeal site into the landscape. That includes maintaining open fields around the site boundary to the west, and substantial planting of the sort recommended in the RMA Study for land north of the Tach Brook. The planting includes both hedgerows and a tree belt, and will act as an effective 40 metre screen, mirroring the planting (both existing and proposed) on the perimeter of Castle Park. Mr Morrish's contention that the screen would be visually permeable, does not withstand scrutiny.
- 7.135 That landscaping scheme would also preserve the present approach to Warwick along the Banbury Road. The tree belt would reflect Castle Park on the opposite side of the road, and would be in keeping with the broader spatial aims to deliver large scale development, (housing, the technology park and the Park and Ride), to the south of the town. The retention of over 40% (24 hectares) of the site to be used for open space, agriculture, habitat enhancement, community woods, and sports area, would also ensure a net ecological benefit and confirms the appellant's commitment to an environmentally-led master plan.

*Loss of Greenfield Land and Best and Most Versatile Agricultural Land*

- 7.136 There will be a loss of greenfield and Best and Most Versatile Agricultural Land if the scheme comes forward, but that is not an issue peculiar to the site, the district, or indeed a country that has to accommodate a high level of housing growth. As Mr McNerney said in oral evidence - landscape is not a finite resource, it will change, and one type of landscape will be lost, but another, will be created. The appellant's case is that by virtue of the qualities embedded in the master plan, the new landscape will be of equal or greater social and environmental value than what it replaces, hence Mr McNerney's conclusion that the environmental dimension of sustainable development is satisfied.
- 7.137 Of the landscape witnesses, only Mr McNerney provided the Inquiry with any evidence of a balancing exercise in landscape terms. Any acknowledgement of the benefits of the proposals is conspicuously absent from the objections. When a balance is properly undertaken, making allowances for benefits in terms of (a) net biodiversity gains and enhancements to the landscape fabric (b) security of future management and funding to deliver positive change and (c) the value and qualities of the new landscape created, the appellant submits that the landscape interests are conserved and enhanced by the proposals. The loss of Best and Most Versatile land is a disbenefit to be weighed in the balance against all of the benefits of the scheme but, in any event, regard should be had to the fact that the distribution of agricultural land grades at The Asps is typical of the surrounding area. Approximately 6.9 hectares would remain in agricultural use.

*Park and Ride*

- 7.138 It was agreed in the Statement of Common Ground between the appellant and the County Council (as highway authority) that:
- (i) *The Park and Ride is an integral element of the mitigation for transport impacts from proposed future development ;*

- (ii) *Contributions to a Virtual Park and Ride are identified as a Grade 1 (most important) mitigation strategy within WCC Strategic Transport Assessment Phase 4;*<sup>128</sup>
- (iii) *The application for the Park and Ride accords with Policy SSP 5 'Safeguarding Land for Warwick and Leamington Spa Park and Ride';*
- (iv) *The Asps is located within the Park and Ride Area of Search as part of Policy TR5 of the emerging Local Plan, and is one of the favoured locations for such a facility.*

7.139 Moreover, it was agreed that the County Council does not have any plans, or indeed, available land to deliver the Park and Ride, and is not actively pursuing land acquisition. Accordingly, *"Park and Ride can only be delivered on land brought forward as a result of housing developments in the area."*<sup>129</sup>

7.140 The desire for a Park and Ride scheme has been a consistent feature of the Council's ambition for Warwick since 1998.<sup>130</sup> It is clear that no other housing development south of Warwick is presently proposing to bring forward such a scheme. There are no buses that presently operate adjacent to the site, and no desire to divert present routes.<sup>131</sup>

7.141 Consequently, the principle of a Park and Ride at the location proposed by The Asps scheme was agreed prior to the start of the Inquiry in the Statement of Common Ground:<sup>132</sup>

*"2.11.1... The application site for a Park and Ride accords with Policy SSP5 'Safeguarding Land for Warwick and Leamington Spa Park and Ride' of the adopted Local Plan (1996-2011). It should also be highlighted that The Asps is located within the 'Park and Ride Area of Search' in relation to Policy TR5 of the emerging new Local Plan, as indicated in Figure 2.10 below."*

7.142 The Statement of Common Ground is entirely unambiguous as to the acceptability by the Council of The Asps as a location for Park and Ride:

*"2.11.2 It is agreed that Park and Ride to the south of Warwick/Leamington is a favoured location and The Asps is a favoured location (along with another site slightly further north) for the location of Park and Ride as indicated in Figure 2.10."*

7.143 The extent to which the County Council now departs from that approach is discussed further below, but at the time the Statement of Common Ground was signed, the only concerns related to the delivery and viability of the scheme. In that regard, the appellant has:

- a. secured a gross cost contract with a bus operator to provide the Park and Ride service for 10 years, and guaranteed to support its viability beyond that 10 year period until it becomes viable;<sup>133</sup>

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<sup>128</sup> CD3.40

<sup>129</sup> SOCG2 paragraph 2.11.3

<sup>130</sup> see annexe 1

<sup>131</sup> Inquiry Doc 30

<sup>132</sup> SoCG2

<sup>133</sup> Inquiry Doc 57 Schedule 3

*"4. The Owner shall submit to the Council and the County Council a Park and Ride Monitoring Report on every 12 month anniversary from the date of Commencement of Development for at least 10 years and until such report demonstrates that the Park and Ride is profitable on a costs against revenue basis.*

...

*6. The Owner shall maintain a contract for the operation of bus services to serve the Park and Ride for 10 years and renew such contract or procure the continuation of that service until such time as the Park and Ride Monitoring Report demonstrates that the Park and Ride is profitable on a costs against revenue basis."*

- b. agreed conditions and provided a section 106 Undertaking that will secure the delivery of the Park and Ride facility and a frequent bus service at the expense of the developer of the site; and
- c. provided evidence of viability through the evidence of Bob Pinkett.

7.144 Such is the appellant's confidence in the deliverability and viability of the Park and Ride scheme, it has agreed that the Owner will not to cause or permit the occupation of one house until the Park and Ride is operational, with 500 car parking spaces and a service of 15 minute frequency to both Leamington Spa and Warwick on Monday to Saturday. Importantly, the appellant has agreed that the Owner will support the service until it is profitable – whenever that is, and will not market the Park and Ride for sale until that time. The facility will also be offered to the County Council before 800 dwellings are occupied, and the offer will remain open for twelve months. Accordingly there can be no doubt as to the deliverability or viability of the Service.

7.145 Despite being signatory to Highways Statement of Common Ground, Mr Benison issued a contradictory "Note" before the Inquiry which sought to resile from the commitments made in the Statement. This process was repeated in XiC. That volte-face was both unwelcome and surprising given the long standing commitment to such a facility, and the number of studies that have been commissioned to support the policy that appears in both the Local Transport Plan and the current and emerging Local Plans. Mr Benison was completely disingenuous in saying the Park and Ride evidence from Mr Pinkett came as something of a surprise when he was well aware of all material developments and was treated to advance warning of all Mr Pinkett's Appendices which were received by him well before document exchange.<sup>134</sup>

7.146 Not only has the concept being actively promoted, but the Report into the objection on the present Local Plan<sup>135</sup> identified the location proposed by the appellant as highly desirable. The Report records how that Inspector was assured that the County Council was satisfied the service would be viable<sup>136</sup>. This work acknowledged the need for support in the early stages, but identified a reassuring business case that reflects the need for such a facility.<sup>137</sup> It identified that the facility could take 1070 vehicles off the road

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<sup>134</sup> Inquiry Doc 30

<sup>135</sup> CD 3.2

<sup>136</sup> Ibid paragraphs 10.7.9 -10.7.11; Issue 2: Viability

<sup>137</sup> Ibid paragraph 10.7.11



per day, including 360 in the morning peak hour<sup>138</sup> and that sites to the south, and particularly in the vicinity of Greys Mallory, provided the most suitable location for the Park and Ride.<sup>139</sup>

- 7.147 In respect of site D (The Asps) it was said that there did not appear to be any archaeological or ecological constraints and the site (among others) appeared viable. An LVIA of the candidate sites was also carried out.<sup>140</sup> However, most importantly, the Inspector confirmed that following a site visit, The Asps *“might well be the best of the four sites on offer at Greys Mallory.”*<sup>141</sup>
- 7.148 In the most up to date documents, the site still emerges as a preferred option for the Park and Ride,<sup>142</sup> and in the most recent study - the Review of Sustainable Transport Alternatives, Atkins, January 2015,<sup>143</sup> part of the ‘Recommended Transport Strategy Approach’, is the introduction of a Park and Ride south of Warwick and Leamington Spa.<sup>144</sup>
- 7.149 Given the advantage of a Park and Ride concept to serve Warwick and Leamington Spa, and the work that has been put into developing a strategy, it is remarkable that the Council, at this Inquiry, should seek to challenge the benefit of such a scheme that they have not, and could not secure, simply as a means of criticising the scheme.
- 7.150 The nonsensical approach of Mr Benison in his oral evidence exhibited the lengths to which the Council are prepared to go to prevent the appellant claiming the benefit of the scheme. So convinced was Mr Benison that the Park and Ride must generate additional traffic through Warwick and Leamington Spa town centres, he was prepared to accept that a person would drive from the north of those settlements, through the centre to the Park and Ride in the south, only to go back from whence they came on a bus. The same farcical ritual was to be repeated at either end of the working day. That is because the only way the Park and Ride could actually lead to an increase in traffic, as opposed to the impact from the housing development, would be if that became the travel pattern of people using the facility. The Park and Ride Report shows<sup>145</sup> that the blue “origin zones” for the southern Park and Ride are not surprisingly, all south of Warwick/ Leamington so that Mr Benison’s farcical journey has no basis in reality.
- 7.151 On mature reflection, Mr Benison was able to accept the relatively straightforward proposition that the figures he relied on showed an increase in traffic because they related not only to the Park and Ride, but to the Park and Ride plus other housing development in Warwick together with the appeal scheme. It has never been claimed that the Park and Ride will replace all of the journeys made by the new residents of Warwick, but what it does undisputedly achieve, is a reduction in the number of journeys that would otherwise be made.

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<sup>138</sup> Ibid paragraph 10.7.8

<sup>139</sup> Ibid paragraph 10.7.16

<sup>140</sup> Ibid paragraph 10.7.19

<sup>141</sup> Ibid paragraph 10.7.21

<sup>142</sup> CD 4.7 map 5 and CD 4.1 map 2

<sup>143</sup> CD 3.41

<sup>144</sup> CD 3.41 p.59, 10.1

<sup>145</sup> CD 3.41 Appendix C Figure 3 on page 6

7.152 The appellant's Notes<sup>146</sup> and correspondence<sup>147</sup> demonstrate the unjustified nature of Mr Benison's criticisms. The figures are broadly consistent with the figure promoted by the County and District Councils to the 2006 Local Plan Inspector recorded above, and reduced the traffic flows through the inner cordon of Leamington Spa and Warwick by about 1%.

7.153 Mr Benison made a whole series of other complaints which, in a similar vein to SWAG's case, ignore the commercial realities of the arrangements that are in place for the Park and Ride. However, Mr Pinkett, who has considerable experience in such matters, confirmed that the contract secured matches closely those he has prepared for use by many local authorities, and follows best practice.

7.154 It would appear the Council now pursue a Virtual Park and Ride rather than an actual facility such as that offered as part of this scheme. A virtual facility makes use of existing bus routes and plainly has disadvantages when compared to an actual facility, as agreed with Mr Benison in cross examination;

- (i) a Virtual Park and Ride is dependent on an existing operator who can cancel his service within 56 days and the Highway authority is powerless to prevent the service ceasing;*
- (ii) with a full Park and Ride, the promoters of the scheme set the prices for the service that can include discounts and special offers, which is obviously more advantageous than being at the mercy of a commercial bus operator setting its own tariff;*
- (iii) performance standards are imposed by the contract, as there are penalties for a poor service. In respect of a commercial bus operator, there are no such sanctions.*
- (iv) unlike a Virtual Park and Ride, the actual Park and Ride can guarantee a good standard of vehicles through the contract specification that will make the route attractive to patrons;*
- (v) clause 4.5 of the contract confirms that Barwood are responsible for the publicity and promotion of the Bus Service to users and potential users, which otherwise would be a costs falling to the Council's feet if they were the ones promoting the scheme; and*
- (vi) because the service is a dedicated service with the Park and Ride as the terminus, it will never be full on arrival. Again, that makes a dedicated Park and Ride Service a more attractive proposition to users than a Virtual Park and Ride using existing buses, because they may be full by the time they reach the Virtual Park and Ride car park.*

7.155 Mr Pinkett, who has considerable experience, including as a bus operator, explained in evidence in chief, the difficulties associated with Virtual Park and Ride services and the absence of a successful working examples. In contrast, there are a number of examples of very successful dedicated Park and Ride services operating in a number of historic towns, where they are perceived to

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<sup>146</sup> Inquiry Docs 20 and 22

<sup>147</sup> Inquiry Doc 42

lessen the impact of traffic on the heritage assets of those places. In this instance, the Park and Ride ticks a number of viability boxes:

- (i) *the ability to service both Warwick and Leamington Spa makes it attractive to a greater number of people;*
- (ii) *it will be available to a large housing development where the residents will likely 'ride' without need to 'park' ;*
- (iii) *the buses can serve key business development, both in the town centres and on route, such as Warwick Technology Park; and;*
- (iv) *it is in the vicinity of tourism and retail opportunities, which also serve to enhance the viability.*

7.156 The expense of developing the facility will be borne by the developer at a capital cost of around £2.5 million. This level of cost is consistent with the cost estimated in the Council's Strategic Transport Assessment Phase 4 (STA4);<sup>148</sup>

*"...The equivalent figures for the south site were £2.59m to £3.01m, based on an 800 space car park."*

7.157 Whether the County Council was to develop a Virtual Park and Ride or a dedicated Park and Ride, that is a cost they would have to bear and would not if The Asps were permitted. Consequently, as accepted by Mrs Darke in cross examination, the money that has been gathered from existing s106 Agreements in the vicinity that would otherwise be required to contribute towards such a facility, can be redistributed to other elements of the package of sustainable transport measures recommended in this area as set out in STA4 - a yet further benefit brought about by the scheme, that has not been acknowledged by the Council.

7.158 Mrs Darke also commented that further work, in addition to that already undertaken in respect of Park and Ride, was required to substantiate the case for a facility. The work undertaken by the appellant does just that, it demonstrates that benefits that would arise, not just for The Asps, but in the context of new development to the south of Warwick and Leamington as a whole, and also demonstrates the viability of such a scheme to be delivered by way of condition and S106.

7.159 The Council's last cast of the dice in begrudging the obvious benefits of the Park and Ride, was to maintain that further studies are necessary. This amounts to a suggestion that to grant permission now would be premature. That argument is not supported by the facts, namely:

- (i) *The need (issue 1) viability (issue 2) merits (issue 3) environmental impacts (issue 4) and area of search (issue 5) have already been addressed and answered in the Development Plan process back in 2006;*<sup>149</sup>

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<sup>148</sup> CD 3.41 paragraph 8.1 of Appendix C

<sup>149</sup> CD 3.2

- (ii) **The continued commitment of the County Council** to the principle of Park and Ride albeit "Virtual Park and Ride";<sup>150</sup>
- (iii) There is no known example of a successful Virtual Park and Ride in operation in the country whilst many successful Real Park and Rides – especially serving historic towns;
- (iv) STA4 emphasises the need for Park and Ride as part of the Sustainable Transport Package to enable development to the south of Leamington and Warwick to take place. Most of this development has now been permitted;
- (v) None of the permitted sites offer Park and Ride;
- (vi) Neither the District nor the County Council has the money or plans to acquire to necessary land, which together with constructions costs is likely to be £2.5m;
- (vii) Stagecoach are not interested in diverting the existing service;<sup>151</sup>
- (viii) In the light of all these factors, including the existence of a previous LVIA, and site visits, this Park and Ride is not premature but overdue. Its provision as part of this proposal is a great advantage of the scheme;
- (ix) Monies received from other developments will be freed to help deliver the other elements of the Sustainable Transport Package.<sup>152</sup>

#### *Transport/Sustainability*

7.160 The District Council does not object to the proposal on the basis of its impact on traffic safety, highway congestion or the sustainability of the location, as SocG1 makes clear.

7.161 The Secretary of State places importance upon the role of the Statutory Consultee in assessing each of the above matters. That does not mean that the County Council's position cannot be questioned, but it does mean that it is for the Rule 6 parties to demonstrate that traffic impact are 'severe' in terms of paragraph 32 of the Framework so as to justify refusal of the planning permission.

7.162 The Rule 6 parties criticism of the location of the site chose to ignore the following facts:

- (i) *the site will have a guaranteed, every 15 minutes public transport service to Warwick and Leamington Spa town centres under the Park and Ride Scheme;*
- (ii) *even if new residents chose to drive their cars to either town centre, this will be a short journey in terms of Framework paragraph 37, as would the journeys to either key destinations such as shops, employment, retail etc. that is unsurprising in a peripheral location such as this;*

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<sup>150</sup> CDs 3.40 and 3.41

<sup>151</sup> Inquiry Doc 30

<sup>152</sup> CD 3.41

- (iii) *Mr Hanafin's evidence<sup>153</sup> represents the high water mark of the case against the scheme, being that a Road Safety Audit should be carried out, and a complaint that the appellant did not know where the £13,000 to be provided to the County Council was to be spent. The latter is a matter for the County Council as Highways Authority, not the Rule 6 parties.*
- (iv) *there has been no clear case made against the proposal that any aspect of it causes risk of injury other than alleged air quality impacts;*
- (v) *air quality is the responsibility of the District Council. The Environmental Statement (Chapter 13) is clearly satisfied that impacts are minimal and acceptable;*
- (vi) *the promise of Park and Ride enables the appeal proposal to reduce air quality impact as policy SSP5 expected it would;*
- (vii) *no specific shortcoming of the Environmental Statement in terms of air quality analysis has been forthcoming and no alternative expert approach to impact has been offered by Mr Hanafin other than a generalised assertion at paragraph 2.4.1 of the poof that*

*"The additional vehicular traffic generated by the Appeal Scheme and the resultant increased congestion and delays in the Town Centre would lead to increased levels of NO<sup>2</sup> particulates and worsen the air quality in the Air Quality Management area (AQMA) of Warwick."*

- (viii) *the Rule 6 parties chose to ignore the delivery through this scheme of a key element of STA4. In purely cash terms, this has a value of at least £2.5m in land and construction costs alone to which must be added the ongoing cost subsidy. This is money that is freed up to use on the other elements of the Strategy. To fail to acknowledge the benefits of this is to fail to properly assess road traffic impacts.*

7.163 There is no justifiable reason for refusal based on traffic impacts. The Statement of Common Ground was correctly agreed and the Rule 6 parties case has not been proven.

### **Overall Conclusions**

7.164 Primarily, it is the appellant's case that, when read as a whole, the development accords with the development plan as explained in Mr Halman's evidence and, as such, permission should be granted without delay.

7.165 In the alternative, relevant policies of the development plan are clearly "out of date." This means a rebuttable presumption in favour of grant of planning permission exists. Whether the presumption is rebutted depends upon the overall balance of all relevant passages of the Framework identified in its paragraph 6.

7.166 While there is heritage objection to the scheme, for the reasons explained above, when the relevant policy and paragraph 134 of the Framework are read

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<sup>153</sup> Paragraphs 3.6.1 - 3.6.18

properly and applied to the appeal scheme, it is not shown that the presumption in favour of the granting of planning permission is rebutted. Furthermore, the heritage/ environmental role must be assessed along with, and be balanced by, the economic and social roles as paragraph 8 of the Framework requires.

7.167 In conclusion it is abundantly clear that there is only very limited harm to be weighed against a number of very significant number of benefits:

- (i) *provision of market and affordable housing;*
- (ii) *generation of new homes bonus;*
- (iii) *creation of new local facilities and services including recreational facilities that will benefit to the wider community, and new opportunities for the appreciation of the historic context of this area of Warwick;*
- (iv) *a Park and Ride facility that is crucial to the County Council's Sustainable Transport Package and which will allow contributions from other developments already consented to be spent on delivering other recommended measures. The £2.5 million that would be spent on the Park and Ride scheme meant that other monies in the Sustainable Transport Initiatives 'pot' would be freed up for other schemes. Moreover, as accepted by Mr Benison in cross examination, the operator would not turn its back a ten year gross cost contract. Moreover, they would be locked in by conditions and the planning obligation;*
- (v) *jobs creation;*
- (vi) *net biodiversity enhancement to be secured through the production of a management plan as well as community woodland and allotments. The scheme will provide high quality design and landscaping to a site that is presently in declining condition.*

7.168 Two comprehensive S106 undertakings addressing all matters raised by infrastructure providers have been secured, that make a number of contributions to mitigate the impacts of the development in a manner consistent with the CIL Regulations including the provision of 40% affordable housing.

7.169 There are a number of other areas where the scheme is policy compliant, and these include flood risk, noise, pollution, accessibility, buried archaeological remains, and waste.

7.170 It is clear that the site is entirely suitable to accommodate residential development and there is no sensible basis upon which to resist the grant of planning permission on the site. The development achieves gains in all three dimensions of sustainability without causing serious or substantial harm. Accordingly, the appellant submits that the appeal should be allowed.

## **8. THE CASE FOR THE COUNCIL**

*[Edited from the closing submissions of the Council's advocate<sup>154</sup> with some*

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<sup>154</sup> Inquiry Doc 50

*additions drawn from the evidence of the Council's witnesses at the Inquiry. The case includes post-Inquiry comments in relation to the High Court judgement referred to earlier.<sup>155]</sup>*

- 8.1 The Council called six witnesses: Mr A Mayes, Mr R Morrish, Mr J Gardner, Mr D Barber, Mr N Benison and Mrs T Darke. The material points of the Council's case are summarised below.

### **Urban Sprawl**

#### Principles

- 8.2 The importance of avoiding urban sprawl is an enduring and central tenet of the British planning system. It comprises the spread of an urban area into what used to be countryside. It is characterised by a straggling form of development that is poorly related to the existing and planned form of the urban area.<sup>156</sup> It is objectionable in policy terms because it consumes open countryside, which ought generally to be protected because of its intrinsic beauty, distinctive or special character, or because it is valued by the community.<sup>157</sup> Such value may not be dismissed as an expression of mere popularity. The views of the public must be considered and taken into account carefully. If they reveal a substantial and objective basis for the value they attach to an area of land it will benefit from the protection of paragraph 109 of the Framework. That approach is supported by the Stroud judgment,<sup>158</sup> particularly the reference to '*taking the site beyond mere countryside.*'

#### The Baseline

- 8.3 The appellant's scheme would consume some 56 hectares (140 acres) of countryside. A more inappropriate location is hard to imagine. The site is remote from the existing urban area to the south of Warwick and Leamington Spa, which terminates to the north of Gallows Hill, east of Europa Way and north of the Tach Brook.
- 8.4 To the south of the town, land parcels comprising Nos 9 and 2b<sup>159</sup> isolate the appeal site from the built up area of Warwick. Mr McInerney agreed that the Toll House at the foot of Gallows Hill marks the exit from the town into the countryside. From that point, views to the north and east are of rising, open countryside filtered through trees, and of woodland and fields (i.e. views through the Thins) to the west. The road undulates through a wooded corridor as far as The Asps. The landscape opens out to the east and south west, contrasting with Nursery Woods and the tree belt edging Castle Park immediately to the west of Banbury Road. Mr McInerney agreed that throughout this journey there is no view of any part of the built up area of Warwick or Leamington, save for heavily filtered peripheral glimpses of the Technology Park immediately on leaving Warwick (which he said would be screened out by boundary planting to site 9). Those views are not only filtered, but fleeting.

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<sup>155</sup> Inquiry Doc 60

<sup>156</sup> Mr McInerney cross examination

<sup>157</sup> Framework paragraphs 17 and 109; Planning guidance ID: 8-001-20140306

<sup>158</sup> CD 8.11 paragraphs 13-16

<sup>159</sup> Mr McInerney's Appendix 9

- 8.5 The same progression is perceived heading north into Warwick from Grey's Mallory Roundabout. Mr McInerney's assertion that the gateway to the town heading north is at the top of Temple Hill is wrong; although the spire of St Nicholas' Church is clearly visible, views of the town are screened out by trees. There is no sense of arrival until the Toll House is reached.
- 8.6 Mr McInerney conceded that the approach to Warwick past The Asps is attractive and sensitive. That is obviously right. The appeal site provides an open foil to the very substantial woodland planting and tree belts that distinguish the Castle Park as a distinctive feature in the surrounding landscape. Ms Vallender of the Environmental Dimension Partnership (EDP) found Banbury Road and Barford Lane to have a "country lane feel."<sup>160</sup> That assessment ought to be given particular weight because it was made free from the pressures of the appeal process. And what is so unusual and important about the approach is that it takes the countryside into the heart of the Warwick's nationally important Conservation Area. That helps to preserve and enhance the Conservation Area's and the town's historic countryside setting. It is the last surviving rural approach to the town. It should be protected.
- 8.7 The entry to the town along Europa Way also has a marked rural feel. It is lined by trees beyond which stretches open farmland, including The Asps. The sense is still very much of a journey through the countryside towards the edge of Leamington, albeit an acknowledged different feel from the Banbury Road approach.
- 8.8 In pure landscape terms The Asps and the surrounding area exhibit the distinctive and attractive characteristics of the Dunsmore and Feldon National Character Area (NCA) and the Feldon Parklands Local Character Area (LCA). It is a rolling open landscape, comprised of large fields enclosed by hedges with some hedgerow trees, occasional spinneys and copses, and dotted with farmsteads and large country houses. The Council accepts the landscape of the appeal site is not in a pristine condition. However, the detractors are relatively minor and reversible: gappy hedges, some ageing hedgerow trees and straw bales dumped in a pond by the landowner. This is simply the result of a lack of maintenance by the landowner. Mr Morrish believes it would cost a few thousand pounds to restore these features. Mr McInerney said it will cost tens of thousands. Whoever is right, that level of expenditure would be relatively trivial compared with the scale of the agricultural enterprise, which extends to over 2700 acres of good quality farmland.

#### The planned future pattern of development

- 8.9 The draft local plan makes provision for substantial housing development to the east of Warwick north of Gallows Hill and east of Europa Way. A second 'axis' of development extends in a south easterly direction along Harbury Lane, to the north of the Tach Brook. A substantial area of land has been allocated at Lower Heathcote Farm. However, about a third of the site (including the part that comes closest to The Asps) will be given over to a

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<sup>160</sup> Ms Vallender was the author of the Heritage Setting Assessment that accompanied the planning application – Inquiry Doc 16. She was to have given evidence at the Inquiry but in the event, was replaced by Mr Crutchley who presented his own evidence on the matter.



country park<sup>161</sup> and it will be further isolated from the appeal site by the dualling of Europa Way.

- 8.10 There is no plan to develop south of Warwick along the Banbury Road. Specifically, whilst the Preferred Options document of May 2012<sup>162</sup> indicated that land south of Gallows Hill and at The Asps should be considered for development, that was never more than a “suggestion”. That suggestion was subsequently firmly scotched following firm representations from Historic England and the public, and brought back into line with the consistent advice of officers and consultants that it was too sensitive to develop. Mr McInerney admitted he had not read the Council’s response to consultation on the Preferred Options. That was a commendably frank yet most surprising and important admission. The Report on Consultation<sup>163</sup> establishes why The Asps is valued in the terms of Framework paragraph 109. It also accounts for Mr McInerney’s mistaken belief that the Council has not explained why it deleted The Asps from the draft Local Plan. It may even shed light on why Barwood has not “walked away” from the scheme because of the obvious harm that it will cause, to which I turn next.

#### The serious and harmful impact of development

- 8.11 If The Asps is developed with 900 houses and a Park and Ride scheme it will, as a matter of fact, create an isolated and conspicuous island of development on rising open land, straggling to the south of Warwick. It would be, and would be seen as, entirely unrelated to the existing urban area. Nor would it be well related to the planned settlement form of Warwick and Leamington. The Council intends that land south of Gallows Hill and west of Europa Way should remain open. The scheme would therefore leap-frog clear defensible boundaries and be seen as an outlier; effectively a substantial new village in the countryside.
- 8.12 The appellant’s proposal to hide houses behind what is intended to be an impenetrable tree belt rather than assimilate it into the landscape highlights rather than solves its problems. It is a frank admission that if built development can be seen it would be perceived to extend the town well beyond its existing limits and jar with the open rural approach to Warwick. The tree scheme itself is problematic in landscape terms. The ES concedes that some development will be visible even after the trees have matured. Certainly the development will be clearly visible from the access roads that are proposed from Banbury Road and Europa Way; they punch substantial gaps in the screen. Mr Morrish, whose experience and qualifications are as impressive as Mr McInerney’s, gave evidence that the screen is likely to be permeable. Even if Mr Morrish is wrong, the scheme will take many years to hide. In the interim, the loss of the rural approach to Warwick is likely to become regarded as an established fact and is ingrained in the psyche. It is impossible to hide the Park and Ride, which will act as a marker for the scheme. And the screen that is proposed along the site’s Europa Way frontage will not tie in with the country park, which will be planted well to the north, beyond the Tach Brook.

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<sup>161</sup> Mr McInerney Appendix DM5c

<sup>162</sup> CD 4.7

<sup>163</sup> CDs 4.3 and 4.4

Finally, just because the development may be difficult to see through the trees, does not mean it is not sprawl. If that were right, Green Belt policy would have been abandoned long ago, defeated by curtain walls of trees.

- 8.13 Faced with all these difficulties, Mr McInerney's frank admission that Barwood would have "walked away from the site" if it had not been allocated in the Preferred Options Development Plan Document at about the time they purchased it, is entirely understandable and almost certainly right. The proposal to develop this site is indefensible and flies in the face of government policy and good practice. The environmental harm it would cause is a sufficient basis for dismissing the appeal in its own right. To suggest that it might be developed in the near future is fanciful in the extreme.

### **Harm to the significance of designated heritage assets**

- 8.14 The Council's case is that primary impact of the proposal would be on the setting of the Grade 1 Registered Castle Park and the setting of the Grade II Listed Aspens Farmhouse. In this closing I focus solely on the impact of the scheme on the significance of these assets. That is not to suggest others are unaffected by the proposal, but the impact is much smaller.
- 8.15 There is no room for doubt that the scheme will harm the setting and significance of Warwick Castle Park. As much is admitted by the appellant.
- 8.16 In January 2014 the appellant's Heritage Setting Assessment found: -  
*"Barford Lane and Banbury Road still retain their informal country lane setting, against the backdrop of the historic plantations on the eastern side of the park, preserving its setting. Of importance here also, is the relationship of the park to the farm structures to the east of Banbury Road including Keepers Cottage and The Aspens, maintaining the historic link to the Warwick Castle Estate despite the demise of the economic link.*
- The country lane environment gives way to a fieldscape to the east which has been present since the post medieval period, but which was the site of a settlement and fields in the medieval period. Due to the rolling topography there is no appreciation of the wider landscape from the Banbury Road and, as such, the close proximity of Europa Way is not apparent.*
- It is considered that the setting of Banbury Road and the experience travelling along it is of high importance and makes a major contribution to the setting of the eastern side of Castle Park. In addition to this the buildings and roadside fields provide a reminder of the historic socio-economic and historic links to the park."<sup>164</sup>*

- 8.17 The impact of the scheme on the significance of the Park was assessed as follows: -

*"The Banbury Road retains its 18<sup>th</sup> century components (Nursery Wood, The Belt, Tall Thins and Temple Hill and Spinney) and design. It is the woodland edge of the Castle Park, the country lane aspect and the housing and fields on the eastern side of the road that defines the immediate setting of the eastern side of the park. However, the recent addition of a heavily engineered entrance to a proposed caravan site which sits on top of a large waste tip has a significant adverse effect on the setting of the eastern side of Castle Park as represented by the Banbury Road.*

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<sup>164</sup> ES at p.25, paragraphs 5.27 to 5.29

*Taking these factors into account, it is considered that the setting of the eastern side of Castle Park, as represented by the Banbury Road, makes a major contribution to the setting of the wider park and the significance of the designated heritage asset.*<sup>165</sup>

- 8.18 More particularly, the ES concludes that even though the fieldscape to the south of Banbury Road is “C20 in form” it nonetheless continues to make a “medium contribution to the setting and significance of the Castle Park”.<sup>166</sup>
- 8.19 The Heritage Setting Assessment (HSA)<sup>167</sup> has little to say about the impact of the scheme. However, the appellant considered that issue in the ES. Mr Crutchley had not read this document. It is, however, important. That is because, as Mr Crutchley agreed, it sets out the harm that the scheme would cause before the issues of the planned approach and inter-visibility with the surrounding countryside were raised. EDP concluded that the noise and light generated by the completed development would have: -

- (1) *A permanent moderate to minor effect on the Park itself and (in the case of noise) on the Banbury Road.*<sup>168</sup>
- (2) *A moderate to minor permanent adverse effect on the legibility and importance of the Park.*<sup>169</sup>
- (3) *A moderate to minor permanent adverse effect on the significance of the Park based on intermittent views of the development and the impact on the open landscape.*<sup>170</sup>

- 8.20 The point to note about the HSA and the Environmental Statement (ES) assessments are that they recognise the “major contribution” of the eastern side of Banbury Road to the Park’s setting and its significance. The ES and HSA were made coolly and dispassionately by EDP outside of an appeal setting. The conclusions contained in the HSA were reviewed by Mr Crutchley. They accord with the opinion of Mr Mayes. Each should, therefore, be accorded significant weight. Moreover, as Mr Halman agreed, EDP’s description of the harm as “moderate to minor” (less than substantial harm in Framework terms) does not mean it cannot be regarded as “serious” and deserving of significant weight. That is clear from the recent decision of Mr Hand in his decision on an appeal at Radford Semele.<sup>171</sup>
- 8.21 Mr Crutchley agreed that the admissions of harm to the significance of the Park that are set out in the ES should be viewed separately from the debate about a planned approach and inter-visibility. I therefore turn to consider the evidence on those two points.

#### The Planned approach

- 8.22 The principal evidence of a planned approach is what can be seen on the ground. Mr Crutchley agreed that the approach to the Park from the south the

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<sup>165</sup> ES Part 2, p.34, paragraph 7.10 and 7.11

<sup>166</sup> ES Part 3b, p.35, paragraph 7.17

<sup>167</sup> Inquiry Doc 16

<sup>168</sup> ES Part 2, p.9-22, paragraphs 9.153-9.155

<sup>169</sup> ES Part 2, p.9-23, paragraph 9.157

<sup>170</sup> ES Part 2, p.9-23, paragraph 9.158 – 9.159

<sup>171</sup> CD7.27, pp. 12-13, paragraph 50

tree belts that were planted by the Second Earl along its eastern edge which would have contrasted with the open and enclosed fields of the surrounding landscape and would have been recognised as demarcating its boundary. In drawing the eyes of travellers towards the Park and along the road and into the distance towards Warwick, that extensive woodland planting would have underlined the extent of the Second Earl's demesne, his span of control and social status, which were the *raison d'être* of parkland plantations.

- 8.23 Travelling past The Asps, Banbury Road does not follow a straight surveyor's line, but turns north east then north-west and falls towards the Tach Brook. Mr Crutchley agreed that part of the journey would have provided views of New Waters. It then rises towards the crest of Temple Hill from which there are clear views of St Nicholas' Church, framed by the trees that line both side of Banbury Road. Woodland planting on the west side of Banbury Road then screens the Castle from view, which allowed the Earl to "unpack" the well-known and spectacular view from the new Bridge.
- 8.24 Mr Mayes explained that the Second Earl bankrupted himself extending the Park and constructing a turnpike so that he could lay out a circuitous and varied approach to the Castle past trees and open water. Circuitous routes are a recognised characteristic of the work of Brown and his followers (of whom the Second Earl was one).<sup>172</sup> The Earl did not have to do that. He could have retained the old driveway for visitors to the Castle and sent others around the outside of the Park. He didn't do that. Whilst there is no unambiguous contemporary literary confirmation of an intent to create a planned approach, (Gilpin's letters admit more than one interpretation<sup>173</sup>), what can be seen on the ground, and its obvious effect on the viewer, is good evidence that a planned approach was intended. That being so, there can be no doubt the open fields of the appeal site were designed to act as a contrast to the Park's tree belts and woodlands, in order to better reveal its presence, scale and structure.<sup>174</sup> The narrow strip of fields and dense woodland planting that is planned to hide the appellant's houses would mask that deliberate contrast on the approach to the Park from the south. That would significantly change and degrade an important element of the Park's original setting. The Council and Historic England say that harms its significance. The views expressed by Historic England are entirely objective, independent and expert. They deserve to be accorded particular weight.

#### Inter-visibility between the Park and The Asps

- 8.25 The Council and Historic England attach importance to The Asps' open, agrarian character and appearance because there is strong evidence that the Second Earl intended that visitors to the Park should enjoy views out into the surrounding landscape. That evidence comprises: -
- (1) Contemporary cartographic evidence in the form of the map drawn by William James in 1806.<sup>175</sup> This illustrates carriage drives along a substantial length of the perimeter with Banbury Road planted (for the most part) with a narrow belt of trees. Views towards the Castle or New

<sup>172</sup> Dr Miele, Appendix 25, p.21.

<sup>173</sup> Dr Miele Appendix 16

<sup>174</sup> paragraphs 7.11 and 7.17 of the HSA

<sup>175</sup> Dr Miele, Appendix 17

Waters would have been obscured at several points along this route. Therefore, planned glimpses of the open countryside would have provided a pleasing contrast to views inside the Park, adding interest and variety to the journey.

- (2) There are linguistic clues that point to an intent to plant a permeable perimeter belt; the HSA notes these include references to the "Tall Thins" and the "Long Thins".<sup>176</sup>
- (3) The writing of John Britton and Joseph Nightingale refers clearly to the "prime features of the surrounding countryside" that may be enjoyed from within the Park.<sup>177</sup>
- (4) Field's account of 1815 also describes the "rural beauties of a ferme ornée; and pleasing views are caught, at intervals, of rich pastures, fertile corn fields, and browsing flocks and herds."<sup>178</sup> Dr Miele originally suggested this was a reference to the "Barford Sheds" within the Park. He said that these were places visitors would be taken to be impressed by the Second Earl's grasp of the latest farming techniques. When it was pointed out that the maps by Sale dated 1791 and the later William James map show there was no convenient access to the sheds by carriage or on foot he changed his evidence, suggesting that a carriage could stop short to provide a view towards the complex. When he was then shown that the sheds were deliberately screened he changed his evidence again, arguing that a ferme ornée could be "waving fields of corn within the park." Based upon his earlier answers, and having regard to other sources of evidence, it is submitted Dr Hodgetts' and Mr Mayes' view that "ferme ornée" was used by Field as a metaphor to describe land outside the Park is almost certainly to be correct.
- (5) Research commissioned by Historic England highlights the school of thought led by Phibbs, that holds Brown's belts were intended to be permeable so that the wider countryside should be visible through the stems and integrated within the Park.<sup>179</sup> Whilst others argue that "many" were "private and inward looking" the evidence indicates that at Warwick the Second Earl departed from the Brownian rule. That adds to the significance of views through the perimeter belt to The Asps, because it is unusual.

8.26 The small, narrow paddocks and dense tree screen that is planned by the appellant would bear no resemblance to the setting of the Park in its heyday. On the contrary, it would seriously detract from its legibility and significance.

#### The Aspens Farmhouse

8.27 Mr Crutchley agreed The Aspens is closely associated with the open farmed landscape of The Asps. That historic, functional and visual link will be severed by the curtain wall of trees and the appellant's housing estate. The appellant's approach to landscaping would, therefore, seriously compromise the setting and significance of the asset; it would be much less recognisable as a farmhouse, less still a farmhouse associated with the economy of Castle Park.

<sup>176</sup> Page 22 third bullet and page 27 paragraph 5.40

<sup>177</sup> Inquiry Doc 14

<sup>178</sup> Dr Miele Appendix 16, p.462, paragraph 6.12

<sup>179</sup> Dr Miele, Appendix 25, p.596

- 8.28 The Inspector in the Bishop's Tachbrook appeal decision<sup>180</sup> found that the residential development scheme proposed would cause some harm to the setting of a listed (grade II) barn conversion. The development the subject of this appeal is much closer to the listed farmhouse and the Castle Park here. The harm is therefore magnified when compared to the other appeal development.
- 8.29 In relation to the caravan park permission at Turnbolls Garden, that is an old permission that dates back to the 1990s.<sup>181</sup> If it has been implemented, it has not been completed. That gives an indication of the intent of the owner. In any event, the site has a narrow road frontage and is well screened. That permission was granted for such development is unfortunate but, even if built out, it would have only a marginal impact at worst.

Conclusion in respect of heritage matters

- 8.30 The ES, HSA and the evidence that has been presented to the Inquiry leaves no room for doubt that the scheme will harm the setting and significance of Castle Park and the Aspens. The parties agree that in each case the harm is less than substantial. It is nonetheless serious, and strongly reinforces the Councils objection to the scheme on environmental grounds.

**The full objectively assessed need for housing (FOAN)**

The starting point

- 8.31 The 5 year housing land supply must be based on the FOAN. As a matter of law, that is a policy off figure. Under cross-examination Ms Howick agreed the 2012 based Sub-National Population Projections are the starting point for the determination of the FOAN.<sup>182</sup> That is, 600 dpa. She accepted the 2012 projections should be used because they are the latest available information, statistically robust and based on nationally consistent assumptions.<sup>183</sup> That is the Council's position.
- 8.32 Having conceded the starting point is 600 dpa, Ms Howick sought to argue the 2011-based interim projections indicate a need for 720 dpa. She said that they should be preferred to avoid inconsistency between Warwick and the rest of the Housing Market Area (HMA) and because they have been tested, whereas the 2012 projections have not. Ms Howick was shown that each of those concerns is misplaced. The SHMA Addendum<sup>184</sup> tested the reliability of the 2012 projections and concluded that "the 2012-based SHMA would provide an appropriate starting point projection to use for strategic planning purposes".<sup>185</sup> Ms Howick could have tested the figures herself in her proof of evidence, but did not.
- 8.33 Moreover, as Ms Howick accepted, the 2011 projections produce a "starting

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<sup>180</sup> CD 7.12

<sup>181</sup> Inquiry Doc 10

<sup>182</sup> and see ID:2a-015-20140306, 2a- 019-20140306 and 2a-020-20140306

<sup>183</sup> see ID:2a-016-20150227 and 2a-017-20140306

<sup>184</sup> CD 3.9

<sup>185</sup> CD3.9, p.31, paragraph 5.11

point” of 631-659 households pa, not 720, which is an “uplifted” figure.<sup>186</sup> (Ms Howick agreed a difference of about 50 households pa). One other important point needs to be made. The planning guidance admits a departure from the most up to date projections where a local adjustment is clearly explained and justified based on established sources of robust evidence.<sup>187</sup> Ms Howick accepted she had not produced any evidence to justify a “local departure”. Thus the starting point should be 600 dpa, not the 714/718/720 dpa relied on by Ms Howick in her main proof of evidence.

### Market signals

- 8.34 The next step is to determine the scale of the uplift that is required in the light of relevant market signals. They are listed under planning guidance paragraph 19. It is accepted the list is not intended to be comprehensive, but it indicates which are likely to be most important. The SHMA has analysed each of them carefully. Ms Howick said that she accepted that analysis. It concludes 25 to 35 year olds may have found it difficult to form households in recent years. That work has been carried forward into the SHMA Addendum. It adds 10 % (60 dwellings per annum) to the starting point. Mr Gardner illustrated that this will return household formation rates to those anticipated under the unsuppressed 2008-based projections.<sup>188</sup> That evidence was not challenged.
- 8.35 So what is the appellant’s case? Ms Howick focused on a single market indicator, which she termed “past provision”, to argue that demographic need ought to be increased by 15%. Ms Howick sought to argue that this concept is entirely different from the “rate of development” specified in the planning guidance.<sup>189</sup> Ms Howick’s case was that the extent to which housing delivery mirrored the planned rate of development is irrelevant (her view was the “past provision bullet point” is in the wrong paragraph of the planning guidance). Instead, her view is that if planning policy in an area has constrained need and demand the FOAN should be increased to reflect that. Ms Howick was shown that there are three serious difficulties with this proposition: -
- (i) *First, the approach that she advocates conflicts with advice on the rate of development, which indicates future supply should only be increased “if the historic rate of development shows that actual supply falls below planned supply”. (emphasis added)*
  - (ii) *Secondly, the use of the planning guidance planned supply as the appropriate reference point is logical.*
    - (a) *Ms Howick accepted that the need for housing is referable to an HMA; that is, the geographical area defined by household demands and preferences.<sup>190</sup>*
    - (b) *She agreed that if a household’s needs are not met in one part of the HMA because need is constrained in the public interest, it*

<sup>186</sup> CD3.7, p.112/T49 and 113/T51 and p.195/T97

<sup>187</sup> ID: 2a-017-20140306

<sup>188</sup> CD 3.9, p.25, Fig. 13

<sup>189</sup> ID: 2a-019-20140306

<sup>190</sup> ID: 2a-010-20140306

*may be met in another part of it provided plans meet the total need arising across the HMA.*

- (c) *She conceded that she did not know whether the RSS required Council's in the Coventry and Warwickshire HMA to provide fewer houses than were required to meet need in the HMA. Nor did she produce evidence on completions across the HMA, which was a statistic she admitted was missing from her Figure 2.1.*
- (d) *She further accepted that if completions in Warwickshire and Coventry equalled or exceeded the requirement all need arising in Warwick District would have been met, albeit not in Warwick District.*
- (e) *On the evidence and logically, it is, therefore, impossible to argue that the delivery of the planned supply of housing across the HMA has underprovided for need arising in Warwick. And insofar as the pattern of supply might have changed patterns of effective demand, Ms Howick agreed that is what the planning system is for.*
- (f) *Third, Ms Howick was unable to demonstrate that an Inspector or the Secretary of State has ever accepted her approach. She took the Inquiry to the inspector's report on the Wychavon (Offenham) case.<sup>191</sup> However, the report does not record that the Inspector accepted her argument on this point.*

8.36 In comparison, Mr Gardner's observations on market signals were clear, convincing and conventional. His assertion that paragraph 5.34 of the Planning Advisory Service Guidance<sup>192</sup> (of which Ms Howick is a lead author) conflicts with planning guidance paragraph 19 was not challenged. On that basis, and having regard to the fact that Figure 13 of the SHMA Addendum indicates that a 10% uplift will "reverse out" past suppression, the Secretary of State is invited to find it is appropriate to uplift the starting point by 60 dpa (i.e. to 660).

#### Economic trends

8.37 The evidence that was given by Ms Howick on economic trends under cross-examination was contradictory and conflicted with other parts of her evidence. Early in her cross-examination, Ms Howick accepted the FOAN differs from the requirement or target because the former excludes policy considerations. She also expressly agreed that decisions to redistribute houses between local authorities under the duty to cooperate is a policy consideration. That evidence was consistent with her main proof of evidence,<sup>193</sup> which acknowledges (in relation to the testing of the 2012 based projections) that: -

*"...increased cross-boundary unmet need will not impact on Warwick's objectively assessed housing need. But it should be considered in setting Warwick's housing*

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<sup>191</sup> CD 7.14 at paragraphs 24, 25 and 35

<sup>192</sup> CD 9.14

<sup>193</sup> paragraphs 4.7 and 4.8



*provision target, because in line with the Framework Warwick should help accommodate it insofar as it has the sustainable capacity to do so."*

- 8.38 However, Ms Howick, refused to accept that a decision to boost the supply of housing in Warwick to 825 dpa in line with Cambridge Econometrics' 2013 economic forecast would, therefore, be a "policy on" decision which must be excluded from the FOAN. That is incomprehensible.
- 8.39 Ms Howick ran into other difficulties. In chief she explained that she preferred forecasts by Experian to those prepared by Cambridge Econometrics (CE) because the former's assumptions may be tested. She also told him that the difficulty with the CE's 2013 forecast is that the assumptions that underlie it have not been disclosed. Consequently, it cannot be tested to determine whether it falls foul of "circularity". Notwithstanding those concerns she inexplicably went on to argue that the CE 2013 forecast ought to be relied on rather than the contemporaneous forecast made by her preferred forecasting house. That was surprising.
- 8.40 What was even more surprising was Ms Howick's steadfast refusal to vary her opinion in the face of compelling evidence produced by Mr Gardner in the form of statistics from NOMIS and the BRES.<sup>194</sup> This evidence demonstrates that compared with the CE 2012 forecast (which underpins the draft Local Plan's employment land allocation) and the Experian 2013 forecast, the CE 2013 forecast is an outlier. Mr Gardner's conclusion on this point was explained clearly and was compelling. It was not challenged under cross-examination. Ms Howick simply avoided the point by saying that she had only received the NOMIS and BRES statistics late the previous day and therefore could not comment on it. In fact they were handed up the day before Mr Gardner actually gave evidence. It comprises of a couple of short tables together with an explanation running to one side of A4. NOMIS and BRES statistics will be entirely familiar to a witness of Ms Howick's standing. It may, therefore, be inferred that her inability to address the point stems from the fact there is no answer to it, no matter how long is taken to think about.
- 8.41 Ms Howick's final difficulty is that, when pressed, she was driven to concede it is not necessary to adjust the need for housing to make good a projected shortfall of the working age population provided that would not lead to unsustainable commuting patterns. She accepted the SHMA Addendum concludes there is no need to adjust Warwick's FOAN to make good any such shortfall because of existing commuting patterns.<sup>195</sup> Ms Howick produced no evidence to rebut that assumption. It follows she has no proper basis for arguing to the contrary.
- 8.42 In comparison, Mr Gardner's evidence that there should be no uplift for economic trends was consistent and clear. He argued any significant cross-border flows under the duty to cooperate ought to be regarded as policy on and excluded from the FOAN. In the alternative, he explained the Experian based forecast ought to be preferred because: -

*(i) its assumptions are clear (consistent with the PAS Guidance);*

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<sup>194</sup> Inquiry Doc 29

<sup>195</sup> CD 3.9, p. 33, paragraph 5.25

- (ii) *it is consistent with the CE 2012 forecast and the CE 2013 forecast after the latter has been properly calibrated to take account of its over-estimate of jobs between 2011 and 2013 (see NOMIS and BRES); and,*
- (iii) *Ms Howick herself prefers Experian.*

8.43 Finally, there is no proper basis for arguing that the use of the Experian forecast would produce an imbalance between the provision of housing and employment land in the draft local plan. Since each of the forecasts produces broadly the same result, that assertion would be factually incorrect. And in any event, that is a long term issue, which ought to be examined at an EIP. The evidence of Mr Gardner goes well beyond what is necessary to be satisfied in a Section 78 appeal.

#### Conclusion on FOAN

8.44 Matters of law, principle and the evidence point to a starting point of 600 dpa; an uplift of 60 dpa to take account of market indicators and no adjustment for employment trends. That produces a FOAN of 660 dpa. That is lower than the requirement in draft policy DS7, but that takes account of Coventry's need to steer 60 dpa to Warwick under the duty to cooperate. That adjustment will be tested at the EIP of the Plan in May. It has no relevance for the purposes of this appeal whatsoever, because it is to do with the requirement.

#### **The five year supply**

##### Matters of principle

8.45 The appellant has taken every possible technical point that might be raised against the Council. This analysis therefore deals with points of principle and then drills down into the detail of each category of supply. However, one important preliminary observation ought to be made. Mr Halman quite properly accepted that because paragraph 47 of the Framework applies to Local Plan making and decision making, those paragraphs of Part 3 of the Guidance that elucidate the assessment of housing land supply also apply to decision making. Consequently, it would be wrong to assume as a matter of principle that components of supply such as C2 and student accommodation and windfalls may only be relied on after each has been tested through a Local Plan. If that had been the Secretary of State's intention, he could simply have said so. He did not. Instead, it is respectfully submitted the correct approach is to look at the quality of the evidence. If the Secretary of State concludes it is thorough and persuasive it ought to be taken into account. If it is thin or generalised, it should not. In this case the Council's position is that substantial evidence on each point has been gathered and tested rigorously ahead of the Examination in Public, which will begin in a little more than a week. He is, therefore, invited to take that evidence into account.

##### The size of the buffer

8.46 The Council's performance falls to be judged in terms of its delivery compared with the annual requirement. The planning guidance advises that it is legitimate to consider the effects of imposed housing moratoriums and the delivery rate before and after any such moratoriums. The planning guidance also advises that the assessment of local delivery is likely to be more robust if

a longer term view is taken so as to take account of the peaks and troughs of the housing market cycle.<sup>196</sup>

8.47 That advice is especially relevant in Warwick. Between 2001 and 2005 delivery in the district was so strong that Mr Halman agreed if it had been allowed to run unchecked the requirement would have been exceeded by 64 %. That led to the imposition of a moratorium in 2005-2006. However, Mr Halman accepted the effect of the moratorium is difficult to entangle from the impact of recession that followed a couple of years later, just as the moratorium began to bite (NB note also the interrelationship with Coventry, which saw a sharp rise in delivery, even as the economy began to struggle). Thus if account is to be taken of the Council's unconstrained performance in a strong housing market and a full economic cycle it is necessary to have regard to the period 2001-2005 up until 1 April 2015. Over that period the Council has delivered well in excess of its requirement.<sup>197</sup> That is true whether or not the FOAN is assessed as 660 dpa or 825 dpa since 2011.

8.48 Therefore a 5% rather than a 20% buffer ought to be applied.

#### Windfalls

8.49 Paragraph 48 of the Framework indicates a windfall allowance may be applied if it is realistic to do so, having regard to: -

- (1) *the SHLAA;*
- (2) *historic windfall delivery*
- (3) *expected future trends (ignoring residential gardens)*

8.50 Mr Halman objects to a windfall allowance in principle. However, that approach is not supported by the Framework or the planning guidance. Everything turns on the evidence. That prepared by Mr Barber is careful and comprehensive.<sup>198</sup>

8.51 Specifically, Mr Halman agreed Mr Barber's analysis of windfall sites excludes small sites of 5 or fewer dwellings and excludes any allowance for those comprising 10 or more dwellings until 2019. That avoids the double counting the careful analysis of SHLAA sites is intended to avoid. Mr Halman also accepted that even when the Council has possessed a good stock of allocated sites windfalls have made a significant contribution to supply. He further accepted that windfalls will continue to come forward, albeit his estimate is 96dpa rather than 121dpa.<sup>199</sup>

8.52 In the circumstances, it is submitted that Mr Barber's conclusion (that around 705 windfalls will be delivered over a 5 year period) is reasonable, supported by robust evidence and may be included in the deliverable supply.

#### C2 and student accommodation

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<sup>196</sup> ID: 3-035-20140306

<sup>197</sup> Mr Barber, main proof, p.5, Table 5

<sup>198</sup> Mr Barber Rebuttal Appendix RS3

<sup>199</sup> Mr Halman Rebuttal p.3, paragraphs 2.6-2.7

- 8.53 Mr Halman accepted the planning guidance does not require provision for student accommodation to be made in a Local Plan.<sup>200</sup> The guidance does mention the need to set out policies for the delivery of C2 accommodation in a local plan. However, it does not state this component must be excluded from the requirement unless there is an adopted local plan in place.
- 8.54 In this case the Council relies on C2 and student accommodation that benefit from the grant of planning permission. In the terms of the planning guidance,<sup>201</sup> the sites should therefore be taken to be deliverable unless there are clear reasons for why that might not be so. In that context, it is to be noted: -
- (1) *Mr Barber has first-hand knowledge of Warwick University's plans to develop student accommodation at Gibbett Hill Road in Stoneleigh.<sup>202</sup> He has led evidence that the accommodation will not be taken up by a growth of the student population. It may also be inferred that the University will price the accommodation to ensure it is actually used. That is likely to release property in Warwick and Leamington. The "conversion rate" applied by Mr Barber is moderate and properly justified. It is therefore reasonable to include the allowance for student accommodation.*
  - (2) *The C2 accommodation relied on by Mr Barber at Earls River Avenue in Warwick also benefits from a grant of planning permission.<sup>203</sup> Mr Halman was unsure why he had discounted some of the units even though they will undoubtedly come forward as self-contained accommodation. By virtue of the fact these units actually have planning permission and reserved matters approval they should be counted towards the supply, there being no clear evidence of any impediment to delivery.*

#### Discount for non-implementation

- 8.55 Mr Halman agreed that there is no support for the application of a discount for non-implementation in the Framework or the planning guidance. On the contrary, he accepted the guidance<sup>204</sup> points in the opposite direction, there being a presumption that all planning permissions will be implemented. He further accepted that a range of practices are applied on appeal. Sometimes a "rule of thumb" of (say) 10% is used. On other occasions a discount is based on observed rates of non-implementation. Sometimes no discount is applied at all. Mr Halman conceded that Mr Barber's approach is evidence based. His own approach (based on an analysis of expected completions versus net completions) is unconventional. It confuses non-implementation with site re-planning, and amounts to little more than a criticism of the Council's inability to forecast delivery year on year through the AMR as if it possessed a crystal ball. It is not reliable and produces a discount which bears no relationship to

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<sup>200</sup> ID: 3-038-20140306

<sup>201</sup> ID: 3-031-20140306

<sup>202</sup> Mr Barber, Summary Proof Appendix B, p.1, row 2 Inquiry Doc 27

<sup>203</sup> Ibid p.2, row 2

<sup>204</sup> ID: 3-031-20140306

those which are usually encountered. Instead, Mr Barber's own evidence based assessment of a 5% discount is to be preferred.

- 8.56 That leads to the related topic of Mr Halman's attack on certain sites with planning permission in Mr Barber's evidence<sup>205</sup> on viability grounds. He cites: -

Pottertons Portobello Works [p.2, row 3]

73 Warwick Street, Leamington [p.4, row 3]

1 Warwick Street, Leamington [p.5, row 3]

Haseley Business Centre [p.7, row 3]

Adj. 135 Warwick Road, Kenilworth [p.7, row 4]

- 8.57 There are two problems with Mr Halman's approach. First, he relies on the comments of the former agents without having confirmed that they are appraised of the current state of affairs on the site they were formally associated with. This is exemplified by his observations on 73 Warwick Street; Mr Halman accepted the Council probably deleted a requirement for affordable housing after Mr Bromley obtained the original grant of planning permission and he had not checked was still appointed as agent or knew about the change. Secondly, and more fundamentally, Mr Halman does not appear to have obtained a viability assessment for any of the sites that are listed. His evidence is based on an "impression", having visited each site. That does not amount to "clear evidence" that a site with planning permission will not be delivered within 5 years. That is especially so where (as in the case of the Portobello Works) the site is controlled by a well-known and reputable developer and they have stated in plain terms that they intend to develop out the site by 2017 or (as in the case of 1 Warwick Street) there is "strong interest in the site".

- 8.58 Having heard the evidence, the Council, however, accepts the site adjacent to 135 Kenilworth Road ought not to be regarded as deliverable at this time. (Therefore minus 12 units.)

#### SHLAA sites

- 8.59 The difficulty with Mr Halman's approach to SHLAA sites is that he sets the bar too high; when cross-examined on his reasons for excluding those advanced by Mr Barber he explained "it cannot be said they will definitely be delivered". That is the wrong test. The correct test is robust evidence of an absence of constraints.<sup>206</sup> Two of the SHLAA sites identified by the Council have been the subject of recent pre-application discussions or granted planning permission. On this basis, it is submitted the whole of this relatively modest component should be included in the supply.

#### Draft Local Plan allocations

- 8.60 Mr Halman's approach to the draft allocations in the Local Plan is too simplistic. His evidence approaches each site on the basis that objections

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<sup>205</sup> Summary Proof Inquiry Doc 27

<sup>206</sup> ID: 3-031-20140306

mean they may not be taken into account, notwithstanding in each case they are controlled by substantial developers who have exhibited a settled intention to bring housing forward or public authorities who are on record as having stated the sites are surplus to requirements. Mr Barber's site specific comments,<sup>207</sup> based on his personal knowledge of each case gained from the Local Plan process, thus ought to be preferred to Mr Halman's more negative approach. There is one possible exception: the Planning Committee's very recent decision to refuse planning permission for Grove Farm<sup>208</sup> may indicate it cannot be considered to be deliverable now, notwithstanding there is no constraint, its allocation in the Local Plan indicates it is supported by the Council as a whole and is likely to come forward soon through a further planning application and/or an appeal.

#### The buffer

- 8.61 The decision of the Secretary of State in the Gresty Road appeal dates from January of this year. It is recent and authoritative. It addresses the question of whether the shortfall should be added to the annual requirement before the buffer is calculated from first principles. It is a material consideration. It ought to be followed. It is certainly more helpful than the Droitwich decision that is referred to by Mr Halman,<sup>209</sup> where the decision turned on Wychavon District Council's past practice rather than any point of principle.

#### Conclusions on the five year supply

- 8.62 The calculation of the 5 year supply is not an exact science. Mr Barber and Mr Halman have narrowed the areas of disagreement between the parties during the course of the Inquiry but neither can be said to be absolutely "right". For the reasons I have given, Mr Barber's assessment of the five year supply is generally to be preferred to Mr Halman's. His evidence was firm, measured and reasonable. He has the benefit of detailed local knowledge of each site, accumulated over several years and sharpened recently by his preparations for the Examination in Public. After removing 12 homes from the supply claimed by the authority, Table 18 of Mr Barbers evidence should read: -

*Row 4: Five year supply = 5348*

*Row 5: Number of years supply = 5.52*

#### **The benefits of the scheme**

- 8.63 The principal benefit claimed for the scheme is the provision of a Park and Ride facility. That claim should be given little weight for six reasons: -

*(1) Mr Parkinson and Mr Halman regard the facility as "essential" to the delivery of the wider scheme. They are right. Without the Park and Ride the scheme would be hopelessly unsustainable in transportation terms. Consequently, it ought to be regarded as mitigation, not a benefit.*

<sup>207</sup> Mr Barber, Summary Proof Appendix B Inquiry Doc 27

<sup>208</sup> See Inquiry Doc 35 - although the officer recommended approval, it was refused by committee shortly before the close of the Inquiry. The site is referred to at Mr Barber's Summary Appendix B, p.23, row 2 Inquiry Doc 27

<sup>209</sup> p.19, paragraph 6.30 of Mr Halman's proof

- (2) *The Local Plan requires the environmental impact of the scheme to be evaluated in comparison to other potential sites in the vicinity of Greys Mallory. Mr Halman admitted that has not been done. This exercise could have been carried out and the application for housing made without a Park and Ride if the site had been safeguarded for a Park and Ride under Local Plan policy SSP5.*
- (3) *The recent Atkins Study indicates the effectiveness of the Park and Ride depends on its successful integration with a range of other sustainable transport initiatives.<sup>210</sup> That has been overlooked by the appellant, which has ploughed its own solitary furrow.*
- (4) *The continuity of the scheme is not guaranteed. The operator is able to break the contract on 12 months' notice. That is not a fanciful suggestion; Mr Benison gave evidence that a Park and Ride was abandoned in Stratford upon Avon. The Highway authority and the District Council have been firm; they will not operate a Park and Ride. Therefore, its billing as a "deliverable" 10 year contract is something of a misnomer.*
- (5) *Mr Benison's evidence is that the scheme adds to, rather than reduces traffic into the Warwick Conservation Area over Castle Bridge.*
- (6) *The Park and Ride will harm the intrinsic beauty of the countryside.*

#### **Other benefits that are claimed for the scheme**

- 8.64 Most of the other benefits claimed for the scheme actually do no more than mitigate some of the harm that it causes. The provision of market and affordable housing might be viewed as exceptions to this rule. However, each actually causes significant harm to the environment without there being a compelling need to provide either in this location. In these circumstances, the schemes benefits may fairly be regarded as relatively minor.

#### **Weight to be afforded to the emerging Neighbourhood Plan**

- 8.65 The judgement does not change the Council's position as maintained at the Inquiry, that little weight should be afforded since the Plan is still at a very early stage of the plan making process.
- 8.66 It is also noted that the effect of the judgement is that policies for the supply of housing land in a draft Neighbourhood Plan should be regarded as out of date unless the Council is able to demonstrate a five year supply of deliverable land for housing. The Council considers that it does possess a five year supply. If that contention is rejected, it would mean that the policies in the Neighbourhood Plan that restrict housing development at The Asps would be rendered out of date. In those circumstances, whilst the weight to be given to the Plan is a matter for the Secretary of State, the Council anticipates that even if the Neighbourhood Plan has been examined or made before the appeal decision is issued, the weight attached to it ought to be reduced.

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<sup>210</sup> CD3.41, pp.57,58,59 and 66, paragraphs 9.3, 9.5 and 10.6.7

### **Conflict with the Development Plan and the planning balance**

- 8.67 Mr Halman conceded policies DP1, DAP4 and DAP8 are particularly material to this appeal. He accepted that in recent appeal decisions in Radford Semele<sup>211</sup> and Barford<sup>212</sup> each of those policies is broadly in accordance with the Framework and indicate they should be given significant weight. The harm that the scheme will cause to the countryside and heritage assets conflicts with DP1, DAP4 and DAP8 respectively. Therefore in accordance with paragraph 38(6) of the 2004 Act planning permission should be refused unless other material considerations indicate otherwise.
- 8.68 On the other side of the balance, the only tangible benefit of this scheme is the provision of market and affordable housing. The weight to be accorded to them is, however, diminished if it is found the Council has a five year supply of land for housing.
- 8.69 The principle in favour of sustainable development does not assist the appellant. The harm that is caused to the environmental dimension of the Framework greatly outweighs its social and economic benefits. Therefore, in accordance with s.38(6) of the 2004 Act and the Framework, the Secretary of State is invited to dismiss this appeal.

### **Timing**

- 8.70 For the following reasons, the Secretary of State is asked to refuse to defer the determination of this appeal until another appeal in respect of land South of Gallows Hill is decided: -
- (1) On behalf of the appellant, Mr McInerney agreed if this scheme is decided at the same time as the Gallows Hill appeal it would be necessary to take account of the cumulative impact of both schemes. However, there is no evidence before this Inquiry on that issue.
  - (2) The public interest requires decisions are made speedily and efficiently. The appellant decided to bring the appeal on. Its determination should not be delayed.
  - (3) If the decision is delayed, it may be overtaken by the Local Plan process. That would be likely to lead to a need for further submissions, which would increase cost to the public purse and lead to further delay.

## **9. THE CASE FOR THE RULE 6(6) PARTIES**

### **Save Warwick Action Group (SWAG)**

*[Edited from the closing submissions of the Group's advocate<sup>213</sup> with some additions drawn from the evidence of the respective witnesses at the Inquiry. The case includes post-Inquiry comments in relation to the High Court judgement referred to earlier.]<sup>214</sup>*

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<sup>211</sup> CD 7.27

<sup>212</sup> CD 7.19

<sup>213</sup> Inquiry Doc 48

<sup>214</sup> Inquiry Doc 59



## **OVERVIEW**

- 9.1 This appeal should be dismissed and planning refused because it is contrary to the development plan and is demonstrably unsustainable for the following reasons:
- a. The scheme as a whole derives no in-principle support from any extant or emerging planning policy. The most that can be said for it in terms of policy support is that one element of it will deliver a Park and Ride in one of the areas of search in saved policy SS5 and emerging Local Plan policy TR5. However, in doing so, it will short circuit the site and technical appraisal process envisaged by those policies. Moreover, unless the tail is to wag the dog this does not help the scheme as a whole. That there was a time, back in 2012, when the site was subject to a draft allocation should carry limited, or no, weight. That allocation has been abandoned by the Council and superseded by the emerging Plan.
  - b. The principle of introducing a large scale urban extension on an unallocated site in the open countryside outside of Warwick is in manifest conflict with saved policy RAP1, emerging policy H1 and the draft Neighbourhood Plan. That is the starting point so far as the Section 38(6) exercise is concerned. Unless saved policy RAP1 is 'deemed' to be out of date pursuant to Framework paragraph 49, these policies are entirely consistent with the Framework in the sense that they have the effect of resisting sub-optimal and unsustainable development in an unsuitable area.
  - c. The consequences of the appeal site being located where it is are very significant in sustainability terms. The site is not easily accessible, not well located and not well related to the existing urban edge of Warwick/Leamington - or any other development influences for that matter. It would therefore perform poorly in relation to the social and environmental roles of sustainable development. There are no attractive means of accessing the site without using vehicles (whether busses or private motor vehicles) and nor are there any deliverable proposals to improve means of accessing the site along existing carriageways whether by foot or bicycle. This has evident consequences as far as Framework paragraph 176 is concerned.
  - d. Given its poor sustainability credentials it is not surprising that the scheme would be a significant generator of traffic. Putting to one side the obfuscatory comparison of the scheme with a purely hypothetical "Asps plus No Park and Ride " scenario, it is plain that the scheme would cause a net increase in traffic in Warwick town centre by 2023, and thereafter as the scheme continued to be built out. In that context it cannot be said that the scheme as a whole offers any advantages in traffic, transport or air pollution terms. On the contrary, very significant disadvantages would arise if the scheme were permitted. The appellant has failed to understand these matters properly and in this respect there are liabilities with the adequacy of the Environmental Impact Assessment carried out in connection with the scheme.

- e. The site is immediately adjacent to Warwick Castle Park and would diminish its significance to a marginally below substantial degree. It would undermine the designed approach to Warwick and permanently change the nature of views available out of the Park towards the site. These matters harm the significance of the Park because they are both aesthetic experiences which were designed to be appreciated by visitors to Warwick and the Park, and contribute to the ability to appreciate and understand the Park in the modern day. In addition, as Ms Maclagan pointed out, the increase of traffic in Warwick town centre, which is situated in a Conservation Area, would harm its significance. These matters attract great weight and are substantial objections to the scheme.
- f. Against the above it is claimed that the Council cannot demonstrate a five-year (plus buffer) supply of housing land and that in that context the scheme should be treated favourably. This is simply not the case. The Council has a robust supply of deliverable housing sites sufficient to provide five years worth of supply plus the appropriate 5% buffer. The appellant's method of calculating the five year requirement is flawed in almost every respect. The Council has conducted a credible interrogation of sites in its supply trajectory and in some cases has eliminated sites. There is no reason to discount any further of them. In any case Councillor Bullen's unchallenged evidence demonstrates, at the very least, that the supply position is likely to be more robust than is recognised by the Council or the appellant.
- g. On balance, and having regard to the extent to which the scheme would conflict with extant and emerging planning policy, the scheme would not amount to sustainable development because it would not secure net gains across the three dimensions identified in Framework paragraph 7. Development which is unsustainable in this sense does not benefit from being viewed through the rose tinted glasses of Framework paragraph 14 such that the policy objection to it should be set aside. In any event it can be seen that the benefits of the scheme, such as they are, are very significantly outweighed by its adverse impacts, whether there is a five-year housing land supply or not.

### **PRINCIPLE OF THE SCHEME**

- 9.2 There is no specific support for the principle of the scheme in any extant or emerging policy document. The only policy support it once had was (a) in draft (b) abandoned as part of the preparation of the emerging Local Plan process and (c) has been superseded by the emerging Local Plan.
- 9.3 What then of the principle of the development? Mr Halman in cross examination was fair in acknowledging that the scheme was contrary to the development plan and in particular saved policy RAP1. Mr Halman also fairly conceded that Mrs Darke's indication that RAP1 only applied to small sites was not correct as a matter of the objective language of the policy. Mr Halman acknowledged that RAP1 was the "dominant" policy in the development plan such that the principle of the acceptability of the scheme should be tested against it. This acknowledgement is plainly right and accords with the judgment of Ouseley J in *R (Cummins) v Camden LBC* [2001] EWHC 1116

(Admin). RAP1 is the lead policy so far as rural housing is concerned. There are other policies of course by the emerging Local plan itself describes the development policies in Chapter 4 as “generic.”<sup>215</sup>

- 9.4 It is important to note that, in cross examination, Mr Halman materially changed tack relative to his approach in his proof of evidence and he is now to be understood as accepting that the scheme is contrary to the development plan such that the starting point, under s. 38(6) of the Planning and Compulsory Purchase Act 2004 and Framework paragraph 12, is that it should be refused unless material considerations indicate otherwise. Unless it is deemed to be out of date by Framework paragraph 49, saved policy RAP1 is otherwise materially consistent with the Framework. It has not been suggested otherwise. It aims to encourage development in urban areas by restricting development in rural areas. In other words it aims to encourage sustainable patterns of development. This is consistent with both the urban and the countryside policies of the Framework.
- 9.5 In cross examination Mr Halman confirmed he did not claim that the saved Local Plan was absent or silent (despite this having been put to Mrs Darke by Mr Cahill). He said it was out of date however because it was only ever intended to cover the period up to 2011. In my submission that is a misguided approach to assessing whether a policy is out of date. Whether a policy is out of date depends upon whether it is out of kilter with national policy. There is nothing in the Framework that indicates that so-called “time expired” saved policies are to be regarded as out of date. Whether they are, is a matter which is for the decision-maker, having regard to whether “they have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy” per Lindblom J in *Bloor Homes*.<sup>216</sup> If RAP1 is consistent with the Framework, as the Secretary of State is invited so to hold, then it is not out of date. It may have been planned to cover a different period, but it is a saved policy and therefore is intended to continue to bite. Unless it is out of kilter with the Framework, it should carry much weight.
- 9.6 The scheme as a whole comprises the residential element and the Park and Ride. Both must be considered against the test contained in S38(6). There is no specific policy support for the Park and Ride in either the saved Local Plan or the emerging Plan. The purpose of the area of search is to allow focussed environmental and technical appraisal of sites within the search areas and to prevent the provision of development that would be inconsistent with the future introduction of Park and Ride.
- 9.7 If there had been an intention to positively encourage applications for a Park and Ride within the areas of search, it would have been easy enough to say so. At no time has such a policy been promoted or adopted. Policy needs to be interpreted objectively and in accordance with the language used in its proper context. That context is that neither the County nor District Councils have reached a settled view as to the merits of Park and Ride, or decided on a site. The upshot is that the scheme as a whole cannot gain any policy support

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<sup>215</sup> CD 3.1 p. 27

<sup>216</sup> CD 8.9 paragraph 45

from the saved Local Plan or emerging Plan policies regarding Park and Ride areas of search.

- 9.8 The principle of the scheme is also inconsistent with two emerging Development Plan Documents: the emerging Local Plan and the emerging Bishop's Tachbrook Neighbourhood Plan. I consider the policies in the emerging Local Plan with which the scheme is inconsistent below. Mr Halman agrees that the scheme conflicts with the Neighbourhood Plan because it is outside the settlement boundary of Bishop's Tachbrook and is not an allocated site. He accepted that the weight to be accorded to this conflict should depend on the stage of its preparation (it has recently been put out to Regulation 14 consultation) and the extent of its "general conformity" or otherwise with the emerging Local Plan. I submit that there is nothing in the Neighbourhood Plan that renders it not in general conformity with the emerging Local Plan. The Neighbourhood Plan contains "strategic overlay" provisions which mean that any site allocations confirmed in the emerging Local Plan process will not encounter a policy objection in the Neighbourhood Plan. Despite not having specifically allocated the HO2 site for development, it will not present any obstacle to the delivery of that development should the allocation be confirmed at examination. It will yield to it.
- 9.9 The leading case on general conformity, *Persimmon Homes v Stevenage BC* [2005] EWCA Civ 1365,<sup>217</sup> makes it clear that the notion of general conformity means that exact conformity is not required, and that a degree of flexibility is built in to the very notion of "general" conformity. The critical issue is whether the emerging Neighbourhood Plan would prevent the realisation of the strategic objectives of the emerging Local Plan. As Lloyd LJ held in *Persimmon Homes*<sup>218</sup> "...the local plan must not put obstacles in the way of the fulfilment of the strategic policies of the structure plan such that they will not, or may well not, be achieved." Although the tone of the emerging Neighbourhood Plan may be more iconoclastic than reverential, comparison of the operative text of its policies illustrates that it does not, and will not, have this effect. In cross examination Mr Halman accepted that the Neighbourhood Plan would not be likely to prevent the delivery of the FOAN in the district as a whole by 2028.

#### **WEIGHT TO BE AFFORDED TO THE EMERGING NEIGHBOURHOOD PLAN**

- 9.10 In accordance with the principle that emerging Development Plan Documents are material considerations in the planning process, the emerging Neighbourhood Plan should carry moderate weight for the purposes of this appeal.
- 9.11 The Plan is at a fairly mature stage in its preparation. The Regulation 14 consultation that is currently being carried out will be finished in June 2015, following which it will be submitted to the Council to take forward to examination. In that sense, it is just a few months behind the emerging Local Plan in terms of the stage of its preparation.

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<sup>217</sup> Attached to Inquiry Doc 48

<sup>218</sup> Paragraph 86

- 9.12 The outstanding objections to the Neighbourhood Plan are those which were canvassed at the Inquiry. Mr Halman agreed with the view that the Plan would not prevent the ability of the Council to achieve the delivery of its planned housing supply over the 2011-2031 plan period. The objections to the Neighbourhood Plan need to be seen in that context, and in the context of the "strategic overlay" policies in it, which allow allocations made in the emerging Local Plan to feed directly into the Neighbourhood Plan, so that the Neighbourhood Plan itself will not resist any Local Plan allocations.
- 9.13 The fact that the Neighbourhood Plan does not positively duplicate these allocations itself is beside the point. So long as it does not undermine the strategic vision in the higher-order Plan, it is obvious that such a plan *as a whole* will still be in general conformity with the higher order plan *as a whole*.
- 9.14 The recent Woodcock Holdings judgement does not change any of the above. The problem in that case was that the Secretary of State had misinterpreted the Neighbourhood Plan such that he regarded the development in question as contrary to it in terms of its location and scale.
- 9.15 In fact the Plan in question, when read properly and objectively in accordance with *Tesco v Dundee*, did not resist the development. It simply anticipated that 30 houses would be provided in the village, identifying some infrastructure constraints. The scheme there overcame those constraints and, although it was for 120 units instead of 30, there was no language in the plan that made it clear that not more than 30 units should be provided.
- 9.16 No such problem arises in this case, because it could not be clearer that, on an application of the language of the Plan, The Asps scheme is contrary to it. For the avoidance of doubt, although it does raise an interesting question, the Parish Council's Statement of Case does not raise the issue of prematurity and this issue was not canvassed in evidence at the Inquiry.
- 9.17 The following additional points arise from the judgement:
- a. Paragraph 43. If there is no five-year housing land supply, then that limits the amount of weight that should be given to "policies for the supply of housing" whether those policies are contained in an extant or an emerging plan and whether in a Local Plan or Neighbourhood Plan.*
  - b. Paragraph 62(i). The 1990 Act only requires general conformity with the strategic policies of the development plan if such policies exist. Where they do not, paragraph 8(2)(e) is not engaged, but that does not mean that a Neighbourhood Plan cannot be prepared and formally "made".*
- 9.18 As to (b) above The Asps inquiry focused on whether the Neighbourhood Plan would be in general conformity with the emerging Local Plan. Although strictly speaking there is no statutory requirement for it to do so, it is agreed that this is the appropriate analysis because there is a possibility, indeed a likelihood, that the emerging Local Plan will be in place before the Neighbourhood Plan.

## **CONSEQUENCES OF LOCATION**

### **Sustainability/accessibility**

- 9.19 Given that the site is, for all intents and purposes, situated in the middle of

the open countryside outside of Warwick, it should come as no surprise that its sustainability credentials in terms of accessibility and means of transport are extremely low. Of the three roads contiguous with the site, only one, Banbury Road, has any footpath/pedestrian provision at all. That footpath does not go all the way into Warwick. It starts near the Aspens and stops at the landfill site. It is of a substandard width and is in a degraded condition (Hanafin XIC). There is no street lighting on it. Mr Parkinson fairly acknowledged in cross examination that it was not an attractive route for walkers. The same analysis applies with even greater force at night. None of the three roads contiguous with the site has any dedicated cycling infrastructure on them. To cycle into Warwick or Leamington one would need to be comfortable with cycling in a non-segregated carriageway with vehicle speeds in excess of 50mph.

- 9.20 Mr Hanafin<sup>219</sup> sets out the walking distances to/from the site. These figures are matters of fact and were not challenged by Mr Cahill at any point. The nearest comprehensive secondary school is a 2.2 mile walk away. The nearest medical centre is just less than 2 miles away on foot. Mr Cahill acknowledged that the local centre would provide little more than "top up shop" facilities and it is evident that people who choose to live at The Aspens will want to access the range of local services and facilities available in Warwick and Leamington. This is a key desire line and, to satisfy it, a walk of over a mile would be needed. All of these walking distances are significantly in excess not just of the Chartered Institution of Highways and Transportation's (CIHT) desirable standards, but their maximum standards too.<sup>220</sup> In cross examination of Mr Hanafin, Mr Cahill seemed to acknowledge that this meant that special transport measures may have to be relied upon or provided to school-age children by the County Council. That is not what the planning system should be promoting.
- 9.21 It is in this context that the failure to provide any deliverable improvements to pedestrian and cycling infrastructure must be seen. It is not disputed by Mr Parkinson that there are no specific proposals to carry out any works (beyond those indicated on the access plans for which detailed approval at outline stage is sought) to improve pedestrian /cycleway infrastructure for the site in a way that would make it not just attractive, but physically possible, to get to and from the site on foot. He relies on a proposed contribution of some £13,000 to make good the obvious accessibility lacuna that the scheme suffers from. During the discussion on the planning obligation, it became clear that the contribution relates to the existing public footpath and is nothing to do with the new cycleway/footway or improving the existing footway.
- 9.22 The key question is whether any pedestrian/cycleway infrastructure would actually be delivered as a result of this low-key contribution. Mr Parkinson accepted in cross examination that there was some uncertainty about what could be achieved, and by what timescale, with this money. He said that he had at first thought it was going to be used for Pedestrian/cycleway improvements along Europa Way, but that he had later been told it would probably be used on Banbury Road. There are proposals to provide dual

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<sup>219</sup> POE at p. 7/8

<sup>220</sup> see CD 3.39 p. 387

carriageway along Europa Way and that is likely to be inconsistent with pedestrian/cycleway improvements.

- 9.23 As to improvements along Banbury Road, Mr Parkinson accepted that he had no clear idea of (a) whether there were any firm proposals to improve Pedestrian/cycleway links; (b) if so what they consisted of; and (c) how they were going to be funded; (d) what proportion of total cost the £13,000 would cover and (e) when they would be delivered. He acknowledged that the money would not be ring-fenced to pedestrian/cycleway spend on Banbury Road- that is plain from the language of the planning obligation. To look at it another way if you were to pose the question how are pedestrian/cycleway links to the site to be secured, you would draw a complete blank. This conflicts with the advice at Framework paragraph 177 which says that it is "important to ensure that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion."
- 9.24 In the light of all of the above I submit that the irresistible conclusion is that there are no deliverable proposals to put in any pedestrian/cycleway links and that accessibility by non-motorised means would be extremely poor. The advice at Framework paragraph 176 applies here: *"Where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), the development should not be approved if the measures required cannot be **secured** through appropriate conditions or agreements."*
- 9.25 We were told that a condition to redirect spend would be wrong. There are no measures for pedestrian/cycleway development. Such works would, in any event, need to be the subject of consultation and need to be costed etc, in connection with emerging development. There is uncertainty about any possible condition. If a Grampian type condition is used, then the obvious consequence would be that this is not a deliverable site insofar as its potential contribution towards housing supply on the basis that there is uncertainty over the actual works and their delivery.
- 9.26 The only consolation for this poor level of accessibility is that the Park and Ride would double up as a local bus service and would provide occupants with a means of accessing the town centres on public transport. This is not a panacea and should not be regarded as such. All it means is that the standard policy requirement to have a bus stop within 400 metre walking distance is met. No other CIHT recommended distances are met. They are all materially exceeded. While the Park and Ride hours of service are in step with service standards for Park and Ride services, the fact that there is no Sunday service at all and no service at all after around 7pm on weekdays (earlier on Saturdays) means that in practice the bus will be subsidiary to private vehicles. The vast majority of trips from the site into the nearby urban areas are likely to be made in private cars, especially any trips involving multiple destinations or bulk shopping trips.
- 9.27 Drawing these strands together, I submit that the scheme is contrary to local and national policy. It is clear, as I show below, that significant weight should

be attached to this shortcoming of the scheme. Saved Local Plan<sup>221</sup> policy DP6 states that development will only be permitted where it provides safe, convenient and attractive access routes for pedestrians and cyclists. The scheme does not make such provision. Policy TR1 of the emerging Local Plan<sup>222</sup> echoes this, criterion (b) being of particular relevance. See also emerging policy SCO criteria (c) and (d).

- 9.28 Framework paragraph 7 says that the social role of sustainable development includes creating “accessible local services that reflect the community’s needs and support its health, social and cultural well-being”. A core planning principle is to “actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.” Paragraph 29 states that “The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel.” There would be no real choice here. Paragraphs 32, 34 and 38 also emphasise, *inter alia*, locating development in locations where the need to travel would be minimised and the use of sustainable transport modes can be maximised; considering whether the opportunities for sustainable transport modes have been taken up; and the desirability of “key facilities” being located within walking distance of the development.

#### Landscape

- 9.29 The out-of-town countryside location of the site also means that it is not sustainable in an environmental sense. Saved policy DP1 requires that development proposals harmonise with or enhance the existing settlement in terms of physical form, patterns of movement and land use. Policy BE1 of the emerging Local Plan reiterates this policy imperative. As Mr Halman agreed in cross examination these are not policies for housing. They are not out of date, and they are entirely consistent with the Framework. Paragraph 7 says that development should protect and enhance our built environment. Paragraph 61 indicates that planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment. These matters have always loomed large in national policy.
- 9.30 The appeal scheme would not integrate well into the existing natural or built environment and certainly would not enhance it. In cross examination, Mr McInerney was fair in acknowledging that in visual terms the site was not well related to the existing urban influences of Warwick or Leamington. Although he set much store by the “urban” nature of the roads around the site, the view of Mr Hanafin, amongst others, was that these were simply busy rural roads with the kind of markings and paraphernalia that you would expect of such roads. This view is to be preferred. Mr McInerney himself was clear that you only get the sense of arrival in Warwick at the top of Temple Hill and he also accepted in cross examination that you can only see the Technology Park for the first time, and read/perceive it as a development influence, at this point where the land rises. Before that point the site is an inseparable part of the

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<sup>221</sup> CD 3.1

<sup>222</sup> CD 4.1



rural fabric that characterises the countryside around Warwick and it was therefore right of Mr McInerney to have accepted that it was not subject to any urban or urbanising visual influences.

- 9.31 This is significant because all of that would change if the site were to be built out. The development of the appeal site would constitute a new large scale urban extension in a countryside location which is not subject to any development or urbanising influences. It is not contiguous with any built form that is part of the urban conurbations of Warwick or Leamington. It is not an infill site or a green wedge between two urban areas. It extends out into the open countryside by a considerable distance and its development, as illustrated in Mr Morrish's photomontages, would cause a fundamental shift to take place. The urban area of Warwick would balloon out sporadically to the south. Beyond the strong natural boundary of Turnbolls Garden there would be an urban estate while north of the Tach Brook there would be an incongruous wedge of countryside left. The proposed shelterbelt mitigation would be no good, since it would take well over a decade for the planting to reach maturity and have the desired effect.
- 9.32 Mr McInerney's semantic attempts to deny that the scheme would cause "urban sprawl" based on disagreement with the adjectives used on his favoured definition of that term were not helpful to anyone. On any ordinary understanding of that term or concept that is precisely how the scheme would appear and would be perceived. Nor was his argument about how the site be perceived from within convincing. He said that because you could see the temple at Leamington and the spire of St Mary's Church you would be able to "orientate" yourself and "identify with nearby urban features" if on the site. There is no real meaning behind these planning slogans. The same could be said of anywhere in the countryside from where you could see tall features of urban areas. That does not mean that they are "urbanised" or appropriate for development. A more sophisticated and realistic assessment of whether the scheme would integrate well with the adjacent patterns of development is needed.
- 9.33 The two other arguments put forward by Mr McInerney to justify the release of the site, notwithstanding its acknowledged lack of positive visual integration with the surrounding built environment, are also, on analysis, unconvincing. The first is that the area south of Gallows Hill/Harbury Lane is to be developed imminently. To rely on development north of the site coming forward is to put the cart before the horse. Mr Halman has not made an allowance in his 5-year forward supply calculation for any of the sites south of Gallows Hill. An application has been withdrawn for one and an appeal is outstanding on the other. We simply do not know what the result of that appeal will be. The HO2 site to the east of the site (land south of Harbury Lane) will be materially shrouded by a mature existing tree belt and a new country park, as Mr Morrish shows.<sup>223</sup> Because of rising land along Europa Way and the existing tree cover, Mr McInerney agreed in cross examination that this site would not exert a development influence on the site and that must be right.

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<sup>223</sup> Mr Morrish Appendix B p. 65

- 9.34 Secondly it is claimed with some vigour that the emerging Local Plan's spatial strategy is to direct development to the south of Warwick and Leamington. It is then claimed that this provides support for the scheme. That remark, which was pressed a considerable number of times on various witnesses by Mr Cahill, must be treated with some latitude because it is wrong. The emerging Local Plan does not provide any policy support for the kind of development comprised in the scheme, even though it is south of Warwick/Leamington. In fact it adopts the same restrictive approach to development outside of urban areas that the saved Local Plan does (policy H1).
- 9.35 The emerging Local Plan does not provide any in-principle support, or a loosening of the general restrictions on rural development, for development south of Warwick. As part of a carefully considered and consultative SHLAA process the emerging Local Plan has allocated sites adjacent to or contiguous with the built up edge of Warwick and Leamington. It has abandoned the draft allocation of the appeal site. It would be irrational to treat the emerging Plan's preference of non-Green Belt land south of Warwick as a material consideration that pulled in favour of any (or all) development south of Warwick. That would be inconsistent with an objective interpretation of the policies of the Plan itself. I am not aware of any authority for the proposition that the general thrust or tenor of a Development Plan Document is a material consideration. There are likely to be disputes about how to interpret that thrust/tenor and such an approach seems to me to be contrary to Tesco v Dundee.
- 9.36 Drawing the above strands together I invite considerable weight to be given to the sustainability disadvantages that flow from the fact that the scheme, due to its out-of-town location, would fail to relate well to any existing or planned development. It would be an eyesore for as long as 15 years and would be perceived as a sporadic and unplanned island of development disconnected from Warwick and/or Leamington Spa. The fact that it would be built on best and most versatile agricultural land is also a significant disbenefit of the scheme, as accepted by Mr McInerney in cross examination.

## **HERITAGE**

- 9.37 The site is immediately adjacent to Warwick Castle Park which, as a Grade I registered park, is a heritage asset of the highest order. It is a landscape resource of international importance, a point well made by Ms Fryer in XIC who explained that the park features in international literature and in the well-known paintings by Canaletto. The significance of the Castle Park is undoubtedly multi-textured. It is not credible to explain significance from a purely social point of view, as Mr Crutchley and Dr Miele sought to do. The argument that the Park's significance, i.e. that which makes it of value,<sup>224</sup> is that it was an inward-looking enclave designed to provide social insulation from the outside world may be an element of the park's significance. But it is not the only element. Indeed, Mr Crutchley agreed in cross examination that it was not 100% of the matter. We should bear in mind that the Historic England research report on Capability Brown says that "the social

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<sup>224</sup> see Framework p. 56

determinants of the landscape park should not be exaggerated.”<sup>225</sup> Both Mr Crutchley and Dr Miele are guilty of doing just that. We need to remember, in this context, that the park was used for agricultural purposes from the late C18 onwards and would have been full of precisely the kind of people that they say it was designed to exclude. Some of these keepers and staff lived in accommodation in the Park.

- 9.38 It is not controversial that the Park in substantially the same form as we know it was laid out and developed by a triptych of individuals (the first Earl (Francis Greville) Capability Brown and the second Earl (George Greville)) between circa 1760 and 1797. The way in which the Park pushed out from the garden during this relatively brief period in the long history of the Castle is of considerable historic interest and therefore significance - a proposition Mr Crutchley agreed in cross examination. To the extent that it affords the ability to appreciate and understand that process, and the aesthetic, personal, intellectual and economic influences driving it, its setting (including The Asps) contributes to the significance of the Park. Again this was agreed by Mr Crutchley in cross examination.
- 9.39 The expansion of the Park was a major part of a wider project of estate “improvement” that was carried out by the Greville’s at Warwick Castle in the latter part of the C18. Improvement, in this context, means the progressive restructuring of the landscape for social, economic and aesthetic ends. Dr Miele sets out a thorough and well-researched summary of the various different underlying drivers of “*improvement*”, from the political, to the aesthetic, to the social.<sup>226</sup> Paragraph 4.1 confirms that improvement “*was a discourse that affected almost every landed estate during the eighteenth century*”. This mirrors what is said at p. 32 of the Historic England report, namely that some historians have “*emphasised the link connection between landscape design and the more general ‘improvement’ of the landscape...in the eyes of some researchers ‘improvement’ is the key to understanding many other aspects of the landscapes and material culture of the period.*”
- 9.40 The list of typical endeavours associated with improvement is set out on p.32 and it is notable that they are almost without exception present here. Examples include tree-planting, new road provision (usually in conjunction with the Turnpike Trustees), drainage and water management schemes, and the creation of lakes etc. The report notes the “*almost superfluous*” parallels between such endeavours and the laying out of carriageways and new landscapes. It is said, convincingly, that understood in this way, landscapes of the period “*embodied many of the wider concerns and interests of the period.*”
- 9.41 It is clear that the Park was provided in the context of estate improvement as understood in this way. A new road was provided. New parkland was created. New Waters was created. Lodge Wood and Nursery Wood were planted out as were the boundary belts. The Aspens itself was decked out with new rendering and was aligned to face the new road and had strong functional links with the workings of the wider Warwick Castle estate. Dr Miele notes the strong functional connection between The Aspens/Asps Cottage and

<sup>225</sup> Dr Miele Appendix 25 p. 606

<sup>226</sup> Dr Miele’s Appendix 2 pages 134 - 140

the Park and says that they were “integral” to the way the Park functioned.<sup>227</sup> Dr Hodgett’s evidence is clear that the Grevilles saw themselves as improving types. There can be no serious dispute that one element of the Park’s significance has to do with these trends. Because the appeal site offers the opportunity to appreciate and understand these matters it contributes to its significance.

9.42 It does so, in particular, because its open rural characteristics resonate with the enclosed field characteristics that it had at the time of the creation of the Park. Although the site’s condition has been degraded somewhat, it is still understood as such. In the language of Historic England’s Note 3 (The Setting of Heritage Assets)<sup>228</sup> this is a case where “*Settings of heritage assets which closely resemble the setting in which the asset was constructed are likely to contribute to significance.*” The evidence is clear that views out beyond the perimeter belt towards the open countryside were designed to be glimpsed and the contribution that the site makes to the significance of the Park takes on even greater materiality in that context.

9.43 The belt would have been narrow enough to afford views out. There is no evidence of understorey planting. The carriageway was deliberately put in place to allow views out at a time when the trees would have been newly planted and would thus have been small. The Rev. Gilpin recognises as much when he speaks of the trees of the foreground “*mixing with those of the country.*”<sup>229</sup> As Dr Fryer explained in XiC this concept of glimpsed views out over the wider improved landscape, focusing perhaps on some picturesque element or other, is a well-recognised aesthetic trademark of the period. Given that we now that George Greville was influenced by the Picturesque movement, these conclusions should come as no great surprise. I can put it no better than the Historic England Report which advises that:

*“...recent research on the landscapes of landed estates has emphasised the importance of examining them as a whole rather than drawing too sharp a distinction between the designed core and the surrounding farms and plantations. Many aspects of estate landscapes served both functional and aesthetic purposes, uniting the two contemporary aims of beauty and utility...A fuller understanding of the parks created by Brown and his contemporaries thus arguably requires an appreciation of change in the wider countryside, particularly through enclosure, tree planting and the progressive remodelling of estate landscapes.”<sup>230</sup>*

9.44 Dr Miele acknowledges as much in his appendices when he highlights<sup>231</sup> that so far as improvement is concerned little difference was seen “*between the laying out of parks and gardens and development of new farmland beyond*”. He also says that “*The creation of ornamental parklands should not be read in isolation from the development of agriculture and the improvement of landed estates more generally*”<sup>232</sup> and that “*...the reorganisation of the landscape, from the designed features surrounding the country house to the economies of*

<sup>227</sup> Dr Miele APP 4

<sup>228</sup> Inquiry Doc 12 page 5

<sup>229</sup> Dr Miele Appendix 24 p. 567

<sup>230</sup> Page 32

<sup>231</sup> Dr Miele Appendices at paragraph 4.4 p. 136

<sup>232</sup> At paragraph 5.11 p. 140

*the agrarian land, were part of the same process, thus linking the country house to the surrounding landscape."*<sup>233</sup>

- 9.45 Another respect in which the site has particular materiality is in respect of the prominent way in which it features in the designed approach to Warwick. Although the focus has been on evidence in the form of contemporary historical records, the layout of the road and the pleasing series of views and experiences it presents speaks for itself. The alignment with the spire of St Nicholas's Church after a connected series of straights is plainly a designed aesthetic achievement which is framed by the experience of pleasing countryside before that point, and is punctuated by the dramatic view of Warwick Castle over the bridge moments later. The value of this approach is linked to the absence of built form before the top of Temple Hill (from where you can see the Technology Park). It is an element of the aesthetic value, and therefore the significance, of Warwick Castle Park, and is plainly the "*approach*" referred to in the Gilpin letter of 1777. As Dr Miele agreed in cross examination, it is by no means clear that the Gilpin treatises were written at a time when the Banbury Road was in use or even constructed, so the absence of a reference to it there is not probative of the matter in hand.
- 9.46 The significance of the Park as understood in this way, i.e. historic value in relation to improvement and aesthetic value in terms of the Banbury Road, and views out to the wider hinterland, would be diminished to a marginally less than substantial degree by the appeal scheme. Its openness and field pattern would be lost. For the first 15 years of the development's lifetime views of it out of the Park and from Banbury Road would be of a significant urban extension. As the shelter belt matured over time, the site's openness would be replaced by a significant tree belt at close quarters. In either case if views were of modern suburban development instead of open fields, one would no longer be able to appreciate or understand to the same degree, if at all, the historic context in which the Park emerged from the Castle in the late C18 as part of a wider estate improvement project. Similarly one would no longer be able to appreciate the designed approach in which development associated with Warwick and the castle is hidden until the last minute.
- 9.47 I therefore invite the Secretary of State to conclude that there would be harm to the significance of the Park and that this harm would be marginally less than substantial. Even if the calibration of harm is different, we know from recent case law that less than substantial harm in heritage terms does not equate to a less than substantial objection to the grant of planning permission. Under paragraph 133 of the Framework, where development causes less than substantial harm to a heritage asset, then "great weight" should be given to this harm, unless there is an equal or greater benefit in the nature of a "public benefit". Heritage harm is an important element of unsustainability because heritage assets should be sustained for the use and enjoyment of future generations (Framework paragraph 12). Saved policy DP11 is entirely consistent with these policies and for these purposes should also attract great weight.

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<sup>233</sup> at paragraph 5.13

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## **TRAFFIC AND AIR QUALITY**

- 9.48 The scheme would be a significant contributor to traffic by 2023 and certainly by the time it was fully built out and operational. That is why a Transport Assessment (TA) was submitted in connection with the application. Warwick has a traffic problem, as the Inspector will have been able to observe on her site visits. This problem is expected to get worse by 2023 and by 2028. In fact the Highway authority consider, on the best available evidence, that there are going to be a number of "severe" and "very severe" traffic outcomes by 2028. This can be seen from Appendices B and C of the Strategic Transport Assessment Phase 4 (STA4)<sup>234</sup> in which orange indicators (dots or lines depending on queue length or journey time) illustrate a severe effect, and red dots or lines illustrate a very severe effect. In the main they show that severe traffic and transport outcomes are expected to arise in Warwick and Leamington town centres by 2028. Significantly, there was no challenge to this analysis in cross examination of Mr Benison or in XiC of Mr Parkinson.
- 9.49 It is this context that two matters fall to be considered. The first is that, as Mr Parkinson acknowledged in cross examination, the appellant has carried out no modelling of the Warwick town centre junctions at all. In particular the junction marked 3<sup>235</sup> was not carried forward in modelling carried out at application stage despite having been scoped in at some point. The reasons for this are wholly unclear and, I suggest, the outcome is a TA that is not fit for purpose. Self-evidently, in order to test whether the scheme is likely, in cumulation with other development traffic generated by 2028, to have a severe impact, it is necessary to understand what happens in the town centre corridors.
- 9.50 No modelling has taken place and is therefore impossible to understand these matters from the appellant's TA. The best available evidence is therefore the (unchallenged) results of STA4 which show that there will be severe and very severe increases brought about by development in 2028. To this must be added the traffic generated by the scheme. Mr Hanafin has provided the relevant inputs.<sup>236</sup> These were not challenged in cross examination. Indeed, Mr Parkinson accepted that the scheme, i.e. the residential element plus the Park and Ride, would have the effect of increasing net traffic flows across Castle Bridge by 2023. Since no mitigation in the town centre is proposed I invite you to conclude that the modelled scenarios demonstrating the severity of traffic increases in Warwick by 2028 are weighty material considerations against the scheme. In this context the agreement of the County Council that the scheme would have acceptable impacts on the highway network is flawed and should be determined afresh by the Secretary of State.
- 9.51 The provision of the Park and Ride would result in a net increase in traffic over Castle Bridge by 2023 and thereafter. In that respect, it too is to be treated as a substantial disbenefit of the scheme, given that it will be introducing more traffic into a system which the County Council already predict will develop severe impacts in 2028. The appellant's attempt to cast the Park and

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<sup>234</sup> CD 3.40

<sup>235</sup> at page 14 of Mr Hanafin's POE

<sup>236</sup> at POE p. 22

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Ride as a benefit of the scheme is irrational because it is based on the false premise that it would cause a net reduction in traffic by 2023. It was clear from the cross examination of Mr Parkinson that this was simply not the case and he accepted as much.

- 9.52 The false logic that results in the appellant's assertion that the Park and Ride is beneficial, is flawed in two respects. Firstly it depends on comparing the 2023 reference case Asps Plus Park and Ride (whether low, medium or high patronage rates) against the 2023 Asps without Park and Ride reference case. As Mr Parkinson accepted, that leads to a purely hypothetical result which is not one which would ever arise in the real world. This is because as his own note succinctly states:<sup>237</sup>

*"...the Park and Ride is not proposed in isolation without the residential development, there is not a scenario where the Park and Ride exists and the residential development does not. The difference between a scenario with the Park and Ride, and without the Park and Ride has to include consideration of the residential development as it is required for existence of the Park and Ride."*

- 9.53 Self-evidently the baseline needs to reflect a scenario that we know (on the best available evidence) *will* happen instead of one that we know will *not* happen, and we know that the 900 dwellings will not come forward without the Park and Ride. The two elements of the appeal scheme cannot be disaggregated from each other because they form part of the same composite development for which planning permission is sought. If one uses the appellant's baseline, one is effectively comparing a notional scenario (development without Park and Ride) with a real one (development with Park and Ride) instead of a real scenario (planned development) with a real scenario (development with Park and Ride).
- 9.54 It is appropriate therefore to test the effect of the scheme as a whole against the 2023 reference case scenario. When that analysis is carried out the effect is to increase net 12 hour two-way traffic flows over Castle Bridge by 362 (low), 302 (medium) and 239 (high) (plus in each case +96 for the buses). This is equivalent to around 110,410 net additional movements/year for the low patronage scenario (though low here is around 5% which is the figure that Mr Pinkett has used in his assessments).
- 9.55 I submit that the introduction of these increases of traffic should be seen as a disbenefit because (a) their effect has not been modelled; (b) STA4 says that the traffic in 2028 is going to be severe; and (c) it would increase NO2 levels in the Warwick AQMA which is already subject to breaches of EU levels. The assumptions underlying Section 13 of the ES (i.e. a reduction in baseline concentrations by 2028) can be seen to be false, as can Mr Crutchley's assumptions regarding net traffic flow reductions and the associated enhancement of the significance of the heritage assets along Banbury Road and in the town centre. That is simply wrong and as a result there is no proper assessment of those assets.
- 9.56 Even if the appellant's methodology of comparing against a notional baseline is accepted, that would also mean that the Park and Ride cannot be treated as

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<sup>237</sup> Inquiry Doc 22 page 3

a benefit of the scheme. The appellant's approach is that the traffic impacts of the scheme are acceptable without Park and Ride. If you use that scenario as a baseline on the basis that it is known to be acceptable in highway terms (in other words Mr Parkinson's approach), then it is still wrong to characterise net reductions from this acceptable baseline as "benefits". This is for the simple reason that if the baseline is already acceptable then there is no extra benefit to be had in removing flows from that baseline scenario. However you cut it, the Park and Ride is not to be regarded as a benefit of the scheme – it is either negative or neutral.

- 9.57 Any assertion that STA4 and RSTA<sup>238</sup> is said to indicate that this Park and Ride scheme is desirable is not borne out by the evidence. These documents have consistently modelled virtual Park and Ride on two sites, one to the north and one to the south of the towns, and it is difficult to glean any real support for a single site to the south on that basis. Indeed the Atkins Study states that *"There are some constraints to delivering Park and Ride which includes securing the northern site and implementing supporting infrastructure and adequate bus priority along the route corridors."*<sup>239</sup>
- 9.58 The report concludes by saying that in order to develop the strategy consideration needs to be given to completing *"walking/cycling/bus network review/gap analysis in the two town centres and on key corridors to identify detailed infrastructure needs to support the vision."*<sup>240</sup> It was clearly only a vision at this stage. Similar missives are expressed in STA4.<sup>241</sup> The upshot is that Park and Ride is a strategic ambition but cannot be regarded as desirable on the basis of any existing information because the wider infrastructural improvements which are critical to support it, such as bus priority measures and junction enhancements, have yet to be adequately tested or developed.
- 9.59 The way in which the Park and Ride is to be secured, whether through conditions or a Unilateral Undertaking, or through a contract, or through a combination of both, has been a moveable feast during the inquiry. One would have thought that a simple undertaking to provide Park and Ride according to a specification agreed by the LPA and subject to a bond (subject to release by the LPA) would have been simple to execute, but that is not the position. There are serious concerns about whether the current matrix of obligations provides sufficient certainty of delivery and more importantly, continued operation at the appellant's risk. There are problems with clause 6 of the Obligation because any profit, however small would trigger the clause. A very small profit does not equate to viability. If reliant on the market to deliver the Park and Ride, there is concern that the costs have been underestimated.

### **CLAIMED BENEFITS**

- 9.60 What then of the claimed benefits of the scheme? There are two primary strands to the appellant's assertion that the scheme would deliver benefits and, specifically in the context of Framework paragraph 134, "public benefits".

<sup>238</sup> Warwickshire and Leamington Transport Strategy - Review of Sustainable Transport Alternatives (CD 3.41)

<sup>239</sup> Ibid p. 57 paragraph 9.4

<sup>240</sup> Ibid at paragraph 10.9 p. 68

<sup>241</sup> CD 3.40 p. 73



The first is the scheme's contribution (which includes 40% affordable units) to the district's housing stock. Mr Pinkett indicates that once build out starts, the scheme will contribute 300 units to the district's housing supply over the next 5 years.<sup>242</sup> The second is that the scheme will deliver a Park and Ride facility within the area of search (as defined in saved policy SS5 and emerging policy TR5) to the south of Leamington.

- 9.61 As I have explained above this second benefit is non-existent. The scheme, i.e. the Park and Ride plus the residential element, would cause a net increase in traffic by 2023 and would worsen traffic circulation and air quality issues. I do not rehearse that discussion here. The weight to be given to the contribution that the scheme makes in terms of open market and affordable dwellings depends on the presence or absence of a 5-year (plus buffer) supply of housing land in the district. I therefore turn to consider why the appellant says there is not one and submit that they are wrong to say so.

#### The five year requirement

##### *FOAN*

- 9.62 Does the objectively assessed level of need for the district between 2011 and 2028 amount to some 660 units or some 825 units? I invite the Secretary of State to conclude that Mr Gardner's assessment is to be preferred over Ms Howick's and that 660 dpa reflects the district's full objectively assessed need for housing. It should be noted at the outset that 660 dpa is not a 'rock bottom' figure and nor does it constitute the scrapings of the FOAN barrel. It represents the outcome of a comprehensive demographic and economic analysis and includes a 10% uplift from the starting point.
- 9.63 Household projections published by DCLG should provide the starting point estimate of overall housing need.<sup>243</sup> The 2012-37 projections were published on 27 February 2015 and are the most up to date estimate of future household growth.<sup>244</sup> They are statistically robust and are based on nationally consistent assumptions.<sup>245</sup> Those latest projections indicate that the annual housing need for Warwick will be in the order of 595 dwellings per annum.<sup>246</sup> This includes a 3.3% vacancy rate<sup>247</sup> about which there is no dispute.
- 9.64 In cross examination Ms Howick fairly conceded that the correct starting point for measuring OAN as far as national policy is concerned is to adopt this figure, which for convenience and robustness can be rounded up to 600 dpa. I therefore invite the Secretary of State to take this figure as the starting point. In line with the ordinary legal principles in this area, a departure from policy needs to be clearly explained, and I submit that there is nothing in Ms Howick's written or oral evidence which provides an adequate explanation for adopting a different and non policy-compliant starting point.

<sup>242</sup> Page 92 of Mr Pinketts's Appendices

<sup>243</sup> ID: 2a-015-20140306

<sup>244</sup> ID: 2a-016-20150227

<sup>245</sup> ID: 2a-017-20140306

<sup>246</sup> Councillor Bullen POE p. 12

<sup>247</sup> Ms Howick POE p. 17

- 9.65 Her choice of 714 dpa as the starting point appears to be the fact that this was the figure that came out of the original Joint Strategic Housing Market Assessment (SHMA) process in 2013.<sup>248</sup> However as she explains<sup>249</sup> the Council has retained the 714 dpa figure in the emerging Local Plan not because it is regarded as the FOAN for the District, but because as a matter of duty to cooperate policy they want to be able to accommodate re-distributed need from Coventry if necessary.
- 9.66 The next question is whether the 600 dpa figure should be adjusted to reflect the fact (if proved) that household formation during the past is unlikely to accurately reflect household formation in the future. Logically this could be for one of two reasons. Either it could be because household formation in the past was suppressed by under-delivery of housing over the base period. Or it could be because household formation in the future is likely to be increased as a result of demographic or economic events which are predicted to occur over the plan period. For the purposes of this appeal Ms Howick contends that an increase of the FOAN is appropriate for the following two reasons, which I will discuss after making a preliminary observation:
- a. *Firstly, a "rule of thumb" increase of 15% should be made because there has been past under-supply of housing in Warwick's area; and*
  - b. *Secondly, because the latest Cambridge Econometrics forecast predicts that there will be higher job growth in the district by 2028 and circa 825 dpa will be needed in order to provide a working age population which is sufficiently large to take those jobs.*
- 9.67 As a preliminary point I make it clear that Ms Howick accepted in cross examination that the FOAN for the District should not, for the purposes of this appeal, be adjusted in order to reflect the prospect that the Council may have to accommodate an element of transferred need from Coventry. She agreed, fairly, with my summary in cross examination of her evidence in relation to the 'Coventry situation' which was as follows. Logically, an element of Warwick's FOAN will comprise in-migrants from Coventry. Because two-way migration between Coventry and Warwick is one demographic trend which occurred over the base period, use of the 2012-based Household Projections will project forward that trend into the future. To that extent Warwick will inevitably come to accommodate people from Coventry by 2028. She is therefore right to say that Warwick's FOAN includes some Coventry in-migrants. The existence of that future need is accounted for by use of the 600 dpa starting point. However no additional contingency should be made for need/demand arising in Coventry that may, as a matter of duty to cooperate policy, have to be transferred to and met in Warwick by 2028.
- 9.68 Ms Howick's concession was well made. This 'extra-over' need is not accounted for by projecting base period trends forward into the future because it does not constitute need/demand properly so-called. It arises not because of a genuine demand in Warwick, but because it may be that Coventry will be unable to satisfy demand arising in its administrative area. The extent to

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<sup>248</sup> Inquiry Doc 3.7

<sup>249</sup> at POE paragraph 4.4 (by reference to CD 4.2)

which Coventry will be unable to do so, and the extent to which that will re-distribute demand to Warwick and the other Council areas surrounding Coventry, and the extent to which they will accommodate it, is quintessentially a matter of policy. As she said it is "indeterminate". It is not properly to be regarded as part of Warwick's FOAN for present purposes.

- 9.69 **15% uplift and historic undersupply.** Ms Howick agreed in cross examination that the use of the subjunctive ("may") in the planning guidance<sup>250</sup> meant that the policy position was not to automatically increase the FOAN from the starting point because of historic under-supply. That paragraph makes it clear that an adjustment should be made to "reflect the consequences of past under-delivery of housing" (emphasis added) and that Councils need to "*take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.*"
- 9.70 She agreed that the upshot was that there are two logically different questions that need to be addressed, namely: (a) whether there had been under supply in the past and (b) what the consequences of that were, i.e. what is the extent to which household formation rates has been constrained by under-supply. In respect of both of these matters she agreed, as she was bound to, that "*any local changes would need to be clearly explained and justified on the basis of established sources of robust evidence.*"<sup>251</sup>
- 9.71 Ms Howick fairly and candidly acknowledged in cross examination that she had not produced *any* evidence as to the second issue outlined above, i.e. assuming past under-supply, the issue of the consequences of that in terms of the extent to which under-supply (if present) did in fact constrain headship rates. She explained that she relied upon the 2013 SHMA<sup>252</sup> as evidence of constrained headship rates. However, this concession was confusing because as she also acknowledged in both cross examinations that "when you look at the SHMA you don't see any great need to make an adjustment". This reflects paragraph 5.78 of CD 3.7. Her view was that the SHMA was wrong in this respect but she admitted that she had not produced any evidence or explanation for her view to that effect. She had not, for example, consulted DCLG data on overcrowding or concealed households or local waiting lists.
- 9.72 The updated chart Ms Howick produced on Friday morning<sup>253</sup> shows nothing more than a direct 'tracking' relationship between annual completions and annual net migration. All that means is that as completions decreased, so did in-migration. That would tend to suggest that there was an appropriate level of supply. It would clearly be otherwise if the two lines were at 45 degrees to each other so that completion was going down as migration was increasing.
- 9.73 What the chart does not show is the overall population of the district as against the overall during the relevant period. That again may help understand if there were enough houses for the population as would a chart of completions against DCLG measures of overcrowding, for example. During the period charted there was a buoyant market and latterly a recession.

<sup>250</sup> ID: 2a-015-20140306

<sup>251</sup> ID: 2a-017-20140306

<sup>252</sup> CD 3.7

<sup>253</sup> Inquiry Doc 36

Nonetheless the direction of travel in both lines is similar. The chart is not helpful. Figure 7 in the SHMA<sup>254</sup> (net changes in housing stock) shows that Warwick's housing stock has enjoyed significant net inflation since 2001 and Councillor Bullen's table,<sup>255</sup> based on DCLG completion data, shows that between 1996/7 to 2013/2014 there were 10,173 completions and cumulative over delivery of 200 units down from a peak of 2357 in 2007/8.

- 9.74 In the circumstances, Mr Gardner's view was that pre-2012 economic circumstances meant that young people (24-35) had found it difficult to secure finance for housing, and that this probably meant that headship rates in this demographic group probably had been constrained in the base period. He therefore considered it appropriate to uplift the 600 dpa demographic starting point by some 10% or 60 dpa on the basis that there would be a return to 2008 headship rates in this demographic by 2028. This is set out in the update to the SHMA.<sup>256</sup> The 2008 date is important because the base period underlying those rates were at a time of a bull market. A 10% increase also resonated with similar uplifts used by Inspectors in recent Examinations in Public of Local Plans. He also explained that there was no precedent for Ms Howick's 15% uplift.
- 9.75 Mr Gardner's analysis in his proof of evidence and in the 2014 SHMAA is precisely the kind of clear explanation and justification on the basis of establishes sources of robust evidence (here the DCLG/ONS data sets) that justify an upward adjustment of the core demographic starting point. I therefore invite you to consider that on the present evidence **660 dpa** is an appropriate figure to use for the District's annualised FOAN.
- 9.76 Putting aside the wholesale lack of evidence as to the consequences of under-delivery and the extent to which that may have suppressed headship rates, it is also far from clear that there has been past under supply in Warwick. Ms Howick's figures show annualised completions as against the relevant policy targets. However in cross examination she accepted that there was no policy indicating that annual rather than cumulative figures should be used. She also accepted that would be reasonable to use cumulative completions. Although her view was that whether the cake was cut annually or cumulatively, there was under-supply relative to "demand".
- 9.77 However, she did acknowledge that she had not produced any evidence to illustrate what demand had been in the past and explained that it was notoriously difficult to calculate. In these circumstances, Mr Leader is clearly correct to point to the planning guidance reference<sup>257</sup> to delivery as against "planned" targets, as against which there has been cumulative over supply as the SHMAA and Councillor Bullen's charts<sup>258</sup> show. In a dynamic market where over supply one year may lead to more properties being released back onto the market the next year, it is clearly open to a decision-maker to use cumulative figures, and I suggest it would be better to do so.

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<sup>254</sup> CD 3.7 page 47

<sup>255</sup> Inquiry Doc 33b

<sup>256</sup> CD 3.9

<sup>257</sup> ID: 2a-019-20140306

<sup>258</sup> Inquiry Doc 33b

- 9.78 **Employment led projections.** It is clear from the SHMAA and the 2014 update<sup>259</sup> that a FOAN of 660 dpa would align with projected job growth of 10,300 (rounded up from 10,253) in the District between 2011 and 2031 (20 years). The 10,300 figure was arrived at by Experian, whose figure was broadly similar to the 10,200 figure produced by the December 2012 Cambridge Econometrics/ GLHearn study.<sup>260</sup> The SHMA update shows<sup>261</sup> that this results in a housing need for Warwick of between 600 and 640 dpa, which is lower than the 660 dpa demographic figure.
- 9.79 Ms Howick has not produced her own job-led or economic model and disaggregated from it the number of dwellings that will be needed to support job growth in the district in the future. Instead she relies on a later Cambridge Econometrics forecast which forecasts significantly higher job growth in the district than the Experian and Cambridge Econometrics /GLHearn forecasts. There was a singular absence in her evidence of a reasoned justification for her preference for the later CE forecast over the two earlier forecasts.
- 9.80 In a Technical Advice Note (TAN) that she produced for the Planning Advisory Service<sup>262</sup> Ms Howick sounds a note of caution over the use of employment forecasts and says that they can be “deeply flawed” for a number of reasons.<sup>263</sup> Despite these general misgivings she was candid in cross examination that because she had not had access to it, she had not been able to interrogate the modelling or assumptions underlying the later Cambridge Econometrics forecast, and that as a result she was unable to ascertain whether it was flawed for the reasons identified in the TAN. Indeed she has not attempted to derive Full Time Equivalent figures from the Cambridge Econometrics job growth figures,<sup>264</sup> which are said to be for total employment, whereas the Experian figures are Full Time Equivalents. Like is not being compared with like.
- 9.81 On the contrary Mr Gardner did have access to the Experian and Cambridge Econometrics /GL Hearn models and he told the inquiry that they were credible. His analysis of the later Cambridge Econometrics forecast, as set out in his note to the Inquiry<sup>265</sup> showed that it has consistently over-estimated job growth between 2011 and 2013. If you correct the Cambridge Econometrics forecast to reflect what *actually* happened between 2011-13, then even the Cambridge Econometrics forecast gives 10,550 additional jobs by 2031 and is wholly consistent with the two earlier forecasts. I therefore submit that the projected job increase of 10,300 by 2031 is appropriate. There has been no challenge to the next conclusion, which is that between 600 and 640 dpa would suffice to cater for this.

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<sup>259</sup> CD 3.9

<sup>260</sup> Mr Gardner's rebuttal proof paragraph 11 and CD 3.7 p. 84 paragraph 6.30 and 6.37; p. 87 paragraph 6.43 and Inquiry Doc 29

<sup>261</sup> CD 3.9 p. 19

<sup>262</sup> CD 9.14

<sup>263</sup> paragraph 6.10

<sup>264</sup> CD 3.9 p. 17 and footnote 1

<sup>265</sup> Inquiry Doc 29

9.82 Mr Cahill seemed to be under the impression that the employment targets in the emerging Local Plan were being informed by the October 2014 Atkins Strategic Land Employment Study for Coventry and Warwickshire (SELS)<sup>266</sup> which itself had adopted the later CE employment/economic forecasts. This was presented as an argument in favour of adopting the CE forecasts, whatever their statistical integrity. However Ms Howick in cross examination was clear that it was not the Atkins SELS but the Coventry and Warwickshire LEP Strategic Economic Plan (March 2014)(SEP)<sup>267</sup> that is driving the emerging Plan so far as its economic/employment agenda. The SEP states that the “CWLEP fully endorses the conclusions of the SHMAA...and economic evidence that a higher level of provision (e.g. 75,000 - 76,000 homes) should be targeted.”<sup>268</sup> i.e. a maximum of 76,000.

9.83 The analysis of the figures is not borne out by the evidence. As can be seen most conveniently from Table 1 of the 2014 report of the Economic Prosperity Board (EPB),<sup>269</sup> the overall housing requirement contained in the 2013 SHMAA<sup>270</sup> was 76,000 between 2011 and 2031 (3800 x 20). That was then adjusted upwards in the SHMA update<sup>271</sup> to 80,000 (4,000 x 20). The figure currently planned for Warwick in the latest SHMA is 606 dpa. This figure has been endorsed by the EPB and is in line with a 4,000 home uplift for the HMA by 2031. It is therefore clear that the economic/employment aspirations driving the emerging Plan will be met by adopting the conclusions of the latest SHMAA which is 606 dpa for Warwick. Using a 660 dpa figure for the purposes of this appeal is a very robust approach in that context and is commended to the Secretary of State.

*Calculating the five year requirement (4552 as per Councillor Bullen)*

9.84 **Backlog.** It is agreed that any backlog should be added to the five -year requirement. Councillor Bullen has calculated his backlog by calculating the number of new homes that ought to have been completed between 2011 and 2014 (4 x 660 = 2640) and subtracting from it 1615 completions between 1 April 2011 and 25 February 2015 since 2011<sup>272</sup> and 88 vacants returned to use for which the Council received new homes bonus pursuant to their empty homes strategy. The Councillor has also provided the DCLG monitoring data in relation to vacant dwellings returned to use.<sup>273</sup> I commend this as a credible approach, for which all the underlying evidence is presented in his Appendix 1. That leaves a backlog of 1087 which should be added to (5 x 660 plus 5%) to make a total 5 year requirement of **4552**. This is slightly more than his updated Table A<sup>274</sup> because of completions between 25/2/15 and 23/4/15 but I am content to invite the use of the larger figure because it is fully evidenced in his Appendix 1.

<sup>266</sup> CD 3.16

<sup>267</sup> CD 3.17

<sup>268</sup> CD 3.17 page 50 paragraph 3.8

<sup>269</sup> CD 3.8 p. 2

<sup>270</sup> CD 3.7

<sup>271</sup> CD 3.9

<sup>272</sup> see page 9 of his proof

<sup>273</sup> Inquiry Doc 33c

<sup>274</sup> Inquiry Doc 33a

- 9.85 **Buffer.** Should the buffer, whatever it is, be added to the overall five -year requirement (i.e. FOAN plus backlog) or should it only apply to the FOAN element? In the January 2015 Gresty Lane, Crewe appeal the Secretary of State expressly indicated that the buffer should only be added to the FOAN figure.<sup>275</sup> This is the correct approach as a matter of principle where Sedgefield methodology is used. The whole point of this exercise is to meet the FOAN during the plan period. If the buffer were added to the backlog that would mean that by the end of the plan period the OAN plus 5% of the backlog would be met, instead of just the OAN. The backlog is calculated by looking backwards, so the need that it relates to already exists. It is not need that will be generated as time goes on. It is this latter type of need that the buffer seeks to address.
- 9.86 The post-2006 annualised under-delivery had to do with the moratorium. This provides an explanation for the recent annualised shortfalls and, on an application of the planning guidance,<sup>276</sup> justifies taking either a longer term view, or looking at cumulative delivery - an approach Mr Halman agreed in cross examination was reasonable. There is nothing in the *Cotswold DC* case<sup>277</sup> that indicates that a decision-maker should not step back in time more than five years. That was a challenge to the rationality of the Inspector doing just that. Lewis J held that it was *Wednesbury* reasonable for the Inspector to do so, but he did not lay down any prescriptive test.
- 9.87 When you look at delivery rates between 1999/2000 and 2006/7, there was serious over-delivery. And between 1996/97 and 2013/14 there was cumulative over delivery of 200 units, despite the moratorium. Indeed the year after the moratorium was introduced there was once again over delivery, both by reference to the former RSS target or by reference to the lower moratorium target. In seven of the 12 years for which Mr Halman presented evidence in his Table 1A<sup>278</sup> there was over delivery. These are all indications that it would be unreasonable to use a 20% buffer on the basis that the Council is a "persistent" under deliverer. At worst there is a pepper-potted history, attributable to the moratorium, but there cannot be said to be a record of *persistent* under delivery.
- 9.88 Should a 5% or a 20% buffer be applied? It is extraordinary to even be having this debate. Up until the 2006 moratorium the Council was a persistent *over-deliverer*. But for the imposed moratorium, there would not be a question mark over this issue. The planning guidance makes it clear<sup>279</sup> that there is no "universally applicable test or definition" of persistent under delivery, but emphasises that "*it is legitimate to consider a range of issues, such as the effect of imposed moratoriums [sic.] and the delivery rate before and after such moratoriums.*" It also advises that "*The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of peaks and troughs of the housing market cycle.*"

Components of forward supply (5856 as per Councillor Bullen)

<sup>275</sup> Councillor Bullen Appendix 3

<sup>276</sup> ID: 3-035-20140306

<sup>277</sup> CD 8.2

<sup>278</sup> Inquiry Doc 41

<sup>279</sup> ID: 3-036-20140306

- 9.89 **Vacants returned to use at 22 dpa.** I suggest that it is reasonable to assume that 22 vacant dpa will be added to the housing stock, and that an allowance for vacancies returned to use would be appropriate. All of the conditions in the planning guidance<sup>280</sup> are met. The Council has an empty homes strategy and there is ample evidence in the form of Councillor Bullen's table<sup>281</sup> that 120 vacancies have been returned to use, and DCLG has been paying new homes bonus on them, between 2011 and 2014. Councillor Bullen's POE at p. 14/15 explains why there is no prospect of double counting. The reality is that vacancies returned to use will continue to come forward in the future at this relatively conservative rate.
- 9.90 **Windfall at 122 dpa.** I agree with the explanation provided by Mr Barber in XiC and cross examination that it would be right in principle to make an allowance for windfall in the District. In cross examination Mr Halman said "*of course there will be windfalls in the future*" and it follows that it would be right to make some allowance for that. The dispute is therefore over the figure. There is compelling evidence that in the past the District has enjoyed exceptionally high levels of windfall come forward. The historic numbers were not challenged in cross examination of Mr Barber or Councillor Bullen. What was challenged was whether windfall would continue.
- 9.91 The obvious answer to this is that Policy DS7 of the emerging Local Plan itself makes an allowance of 2,485 sites (138 dpa) for windfall and contains a number of policies encouraging suitable windfall to come forward. It should be noted that Councillor Bullen's 122 dpa for windfall is lower than this. In the context of urban regeneration in Warwick and Leamington, the extension of permitted development rights for material changes of use, and the high levels of previous windfall delivery, there is no justification for making a 0 allowance as Mr Halman proposes. This is at odds with his statement that there will be windfall in the future. Both Mr Barber's and Councillor Bullen's figures closely match the figure in the emerging Local Plan and, in the absence of any evidence - as opposed to the speculation that Mr Halman indulged in - suggesting that windfall will not come forward at all, this is a reasonable figure to use.
- 9.92 **Deliverable sites without planning permission at 677.** I have nothing to add save that we agree with Mr Barber. It is notable that Councillor Bullen has made a conservative, and therefore I suggest robust, allowance of 677 whereas Mr Barber has made an allowance of 923.
- 9.93 **Deliverable sites with planning permission at 4600.** I do not wish to rehearse the evidence of Mr Barber on this issue. Because Councillor Bullen's evidence as to sites with planning permission (3230)<sup>282</sup> went unchallenged in cross examination, it is not possible for a detailed response to be set out here. The bottom line is that he has carried out an extremely thorough search through the Council's raw planning and building regulations data, and he has identified a number of sites that Mr Barber and Mr Halman have not spotted. These include dwellings achieved through change of use under permitted

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<sup>280</sup> ID: 3-039-20140306

<sup>281</sup> Inquiry Doc 33d

<sup>282</sup> in the updated Table A at Inquiry Doc 33 and 2822 in the original Table A at POE p. 9



development rights, smaller sites in rural areas, and sites where permission was granted some time ago and are being built out slowly.

- 9.94 Councillor Bullen has also analysed the sites for their deliverability, having regard to the indication in footnote 11 of the Framework that sites with planning permission should be considered to be deliverable unless there is clear evidence that they are not going to be implemented within the next five years. He anticipated each of the sites in respect of which Mr Barber felt it appropriate to make a discount, and in respect of the Pottertons Portobello Works site has only included 148 sites in his supply trajectory and not 160. His analysis is robust and, given that his evidence went unchallenged, in the context of footnote 11 of the Framework I invite you to give his conclusions considerable weight. At the *very* least it can be seen that his analysis indicates that the supply of housing coming forward in the District is considerably greater than any of the main parties have thus far appreciated. This should give greater confidence in the Council's figures which should be seen as a minimum.
- 9.95 **Institutional accommodation.** It would be right to continue to make an allowance for institutional dwellings in the five -year supply. This is for the obvious reason that the provision of student/care accommodation releases regular accommodation back onto the market. The release ratios that Mr Barber has adopted are credible and did not come under attack. It was only the principle of inclusion that did. That attack was based on the premise that you should not allow for supply if you have not included a need. That is a red herring.
- 9.96 In respect of care accommodation the need is included in the FOAN because the elderly population are a significant demographic element whose housing requirements are factored into the overall need, come what may. No special counting or analysis is required to factor their needs into the FOAN. It is simply a question of whether they will be accommodated in C2 or C3 accommodation over the plan period. There is no reason in principle why C2 accommodation for elderly people should not be counted but C3 should. In reality both meet the same need and both release dwellings back into circulation. Where there is a static (as opposed to a rising) student population it is the same. A static population will be accommodated in purpose-built accommodation or in private rented accommodation. Logically if you increase the former you will pull students out of the private rented market.
- 9.97 In respect of the Earls River Avenue site (ref: W/13/0464) the appellant has also erred in failing to include self-contained accommodation within the supply. The Assisted Living Units do comprise that and should be counted.
- 9.98 **5% non-implementation.** For the reasons set out by Councillor Bullen,<sup>283</sup> a 5% non-implementation rate is on the high, and therefore on the robust, side. His own research suggests that the true figure is more like 2.5%. There is no justification for a 10% figure and certainly there is no appropriate quantitative analysis underlying Mr Halman's invitation to use it. The context, it has to be remembered, is that the sites included in the forward supply trajectory, are

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<sup>283</sup> POE p. 15,

already ones which are regarded as deliverable within five years. It is therefore appropriate to use a lower slippage rate to reflect the decreased risk profile of these sites.

- 9.99 Overall, Mr Bullen's evidence is that the five year requirement is 4552 or 910 dpa ( $5 \times 660 = 3300$  plus 5% = 3465 plus the backlog of 1087 ( $4 \times 660 - 1615$ )). His evidence is that the supply trajectory is ( $5 \times 120$  windfall) + ( $5 \times 120$  vacants returned to use) + (677 deliverables without PP) + (3230 deliverables with planning permission) - (5% non-implementation) + (1370 units under construction) = (610) + (110) + (677) + (3230) = 4627 less 5% = 4395 + 1370 = **5765**. This gives an overall supply of **6.3 years**. If the original Table A figure for deliverables with planning permission is used instead of the updated Table A figure (2822 instead of 3230) to reflect only the sites detailed in Councillor Bullen's Appendix A, then the overall supply becomes **5.9 years**. These are not marginal levels of supply.

### Consequences

- 9.100 If the Council has a five year housing land supply then that limits the amount of weight that the scheme's benefits, so far as they consist in a contribution to the housing stock, are concerned. Conversely, if the Council does not have an adequate supply of housing land, then the scheme's contribution to market and affordable will naturally attract more weight.
- 9.101 That is not the end of the matter however since a line of authority (William Davis,<sup>284</sup> Dartford,<sup>285</sup> Cheshire East,<sup>286</sup> and Wenman<sup>287</sup>) has made it clear that the presumption in favour of sustainable development at Framework paragraph 14 does not apply to unsustainable development. I am not aware of any authority which goes against the ratio of William Davis on the paragraph 14 point, and as recently as January 2015, Counsel for the SSCLG in Cheshire East was instructed to agree that "*the presumption in paragraph 14 of the Framework only applies in favour of sustainable development.*" Happily, Mr Halman accepted as much in cross examination and there is agreement that if the scheme is unsustainable then it should not be granted permission.
- 9.102 It follows that if the scheme is found not to comprise sustainable development, then there is nothing in Framework paragraph 14 that comes to rescue it from the consequences of being in conflict with development plan policy and the normal position under Section 38(6) of the Planning and Compulsory Purchase Act 2004. It is only if development, which conflicts with development plan policy such that Section 38(6) and Framework paragraph 12 indicates it should ordinarily be refused, is "sustainable" then Framework paragraph 14 has the effect of indicating that permission should nevertheless be granted if the benefits of the scheme are not significantly and demonstrably outweighed by the matters pulling against it, i.e. conflict with development plan policy.

<sup>284</sup> Davis Ltd and Jelson Limited vs SSCLG and North West Leicestershire DC [2013] EWHC 3058 (Admin)

<sup>285</sup> CD 8.12

<sup>286</sup> Cheshire East Borough Council v SSCLG and Richborough Estates [2015] EWHC 410 (Admin)

<sup>287</sup> Wenman v Secretary of State for Communities and Local Government [2015] EWHC 925

## **CONCLUSION**

9.103 For the reasons set out above, when viewed in the context of local and national policy, the scheme would be demonstrably unsustainable and would come at a high environmental and social cost. Of the scheme's two chief claimed benefits one, the Park and Ride, has proved to be an illusion. The other should attract limited weight given that the Council is able to demonstrate an adequate supply of housing land. The benefits flowing from the scheme's contribution to market and affordable housing do not outweigh the significant and demonstrable harm it would cause. Permission should be refused.

### **Hallam Land Management/William Davis Limited (Hallam/Davis)**

*[Edited from the closing submissions of the party's advocate.]<sup>288</sup>*

9.104 Hallam/Davis have an interest in a block of arable agricultural land known as Land at Gallows Hill, to the east of the appeal site. That parcel of land is being promoted through the development plan process in order that its potential for future development can be properly and fully explored in the context of the wider development needs of Warwick District and any other local authority needs to which Warwick District may be obliged to make a contribution pursuant to the Duty to Cooperate.

9.105 The scope of the Hallam/Davis case at this inquiry is an unusually narrow one. Their involvement has been prompted solely by the emergence and subsequent propounding of a theory as to the design of Warwick Castle Park and 'a unique sequential approach'<sup>289</sup> to Warwick along the diverted Banbury Road, which seemed to Hallam/Davis and their advisers to be specious and which, on further examination, has been proved to be so.

9.106 The originator of this theorem appears to have been Dr Hodgetts of the Warwickshire Gardens Trust, but she has found loyal adherents in Dr Fryer, Mr Mayes and Mr Molyneux. The submissions for Hallam/Davis are confined to the de-bunking of this theory, with the accompanying setting of the record straight. In so doing, they rely upon the evidence of Dr Miele, an acknowledged expert, who has undertaken a very considerable volume of research to establish the correct analysis.

9.107 In confining these submissions in this way, I emphasise that Hallam/Davis have no quarrel generally with the status and significance of Warwick Castle or the Castle Park, which are plainly assets of the highest importance and deserving of proper protection. Equally, Hallam/Davis also recognise that Banbury Road from the Europa Way roundabout to the edge of the town (although it is the designated A425 at this point) is generally an attractive road with some countryside qualities and that these should be recognised when development in its vicinity is in contemplation.

9.108 As to the appeal scheme itself, Hallam/Davis have called no evidence and make no comment upon its merits, beyond the matters of agreement set out

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<sup>288</sup> Inquiry Doc 49

<sup>289</sup> Mr Mayes proof, paragraph 7.10

in the Statement of Common Ground with the appellant. The focus of the case for Hallam/Davis is simple and twofold:

- i) The very limited contribution which the land to the south and east of Banbury Road makes to the significance of the highly designated Warwick Castle and the Registered Park to the North and West, and in particular the complete absence of evidence of any 'designed' views into or out of the Castle Park along its boundary with Banbury Road;
- ii) and the complete absence of evidence for the assertions made that the length of Banbury Road passing the appeal site and the Hallam/Davis land is an integral part of a carefully designed progression to both Warwick Town and Castle and that this land must be preserved in its present condition in order to respect that intention.

**ISSUE 1: The function of the Park and alleged designed intervisibility**

- 9.109 Although there has been much discussion of the work of Capability Brown – and of course his work nationally and at Warwick provides a critical part of the context for understanding the English landscape movement in the C18th – it is important to recognise that Warwick Castle Park as we now see it is the work of the Second Earl of Warwick and that he swept away a good deal of the work undertaken by Capability Brown for his father<sup>290</sup> in the latter years of the C18, by extending the Park by 200 acres to the east.<sup>291</sup>
- 9.110 Examination of the historic maps reveals that the Park as left by Capability Brown was bounded to the east by the main London-Banbury- Warwick-Birmingham Road. This was the C18 equivalent to the M40 and it would have carried all the traffic passing north and south through the busy county town at a time when no alternative modes of transport existed. Of course, the nature and volume of traffic would have been very different to what the M40 carries today, but this road would have been a main artery for tradesmen and other travellers going to or passing through Warwick as part of a longer journey. Its importance is attested to by the fact that it was a turnpike (or toll) road, with charges levied for its maintenance by the turnpike trustees.
- 9.111 This road approached Warwick from Banbury immediately due south of - and in full view from - the main elevation of Warwick Castle,<sup>292</sup> entering the town of Warwick across the medieval Great Bridge, immediately beneath the Castle walls. This was the elevation in which an extensive suite of new entertaining rooms had been created by the First and Second Earls.<sup>293</sup>
- 9.112 It is in this context that we should judge the purpose and intent of the Second Earl in extending his park by 200 acres to the east and at the same time removing from the views obtained from his principal south facing elevation of the turnpike road and its traffic. This was diverted on to a new route beyond the Park and the edge of the Park was densely planted up with screening

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<sup>290</sup> Dr Hodgetts Figure 14 for the Park circa 1769.

<sup>291</sup> Dr Hodgetts Figure 19 for the Park in 1791, with the extension annotated.

<sup>292</sup> Dr Hodgetts Figures 13 and 14.

<sup>293</sup> Dr Miele XinC

belts. The density of the planting may be judged from the detailed surveys undertaken in 1791 by Sale and 1806 by James.<sup>294</sup>

- 9.113 There is no evidence of any designed views into or out of the newly extended Park on its southern and eastern boundaries – and what purpose would they serve? Dr Fryer accepts this general principle,<sup>295</sup> but enters three caveats where she alleges views were intended. Two are the narrowest of farm accesses, visible only on a C20 map. The other relates to the bridge over eastern end of New Waters. This suggestion does not correspond with the evidence. It is accepted that there may have been a glimpsed view over the water at this point, but this was simply an unavoidable consequence of the need to take the turnpike road over the water at this point. There is no evidence of an ornamental bridge, no balustrading or projection from which to take a view; indeed the 'Park-side' of the bridge is shown in 1791 and 1806 with a thin screen planting belt still in place to restrict views into the Earl's Park, notwithstanding the difficulties associated with planting across a bridge. The other side of the bridge is left largely open - as views to the east across the functional (header) part of the water body were not regarded as so sensitive.
- 9.114 The evidence of a carriage drive around the boundary of the Park is not evidence of an intention to obtain views out from the Park. Such a drive would have been routed circumferentially in order to demonstrate the sheer physical extent of the Park and allow the broadest and most impressive panoramas across the designed landscape within.<sup>296</sup> Dr Miele readily acknowledged<sup>297</sup> that there might be landscape parks where such a drive would take in a fine 'borrowed view' beyond the confines of the park to some eye-catching feature of romantic or picturesque beauty or interest. There is no evidence of any such feature at Warwick and indeed, on the contrary, beyond the park lay the traffic on the turnpike road.
- 9.115 It is notable that the earliest – and most detailed – survey of the Second Earl's Park<sup>298</sup> clearly shows the carriage drive very much 'inside' the perimeter screen belt. It is also evident on the ground that the drive was routed well below the level of the turnpike road where it crossed New Waters, presumably to reduce inter-visibility with the outside world to the absolute minimum.
- 9.116 The reference in Field's account<sup>299</sup> of his visit in 1815 to a '*ferme ornée*' and a fertile cornfield is entirely consistent with this account. A *ferme ornée*, as Dr Miele explained, was the practice of agriculture within an ornamental context. This would have been an entirely appropriate part of the experience within the Park; indeed there is evidence of field boundaries in the vicinity of Barford Sheds<sup>300</sup> which support this as the likely location for Warwick Castle Park's *ferme ornée*. This does not imply any intended views out from the Park.

<sup>294</sup> See A3 versions in Dr Miele App 17

<sup>295</sup> Dr Fryer proof para.4.7 "The tree lined boundaries of the Registered Park and Garden...define the perimeter of the park and exclude views into and out of the park. (Emphasis added)

<sup>296</sup> Dr Miele XInC

<sup>297</sup> Ibid

<sup>298</sup> Sale 1791: see Dr Miele App 17

<sup>299</sup> Dr Miele Appendix 16, page 50-51

<sup>300</sup> See for example, James 1806 survey within Dr Miele Appendix 17

9.117 In summary, the English Heritage Updated and Revised description of the Registered Park and Garden<sup>301</sup> puts the situation accurately in describing the Park as *'...enclosed to the east by a predominantly deciduous plantation which screens the Banbury Road.....'*. Moreover, this is the situation now, notwithstanding that the peripheral tree belts at the Castle Park have received little or no maintenance or replanting in recent years. They are agreed<sup>302</sup> not to be representative now of their C18 planter's intent and we understand that the planting in the Park is the subject of a very extensive restoration proposal which has not been placed before the inquiry – no doubt because it would reveal the extent of the Park's degradation in recent years.

9.118 Accordingly, there is no basis whatsoever for the assertion that the park was planned and laid out with any intended inter-visibility with the Banbury Road. Indeed, quite the contrary intention is evident: the Second Earl did not want to be reminded of the traffic on the London-Banbury- Warwick- Birmingham turnpike, which he had just diverted at great expense.

**Issue 2: The absence of any evidence of a planned picturesque approach along the Banbury Road to the Castle/Town**

9.119 As Dr Miele acknowledges, there is no dispute whatsoever about the picturesque qualities of the much painted view of the Castle from the New Bridge at the entrance to the town. However, Dr Miele fundamentally disagrees with the assertions of Dr Hodgetts that this is the culmination of a planned sequence of picturesque experiences along the route of the diverted Banbury Road turnpike.

9.120 It is not disputed that the diversion was 'planned', in that it was plainly not accidental and would have been laid out by a surveyor, but Dr Hodgetts research in fact disproves her own theory. The Second Earl's key motive was to expand his park and remove the turnpike from his view. The basis of his application to the turnpike trustees<sup>303</sup> was simply to achieve a new alignment *'in as straight a line as possible to the south east corner of the Temples, running along the east side [of the Temples] and through the adjoining new enclosures into and along the road to Whitnash [Gallows Hill/Street] to the south of the Great Bridge.'* Thus, the diversion was agreed so as to join and *'run into'* the line of an existing approach road to Warwick<sup>304</sup> and the medieval Great Bridge. Dr Hodgett's Figure 18 shows this new alignment.

9.121 It took another decade and a final decision (for sound practical reasons associated with the state of repair of the Great Bridge) about the building of the New Bridge for the route to be continued straight into the town. There is no evidence whatsoever of any particular focus on the spire of the (subsidiary) Church of St. Nicholas or of any link between the two elements of the diversion (with approvals separated by a decade) as part of a broader 'master plan.' Indeed, the correspondence unearthed by Dr Hodgetts reveals that, even after the decision had been taken to build the New Bridge, the Second

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<sup>301</sup> Dr Miele Appendix 15: Re-surveyed in considerable detail by EH's landscape experts in 2001

<sup>302</sup> Dr Fryer cross examined

<sup>303</sup> Dr Hodgetts page 18

<sup>304</sup> Gallows Street/Hill

Earl had not determined how he would achieve his approach to the Castle<sup>305</sup> – suggesting an incremental and *ad hoc* approach to the creation of the new entrance to the Castle.

- 9.122 It is submitted that the outstanding factor in the Banbury Road approach to Warwick is the absence of any indication that one is approaching a great Castle or its Park. The Asps properties are not ornamented to suggest the presence of a landscape park or connection with a noble family; the toll house is a utilitarian structure with no heraldic flourish; there are no gates, lodges, eye-catchers, park railings or other features on the route to announce the existence of the Earl's demesne beyond the peripheral belts. Indeed, this anonymity heightens the surprise at the New Bridge.
- 9.123 The Gilpin 'saga' provoked by Dr Hodgetts, and the original excitement about the 1778 'approach' letter to William Mason,<sup>306</sup> has been proved to be a complete red herring, given the very full accounts of the Second Earl's works at Warwick unearthed by Dr Miele, which Gilpin went on to give in the 1788 and 1794 Editions of his 'Cumberland and Westmoreland' Book (originally published in 1786 but clearly revised in later Editions to take account of subsequent developments).<sup>307</sup> It is submitted that the absence of any reference whatsoever by Gilpin to the Banbury Road approach in either editions of his Book - or the taking of any credit by him for any of the Second Earl's remodelling - strongly supports Dr Miele's view that the Banbury road diversion was no more or less than a practical and functional piece of road building, whose purpose was to re-provide the major public turnpike route into Warwick from the south once the old route had been subsumed by the expanded park. It is quite clear that Gilpin's focus in his writings (contemporaneous with the Second Earl's improvements) was solely the 'local' approach to the Castle.
- 9.124 This is further confirmed by the absence of any reference by later commentators to the Banbury Road as having particular planned qualities in relation to the Castle or its Park. I also note that the extent of Historic England's Registered Park stops at the edge of the perimeter belts and does not extend to include all or part of the road or what lies beyond it to the south.

### **Conclusion**

- 9.125 For all the above reasons, when considering the evidence on cultural heritage matters in determining this appeal, we invite the Inspector and Secretary of State to find:
- i) that Banbury Road and the land to the south and east of the road where it passes Warwick Castle Park make only a very limited contribution to the significance of the Castle and Park as designated heritage assets;
  - ii) and that there is no historical evidence to support an intended or 'planned' relationship between the Park and the diverted Banbury Road turnpike or

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<sup>305</sup> Dr Hodgetts proof page 26, citing letter to his uncle in 1791

<sup>306</sup> Dr Miele Appendix 10

<sup>307</sup> Dr Miele's Appendices 24A and 24

land beyond, contrary to the assertions of the Council, Save Warwick and the Warwick Gardens Trust.

## 10. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY

- 10.1 Oral representations made in addition to the written submissions of the respective parties:

### ***The case for Mr N Molyneux (Historic England)***<sup>308</sup>

*The main points were:*

- 10.2 English Heritage was consulted on the present application on 12 March 2014, and offered a substantive response on 1 April 2014.<sup>309</sup> We highlighted that the scheme would have a negative impact on the setting of the Castle Park and hence on its significance. We were of the view that there were no benefits to the historic environment contained within the application.
- 10.3 We were consulted on the development of the housing allocations within the emerging Local Plan and wrote letters on 23 May 2013 with specific reference to The Asps.

## HERITAGE POLICY AND GUIDANCE CONTEXT

- 10.4 Legislative framework: Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 state that in every listed building consent or planning permission decision concerning a listed building, 'special regard' must be paid 'to the desirability of preserving a listed building or its setting or any features of special architectural interest which it possesses.'
- 10.5 Section 72(1) refers to Conservation Areas, where 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'
- 10.6 National Planning Policy Framework: The introduction to NPPF states that 'Our historic environment – buildings, landscapes, towns and villages - can better be cherished if their spirit of place thrives rather than withers.' As set out in paragraph 7 on sustainability, the protection and enhancement of the historic environment is a key part of that concept which is at the heart of decision making. At paragraph 131 planning authorities are told they should take account of 'the desirability of sustaining and enhancing the significance of heritage assets'.
- 10.7 The Framework requires consideration of the potential for and desirability of enhancement in every case. Conservation is defined as a process of managing change that sustains and where appropriate enhances the significance of heritage assets (paragraph 132). Local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment.

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<sup>308</sup> Formerly English Heritage

<sup>309</sup> Relevant letters are appended to My Molyneux's written statement



- 10.8 The levels of harm are divided into substantial and less than substantial, and the relevant considerations to be applied are set out in paragraphs 133 and 134 respectively. The considerations to be applied to undesignated heritage assets are laid out in paragraph 135, and with respect to archaeological assets at paragraph 139. Paragraph 137 requires local planning authorities to identify opportunities for changes in the setting of a heritage asset to enhance or better reveal the significance of a heritage asset. They should see taking such opportunities as a positive public benefit and part of the process of place-making.
- 10.9 In the Framework, the setting of a heritage asset is defined as '*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*'
- 10.10 Government Guidance: The *Historic Environment Planning Practice Guide* which sat alongside PPS5 is still in force.<sup>310</sup> English Heritage setting guidance: English Heritage *Historic Environment Good Practice Advice Note 3* is relevant to this appeal.<sup>311</sup>

## ANALYSIS OF THE ISSUES

### Step1: Identifying the heritage assets affected and their settings

- 10.11 The main designated heritage asset affected by the proposals is the grade I Registered Park and Garden, Warwick Castle Park. This contains the partially listed (at grade I) and partially scheduled ancient monument of Warwick Castle. The Warwick Conservation Area encompasses a large number of listed buildings in town, as well as the Registered Park.
- 10.12 **Warwick Castle.** The residential portion is listed at grade I, and the earthwork elements and the curtain wall are scheduled as an ancient monument. This is one of England's premier castles with a long history stretching back to the eleventh century. There is a great deal of medieval fabric and significant later interventions. The history of the Castle is usefully summarised in the *Victoria County History* (vol 8, pp 452-464).
- 10.13 **The Castle's setting.** The immediate setting is the Castle Park, included on the English Heritage Register at grade I. However, being located at a high point the setting extends far beyond the Castle Park, dominating a wide swathe of Warwickshire countryside. The Castle has changed its function through time from its feudal and military purposes of domination and social control through to a country house set in its park with the associated wider landscape beyond.
- 10.14 **The Castle Park.** The development site is located to the east of the Park in the adjacent fields. This edge of the park is enclosed by a relatively narrow

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<sup>310</sup> NB **This is not correct.** It was cancelled by Government on 27 March 2015.

<sup>311</sup> Inquiry Doc 12

boundary planting of trees, thickened in some areas by small areas of woodland within the park abutting the boundary.

- 10.15 The boundary planting was known as The Thins and it is clear from the historical evidence that the boundary circuit drive within it was intended to have views both into and out of the Park.
- 10.16 **Warwick Conservation Area** encompasses the historic town and the historic park. I have referred to the Park above, and the description applies to the Conservation Area too. In addition there is the approach to the town and the impact of the development on that. Historically the approach along the Banbury Road was (and still is) essentially a rural one, with The Thins on one side and hedged agricultural land on the other. This led to the Castle Bridge, where the vista of the Castle perched above the river opened up, then the Castle vanished from sight and the approach then lay through a sandstone gorge until finally the view opened up once more close to the Castle.

### **Step 2: The settings and their contribution to the significance of the heritage assets**

- 10.17 **Setting of Warwick Castle.** The immediate setting of the Castle is the Park. The Castle now has its main entrance on the north side, through the ticket office in the stable block. The Park has from a relatively small kernel close to the Castle and slowly expanded to provide a parkland setting to the south of the Castle. The landscape has benefitted from an input by particularly Capability Brown and was progressively expanded to the east, with the Banbury Road being moved to its current position. Much of the agricultural land beyond was also in the control of the estate. The setting of the Castle to the north is the town of Warwick.
- 10.18 **Significance of the Castle.** The evidential value of the below ground archaeology and the fabric is high. In historical terms it is a classic medieval castle. Aesthetically the Castle dominates the landscape and was depicted by Canaletto in the eighteenth century. The communal values are high in terms of its use as a tourist attraction, continuing its function as a centre of economic activity in the town.
- 10.19 Warwick Castle is the most significant heritage asset in the town and of international significance. The setting, both the park and the garden as well as the wider setting, form an important part of the overall significance of the heritage asset.
- 10.20 **Setting of Warwick Conservation Area.** This is formed of two discrete elements: the town and the park. The most significant element of the wider topography forming the setting is the gentle rising ground to the east visually bounded by a ridge.
- 10.21 The landscape is essentially agricultural. The pasture land preserves some medieval ridge and furrow, a remnant of the open field systems. This is overlain by the field boundaries of the eighteenth century enclosures which in turn have been partially removed by twentieth century agriculture.

10.22 **Significance of the Conservation Area.** The evidential value lies in the archaeology of the historic town and the relationship of the Conservation Area and its constituent parts to the surrounding countryside. In historic terms the recognisable elements of the landscape are medieval and later. The redevelopment of the town following the great fire of 1694 provides a major unity. The setting reflects the historic development of the place. The aesthetic values in the visual relationship of the Castle to the settlement. In communal terms the historic settlement patterns still forms an important element in the settlement functions. In sum, the setting of the Conservation Area encompassing the town. Relationship with the Park.

**STEP 3: The effect of the proposed development on the significance of the heritage assets.**

10.23 The main impact of the scheme in historic environment terms is upon the setting of the grade I Castle Park and hence the Castle and the Conservation Area. The proximity of the development to the heritage assets will have an impact on the setting. This will disturb the tranquillity of the place and have an historic and aesthetic impact.

10.24 The views into the Park and Conservation Area will be affected by the housing. There will be an impact from increased noise levels generated by the traffic associated with the housing development. At night the housing will also produce light pollution, changing the rural character which is at present dark at night time. The physical presence of development in the landscape will have an impact on significance by changing the relationships of the Conservation Area, Castle Park and historic surrounding areas of agricultural land.

10.25 The development will impact on the significance of the Castle through the further severance of the heritage assets from its historic hinterland. The current setting of the Castle provides it with a relatively tranquil and historic setting, although that has been intruded upon to a degree by the Technology Park and other development north of Heathcote Lane/Gallows Hill.

10.26 In terms of the Park and Conservation Area the development completely severs it from its historic hinterland to the east.

10.27 Whilst the overall level of harm to the heritage assets in question cannot be described as substantial, it will nevertheless be harmful. It thus falls into the very broad area of less than substantial harm. Where in the spectrum the harm lies is a matter of judgement in each case. In this case it forms a serious level of harm as set out above.

**STEP 4: Maximising enhancement and minimising harm**

10.28 As set out above the setting of the heritage assets, and hence their significance, will be harmed. Accordingly, the proposal may be justified if the harm is outweighed by the public benefits deriving from the proposals as set out in paragraph 134 of the NPPF. The greater the harm the greater the public benefits need to be.

10.29 As offered in the application we seem to have no benefits for the historic environment. The level of harm is sufficient to merit the refusal of this

application on historic environment grounds with no overwhelming public benefit to balance against that harm.

### **EVIDENCE OFFERED IN SUPPORT OF THE SCHEME**

- 10.30 Within the application submission the heritage issues are specifically addressed in Chapter 9 of the Environmental Impact Statement headed *Archaeology and Heritage* and a *Heritage Setting Assessment* by The Environment Dimension Partnership (dated January 2014). Chapter 9 addresses in terms of Highways Agency Handbook, not compliant with the language of the Framework. More useful is EDP's analysis which is in accord with the Framework and the English Heritage Settings Guidance. They offer an extended analysis of the heritage assets.
- 10.31 The sensitivity of the Castle is rightly regarded as high. However, the setting is mainly considered to be the views from within the park, and they fail to take in the broader part of the definition of setting which is about the experience of the setting.

### **CONCLUSION**

- 10.32 Overall, the scheme impacts on the setting of a number of significant heritage assets. The key matter for consideration derives from the definition of setting offered in the Framework, namely the surroundings in which a heritage asset is experienced. This will have a detrimental impact on the 'experience of the place' which will not be ameliorated by simply planting more trees.
- 10.33 The scheme will cause less than substantial harm, but still sufficient to merit a refusal without substantive public benefits, as required in paragraph 134. The sum total of the impacts leads me to the conclusion that without substantial benefits for those assets it cannot be justified, and that the local planning authority's refusal of the application should be sustained.

#### ***The case for Dr C Hodgetts (Warwickshire Gardens Trust)***<sup>312</sup>

*The main points were:*

- 10.34 The application should be refused on account of the detrimental impact it will have on the Park and its setting. The Grade I registered Park is a heritage asset of the highest significance and great weight is required to be given to the desire ability of preserving its setting. The inclusion of the Park within Warwick Conservation Area also brings a strong presumption against the grant of a permission which would bring substantial harm. Even were the harm to be judged as less than substantial, the Barnwell judgement, followed by several recent appeal decisions (including one recently at Bishop's Tachbrook)<sup>313</sup> has established that less than substantial harm does not equate to a less than substantial planning objection.
- 10.35 Historically, the Park was not a closed-off entity: its perimeter carriage drive, quite close to Banbury Road, would have permitted views out across the

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<sup>312</sup> See also Inquiry Doc 11

<sup>313</sup> CD7.12 - APP/T3725/A/14/ 2216200

surrounding countryside. From the road, the Park could be experienced in a variety of contexts; in places the tree belt is, and was, quite thin and there would be glimpsed views into the parkland or, in other places, into the picturesque planting of the woodland. At the crossing of New Waters, there were views down and up the water body. In the other direction, the surrounding farmland would be seen, sometimes across the hedges and sometimes filtered through trees. Thus the landscape setting of the Park, including the appeal site, is intimately connected to it.

- 10.36 The applicants propose an open landscape buffer against the road, but this would be a damaging element, in either being too suburbanised, or being too dense, reducing connectivity with the Park.
- 10.37 As the centre of the appeal site is higher than the road, the built area will be clearly visible from the road, from the Park, and from the public footpath that traverses the appeal site. At night, house and street lights will bring a completely alien quality to the park and its setting.
- 10.38 We are also concerned at whatever road 'improvements' may be required to deal with the additional traffic which may arise from the development. We have already seen the detriment which has arisen from the Turnbills Garden junction and the Gallows Hill traffic management works. Further work creating additional lanes and reducing verges, providing street and traffic lights and additional signage will be detrimental not only to the designed rural approach, but to the equally designed urban 'piazza' on Castle Hill. If the appeal were to succeed, such measures would inevitably follow and the traffic generated would impede the enjoyment of Warwick's heritage assets by residents and visitors.

#### *The C18 planned approach to Warwick*

- 10.39 The section of Banbury Road that runs alongside the Park, and also the appeal site, comprises an C18 planned approach to Warwick from Banbury and London, with the grade I listed church of St Nicholas forming an important focal point at its culmination in Warwick. The approach is an important part of the design of the extension to the Park, undertaken by the second Earl and completed with the opening of the new bridge in 1793, the concept having been fairly well worked out by 1777 when work started on the realignment of the road from Barford. An Appendix to the statement of Dr Hodgetts details the background to the Park extension and the realignment of the Road.
- 10.40 The historical account of the formation of the new Banbury Road between 1777 and 1793, as set out in the Appendix, demonstrates that it was conceived to achieve maximum landscape impact. It was carefully contrived to tease the visitor, offering on either side, glimpses of the park and of the open countryside of land, which was largely in the earl's ownership and which he had recently improved.
- 10.41 A recent English Heritage study makes this pertinent comment: *'Straight-sided fields, model farms and estate plantations all contributed to an air of rational improvement and might be considered visually pleasing in their own right. Recent research on the landscapes of landed estates has emphasised*

*the importance of examining them as a whole, rather than drawing too sharp a distinction between the designed core and surrounding farms and plantations.*<sup>314</sup>

- 10.42 The first sections of the approach from the south had an entirely rural character, the tree lined road giving glimpsed views of the Park on the left and the open countryside on the right. From The Asps, the road drops down to Tach Brook, where a dam dating from 1787-8 created New Waters, a wide sheet of water which extended across the road at what is now known as Turnbolls Garden. The road was carried on a bridge thirty feet wide, while the carriage drive within the verge had another thirty-foot bridge. The periodic turns in the road and the plantation of Turnbolls Garden gradually release the views to the right.
- 10.43 The road then climbs Temple Hill, turning westwards towards the summit, so that, on the crest of the hill it is aligned exactly on the spire of St Nicholas's church, providing the first indication of the approaching town, the Castle and town only being revealed at the last moment, as the road descended past the little gothic turnpike cottage (Grade II) at the junction with Gallows Street and crossed the new Bridge, from which the south front of the Castle bursts into view. Before then, the views are confined by the plantations on either side. From there, the eye is then drawn up the hill to the Castle gate, where the rock-cut drive to the Castle concludes the Picturesque experience with the explosion of light at the end. This concept of changing views and final surprise was central to the ethos of the Picturesque movement of which the second Earl was an enthusiastic supporter.
- 10.44 A commonplace approach might have involved making a lodge at the southernmost edge of the Park, with an approach drive winding through the park towards the castle across the river. If an owner did not have a sufficiently impressive distance a few extra turns might be applied to lengthen the drive. This was not the solution chosen by the second Earl. As the owner of much of the land on the east of the new road, he chose to show it off with his tree-lined approach.
- 10.45 The significance of the planned approach lies in the fact that it does not just happen to frame the expanded Castle Park, but contains design elements of its own: a succession of straight sections followed by turns to produce a series of views and display the unfolding landscape and finally the Castle and town. It forms a link between the Park and the surrounding farmland, enabling the Park to be experienced in its setting. The development of Warwick south of the river has, so far, remained subsidiary to this design. Recent road works and traffic signals, though damaging, have not irrecoverably undermined the concept or the beauty of this approach. But the historic designed landscape remains very vulnerable both to the visual impact of the development proposed and to unsightly road 'improvements'.
- 10.46 The Asps is the tiny hamlet in Bishop's Tachbrook which now faces the junction of Barford Lane with Banbury Road. Detailed surveys in 1751 and

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<sup>314</sup> Jon Gregory, Sarah Spooner, Tom Williamson, *Lancelot "Capability" Brown: Research impact review*, (English Heritage, Research Report Series, No 50 -2013)

1760 show two farmsteads here, the smaller being further diminished by the new road and park expansion and, after 1776, was combined with the other holding.

- 10.47 The estate maps of 1786-8 show the new road slicing through the holding, but apparently leaving the house standing. This may have already been taken into use for the estate gamekeepers, since it was no longer a farmhouse. The model farm buildings created by the first Earl at the Castle Park Lodge in the 1750s and 1760s seem to have been pulled down in 1787 and to some extent, building at The Asps was replacing some of their functions.
- 10.48 The Asps became the centre of the game-keeping, including the kennels, with accommodation for the game-keepers. Although the development of the Barford Sheds within the Park (originally barns and cattle shelters for the southern part of the Park, included later in the C19 accommodation for the gamekeepers and their dogs) it is clear that the development of The Asps Farm site in the 1790's was part of the programme of enhancement of the estate buildings promoted by the second Earl.
- 10.49 The foregoing demonstrates that the alignment and treatment of the new Banbury Road was part of the design of the enlarged Park. The proposed development would have a significant impact upon this historic approach to the town of Warwick.

#### *Changes since 1836*

- 10.50 In 1913 The Borough Council rented land on the north east of the new bridge for tennis and bowls. It subsequently obtained ownership of this and the rest of St Nicholas's Meadow to form St Nicholas's Park, opened in 1933. The then Earl insisted that the boundary to the road retain its hedge in order to preserve its rural appearance, rather than the traditional park railings. Although most of the hedgerow plants have now gone, the fence, where present, is still of timber and it still has a rural rather than municipal aspect.
- 10.51 The open water of the eastern (upper) section of New Waters had disappeared by 1925 and was notated as reed beds or marsh until 1974. In the 1980s Warwickshire County Council gave permission for landfill and subsequently, permission has been given for a caravan park
- 10.52 In 1986 permission was granted for gravel extraction in the southern part of Castle Park (Nursery Wood). It was claimed that the permission had commenced by the creation of a road and some test digging, but no further extraction took place.
- 10.53 In the 1980s, the County Council devised a plan for a Technology Park on the north side of Gallows Hill. It was originally intended that the buildings should be low-rise, though subsequently larger buildings were permitted. However, land modelling and tree planting have lessened the potential visual damage.
- 10.54 In 2004, the County Council decided to modify the road junction at Gallows Hill. The highway work included traffic signals and street lights as well as an additional section of highway which placed the toll cottage on an island.

### ***The case for Dr Hazel Fryer***

*The main points were:*

#### **THE APPEAL SCHEME AND LOCAL PLAN POLICY**

- 10.55 The Local Plan retains the village boundaries that were established in 1987. The Public Inquiry confirmed that the Tach Brook Valley was to be preserved in a rural condition. The saved Local Plan policies do not provide support for the Appeal Scheme.
- 10.56 Relevant development plan policies consistent with the National Planning Policy Framework have been examined in the Bishop's Tachbrook Parish Council's Statement of Case.<sup>315</sup>
- 10.57 The appeal site was put forward for development in the first phase of the Local Plan Consultation but was later abandoned as a preferred option for development. The site is in agricultural use and the large majority (44.7 hectares) of it is grade 2 land, whilst 6.5 hectares is grade 3a and 4.0 hectares is grade 3b and 1.4 hectares is non-agricultural land. It has not been demonstrated that development of the site is necessary and the District Council has, so far as it considers that it can, for the most part used areas of poorer quality land. This land is of high quality and should be protected from development.<sup>316</sup>
- 10.58 The appeal scheme is contrary to numerous policies in the emerging Local Plan. In particular policy HE4 states that 'Development will not be permitted if it would result in substantial harm to the historic structure, character, principal components and setting of Parks and Gardens of Special Historic interest included in the English Heritage Register'. In considering less than substantial harm, the document states '*Where a development proposal will lead to less than substantial harm to the significance of a designed heritage asset, this harm should be weighed against the public benefits of the proposal, including securing the optimum viable use*'. Warwick Castle Park is the only Grade I landscape within Warwick District that is of international importance. It is one of only four examples nationally of Lancelot Brown's early landscape commissions and is the highest designated Brown landscape within the County.
- 10.59 The appeal, if approved, would irrevocably damage the environs of this highly significant landscape, designed as the setting for an important medieval castle (listed grade 1 and Scheduled Ancient Monument), and developed as the residence of the Greville family from the C17 onwards. The word 'substantial' is difficult to define. In my professional opinion, based on the currently available guidance on what constitutes 'substantial', the level of harm would fall marginally below this threshold for the purposes of draft Policy HE4 and the Framework. However I consider the Park to be of such importance, for the reasons indicated above, that significant harm – which this would be – should be avoided if at all possible.

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<sup>315</sup> Councillor Bullen proof paragraph 3.2

<sup>316</sup> Ibid



- 10.60 The only comprehensive regional study in this field that has been carried out was undertaken by the West Midlands Regional Authority in their Regional Spatial Strategy of 2009 Chapter 7, Prosperity for All. Policy PA10: Tourism and Culture recommended that '*Development Plans should include policies that support the future development and success of Key Regional tourism and Cultural Assets.*' In the Region, in addition to Warwick Castle which was named in its own right, fifteen areas of significance were identified.

### **HERITAGE CONSIDERATIONS**

- 10.61 The Appeal site comprises 56.6 ha of open land that continues to be managed agriculturally and retains the appearance of the estate landscape that has remained since the early C19. Situated beyond the built up perimeter of Warwick, the appeal site is an irregular area of land bounded by the A452 to the east and the A425 Banbury Road to the west with a roundabout at the junction of these two roads to the south and the Tach Brook to the north. The site rises to a height of approximately 74 m AOD falling to 51 AOD to the north of the site and 63m AOD along the boundary with the A452 Banbury Road.
- 10.62 The A452 Banbury Road heads north towards Warwick curving beside Park Farm and the agricultural lands to the west and east before curving to the east around Asps Cottage, Asps Cottages and The Aspens, a grade II listed building. The Barford Road approaches the Banbury Road from the south west running beside The Belt which marks the boundary of Warwick Conservation area and passes the southern entrance to Warwick Castle Park.
- 10.63 The appeal site and surrounding areas are predominantly in agricultural use and views of the site remain open and rural in nature. The proposed development, should it be approved, would have a significant impact upon this historic approach to the town of Warwick and the setting of Warwick Castle, Castle Park and the wider Warwick Castle landscape.
- 10.64 Warwick Castle is of international significance in terms of its architecture, archaeology and history. So too are its gardens, parkland and wider setting. Warwick Castle Park is remarkably intact. Although a small section of the Park, The Verge in Bridge End has been developed, together with a small section of Barford Wood lost for the M40 in the 1980s, the Park has essentially retained the boundaries that it had achieved by 1791. These can be as seen on the 1806 plan.
- 10.65 Warwick Castle Park, now the subject of restoration proposals is significant in international terms as an C18 landscape park in close proximity to a supremely important mediaeval fortress and a mediaeval county town first laid out in the Saxon era. Outside the park are swathes of open farmland on three sides, providing a buffer and contrast to the park beyond the enclosure of its own boundaries and providing rural views. The appeal site lies within this area which is clearly part of the setting of the Park.
- 10.66 This southern approach to Warwick remains largely unchanged. The development of the appeal site would have a significant adverse effect on the appearance and historic character of the countryside. Adjacent sites such as the Eastern New Waters, Turnbolls Garden, the farm and estate buildings

and their settings, have not been given full recognition as important heritage assets.

- 10.67 The tree lined boundaries of the Registered Park and Garden (Warwick Castle Park) define the perimeter of the park and exclude views into and out of the park. These boundary belts were also designed to reveal specific carefully selected views including the view that exists from the Banbury Road towards New Waters and which previously existed towards the Eastern New Waters. Other designed views are apparent towards Park Farm from the southern drive and the partial view towards The Asps complex, also from the southern drive. The Perimeter ride along the East Boundary of Warwick Castle Park is seen in photographs figure 14 – 18 of Appendix 1 'Proposed development on land at Asps Farm'.<sup>317</sup> The woodland planting along the eastern boundary of the park is varied in width and there are points where views are afforded.
- 10.68 The re-routing of the Banbury Road to the east of the Park in 1791 expanded the park by an additional two hundred acres and created a new designed approach to Warwick.
- 10.69 The fields that comprise the appeal site were part of the wider setting of the park and of the Approach to Warwick along the Banbury Road the (A425). This point is acknowledged by English Heritage in their advice concerning this application.<sup>318</sup> Other features including the Aspens, Keepers Cottage, Turnbulls Garden and the former position of the feeder lake to New Waters also contributed to the historic function of the park.
- 10.70 It is important that the relationship between the Aspens and Keepers Cottage and Castle Park continues as from this position the eastern boundary of the park can be appreciated fully. Restoration works within the Park will also influence this perception and improve understanding of this aspect of the landscape.
- 10.71 The topography along the Banbury Road provides a changing vista along the eastern boundary of Castle Park which focuses on heritage features within the town, including the Toll House, Castle Bridge and from it the view of the old bridge and St Nicholas Church as Warwick is approached, and a sequence of tree framed views when proceeding along the Banbury Road to the south, i.e. away from Warwick.
- 10.72 An exceptional heritage feature was created at Warwick in the eighteenth and early nineteenth centuries, comprising Warwick Castle with the backdrop of the town and its designed landscape park and gardens, and its magnificent re-routed approach along the Banbury Road, this is, to the best of my knowledge, unique.

### **ALTERATIONS TO THE VISUAL AMENITY, LANDSCAPE CHARACTER AND SETTING**

- 10.73 The Guidelines for Landscape and Visual Impact Assessment (GLVIA)
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<sup>317</sup> Objection to planning application on behalf of C and S Taylor LLP by Hazel Fryer, Parklands Consortium Limited and James Edgar, Historic Buildings Consultant

<sup>318</sup> Letter from Ross Brazier 1 April 2014

produced by the Landscape Institute and Institute of Environmental Management and Assessment define Visual Amenity as 'The overall pleasantness of their surroundings, which provides an attractive visual setting or backdrop for the enjoyment of activities, living, working, recreation, visiting or travelling through an area.'<sup>319</sup> This document has been evaluated by Jerry Birkbeck in his Proof of Evidence on Landscape and Visual Matters.

- 10.74 The visual setting, achieved with the final section of re-alignment of the Banbury Road to the east, between 1788 -1793, completed the vision for Warwick Castle, the Castle Park landscape and its estate setting. The designed series of views along the Banbury Road, a feature of this concept, mark the approach to and departure from Warwick and remain an important feature that is experienced today.
- 10.75 The appeal site is of great significance. The location is on elevated land to the east of the approach to Warwick. The approach circles the features of Park Farm and the ornate complex of The Asps and The Aspens, whilst Castle Park falls to the west and the Banbury Road descends as it progresses northwards to cross New Waters and Eastern New Waters. The appeal site is part of a wider managed agricultural landscape forming part of the visitor experience of Warwick Castle and its landscape setting.
- 10.76 If approved, the Appeal scheme would result in significant change within the site when viewed from Banbury Road, Warwick Castle and Castle Park and the designed wide open views of roadside fields would be closed by woodland blocks which would be planted to screen the development from the road.
- 10.77 The farm and estate buildings and their relationship to The Asps, Asps Cottage, and The Aspens are examples of improved buildings and farm holdings set in the Earls' open agricultural lands, managed as part of an historic estate landscape.
- 10.78 The proposed tree belts proposed to screen the development would change irretrievably the historic improved agricultural landscape. The improved agricultural landscape is in distinct contrast to the parkland landscape of Castle Park. An extract from the 1813 Ordnance Surveyor's drawing of Warwickshire, on which is superimposed the proposed area in question shows that much of this whole historic landscape survives.
- 10.79 Appendix 1 to Dr Fryer's statement is an extract from the Conservation Management Plan prepared for Warwick Castle Park in February 2014 and outlines the sequence of events that came together to complete the design for Warwick Castle, Castle Park and the designed approach into Warwick through the improved agricultural lands.<sup>320</sup>

## CONCLUSIONS

- 10.80 Warwick Castle is of international significance in all of its constituent parts:
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<sup>319</sup> Guidelines for Landscape and Visual Impact Assessment Third Edition (2013) page 158

<sup>320</sup> Warwick Castle Park Conservation Management Plan prepared for C and S Taylor by Parklands Consortium Limited February 2014. **NB** Notwithstanding numerous requests by the appellant prior to and during the Inquiry, the full document was not made available to the appellant or the Inquiry.

architecture, archaeology and landscape including Castle Park, the Gardens and the wider landscape setting. Warwick Castle Park is significant in international terms as an eighteenth century landscape park in close proximity to a supremely important mediaeval fortress and a mediaeval county town laid out in the Saxon era. Outside the park are swathes of open farmland on three sides, providing a buffer and contrast to the park beyond the enclosure of its own boundaries, and providing rural views.

- 10.81 The Warwick Castle designed landscape is remarkably intact despite minor intrusions. In the main, the Park retains the boundaries it had achieved by 1791 and as shown on the 1806 plan. The Park, now in new ownership, is the subject of a Conservation Management Plan with a view to restoring its historic features and halting any further decline.
- 10.82 Specific sites such as the Eastern New Waters, Turnbolls Garden, the farm and estate buildings and their settings are now recognised as important heritage assets and features of the Banbury Road designed approach to Warwick. The appeal proposal, if approved, would irrevocably change this major heritage composition. The Appeal should therefore be dismissed as contrary to the policies and guidance referred to above.

### ***The case for Ms H Maclagan***

*The main points were*

- 10.83 The appeal scheme would affect a number of heritage assets. For some, adverse impact can be mitigated by appropriate measures. However, the critical assets affected are the ensemble of Warwick Castle Park and the Castle within it, and also the historic town of Warwick, recognised by the Conservation Area and wealth of listed and unlisted historic buildings in a largely historic street layout. The two are inextricably linked through the history and development of the town, and its relationship to the castle – what impacts on one, impacts on the other.
- 10.84 The importance of the Castle and the Park ensemble is evident from their statutory status and is acknowledged in the Environment in the Environmental Statement as a 'receptor of high importance.' That much appears to be common ground.
- 10.85 The historical development and importance of the Castle Park have been thoroughly addressed in the material produced by Hazel Fryer, and to which I have nothing to add from a historical point of view. In my opinion her evidence demonstrates that the significance of this asset lies both in many individual component features, and in their contribution to the whole; also that the proposed development would adversely impact these and thus would cause harm to the significance of designated heritage assets, albeit harm below the 'substantial' threshold.
- 10.86 The matter of the historic town is more complex. The designation used in the UK to recognise and protect a historic settlement or area is a Conservation Area; individual structures of importance which may lie within it are separately designated. I do not disagree that a Conservation Area in itself should generally be treated as an asset which is a 'receptor of

medium/low importance' (as indicated in Table 9.1 of the Environmental Statement) – however this is not universally true and each case needs to be considered and assessed on its own merits. In this case the historic town contains some 300 Listed Buildings, over 40 of them listed in either Grade I (buildings of exceptional interest, approximately 2% of all listed buildings) or Grade II\* (buildings of particularly important and more than special interest, approximately 4% of all listed buildings), as well as a reasonably well-preserved layout. The town also contains 7 Scheduled Ancient Monuments.<sup>321</sup> My view is therefore that the historic town as a whole should be treated as 'receptor of high importance'.

- 10.87 In my opinion the ES fails to consider adequately the impacts, direct and indirect, of the proposal on the historic town as a whole, and therefore is fundamentally flawed and indeed misleading. Section 9.24 identifies five assets with the potential to be affected; these include the Castle complex and Conservation Area but not the historic town as such, nor any of the other buildings within it apart from St Mary's Church. Further discussion of the Conservation Area is limited to Section 9.75, which focuses on the Castle and Park, and pays scant attention to the historic town either here or in the sections starting at 9.97, at 9.119, and (particularly) at 9.152. The same applies to Tables 9.4 and 9.5. It appears, therefore, that a significant element of potential heritage harm has been wholly overlooked. This is plainly wrong and undermines the credibility of the Environmental Statement's conclusions on heritage matters.
- 10.88 The ES<sup>322</sup> acknowledges that 'All planning policy relating to heritage assets requires that the significance of the assets is identified and any significant effects on them from the proposed development are assessed to inform the planning process.' However, because the historic town is not identified as being affected, impacts on its significance have not been assessed either.
- 10.89 I am aware that the appellant put forward the view that net traffic movements into and through Warwick would be reduced overall if their proposals were implemented in full. However, this is not uncontested and does not appear to have been adequately demonstrated. As I understand it, the focus of study has been on the impact on the primary network more than on the town centre of Warwick. The impact of possible different outcomes for the town centre should therefore be thoroughly assessed before an informed decision can be made.
- 10.90 Traffic in Warwick is already acknowledged to be at an unacceptable level (eg the Inspector's report on the 1993 Local Plan). This has proved an intractable problem. In addition to the impact on air quality, which lies wholly outside my area of knowledge, additional traffic into and through the town centre would inevitably have an adverse impact on the built environment – the Conservation Area and the Listed Buildings within it. It would thus be in direct conflict with Policy DP3 of the Warwick Local Plan (1996-2011).

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<sup>321</sup> The uninhabited parts of the Castle, the ruined and the current Castle Bridge, the Priory of St Sepulchre, St Michael's Leper Hospital, the site of St Mary's College, the East Gate (with St Peter's Chapel).

<sup>322</sup> Paragraph 9.15

- 10.91 The fragility and vulnerability of many historic structures is evident to any passer-by in, for example, the erosion and decay of the fragile local stone. Potential impacts from traffic include physical damage from water and airborne pollution, erosion vibration and collision. Increased traffic levels also have the potential to detract from amenity through increased noise levels, visual intrusion of signage and the creation of a less safe and pedestrian friendly environment. I therefore consider that the impacts of potential increased traffic levels on the historic town should have been assessed in the Environmental Statement, and need to be assessed to enable informed decision-making.
- 10.92 In the absence of such assessments, in my view the proposed development has the potential to cause an unacceptable level of harm to both the Castle Park and the Conservation Area and the Listed Buildings within it and the settings of both. Further, no benefits which would outweigh this harm (Framework paragraphs 132 and 135) have been demonstrated, and therefore the appeal should be dismissed.

***The case for Professor J M Bishop***

*The main points were:*

- 10.93 Air pollution today is invisible, resulting from emissions from motor vehicles, particularly diesel cars and Large Goods Vehicles and presents a significant threat to health. It is pollution which cannot be avoided by individual actions in the lives we lead today.
- 10.94 The pollution we face is a mixture of gases and particles and it is the latter which are the most dangerous. They vary in size and the smaller particles measuring 10 microns (uG) or less when inhaled are capable of reaching the deepest parts of the lung. The particles are a complex mixture of chemical substances, both organic and inorganic suspended in water. Deep in the lung, the components are absorbed into the bloodstream and carried to other organs in the body. These toxic materials have been shown to cause cardiovascular disease and strokes, lung disease including lung cancer, and an increased incidence of cancer of the urinary tract including the bladder.
- 10.95 Measurements of components of pollution have been made since 2006 but have not included particulate matter. The most useful measurement is of nitrogen dioxide (NO<sub>2</sub>) which has been measured automatically and continuously at a site at Pageant House in Warwick. A guideline recommended by the WHO is for the annual mean value to not exceed 40 ug/m<sup>3</sup>. In addition, a one hour mean value of 200 ug/m<sup>3</sup> should not be exceeded more often than 18 times in a year.
- 10.96 For the seven years from 2006-2012 inclusive, the annual value in Warwick ranged from 53.0 to 62.5ugm/m<sup>3</sup>, with a mean of 58.3. Measurements by another method (and not made continuously) show that the level of 40 was exceeded at numerous locations. Occasions when the hourly mean was greater than 200 ranged from 24-63 in the years 2006-08, the recommended maximum being 18. These peak values can cause serious effects to sufferers from asthma or other chronic lung disease. Unfortunately, no measurements have been made of particles during these years.

- 10.97 Published research shows simultaneous measurements of NO<sub>2</sub> and small particle levels to be highly correlated statistically, more especially when measurements are made in cold weather rather than mid-summer. With some reservations, it appears that NO<sub>2</sub> measurements could be used as a proxy for levels of small particle concentrations.
- 10.98 The evidence makes it clear that significant and dangerous levels of air pollution already exist in central areas of Warwick, almost certainly related to road traffic. Those people at greatest risk live or work in the affected areas. However, it must be noted that we have no data for other major roads with heavy traffic, including Banbury Road, Stratford Road, Myton Road and Emscote Road and no measurements have been made to the south of the River Avon. It is noted that in areas involved or potentially involved in these levels of pollution, there are several schools.
- 10.99 The situation can only worsen, if extensive housing development occurs to the south of Warwick, with increased traffic flow over the bridge into the town. There is nothing that individuals can do to mitigate the dangers and they must rely on action by local government. The growing danger to the health of all who live and work in Warwick (and to some extent those who visit), both young and old, requires urgent attention. Prevention is, as ever, better than cure.

***The case for Mr D Crips***<sup>323</sup>

*The main points were:*

- 10.100 My concern over any proposed housing development, particularly to the south of the Avon, is the impact that the resultant traffic will have on conditions in Warwick town, most of which is an Air Quality Management Area. Pollution in all its forms is prevalent and our health and our heritage are at risk.
- 10.101 The development proposal will in particular cause increased traffic levels on the Banbury Road. This already carries one third of peak hour traffic into Warwick and is a major contributor to peak hour congestion. The "peak hour" actually lasts for about 4 hours each working day when the schools are in session. The traffic across Castle Bridge, a scheduled structure which itself is at risk, carries some 20,000 vehicle movements per working day.
- 10.102 Since 2004 I have been working with the District and County Councils and others in various traffic forums with a view to reducing the volume of traffic in Warwick. The policies of traffic reduction and air quality improvement were agreed in the Warwick Area Committee of November 2006 and have been embodied in the Local Transport Plan. Specifically the Air Quality Action Plan paragraph 7.1.4 Theme A1 – Reduction in Traffic Flows states "*....there is an ongoing project to look at various traffic management measures to reduce the amount of traffic in the town centre...*". This was followed through as recently as 2014 through a series of stakeholder meetings convened by the County Council which focused on techniques for management of traffic

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<sup>323</sup> Inquiry Doc 7

demand. Some successes have been achieved, in Chapel Street, Gerrard Street, High Street and Jury Street, but much more needs to be done to reduce air pollution to acceptable and legal levels. Two schemes for traffic reduction in Banbury Road have been identified, but neither has been implemented.

10.103 The current development proposal does not offer a single measure, endorsed by the Highway authority, to mitigate the effects of its resultant traffic burden. More broadly, any development proposal which would increase the volume of traffic in Warwick town centre would be contrary to the traffic reduction policy embodied in the Local Transport Plan. Without confirmed mitigation measures from the Highway authority the present proposal cannot therefore be allowed to succeed.

### ***The case for Mrs J Russell***

*The main points were:*

- 10.104 However good the plans for development, this is the wrong location for 900 houses and the appeal should not be allowed. It is south of the river. Warwick has only one narrow bridge that crosses the River Avon connecting the north and south sides of the town. This creates a bottleneck for traffic crossing the bridge from the south.
- 10.105 Our current houses and business south of the river already give rise to large hold ups and tail backs of traffic at peak times. The resultant air pollution in central Warwick is above Government safe levels. We are becoming ever more informed by research of the ill-health consequences of this air pollution both to lungs and to heart. We know the inevitable result will be greatly increased costs to the health service, an increased demand for doctors and hospitals and ultimately increased cost to everyone's pocket.
- 10.106 Planning permission has already been given for another 2000 houses south of the river. Warwick District Councillors are being recommended to approve a further near 1000 houses next week. Stratford District is planning to build 3000 houses at Gaydon, bringing even more traffic to this same Banbury Road entrance to Warwick and north. These plans will bring thousands more vehicles to cross this one narrow bridge and into and through the town. Traffic delays could become constant. Air pollution will rise to much higher levels. This has to adversely affect residents, visitors and trade in Warwick. There is no possible traffic management scheme that can provide a solution. Traffic trying to get to, from and through Warwick in all directions will be affected. We are putting our heads in the sand if we pretend that this can somehow work out.
- 10.107 Added to this is the fact that Warwick itself is a huge heritage asset for the whole District. It is blessed with some outstanding historic buildings and heritage areas, plus Warwick Castle. It is a major tourist attraction to people from all over the world. We need to realise the value of this both for our area and the whole country.
- 10.108 The Framework puts an emphasis on protecting heritage assets. Paragraph 126 is particularly important. Historic Warwick brings money and prosperity



to the area. We need to enhance this asset not damage or destroy it. In order to conserve and enhance the historic environment of Warwick, it is important that we preserve this greenfield area to the south of the town and this last green entry into Warwick across the beautiful single span grade II\* listed stone bridge from which we see the world famous view down the river to the Castle. It is not appropriate or wise to subject this historic bridge to these hugely increased traffic streams which include so many heavy goods vehicles.

- 10.109 One of our Warwick residents advised the Government about the Framework guidance on making Local Plans. He specified that the area should not be degraded by any proposed plans and development in the area should enhance the quality of life. At first sight, it might appear that the proposal here would not degrade the area or reduce the quality of life for existing residents. However, it would create a further serious blow to the town's ability to remain an attractive place to visit, live and work.
- 10.110 We may need more housing but we are irresponsible if it creates such problems of traffic, congestion, pollution, and frustration that life becomes impossibly difficult, severely spoiling the quality of life. Visitors will hesitate to come here and people will hesitate to live and work here. There are already 3000 extra houses in the pipeline south of the river. The need to build more houses somewhere seems to be blinding people (particularly if they do not live here) to the impact on the unique heritage asset that is Warwick. It is an irreplaceable resource that may be spoiled for ever.

### ***The case for Mr M Sullivan (CPRE)***

*The main points were:*

- 10.111 The Branch objects to the appeal scheme which comprises a very large housing estate on best and most versatile greenfield land and supports the evidence and arguments presented by the SWAG, the Warwick Society and the Warwickshire Gardens Trust.
- 10.112 The open and rural approach to Warwick is of key importance in protecting the setting and character of this historic County town. Whilst other approaches to the town have been urbanised, that from Banbury is the remaining approach which forms part of the setting of the town. Extensive evidence will be presented on the landscape importance of the appeal site, its relationship with the grade I Registered Warwick Castle Park and the lack of housing need for the development proposed and the damaging effects that it would have on the historic town centre and other areas from increased traffic. CPRE Warwickshire Branch supports the evidence on all these issues by the Rule 6(6) party.
- 10.113 Although an area of search for a Park and Ride has been included in the Local Plan for the last ten years, nothing has happened.
- 10.114 The proposal is wholly contrary to planning policies for the countryside and protection of landscape and heritage assets, as set out in the Framework, in the saved policies of the Local Plan and the policies in the emerging Local Plan.

### ***The case for Councillor J Holland***

*The main points were:*

- 10.115 All three Councillors who represent the Warwick are unanimous in their opposition to the proposal. There is no common ground in relation to the transport impact of the proposal. There are also significant concerns with regard to public health. Indeed, the main cause of avoidable death in Warwick relates to vehicles. The exposure of the population of Warwick to pollution and deaths from vehicles is the same as deaths from cigarette smoking – 350 avoidable deaths were due to lifestyle and lack of exercise. There is clearly a need therefore to have short enough distances to be able to walk, cycle or use public transport.
- 10.116 The development proposed would take that choice away from future occupiers, which residents relying on the private car. The role of the County Council now includes health and well-being. The requirement to reduce avoidable deaths is key to that.
- 10.117 In relation to primary schools, there will be spare capacity at the time of the development proposed. In relation to other schools however, the Council cannot provide places to meet demand. Increasing the population through housing developments such as this will add further pressure – the liability for not being able to meet that demand rests with the County Council.
- 10.118 There is no credible transport strategy for Warwick. Although a number of workshops were held, no outcomes were put to the stakeholders for approval. Only examples of what might be done were discussed and things such as a congestion charge are politically impossible. A previous Local Plan Inspector found that development should only go ahead in conjunction with a scheme to reduce traffic movements in the town centre.
- 10.119 The centre of Warwick is an Air Quality Management Area. The Highway authority has not taken any action to reduce traffic movements and thus reduce pollution and no agreed measures are in place. The forecasts produced following work done by Atkins have all been proven to be wrong and so the modelling used by the appellant is false. The original brief was not correct. The town cannot accommodate the likely traffic from the development proposed. There are no primary schools south of the river so all associated traffic would need to cross the single bridge. That is not sustainable development.
- 10.120 It is the elected Members who decide policy and the strategic vision. That is not the same as implementation of the strategy, which is for officers such as Mr Benison on behalf of the Highway authority. His work does not include the key points that relevant to this Inquiry and his remit does not include public health. Although Mr Benison signed the Highways Statement of Common Ground, that doesn't mean that the County Council supports the appeal proposal. It does not support the proposal, there being strong objections on grounds of public health, inability to provide schools and no satisfactory solution for the town centre. Members do not support the proposed Park and Ride scheme on the appeal site.

### ***The case for Councillor Brookes***

*The main points were:*

- 10.121 The planning system still exists to ensure the prudent use of land resources and to prevent sprawl, ensuring that the right development is directed to the right location at the right time. The appeal scheme is not such a development.
- 10.122 Local Councillors were not enthusiastic about the appeal site as a possible options site in the emerging Local Plan, given the impact on the setting of heritage assets, the setting of the town and the effect on the southern approach to the town. That view was endorsed by the public responses to the consultation. The site occupies an elevated position and is clearly visible from the highway. It is also in a highly sensitive landscape. As a consequence, it is now not included as one of the sites being taken forward.
- 10.123 The landscape is of more than merely local value and to the residents of Bishop's Tachbrook it is very important. A public footpath links the church in the village to The Asps site and follows the ridge. There is great public amenity on being able to view the townscapes nestled in the countryside. That should be preserved. The path already has to pass a solar farm near the village, which serves to increase the importance of the views from the rest of the route.

### ***The case for Councillor Rhead***

*The main points were:*

- 10.124 The appeal site lies outside the development boundary and the scheme would undermine the Council's planned approach to the location of new housing. This rural area is valued by the local community and is an important protected landscape. There is a huge demand on best and most versatile agricultural land with existing planned development. The loss of such land in connection with the appeal scheme is unnecessary.
- 10.125 The scheme would result in urban sprawl. The site is disconnected from the main settlement edge and the scheme would extend built development in to the countryside. The scheme would erode the existing gap between Warwick and Bishop's Tachbrook and Barford resulting a loss of separation.
- 10.126 English Heritage has confirmed that there would be a serious impact on the historic approach to the Castle and the Castle Park. There would also be an urbanisation of the approach to Leamington Spa from the M40.
- 10.127 There is a lack of infrastructure to support the development proposed, including access to schools, hospitals and rail stations. Concerns in this regard are not addressed by the proposed Park and Ride scheme. Irrespective of the Park and Ride, future residents will be highly dependent on the private car, with consequent exacerbation of existing pollution problems, where pollution is already higher than is acceptable. Even today, at peak times, traffic backs up from the town centre through Barford.

***The case for Mrs B Law***<sup>324</sup>

*The main points were:*

- 10.128 The development proposed is contrary to the aims and objectives of the Framework, which states that where significant development of agricultural land is necessary, authorities should seek to use poorer quality land in preference to that of higher quality. The appeal scheme would result in the loss of about 50 hectares of mainly grade 2 agricultural land, with a narrow belt across the southern end of the site comprising grades 3a and 3b. As set out in the Framework, grade 2 and 3a land comprises best and most versatile agricultural land which should only be used as a last resort when it is clear there is no other option. The agricultural statement in the application states that the land is part of a viable and productive set of farms currently operated. As such, it clearly has an economic value to both the farmer and the country as a productive unit.
- 10.129 Grade II listed properties, Aspen House and Asps Cottage front onto Banbury Road next to the appeal site, with their boundaries abutting the development proposed. The appeal scheme would harm those heritage assets and their setting, contrary to the provision of paragraphs 17 and 132 of the Framework.

***The case for Mr J MacKay***<sup>325</sup>

*The main points were:*

- 10.130 Warwick town centre is of very high architectural and historic significance, as recognised by the statutory protection given to it. The beauty and distinctiveness of the town give it both economic and social value. The materials and structures of many of its buildings are fragile and they are expensive to maintain and operated. The future of the town centre and its buildings depends on them being attractive to residents, businesses and visitors.
- 10.131 The volume of traffic passing through the town and the 'mitigation' measures proposed to accommodate the increase in traffic generated by the application site and other developments threaten substantial harm to the town centre and its economy, to its attractiveness to residents and visitors, to the health of those spending time in it, and thus to its heritage assets. There would be conflict in this regard with the Framework. It does not constitute sustainable development and the appeal should be dismissed.

## **11. WRITTEN REPRESENTATIONS**

- 11.1 As set out in the officer's report,<sup>326</sup> the application attracted a number of individual letters of objection. Letters of objection were also submitted by Bishop's Tachbrook Parish Council, Royal Leamington Spa Town Council, and Warwick Town Council. All those representations are summarised in the officer's report.

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<sup>324</sup> Inquiry Doc 8

<sup>325</sup> Inquiry Doc 9

<sup>326</sup> Forwarded with the Questionnaire

- 11.2 In relation to the appeal, further letters were received from a number of persons, most of whom spoke to the Inquiry on an individual basis as set out above. The correspondence set out below relates to those letters submitted by persons who did not speak to the Inquiry.
- 11.3 **South Warwickshire NHS Clinical Commissioning Group:** A letter from the group was submitted during the Inquiry.<sup>327</sup> The Group is responsible for ensuring that the primary healthcare needs of South Warwickshire are met. In response to the planning application a request was made for a contribution towards the cost of a new GP surgery. Without the contribution, the development would have an unacceptable adverse impact on existing healthcare provision. Although a contribution is included in the S106, the document includes a strikeout clause should the Secretary of State conclude that the obligation does not meet the statutory tests. The submission sets out the legal framework within which the request is made, the planning policy framework, current GP surgery infrastructure in the locality, the likely impact of the appeal scheme and the mitigation requested and the means by which it should be secured. It concludes that, if left unchecked the appeal scheme would have an unacceptable impact on an already over-stretched infrastructure with serious adverse consequences for existing residents and future residents of the scheme. Two ways of mitigating that impact are identified, but the most sustainable and appropriate is a contribution towards the construction of a new GP surgery in the Gallows Hill area.
- 11.4 **South Warwickshire NHS Foundation Trust (SWFT):** SWFT is the major provider of acute and community healthcare services to the population of south Warwickshire. It is a secondary care provider delivering a range of planned and emergency hospital services and is the sole, capable provider of urgent and emergency care services in South Warwickshire. It is currently operating at full capacity. Although the Trust has plans to cater for the ageing population and growth, it will not be able to plan for growth in a piecemeal manner due to its retrospective funding mechanism and the Payments by Results regime. Without the contribution sought, the strain on existing services would be unacceptable with consequences for the safety and care quality for the existing and new population. That is not sustainable. The contribution sought would not support a government body: rather it would enable the body to provide services needed by the occupants of the new homes proposed. The written statement sets out the background and justification for the contribution sought and is supported by Counsel's opinion.
- 11.5 **Warwickshire Police and West Mercia Police:** They requested a S106 contribution to provide police infrastructure necessary to enable the direct delivery of policing services to the site. No objections were received from either the Council or the appellant and so it was assumed that HE request met the relevant statutory tests. It was a surprise, therefore, to see on the Statement of CIL compliance, that the request was considered not to be compliant, notwithstanding that the Obligation did include the requested

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<sup>327</sup> Inquiry Doc 44

provision. The correspondence sets out why, in their view, the contribution is CIL compliant and is supported by four Appendices.

- 11.6 **Mrs S Butcher:** Objects on the grounds of increased traffic and increased pollution. The scheme is not sustainable development. It is remote and is not large enough to sustain locally the essential services that residents will need. Therefore all trips to do with employment, leisure activities and schooling will have to be done by car. The feasibility of the Park and Ride has not been established. The Park and Ride at Stratford has consistently lost money and she is not convinced that the County Council will be willing or able to fund this one. As a shopkeeper, she is aware that more people mean more potential customers but the congestion caused in Warwick by extra traffic will drive customers away. Traffic modelling has demonstrated that the development proposed will increase the number of cars in Warwick. Air Quality data shows most of the town centre and parts of West Street have air pollution levels above the legal limits. Increased traffic can only make matters worse.

## 12. CONDITIONS

- 12.1 Should the appeal succeed, recommended conditions and the reasons for them are attached as Appendix D. They are based on the draft conditions agreed between the appellant and the Council.<sup>328</sup> An additional condition relating to footpath/cycleway improvements was mooted during the related discussion.<sup>329</sup> The conditions were discussed in detail, on a without prejudice basis, in the light of the advice in the Framework and the planning guidance.
- 12.2 Suggested condition 8 related to the implementation of landscaping. However, since landscaping is a reserved matter, it was agreed that the condition was inappropriate at outline stage and could be deleted. Minor alterations were made to the wording of some of the conditions in the interests of precision and, in some cases, to deal with implementation. The alterations were discussed at the Inquiry.

## 13. PLANNING OBLIGATIONS

- 13.1 The Council does not have an adopted Community Infrastructure Levy Delivery Schedule.
- 13.2 Two Unilateral Undertakings, both in the form of a Deed, were submitted to the Inquiry. The first secures the provision and running of the proposed Park and Ride facility. The second covers arrangements relating to affordable housing, biodiversity off-setting, education, healthcare, police, public rights of way and sustainable travel/welcome packs.
- 13.3 Both Deeds include a provision whereby if the Secretary of State was to determine that any obligation provided for therein does not comply with Community Infrastructure (CIL) Regulations 122 or 123, that obligation would be deemed to be severed from the Deed.

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<sup>328</sup> Inquiry Doc 25c

<sup>329</sup> Inquiry Doc 54

- 13.4 Consideration of the obligations provided for is to be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.
- 13.5 In order to assist the related discussion at the Inquiry, a CIL compliance schedule was provided at my request, prepared jointly by the appellant and the Council (email dated 2 April 2015). The Schedule has two Appendices: Appendix A comprises the Education Statement of Common Ground (SoCG3); Appendix B comprises the Highway authority's justification for the sustainable travel/welcome packs sought.

***Park and Ride***

- 13.6 The development proposed includes a Park and Ride facility. The relevant Obligation precludes commencement of development until:
- the owner has secured a signed and dated contract with a bus operator to operate a bus service to serve the Park and Ride for return journeys between the appeal site and Warwick and Leamington Spa for a 10 year period from first occupation of any dwelling unit on the appeal site;<sup>330</sup>
  - a Specification for the Park and Ride service has been approved pursuant to a relevant planning condition. The Specification is to include a 500 space car park; necessary supporting infrastructure (including signage, ticket machines, toilets, shelters and lighting); marketing and branding; contracted operator and contract term; staffing and operational information; timetable and operating days (substantially as proposed to Warwick Monday-Friday 07.00-19.24 hours and 07.45-1854 on Saturdays, and to Leamington Spa Monday-Friday 07.00-19.25 hours and 07.30-18.55 hours on Saturdays, other than on public holidays); maintenance standards; financial viability information; long terms management of the facility including flexibility to allow for the District or County Council to operate the facility; and
- 13.7 No dwelling is to be occupied until the Park and Ride is operational in accordance with the Specification, with 500 parking spaces and a 15 minute frequency service Monday - Saturday to both Warwick and Leamington Spa in accordance with the timetable in the Specification.
- 13.8 The obligation secures the submission of an annual monitoring report prepared by a suitably qualified transport engineer to confirm, on an open book basis, the patronage of the scheme and the revenue and operating costs, for at least ten years or until the report demonstrates that the Park and Ride is profitable on a costs against revenue basis.

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<sup>330</sup> Inquiry Doc 23

- 13.9 The occupation of any further increment of 100 dwellings is precluded unless the relevant monitoring report has been submitted to the Council and unless the Park and Ride service is operating in accordance with the Specification.
- 13.10 The owner is obliged to maintain a contract for the operation of bus services to serve the Park and Ride for ten years and renew such contract or procure the continuation of that service until such time as the monitoring report demonstrates that the service is profitable on a costs against revenue basis.
- 13.11 No more than 800 units can be occupied until an offer has been made in writing to transfer the Park and Ride to the County Council and such offer has remained open for acceptance for one year.
- 13.12 The Park and Ride cannot be marketed for sale to a private operator unless and until the Park and Ride monitoring report shows that it is profitable on a costs against revenue basis without making the District and County Council aware of such marketing.
- 13.13 The owner is obliged to maintain the Park and Ride in accordance with the Specification.

***Other Provisions***

- 13.14 Affordable Housing: 40% of the dwelling units would be provided as affordable housing in accordance with Local Plan policy SC1. 30% of those would be provided as affordable rented accommodation, 20% would be provided as intermediate units, with the remaining 50% being provided as social rented units.
- 13.15 Education: Policy SC14 of the Local Plan confirms that contributions will be sought towards community facilities, including education. To that end, contributions are secured for pre-school, primary, primary SEN<sup>331</sup>, secondary, secondary SEN and post-16 education. The Undertaking reserves land for a primary school (including a nursery class) within the development site. The primary and nursery education needs arising from the development proposed would be such that a new school is required, there being no capacity to extend existing or planned schools in the catchment to accommodate any increase in pupils. The school would be constructed and delivered either by the developer, or by the County Council with funding from the developer. Secondary school places would be provided at Myton School through the provision of additional accommodation at that existing facility. I understand that because of its personal nature, SEN provision is not ascribed to a particular school.
- 13.16 GP Surgery (NHS): The community facilities referred to in Local Plan policy SC14 include healthcare. Policy HS6 of the emerging Plan also seeks to ensure that new development contributes to the delivery of additional healthcare provision and infrastructure, with policy DM1 requiring contributions towards infrastructure provision taking account of the cumulative impact of new developments. To that end, a contribution of

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<sup>331</sup> Special Educational Needs



£341,789.40 is secured towards the development of a GP practice to serve the development proposed.

- 13.17 Healthcare (South Warwickshire Foundation Trust - SWFT): a contribution of £1085.18 per dwelling is secured, payable to the Council for onward payment to SWFT for the provision of acute and community health care facilities serving Warwick.
- 13.18 Police: the obligation secures the provision of a building for use as a police office, of at least 200 square metres gross internal floor area (together with service connections and external parking) to be located within the local centre that forms part of the development scheme. In addition, a contribution of £187,991 is secured, payable to the Council to fund the provision, fitting out and equipping of the police office.
- 13.19 Public rights of way: Policies RW2, RW2a and RW5B, of the Warwickshire Local Transport Plan 2011-2026<sup>332</sup> aim to improve the physical rights of way and recreational highway network for all users, both within a development site and in the surrounding area. To that end, a contribution of £13,320 is secured towards improvements to public rights of way within a 1.5 mile radius of the development.
- 13.20 Sustainable Travel/Welcome packs: In promoting sustainable development, policy LUT3 of the Local Transport Plan seeks developer contributions towards a number of measures, including the provision of travel packs for new developments. Local Transport Plan policies CTB6 and CTB7 also promote travel awareness campaigns and promote public transport as an attractive and sustainable travel choice. To this end, the obligation secures a contribution of £75 per dwelling for the provision of a travel/welcome pack for each property, to advise occupants of sustainable transport options available to them, as well as addressing wider issues of sustainability in terms of recycling and saving energy etc.<sup>333</sup>
- 13.21 Biodiversity offsetting: In the event that the Secretary of State is of the view that such is necessary, a contribution is secured towards improving the biodiversity of other land in the District.<sup>334</sup>

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<sup>332</sup> CD 3.39

<sup>333</sup> More information on the welcome packs, including costings, is provided at Appendix B of the submitted CIL Compliance Schedule (2 April 2015)

<sup>334</sup> To be calculated in accordance with the County Council's Financial Contribution Calculator pursuant to the Biodiversity Offsetting Scheme (CD 3.45)

## 14. INSPECTOR'S CONCLUSIONS

- 14.1 The following conclusions are based on my report of the oral and written representations to the Inquiry, and on my inspection of the site and its surroundings. The numbers in square brackets thus <sup>[1]</sup>, refer to paragraphs in the preceding sections of this Report from which my conclusions are drawn.
- 14.2 The appeal site lies outside the development boundary for Warwick as defined by the development plan. In planning policy terms therefore, it lies in the open countryside.<sup>[3.2, 4.2, 8.3, 9.8, 10.61, 10.124]</sup> It is not allocated for housing and general residential development in the open countryside is contrary to the policies of the development plan.<sup>[4.3]</sup> It is also contrary to the equivalent policies in the emerging Local Plan.<sup>[4.11, 4.12, 4.15]</sup> At the time that the planning application was determined by the Council, the Authority could not demonstrate a five year supply of housing land.<sup>[6.1]</sup> By the time of the Inquiry however, the Council's position was that does have a five year supply, including an appropriate buffer.<sup>[6.1]</sup> That position is contested by the appellant.
- 14.3 In light of the above, and having regard to the respective cases presented to the Inquiry, I consider the **main considerations** to be:
- the Council's housing land supply position;
  - the effect of the scheme on the setting, and thereby significance, of nearby heritage assets;
  - its effect on the character and appearance of the surrounding area;
  - its effect on the safety and free flow of traffic on the local highway network;
  - accessibility in terms of the facilities and services required by future residents on an everyday basis;
  - and whether the scheme should be regarded as sustainable development having regard to the provisions of the National Planning Policy Framework (the Framework) as a whole.

### Housing Land Supply<sup>[6.1-6.3, 7.3-7.29, 8.31-8.63, 9.62-9.99]</sup>

- 14.4 Paragraph 47 of the Framework advises that local authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
- 14.5 There are material differences between the parties relating to the housing requirement, the appropriate buffer, when in the process it should be applied, and the housing supply. The Council's position at the Inquiry was that, as of 31 March 2015, it had a 5.52 year supply including a 5% buffer based on a FOAN of 660 dwellings per annum (dpa) even though policy DS7 in the emerging Local Plan sets out a requirement of 714 dpa. The appellant, on the other hand, suggested a supply of between 2.11-2.51 years, including a 20% buffer, the lower figure being based on a FOAN of 825 dpa (the figure promoted by Ms Howick for the appellant), the latter representing the position based on 714 dpa figure in the emerging Local Plan. The evidence

produced by Councillor Bullen for SWAG,<sup>335</sup> suggested a supply of some 6.3 years based on a need for 910 dpa. If the figures set out in his Table A for deliverable sites with planning permission are used (that Table is based only on the sites detailed in his Appendix A) the supply reduces to 5.9 years.

- 14.6 The Inquiry heard a substantial amount of evidence on the subject of housing need, requirement and supply. However, it is well established that it is not for the decision maker in a Section 78 appeal decision to carry out some sort of Local Plan process to arrive at an alternative housing requirement figure.<sup>336</sup> That is a matter for the Core Strategy Inspector in due course. I am mindful, in this regard that the preliminary Hearings into the emerging Local Plan were due to take place shortly after the conclusion of this Inquiry. It may well be the case, therefore, that the housing situation in Warwick will be clearer by the time the Secretary of State makes his decision in this appeal.
- 14.7 In that context, and for purposes of this appeal, I shall look at housing land supply in the context of the lowest of the FOAN figures referred to at the Inquiry, namely 660dpa as promoted by the Council. That is not to be taken as any indication that I agree that that is the correct figure. Rather, it is simply a pragmatic way forward since, if a five year supply cannot be demonstrated against that figure, the situation would only be worse if any of the higher requirement figures prove, in the event, to be more realistic.
- 14.8 The buffer: Framework paragraph 47 advises that an additional buffer of 5% (moved forward from later in the Plan period) should be added to an authority's housing requirement to ensure choice and competition. Where there is a record of persistent under delivery, this should be increased to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition.
- 14.9 A housing moratorium was in place in the District between 2005-2009, with difficult economic conditions prevailing from 2007 onwards, all of which will have had an effect on the level of completions. There was much debate in this regard, as to the period that should be assessed in determining whether there had been a persistent under-delivery. The appellant argued that the assessment should relate to the last five years, with the Council and SWAG arguing that it should be as long as the last 15 years.
- 14.10 As can be seen by looking at a combination of the data at Tables 5 and 6 of Mr Barber's proof and updated Table 1a within the proof of Mr Halman,<sup>337</sup> gross completions<sup>338</sup> in each of the last four years (ie the time since the end of the period that the 1996-2011 Local Plan was intended to cover) have been well below even the annual requirement of 660 dpa, notwithstanding that they have been increasing since 2011/2012.<sup>339</sup> The tables also show that gross

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<sup>335</sup> His own proof and appendices, plus Inquiry Docs 33a-d

<sup>336</sup> St Albans City and District v Secretary Of State For Communities and Local Government [2013] EWCA Civ 1610

<sup>337</sup> Inquiry Doc 41

<sup>338</sup> It is important to compare like with like. As set out at paragraph 2.1 of Mr Barber's Rebuttal, since the targets are expressed as gross figures, it is necessary to compare gross, as opposed to net, completions.

<sup>339</sup> Even if the RSS requirement figure of 395 is used for 2011/2012 instead of 660 (on the basis that the RSS was not revoked until 2013) the target was not met.

completions have not met any of the various targets in any of the last six years, or indeed in seven out of the last ten.<sup>340</sup> Gross completions did not meet the targets in seven of the last 15 years.

- 14.11 On balance, therefore, I am inclined towards the view, that there has been a persistent under-delivery of housing against previous housing targets. That situation is exacerbated if the higher figure in the emerging Local Plan is used for the last three/four years, worse still if the appellant's figures are used. Accordingly I consider a buffer of 20% to be appropriate here as opposed to the 5% applied by the Council. I note, in this regard, that the Council and SWAG seek to apply the buffer before considering the shortfall, relying on a Secretary of State decision (Gresty Lane)<sup>341</sup> to support their approach. The appellant, on the other hand, was of the view that it should be applied to the five year requirement plus the shortfall.
- 14.12 In dealing with housing land supply, it is important to use the correct terminology. References to 'backlog' generally relate to need that has not been met from the previous Plan period (in this case 1996-2011) which would be taken account of in the current SHMA. The term 'shortfall' or 'undersupply', relates to that part of the housing requirement that has not been delivered in the years of the current Plan period that have elapsed to date (2011-2015 as at the time of the Inquiry).
- 14.13 From my reading of the Inspector's Report and the Secretary of State's Decision Letter in relation to Gresty Lane, it seems that the terms backlog and shortfall/undersupply may have been used differently by the different writers. The matter at hand relates to the *supply* of land and not the housing *requirement*. There seems to me to be a tension in this regard, with the stated intention of the Framework at paragraph 47 to boost significantly the *supply* of housing, and the approach of the Council and SWAG which would, in effect, result in a reduction of the buffer by whatever the shortfall was. On that basis, I consider that the shortfall<sup>342</sup> should be added to the FOAN before the buffer is applied (i.e.  $3300 (660 \times 5) + 1375 = 4675$  plus, for the reasons set out above, a 20% buffer of 935, which equates to a five year requirement of 5610 dwellings (1122dpa)). I recognise that the route to this conclusion is different from that set out in the Secretary of State decision referred to, but I believe the approach I have set out steers clear of the possibility of the double-counting problem which he wished to avoid.
- 14.14 C2 and student accommodation: The planning guidance confirms that future **need** for specialist accommodation for older people, broken down by tenure and type (e.g sheltered, enhanced sheltered, extra care, registered care) should be assessed, with the assessment setting out the level of need for residential institutions (Use Class C2).<sup>343</sup> To this end, it goes on to advise that local authorities should identify particular types of general housing as part of their assessment. The same section of the guidance requires that local authorities should plan for sufficient student accommodation, whether it

<sup>340</sup> That includes assessment against the RSS figures as well as the Council's 660dpa figure

<sup>341</sup> APP/R0660/A/13/2209335 Land bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Crewe

<sup>342</sup> The evidence of Mr Barber for the Council was that the shortfall is 1375 dwellings for April 2011-March 2015 – see his Table 7 repeated in his Summary proof (Inquiry Doc 27)

<sup>343</sup> ID: 2a-021-20150326

consists of communal halls of residence, or self-contained dwellings, and whether or not it is on campus.

- 14.15 In terms of **supply**, the guidance confirms that local authorities should count housing provided for older people, including C2, against their housing requirement, the approach to be set out clearly in the Local Plan.<sup>344</sup> It adds that, in decision taking, **evidence** that development proposals for accessible and manageable homes specifically for older people will free up under-occupied local housing for other population groups is likely to demonstrate a market need that supports the approval of such homes. The guidance also confirms that all student accommodation can be included towards the housing requirement, based on the amount of accommodation it releases onto the housing market.<sup>345</sup>
- 14.16 The Council includes new C2 bed spaces uses within the housing land supply, subject to a one third discount (in recognition that new C2 units do not, necessarily, release a corresponding residential property on to the open market)<sup>346</sup> with the equivalent of 115 dwellings included in the five year supply.<sup>347</sup> The SHMA does provide an assessment of housing needs across all age groups, including the elderly population. However, as set out in the evidence of Mr Halman,<sup>348</sup> C2 accommodation has not been assessed as a specific part of the FOAN. There is no objective evidence either, to support the somewhat arbitrary 'rule of thumb' reduction operated by the Council in this regard. Moreover, the planning guidance is clear that the approach to be taken should be determined as part of the Local Plan process - there is no policy in the existing development plan that deals with this, and my attention was not drawn to anything in the emerging Local Plan in this regard. For the time being therefore, I consider that the Council's evidence does not provide a sufficiently robust basis for the C2 figures used in the supply calculations.
- 14.17 Whilst the Council includes an allowance for student accommodation in the supply, it would appear that the student accommodation need has not been considered specifically in the SHMA. Neither was there anything substantive to justify the Council's approach in terms of the amount of accommodation such provision might release onto the housing market. Like the C2 accommodation above, I am not persuaded that it would be appropriate to count such accommodation on one side of the balance and not the other.
- 14.18 Windfall: An allowance can be made for windfall sites in the five year supply where there is compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply.<sup>349</sup> The Framework also indicates that any allowance should be realistic, having regard to the SHLAA, historic windfall delivery and expected future trends, and should not include residential gardens.

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<sup>344</sup> ID: 3-037-20150320

<sup>345</sup> ID: 3-038-20140306

<sup>346</sup> Proof of Mr Barber paragraph 4.2.3

<sup>347</sup> Mr Barber Appendix 1

<sup>348</sup> Mr Halman Appendix 1

<sup>349</sup> ID: 3-024-20140306 and Framework paragraph 48

- 14.19 Windfalls have clearly played an important role in the supply of housing in the District in the past.<sup>350</sup> However, that included a period when the moratorium was in place (2005-2009) which would have suppressed completions between 2008/9 to 2011/12, as well as two extremes of the housing market: a period where the housing market was extremely buoyant (2002-2007) and the economic downturn (2007-2012). Adopting what it considers to be a cautious approach (as set out in its Paper on Estimating a Windfall Allowance)<sup>351</sup> the Council suggests that an average of 161 dpa should be allowed for.
- 14.20 In terms of future trends, there was general agreement that Warwick is an attractive place to live and that consequently, there is a high demand for housing. There is no reason to suppose therefore, that any windfall sites that were to come forward would not be taken up quickly. However, the Authority's allocated sites were virtually exhausted by the middle of the last decade and have not yet been replaced. As a consequence, it would have been heavily reliant in recent years on windfalls. I tend towards the view of the appellant in this regard, that this is not a trend that is likely to continue, since the emerging Plan allocates sites to deliver the majority of the District's housing until 2029, with suitable sites capable of accommodating at least five houses having been included in the supply over the short, medium and long term.<sup>352</sup> Moreover, the inclusion in the emerging allocations of swathes of greenfield, and in some cases green belt land, indicates the limited availability of brownfield land suitable for redevelopment. Furthermore, by their very nature, there is a greater chance of windfall sites coming forward later in the Plan period, as additional sites which cannot reasonably be foreseen at the moment come forward for development. Such opportunities are much more limited in the short term.
- 14.21 All in all, whilst windfall sites may have a part to play in future supply, I am not persuaded, on the evidence before me, that they will come forward at the scale and pace envisaged by the Council. As a consequence, the significant reliance placed on such as part of its five year supply is not well-founded. I also note, in this regard, that its approach is the subject of unresolved objection to the emerging Plan.
- 14.22 Specific sites:<sup>353</sup> During the Inquiry, the Council accepted that one of the sites (No W/11/1618 Site adjacent to 135 Kenilworth Road) identified as providing 12 units in its housing land supply, should not be regarded as deliverable. A number of other sites included by the Council in its supply were also challenged by the appellant. However, no detailed viability assessment was provided to support the concerns raised, and neither was anything other than what was essentially anecdotal evidence provided by either of the main parties in relation to those sites.

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<sup>350</sup> Mr Barber Appendix 3 unnumbered table on page 5

<sup>351</sup> Warwick District Local Plan Estimating a Windfall Allowance: Publication Stage April 2014 (CD 3.15) and Mr Barber Appendix 3 paragraphs 4.6-4.11

<sup>352</sup> Mr Halman proof paragraphs 6.58-6.65

<sup>353</sup> Appendix B to the Summary proof of Mr Barber (Inquiry Doc 27) lists all the sites in the Council's supply. It includes comments by the Council and the appellant in relation to each site.

- 14.23 Pottertons, Portobello Works (W05/1258) 160 units – Permission was granted in 2005 for a residential apartment scheme here. However, the company experienced financial difficulties during the economic downturn and the site stalled completely in 2009. It was subsequently sold on in 2011. Although an application for amendments was submitted in 2013, the Council’s monitoring records show no commencements since the sale of the site. Although the developers have suggested to the Council an intention to re-start on site in 2015, there was no indication by the close of the Inquiry that work had recommenced. On that basis, whilst not necessarily agreeing with the appellant that the site should be removed in its entirety from the supply, I am not persuaded that the total number of dwellings ascribed to it is likely to be deliverable within the next five years.
- 14.24 1 Warwick Street (W/11/0994) 17 units – this conversion scheme is the subject of a prior approval requiring that works commence before the end of May 2016. However, the site has been marketed for 12 months now, generating a lot of interest but with no sale achieved to date. I am also advised that there are problems with the tenure of a rear decked car park which needs to be resolved. Even if the development were to be commenced by the specified date, those circumstances cast some doubt in my mind as to whether all the units would be delivered in the five year period.
- 14.25 Haseley Business Centre (W/12/0138) 15 units – Planning permission was granted in 2012 for the conversion of offices to eight apartments and the erection of seven dwellings. The appellant contacted the agent who confirmed that the approved scheme is unlikely to be built out, with the current permission expiring in August this year. Discussions are ongoing with the Council in relation to a revised scheme, but no application had been submitted by the time of the Inquiry. Again, whilst the site may have the potential to deliver some units within the five year period, I am not convinced that would be developed in its entirety within that timescale.
- 14.26 Of more significance, a SHLAA site (No W/15/0271 Grove Farm, Harbury Lane, Bishop’s Tachbrook) identified as providing 135 houses, was refused against officer recommendation<sup>354</sup> at a planning committee meeting immediately prior to the close of the Inquiry. The absence of planning permission for a site does not necessarily mean that it is not deliverable. However the refusal of permission will, at the very least, cause some delay in delivery, making it unlikely that the number of home identified will all be capable of being delivered in the five year period.

#### *Overall Conclusion on Housing Land Supply*

- 14.27 It might be that, in due course, the Local Plan Inspector concludes that the FOAN is greater than that argued by the Council at this appeal. However, for the purposes of this appeal, and in advance of the formal Examination, I have adopted the lowest of the figures promoted, namely the Council’s figure of 660 dpa. For the reasons set out above, I consider that a buffer of 20% should be added to the FOAN plus the backlog that has accrued, giving a five year requirement of some 5610 dwellings (1122dpa). Based on the Council’s

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<sup>354</sup> Inquiry Doc 35

own supply figures of 5348,<sup>355</sup> that would equate to a supply of some 4.85 years (5438/1122). The supply would reduce further in the light of my concerns in relation to elements of the supply as set out above, irrespective of whether a non-implementation allowance should be applied. That combination of circumstances casts significant doubt on the Council's ability to demonstrate a robust five year supply of deliverable housing land. In those circumstances, pursuant to paragraph 49 of the Framework, Local Plan policy RAP1, which directs the location of new housing, cannot be considered as up to date.

- 14.28 Councillor Bullen (for SWAG) provided very detailed evidence in relation to myriad individual sites which, he argued, should have been included in the housing completions and supply figures. I do not doubt the effort that went in to collecting that information. However, I heard no good reason as to why that data had not been endorsed by the Council. It seems to me that if all the properties the Councillor had identified could legitimately be counted towards supply/ completions, then the Council would have seized upon them in support of its case. It did not. As I set out at the start, it is not the role of appeals such as this to carry out a Local Plan process. It might well be that the case Councillor Bullen makes will be examined in more detail as part of the formal Local Plan process. For the purposes of this appeal though, I am not persuaded that it would be judicious to endorse his figures as part of this appeal.

### Heritage Assets

- 14.29 It was no part of any case that the appeal scheme would have a direct effect on any heritage asset. Whilst the site lies within the setting of a number of designated assets, there was agreement that any harm to the significance of those assets would, in the terms of the Framework, be less than substantial.<sup>[6.2, 7.117, 8.20, 8.30, 9.46, 9.47, 10.27, 10.33]</sup> The Framework identifies the importance of heritage assets in terms of their significance, which is defined as '*The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.*' Paragraph 132 confirms that significance can be harmed or lost by development within the setting of an asset.
- 14.30 As defined by the Framework, the setting of a heritage asset comprises the surroundings in which it is experienced. The extent of a setting is not fixed and may change as the asset and its surroundings evolve. Moreover, elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
- 14.31 Guidance on the setting of heritage assets can be found in the recent English Heritage (now Historic England) publication *The Setting of Heritage Assets*,<sup>356</sup> which supersedes previous English Heritage Guidance with the same title, but

<sup>355</sup> Adjusted from 5360 to take account of the 12 dwellings on the Kenilworth Road site that were agreed should be removed – see paragraph 14.22 above

<sup>356</sup> Inquiry Doc 12



dated 2011. Historic England replaces English Heritage as the Government's adviser on the historic environment and, although not endorsed by Government, weight can be attached to its advice accordingly. The guidance indicates that setting embraces all of the surroundings from which the heritage asset can be experienced, or that can be experienced from, or with, the asset. So, looking at the various assets in turn:<sup>357</sup>

- 14.32 **Warwick Castle** (grade I listed building and part Scheduled Ancient Monument)<sup>[10.12, 10.13, 10.17-19, 10.23, 10.25, 10.63, 10.64, 10.80, 10.83, 10.84, 10.107]</sup> The Castle lies on the southern edge of the town centre, some 1.65 kilometres to the northwest of the appeal site facing south, overlooking the River Avon. This is one of England's premier castles with a long history stretching back to the eleventh century. There is a great deal of medieval fabric with significant later interventions. It was built around a courtyard, with a motte to the southwest of the domestic ranges in the southeast. The western entrance is flanked by C15 towers (Bear Tower and Clarence Tower), the north-eastern elevation being dominated by Guy's Tower and Caesar's Tower, both of which date from the C14.
- 14.33 The Castle is a very fine example of English medieval fortification, used later as a residence for the Earls of Warwick. Its significance, which is unquestioned, derives from its outstanding evidential, aesthetic, communal and historical values, both associative and illustrative, being depicted by Canaletto in the eighteenth century. The communal values are high in terms of its use as a tourist attraction, continuing its function as a centre of economic activity in the town.
- 14.34 It occupies a prominent position, overlooking the Castle Park and landscape to the south. It was intended to defend the crossing of the River Avon, which led to an historical relationship with the old Castle Bridge and the historic town which, together with the Castle Park, forms the Warwick Conservation Area. The Castle is a dominant and defining feature as perceived from within the town to the north and northwest, where the tight urban grain of development expands up to Castle boundary and within the Castle courtyard, the walls create an enclosed character, secluded from the town to the north. Conversely, to the south and south east, the landscape is more open. The landscape within the Park, immediately to the south of the Castle has benefitted from an input particularly by Capability Brown and was progressively expanded to the east, with the Banbury Road being moved to its current position. It was designed intentionally to include views of the Castle.
- 14.35 The elevated position of the Castle within the wider landscape means that its setting is wide ranging, extending further than the Castle Park. At present, there is no intervisibility between the appeal site and the Castle, even when viewed from the top of the towers. If built however, it seems likely that the roofs of some of the buildings proposed may be seen from the towers. That said, any views would be glimpsed and would be seen in the context of glimpses of other existing and planned development in the wider landscape,

<sup>357</sup> The information on the assets that follows is derived from, among other places, ES chapter 9, Heritage Setting Assessment (Inquiry Doc 16) and the proof of Mr Crutchley

with much intervening vegetation. All in all, it seems to me that whilst the development may be visible in views from the Castle towers, the degree of separation would be such that there would be no harmful effect in terms of the special interest or significance of the Castle.

- 14.36 **Remains of Old Castle Bridge** (grade II\* and Scheduled Monument)<sup>[9.111, 9.120, 9.121, 10.71]</sup> The old bridge dates from the medieval period and now lies in picturesque ruins at the northern end of the Park, at the foot of the Castle walls. Its significance derives mainly from its architectural interest, together with its evidential, historical and aesthetic values. Together, they reflect its contribution to the development of the townscape of Warwick and the form and morphology of Castle Park, serving as an illustration of the changing form of bridge construction over the centuries, especially when seen in the context of the existing bridge located to the north-east. The old bridge forms part of the classic and characteristic view of Warwick Castle from that later (new) bridge across the Avon.
- 14.37 In terms of setting, the old bridge has a close physical relationship with the Castle and the town, the later bridge and the river. There are no outward views from the remains of the bridge that encompass the appeal site and the bridge cannot be seen from the appeal site. I am satisfied, in this regard, that the appeal site makes no contribution to the setting of the old bridge. As such, the development proposed would not harm its special interest or significance.
- 14.38 **Castle Bridge** (grade II\*)<sup>[7.98, 7.104, 7.114, 7.115, 8.23, 9.45, 9.119, 9.121, 9.122, 10.16, 10.39, 10.43, 10.71, 10.108]</sup> The bridge, of sandstone ashlar, was constructed between 1789-1793 to replace the earlier structure referred to above. It has a single span and connects the northern end of the realigned Banbury Road and the town. Its significance derives, in part from its historic interest, as an important crossing point on the Avon, forming part of the overall experience of travelling into and out of the town. Significance also derives from its illustrative and aesthetic values, having been designed by David and William Saunders. In particular, it forms a significant viewing point from which to appreciate the Castle.
- 14.39 The setting of the Bridge derives from its association with the Avon, the modern alignment of Banbury Road and the Castle. It is visible from the northern part of Banbury Road on the approach to Bridge End. However, due to its design, the Bridge has little profile in the wider area. In particular, it is neither seen nor experienced from the appeal site, which lies some 1.45 kilometres to the south-east, beyond the curving eastern boundary of the Castle Park and which is passed long before the bridge eventually comes into view. Moreover, as confirmed in the evidence of Mr Parkinson, there would be no impact on the structural integrity of the bridge as a consequence of the proposal. I am satisfied therefore, that the appeal scheme would cause no harm to the special interest and significance of this heritage asset.
- 14.40 **Warwick Castle Lodge Gatehouse** (grade II)<sup>[7.104, 7.114, 7.115]</sup> The Gatehouse was constructed at the same time as the current bridge, as part of the new route into Warwick at the northern end of Banbury Road. Its significance derives not only from its architectural interest, but also its historic interest as

an important entrance to the Castle, close to a crossing point on the Avon, forming part of the overall experience of travelling into and out of the town. Like the bridge, its setting derives from its association with the Avon, the modern alignment of Banbury Road, and the Castle. Due to its siting, the Gatehouse has little profile in the wider area. In particular, it is neither seen nor experienced from the appeal site, which lies some 1.45 kilometres to the south-east, beyond the curving eastern boundary of the Castle Park. The appeal scheme would cause no harm to the significance and special interest of the Gatehouse.

- 14.41 **Church of St Nicholas** (grade I)<sup>[7.98, 8.5, 8.23, 9.45, 9.121, 10.39, 10.43, 10.71]</sup> – The church was wholly reconstructed on the site of an earlier Medieval church at around the time of Brown’s improvements to the Park in the latter half of the C18. Evidentially, its significance derives from its *‘mixed perpendicular and flamboyant style by Thomas Johnson of Warwick’* and also in the way its form contributes to the urban fabric of the town. Its communal value lies within its central role as a place of worship in the parish, as well as providing a landmark, identifying ‘arrival’ at Warwick for travellers approaching the town from the south along Banbury Road. Its historic value derives principally from its visible expression of longstanding worship on the site.
- 14.42 Its setting is defined largely by its associated churchyard, the immediate streetscape and the views towards it from the final section of Banbury Road as it rounds a bend at the top of Temple Hill and descends towards the town, which views emphasise its aesthetic value. The church, which lies some 1.76 kilometres to the north-east of the appeal site, has no historic or functional inter-relationship with the appeal site<sup>358</sup> and is not seen from the site, which would have been long since passed by a traveller before any experience of the church is obtained. Those circumstances persuade me that the setting of the asset, and thus any significance that derives from its setting, would not be harmed by the development proposed.
- 14.43 **Church of St Mary (including Beauchamp Chapel)** (grade I)<sup>[7.133, 9.32, 10.87]</sup> The church is located within the historic medieval and later core of Warwick, more than 2 kilometres from the appeal site. Its rebuilding, following the great fire of 1694, was supervised by Sir Christopher Wren. In addition to its architectural and historic interest, the significance of the church derives from its communal value as a place of worship and focal point for the community for over 1500 years, and its aesthetic values as an illustration of changing architectural progression over that period.
- 14.44 Its setting is defined largely by its functional, visual and aesthetic relationship with the surrounding townscape. The church tower can be seen over a wide area, serving to identify its relationship with the parish and the location and identity of the town. However, there is only a distant glimpsed view of the tower from a very localised area in the north of the appeal site. That degree of separation leads me to the view that the setting of the asset, and thus any significance that derives from its setting, would not be diminished by the development proposed and I find no harm in this regard.

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<sup>358</sup> In fact the appeal site lies within a different parish.

- 14.45 **The Toll House** (grade II)<sup>[7.100, 7.104, 7.114, 7.115, 8.4, 8.5, 9.122, 10.54, 10.71]</sup> The building, which lies almost 1 kilometre to the north of the appeal site, was constructed in the late C18/early C19. In addition to its special architectural and historic values, its significance derives partly from its evidential and aesthetic values, principally in terms of the way it expresses the development of the local road network and transport infrastructure through the Georgian period, and also in terms of its inter-relationship with the Banbury Road/Heathcote Lane junction on the approach to Warwick from this direction. Its setting is defined by its relationship with the roads by which it is now surrounded, separating it from the wider landscape.
- 14.46 Even were there to be an increase in traffic passing the building as a consequence of the appeal scheme, I am not persuaded that that would, necessarily, result in any harm to its significance and special interest, given its location at the centre of an already busy traffic intersection.
- 14.47 **Warwick Castle Park** (Grade I Registered Park and Garden)<sup>[3.4, 6.9, 7.85-7.104, 7.134, 7.135, 8.4, 8.6, 8.14-8.26, 8.28, 8.30, 9.1(e), 9.37-9.47, 9.105-9.125, 10.2, 10.11-10.54, 10.59-10.72, 10.74-10.81, 10.83-10.85, 10.112, 10.126]</sup> and **Warwick Conservation Area**<sup>[7.84, 8.6, 8.64, 9.1(e), 10.11, 10.16, 10.20-10.29, 10.34, 10.62, 10.83, 10.86, 10.87, 10.90, 10.92]</sup> (I deal with the two together since the southern extent of the Conservation Area encompasses and shares a boundary with the Park.) The majority of the discussion on heritage assets centred on the Park and on the Banbury Road approach to the town. A substantial amount of evidence was produced by the various parties to the Inquiry in relation to the history of the Park, which was examined over the best part of a week.
- 14.48 Since the C14, the land to the south of the Castle has been associated with it. The Park, created in the C18 to enhance the setting of the Castle was, essentially, the work of two men: Francis Greville, Baron Brooke and Earl of Warwick and his son George, second Earl of Warwick. The Park includes work by Lancelot 'Capability' Brown and was also influenced by other notable C18 figures.
- 14.49 In around 1784, work started on realigning that stretch of Banbury Road from The Asps into Warwick, to run further to the east, along the external perimeter of the extended Park. That is the route it continues to follow today, running between the appeal site and the Castle Park for part of this stretch. The final link with the town was created with the construction of the 'new' Castle Bridge' and the Castle Gatehouse referred to above.
- 14.50 Whilst the Park is clearly an important and integral part of the setting of the Castle, it is a heritage asset in its own right, with its own associated setting. That the appeal site lies within the setting of the Park is not in dispute. Rather, the differences of opinion relate to the extent to which that setting contributes to the significance of the grade I registered Park and, if it is of some significance, how that significance would be affected by the development proposed. Much of the discussion in this regard related to the purpose of the tree belt that runs around the eastern perimeter of the Park, along the boundary with the realigned Banbury Road – whether it was intended that there should be views out of/into the Park, or whether it was a

thick, dense belt, that precluded such views. Whatever its intended function, there clearly was a tree belt, the remains of which are still evident today.

- 14.51 The evidence before me is that much of the wider agricultural land, including the appeal site, was in the control of the Castle estate, in addition to the farming activities that took place within the Park. There is clearly an historic relationship therefore, between the appeal site and the Park. I am mindful, in this regard, of the observations of Dr Miele for Hallam Davis<sup>359</sup> that "*The creation of ornamental parklands should not be read in isolation from the development of agriculture and the improvement of landed estates more generally*" and that "*...the reorganisation of the landscape, from the designed features surrounding the country house to the economies of the agrarian land, were part of the same process, thus linking the country house to the surrounding landscape.*"
- 14.52 Clearly, whatever the intended function of the tree belt around the Park, the agricultural land outside still had a role to play, the Historic England Report advising that:  
*"...recent research on the landscapes of landed estates has emphasised the importance of examining them as a whole rather than drawing too sharp a distinction between the designed core and the surrounding farms and plantations. Many aspects of estate landscapes served both functional and aesthetic purposes, uniting the two contemporary aims of beauty and utility...A fuller understanding of the parks created by Brown and his contemporaries thus arguably requires an appreciation of change in the wider countryside, particularly through enclosure, tree planting and the progressive remodelling of estate landscapes."*<sup>360</sup>
- 14.53 I recognise that, in the past, travellers would have passed through mile after mile of possibly similar farmland in travelling to Warwick by coach from Banbury, leading some to think what is so special about this particular area of farmland. Here however, the open, pastoral nature of the appeal site provides a foil to the substantial woodland planting and tree belts (whatever their function) that distinguish the Castle Park as a distinctive feature in the surrounding landscape, with this part of Banbury Road still having an informal country lane feel. It is that role, in terms of its juxtaposition with the formal Park boundary, which makes it significant in terms of the special interest of the Park. The open rural characteristics of the farmland still have some resonance with the field characteristics at the time of the creation of the Park and, although the condition of the site has been degraded somewhat, it is still understood as such. In the language of Historic England's Note 3 (The Setting of Heritage Assets)<sup>361</sup> this is a case where "*Settings of heritage assets which closely resemble the setting in which the asset was constructed are likely to contribute to significance.*" As an integral part of that landscape, the appeal site continues to contribute to the significance of the heritage assets that are the Castle Park and the Conservation Area, the boundary to which is contiguous with the Park at this point.

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<sup>359</sup> Dr Miele Appendices at paragraph 4.4 p. 136

<sup>360</sup> Page 32

<sup>361</sup> Inquiry Doc 12 Page 5

- 14.54 Although current boundary features within the appeal site could be enhanced as part of the proposed landscaping works, the relatively small, narrow paddocks and dense tree screen that would be created along the Banbury Road frontage would bear no resemblance to the historic setting of the Park. Moreover, as acknowledged by Mr Crutchley for the appellant,<sup>362</sup> notwithstanding any particular purpose of the tree belt, it was a clear statement about the wealth, status and control of the Park's owners, illustrating their ability to enclose a significant area of land.
- 14.55 It seems to me that the formation of a dense tree screen along the opposite side of the Banbury Road, albeit set back behind a narrow fieldscape would, in effect, compete with what should be the dominant feature here, further detracting from the significance of the Park. The erection of up to 900 dwellings, a school, local centre etc, would create a considerable urban presence on what is open farmland and would mean that the most important aspect of the appeal site, its openness, would be lost, detracting from the legibility of the Park and diminishing considerably the ability to appreciate its significance and the significance of the Conservation Area. Although, in the parlance of the Framework, that harm would be less than substantial there would, nevertheless, be real and serious harm to those designated heritage assets that will need weighing against any public benefits of the scheme proposed.
- 14.56 There was also much discussion about whether this part of Banbury Road comprised what was referred to as a 'planned approach' to Warwick and the effect of the development proposed on that. I deal with this later under Character and Appearance.
- 14.57 **The Aspens** (grade II)<sup>[3.4, 6.9, 7.80, 7.83, 7.86, 7.87, 7.92, 7.94, 7.98, 7.103, 7.110-7.112, 8.14, 8.16, 8.27, 8.30, 9.19, 9.41, 10.62, 10.69, 10.70, 10.75, 10.76]</sup> The Aspens is a C17 dwelling with a timber framed rear range set at right angles to an C18 red brick façade facing onto Banbury Road. The date of its construction suggests that it may pre-date the realignment of the road, the re-fronting being a likely consequence of the desire of the occupants to face outwards onto the road.
- 14.58 Its significance derives predominantly from its architectural/aesthetic and historic values, as well, albeit to a lesser extent, as its evidential value, expressing a transitional approach to vernacular building techniques. Whilst modern agricultural buildings have been constructed to the rear, it derives some significance too from its close association with the open farmed landscape of The Asps. That historic, functional and visual link would be severed by the belt of planting proposed and the built development beyond, compromising the setting and significance of the asset. That said, I consider the harm in this regard, to be limited.
- 14.59 **Asps Cottage (formerly Keepers Cottage)** (unlisted - not be confused with the nearby Asps Cottages, a small unlisted terrace of cottages of likely early C20 origin (somewhere between 1938-1955)<sup>[3.4, 6.9, 7.110, 7.113, 8.16, 9.41, 10.62, 10.69, 10.70, 10.77, 10.129]</sup> Asps Cottage is located immediately to the south of The Aspens. It has a brick façade facing the road, whereas the rear has an older

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<sup>362</sup> Paragraph 4.64(2)

appearance, with an apparently similar heritage to The Aspens, in that its frontage was changed at the time the road was realigned. In all likelihood, it housed workers from the Castle estate. Any significance derives from its limited architectural and historic interest, as well as its evidential value in having a relationship with Banbury Road and The Aspens, and with the farmland beyond. Whilst the physical relationship between the two buildings would not be affected, the loss of its farmland setting would diminish its limited interest, further still, although any harm in this regard would be negligible.

#### *Overall Conclusion on Heritage Assets*

- 14.60 14.60 Among other things, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for any works or development affecting the setting of a listed building, special regard is to be had to the desirability of preserving that setting. However, there is no equivalent statutory provision for the setting of other designated or non-designated heritage assets.
- 14.61 In terms of listed buildings, I have found harm to significance only in relation to The Aspens. Such harm that there would be is minimal, and definitely less than substantial. Nevertheless, the courts have confirmed that, for the purposes of deciding whether there would be some harm, the desirability of preserving the setting of listed buildings was a matter that should be given considerable importance and weight in the balancing exercise.<sup>363</sup>
- 14.62 With regard to heritage assets that are not listed buildings, both designated (for example registered parks and gardens and Conservation Areas) and non-designated (such as unlisted buildings of heritage interest) the Framework confirms that the significance of a heritage asset can be harmed or lost by, among other things, by development within its setting. In addition, Local Plan policies DAP4, DAP8 and DAP11 together, with corresponding policies in the emerging Local Plan (SC0, HE1, HE2 and HE4) seek to preserve or enhance the special interest of heritage assets.
- 14.63 I have found considerable harm to the significance of the grade I registered Castle Park and, by association the Conservation Area, both of which are designated heritage assets. There would also be some, albeit very limited harm to the significance of the non-designated asset that is Asps Cottage. There would be conflict, therefore, with the relevant policies and also with one of the overarching core planning principles at paragraph 17 of the Framework, namely the need to '*conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.*' Framework paragraph 58 also requires that decisions should, among other things, '*respond to local character and history*' with paragraphs 126 and 131 confirming that '*heritage assets are an irreplaceable resource*' that should be conserved '*in a manner appropriate to their significance*' with account to be taken of '*the desirability of sustaining and enhancing the significance of heritage assets*'. The harm I have identified means that the development would not meet the 'conserve and enhance'

<sup>363</sup> Barnwell Manor v E Northants DC, English Heritage, National trust and SSCLG [2014] EWCA Civ 137

thrust of the local policies and the Framework. The harm, which is significant, attracts considerable weight which is dealt with later in the overall planning balance.

### **Character and Appearance**<sup>[7.131-7.135, 8.2-8.13, 9.1(b)(c), 9.29-9.36, 10.73-10.79, 10.122-10.126]</sup>

- 14.64 The appeal site, which comprises some 56.6 hectares of agricultural land, lies in the open countryside beyond any currently defined development boundary. It is surrounded largely by further agricultural land, with Warwick Castle Park to the west on the opposite side of the A425 Banbury Road.
- 14.65 One of the core principles of the Framework requires that planning takes account of the varying roles and character of different areas and recognises the intrinsic character and beauty of the countryside. Local Plan policies DP1 and DP3 require, among other things, that new development harmonises with, or enhances, the existing settlement in terms of physical form and land use and relates well to landscapes features. Development is also expected to protect and enhance the landscape character of the area, respecting its historic character.
- 14.66 The Asps lies within the extensive National Character Area 96 'Dunsmore and Feldon'.<sup>364</sup> At a more local level, the site forms part of the Feldon Parklands Landscape Character Type, as defined in the Warwickshire Landscape Guidelines (1993).<sup>365</sup> Reflecting the National Character Area characteristics, the Guidelines confirm that the Feldon Parklands<sup>366</sup> comprise an agricultural region, largely unaffected by urban or industrial development and thus is an area that has a strong rural character. I note, in this regard, that the name Feldon refers to the Old English term *feld*, meaning 'open cleared land.'
- 14.67 Characteristic features of the Parklands landscape include a rolling topography where open summits contrast with enclosed wooded valleys. Large blocks of woodland and smaller coverts are a key component of this farmed landscape, helping to create a sense of scale and enclosure. Wooded stream lines, belts of trees and scattered hedgerows reinforce that impression and, together with the woodland, unify an otherwise intensively farmed landscape with a poorly defined pattern of large sized fields. It is also characterised by large country houses set in mature parkland, a nucleated settlement pattern of small estate villages, and large isolated brick farmsteads. The appeal site and the neighbouring fields are shown as lying within an 'enhancement zone', where the intention is to conserve and enhance the overall structure and wooded character of the landscape.<sup>367</sup>
- 14.68 For the appellant, it was argued that the appeal site does not comprise a good example of the Feldon Parklands landscape. However, the site is but one part of the much more extensive Parklands landscape and a single parcel of land is unlikely to include all the characteristics of a landscape type. I saw that the site does have some detracting features, but it also has many positive attributes. It is presently of obvious open rural character, its large fields and

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<sup>364</sup> Environment Statement Appendix 7 and CD 9.2

<sup>365</sup> CD 3.47

<sup>366</sup> Ibid page 62

<sup>367</sup> Ibid page 70



hedgerows being characteristic of the local agricultural landscape, although I recognise that the hedgerows are degraded in parts and that a number of the roadside trees are past their best. The site has an attractive rolling topography which is clearly seen when travelling along the Banbury Road as it dips down to the wooded Turnbolls Garden and the Tach Brook (together with its associated ponds) and from public footpath W105 which runs through the appeal site. The site forms part of an historic farmstead, once part of the Castle estate, with adjacent cottages also suggesting estate origins, all of which are representative of the landscape type. Moreover, looked at in its context, the setting of the wooded margins of Warwick Castle Park and the rolling predominantly agricultural setting to the south and east very much influence and enhance the character of the site and again are synonymous with the landscape type. On balance, therefore, I consider that the appeal site does have some very positive landscapes attributes.

- 14.69 Paragraph 7 of the Framework points out that, amongst other matters, the planning system should contribute to protecting and enhancing the natural, built and historic environment. Section 11 of the Framework provides more information on this, with paragraph 109 introducing the term 'valued landscapes' which, it indicates, should be protected and enhanced by the planning system, although the term 'valued landscapes' is not defined.
- 14.70 Whilst the appeal site does not form part of any designated landscape, it is considered by many, as demonstrated by the representations at both application and appeal stage, to make a positive contribution to the landscape setting of historic Warwick. I have no doubt that the current pastoral openness of the appeal site is highly valued by residents in this regard. However, the phrase 'valued landscapes' cannot simply mean valued locally, otherwise most areas of greenfield land adjacent to an urban area would be likely to be valued by those who regularly experience them.
- 14.71 A more detailed study of the area was carried out in 2009 by Mr Morrish on behalf of the Council to inform the LDF process.<sup>368</sup> The study assessed the landscape value of a number of land parcels to the south of Warwick and Leamington Spa, the appeal site forming the southern portion of a larger 130 hectare parcel (known as land south of Gallows Hill). The assessment found that the site had a high landscape value, its predominantly agricultural and rural landscape being important to the setting of the existing settlement and Warwick Castle Park which is also within Warwick Conservation Area. It concluded that development of that land would be likely to greatly alter perceptions of Warwick and Leamington Spa, particularly on the two main approaches to the towns from the south, along Europa Way and Banbury Road. As a consequence, the land was not included in the 2009 Preferred Options.
- 14.72 In 2010, the Council suspended the LDF process and started work on a new Plan. By early 2012, following a strategic housing land availability assessment (SHLAA) that process had reached site allocations stage. Mr Morrish was asked to look again at a number of key sites throughout the District, including

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<sup>368</sup> CD 3.30

land immediately to the south of Gallows Hill (SHLAA refs W7 and W26) and the appeal site (SHLAA reference W27) and to advise on landscape matters. His assessment proceeded on the basis that some development may be required in areas previously identified as being of high landscape value. After re-assessing the land south of Gallows Hill and the appeal site, he still considered them to be particularly significant to the setting of Warwick and Leamington Spa and that, in their present state, helped to retain a rural approach to the towns, in the case of Banbury Road almost all the way to the historic medieval core of Warwick. The heritage of Warwick makes it a significant tourist destination and he recommended that the land be safeguarded from development. He did, however, offer that, with substantial green infrastructure, an argument could be made for a limited amount of urban expansion on the land immediately south of Gallows Hill, to the north of the appeal site opposite Warwick Technology Park (SHLAA refs W7 and W26).

- 14.73 Although, contrary to that study, the subsequent iteration of the Preferred Options Plan (May 2012) included both sites,<sup>369</sup> it was closely followed by the June 2013 Revised Development Strategy, which included only the land opposite to the Technology Park,<sup>370</sup> excluding The Asps largely, it would seem, following consultation responses<sup>371</sup> and the publication by the Council of a study entitled 'The Setting of Heritage Assets, The Asps, Warwick'.<sup>372</sup> It is that latest iteration of the Preferred Options that informed the Publication Draft of the Local Plan 2011-2029 which was submitted to the Secretary of State in January 2015.<sup>373</sup>
- 14.74 The background set out above suggests to me that the site is more highly valued than other open agricultural land around the fringes of the towns.
- 14.75 The landscape professionals representing the two main parties undertook landscape and visual impact assessments of the proposed development using a methodology based on GLVIA3.<sup>374</sup> Unsurprisingly however, given that subjective judgments are involved, there are differences between the assessments.
- 14.76 For the appellant, it was maintained that the overall magnitude of change for the wider landscape context would be low, giving rise to a minor to minor/negligible adverse residual effect that is not considered significant in landscape terms. With regard to the site itself, although the development would represent a very high magnitude of change, that would be to a low sensitivity landscape, giving rise to a moderate adverse level of effect which would be significant. However, it was maintained that there would be a very high beneficial magnitude of change to the landscape fabric and biodiversity potential of the site. As a consequence, it was concluded that the residual effect on this landscape aspect would be moderate beneficial, which is locally of significance.<sup>375</sup>

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<sup>369</sup> CD 4.7

<sup>370</sup> CD 4.8

<sup>371</sup> CDs 4.2 and 4.3

<sup>372</sup> CD 4.6

<sup>373</sup> CD 4.1

<sup>374</sup> Guidelines on Landscape and Visual Imp[act Assessment Third Edition (April 2013)

<sup>375</sup> Chapter 7 of the Environmental Statement - Section 6

- 14.77 In contrast, the Council's case was that the landscape has a medium to high sensitivity to the type of development proposed and, when the scheme is considered as whole, including substantial infrastructure requirements, would result in a high magnitude of landscape change. The significance of the effects for local visual receptors is considered to be substantial/moderate to substantial, with the receptors being considered as sensitive (nearby residents and users of the footpath). Although passing road users are considered less sensitive visual receptors, the site would still be prominent from Banbury Road and Europa Way, including tourists, who might be considered as more sensitive. Whilst the landscaping proposed, including the planting belts, would help mitigate the impact over a long time scale (some 15 years plus) there would also be loss of vegetation and urbanisation of the setting, the development extending the settlement some 2 kilometres further south on Banbury Road than is currently the case.
- 14.78 For SWAG, and others, it was maintained that the development would result in significant change not only within the site itself, but also when viewed from Banbury Road (among other places). It was maintained that the 'fieldscape' buffer and tree belt behind would not be characteristic of the area and would not mitigate the impact of the development proposed, the character and appearance of the landscape type deriving from its open and agricultural nature, notwithstanding that the site lies within an enhancement zone, as defined by the Warwickshire Landscape Guidelines.
- 14.79 Whilst I have been guided by the main parties' assessments I have, because of their different findings, formed my own assessment of the issues, based on my observations made during the site visit.
- 14.80 There is a distinct absence of substantial built form on the site itself and, notwithstanding the small cluster of buildings adjacent to a part of the site on the Banbury Road frontage, and Park Farm, there is an absence of obvious built form in the immediate locality. It was agreed for the appellant that the Toll House at the foot of Gallows Hill, some way to the northeast of the appeal site, marks the exit from the town into the countryside, the road undulating thereafter through a wooded corridor to The Asps. Here, the landscape opens out to the east and, once past Castle Park, to the south west, contrasting with Nursery Woods and the tree belt edging Castle Park along this part of Banbury Road. Throughout this journey, there is no view of any part of the built up area of Warwick or Leamington, save for heavily filtered peripheral glimpses of the Technology Park immediately on leaving Warwick.
- 14.81 On the journey into Warwick, heading north from Grey's Mallory Roundabout close to the southern end of the appeal site, I agree with the Council that whilst the spire of St Nicholas Church is seen from the top of Temple Hill, just to the north of the appeal site, views of the town itself are screened out by trees and there is no sense of 'arrival' really until the Toll House is reached. That said, and whether or not the approach is 'planned' as argued by Dr Hodgetts and others, once past Greys Mallory, I consider the approach to Warwick passing The Asps to be not only very attractive, but also particularly sensitive, given its relationship with Castle Park as set out earlier. Moreover, the Banbury Road approach takes the countryside almost to the heart of historic Warwick, the open undeveloped nature of the appeal site making a

significant contribution to the character and appearance of that approach. I am persuaded, therefore, more towards the Council's assessment that, in its context, the landscape here has a medium/high sensitivity to the type of development proposed.

- 14.82 Whilst the entry to the town along Europa Way also has a marked rural feel, lined by trees beyond which stretches open farmland, including The Asps, it is not as sensitive as the approach along Banbury Road. That said, there would be some impact as a consequence of the proposed highway alterations along this road, including the proposed vehicular access from the development onto Europa Way, but that would be in the context of its planned dualling.
- 14.83 The appellant has endeavoured to mitigate the impact of the development scheme by setting it back behind an 80 metre 'fieldscape' along the Banbury Road frontage, backed by a 40 metre belt of trees. Even so, and even when that planting is eventually established (some 15+ years down the line) the change from open, agricultural land to an estate of some 900 dwellings, plus a school, local centre and 500 space Park and Ride facility would, in my view, still be readily discernable as a significant urban extension. This is a relatively prominent site on a main approach to Warwick for those heading in from the south along the A425 Banbury Road. Although there are some detractors, including an electricity substation, associated overhead powerlines and the traffic police depot, these are located adjacent to a major traffic interchange (Greys Mallory) and are very self contained. They do not impinge to any significant degree on the pastoral landscape of the appeal site.
- 14.84 The emerging Local Plan has allocated a number of greenfield sites to the south of Warwick and Leamington Spa for housing to help meet the FOAN as set out in the emerging Plan. However, those sites are contiguous with existing boundaries to the urban area. In effect, the appeal site 'leapfrogs' further into the open countryside. It is bound to the east, in part, by allocated site H02 in the emerging Plan. However, even when that site is built out (assuming that it is retained in the emerging Plan) the appeal site would be separated from built development on site H02 by a proposed country park that would provide a new soft edge to the urban settlement, isolating it from the appeal site. To the north, on the far side of Turnbolls Garden (to the south of Gallows Hill) are open fields. Whilst the eastern half of that land is the subject of a current appeal against refusal of planning permission, the outcome is as yet unknown. Accordingly, the appeal scheme would comprise an isolated enclave of development which would be poorly related to Warwick in physical terms and which would encroach into the countryside.

#### *Overall Conclusion on Character and Appearance*

- 14.85 It is clear that there is a difference between a designated landscape and a valued landscape. Whilst this is not a designated landscape, I am in no doubt that, for the forgoing reasons, it can properly be considered as a valued landscape. Whilst the planting proposed may be beneficial, in terms of strengthening existing hedgerows and the planting of more trees, that would be as part and parcel of a significant development scheme which, of itself, would erode rather than protect the existing pastoral landscape. Given the sensitivity of the landscape hereabouts, I consider that there would be very substantial harm to the established character and appearance of the area.

There would be conflict, in this regard, with Local Plan policies DP1 and DP3, and policies DS3, DS4, H0 and SC0 of the emerging Local Plan, which together seek to protect such interests. It would also be at odds with the aims and objectives of paragraph 109 of the Framework, as it would fail to protect and enhance a landscape which is of clear value, and with paragraph 126 which, among other things, requires that new development should make a positive contribution to local character and distinctiveness.

## Highways

**Park and Ride** [1.6, 6.6-6.8, 7.106(v), 7.126, 7.130, 7.135, 7.138-7.159, 7.162(i)(vi), 7.167(iv), 8.11, 8.12, 8.64, 9.1(a)(d), 9.6, 9.7, 9.26, 9.51, 9.52, 9.86-9.61, 9.103, 10.113, 10.120, 10.127, 11.6, 13.6-13.13]

- 14.86 Notwithstanding that the District Council did not pursue the highways reason for refusal at the Inquiry, the highway authority continued, as set out in SoCG2 and in correspondence from the County Council,<sup>376</sup> to express concerns in relation to the viability, delivery, management and service provision of the proposed Park and Ride, continuing with the position that the authority now preferred a virtual Park and Ride scheme over the conventional facility proposed and that, as a standalone scheme (as opposed one combined with a Park and Ride facility to the north of the towns) the proposed Park and Ride would increase traffic movements in the Warwick and Leamington Spa.
- 14.87 Councillor Holland, speaking in his capacity as a County Councillor, took a slightly different stance stating, among other things, that there was no transport common ground, that there was no credible transport strategy and that, contrary to the position of the County Council's Strategic Director for Communities, the three County Councillors for Warwick did not support a Park and Ride. SWAG and others, also took issue with the traffic generation figures relied on by the appellant and with the accessibility of the location.
- 14.88 There has been national support for the general principle of Park and Ride since the mid-1990s,<sup>377</sup> with local support in Warwick since 2000 at both District and County level.<sup>378</sup> Currently, policy SSP5 of the Local Plan defines an area of search for the development of a bus-based Park and Ride at Greys Mallory, confirming that other development within the area of search will not be permitted if it would be likely to prejudice implementation of such a facility. Policy TR5(c) of the emerging Local Plan identifies areas of search for virtual Park and Ride facilities both to the north and south of Warwick and Leamington Spa.<sup>379</sup> The areas to the south continue to include Greys Mallory.
- 14.89 The County's Strategic Transport Assessment Phase 4 of April 2014 (STA4)<sup>380</sup> prepared in support of the emerging Local Plan, identifies a broad package of transport schemes to mitigate the transport impacts of planned growth for the area up to 2028. STA4 concludes that more work is needed on sustainable transport improvements, which would form part of the mitigation package

<sup>376</sup> Inquiry Docs 28 and 31.

<sup>377</sup> Section 3.2 of Appendix C to Mr Pinkett

<sup>378</sup> Ibid Section 3.3

<sup>379</sup> A virtual Park and Ride comprises a car park site served by an existing bus route. A conventional arrangement such as that proposed at the appeal site, comprises a car park with facilities (including signage, ticket machines, toilets, shelters and lighting ) and a dedicated bus service.

<sup>380</sup> CD 3.40

required to support housing and employment growth proposals and to encourage modal shift. That work has since been undertaken by Atkins who, overseen by a steering group that included representatives from both the County and District Councils, and guided by engagement with wider stakeholders, produced the Warwick and Leamington Spa Transport Strategy: Review of Sustainable Transport Alternatives for the County Council in January 2015 (RSTA).<sup>381</sup> Among other things, the RSTA identifies the components that should comprise the future transport strategy for Warwick and Leamington Spa. They include the introduction of Park and Ride north and south of the towns (albeit a virtual Park and Ride provision) with targeted bus priority enhancements and improvements to bus stop infrastructure on key routes.

14.90 The development proposed comprises a residential led scheme that includes a conventional Park and Ride facility with capacity for 500 parking spaces and scope for expansion to accommodate a further 250 spaces. The submitted plans show the facility as lying within the Greys Mallory area of search. It would be next to an existing police traffic base and an electricity sub station and, as set out below, it can be accessed safely from the highway network. There was no evidence before the Inquiry to indicate that any other land within the search area to the south of the towns was currently available for the development of such a Park and Ride facility (virtual or otherwise). Indeed, SoCG2 sets out that The Asps is one of two favoured locations on the south side of the urban area. I find no inherent conflict therefore, with policy SSP5 of the current Local Plan, or with policy TR5 of the emerging Plan. It also seems to me that a Park and Ride of some sort continues to be an integral part of the Council's publically available sustainable transport strategy.

14.91 The application is accompanied by a planning obligation dealing specifically with the Park and Ride.<sup>382</sup> Among other things, it ensures that the scheme would be fully operational no later than first occupation of any dwelling on the site and sets out management arrangements and level of service provision for ten years, with a ten year Park and Ride bus services contract with a local bus company being handed up to the Inquiry.<sup>383</sup> The planning obligation also requires that the owner shall submit an annual monitoring report for at least ten years and, until such report demonstrates that the Park and Ride is profitable on a costs against revenue basis; that a contract for the Park and Ride to be operated (or procurement of the continuation of that service) until the monitoring report demonstrates that it is profitable on a costs against revenue basis; and that the Park and Ride shall not be marketed to a private operator unless the monitoring report demonstrates that it is profitable on a costs against revenue basis. SWAG was concerned that, under in the terms of the obligation, whilst the scheme could be deemed to be profitable by being as little as a few pounds in the black, that would not mean that it was necessarily viable and so would not be an attractive proposition for the Council, or to an independent operator, at the end of the ten year period. Be that as it may, I

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<sup>381</sup> CD 3.41

<sup>382</sup> Inquiry Doc 57

<sup>383</sup> Inquiry Doc 23

am not persuaded that it is realistic to require the developer to operate the facility in perpetuity, or set some arbitrary profitability figure.

14.92 I recognise that the County Council would wish to avoid long term liability, and am mindful that the second letter from the County Council's Strategic Director for Communities<sup>384</sup> indicates a preference for a virtual Park and Ride scheme using existing bus routes. However, the Local Transport Plan seems to confirm that the change in the County Council's aspiration from a conventional Park and Ride scheme to a virtual one, relates to the lack of progress in securing a site or funding for a conventional scheme, a virtual scheme being an arrangement that could come forward with third party funding.<sup>385</sup>

14.93 The Park and Ride proposed would be entirely funded for the first ten years by the appellant and, based on the evidence that was before the Inquiry, I have no reason to suppose that it would be unrealistic to expect that the Park and Ride would not become viable at around year ten of the anticipated 16 year phased build period for the development. All in all, I am satisfied that the arrangements secured by the planning obligation, in combination with the contract and planning conditions would, were the appeal to succeed, provide sufficient detail and security over a reasonable period in terms of the viability, delivery, management and service provision of a conventional Park and Ride scheme on the appeal site.

14.94 Moreover, at the Inquiry, the highway authority witness, Mr Benison, agreed that the Park and Ride scheme proposed would have significant benefits over a virtual scheme for various reasons including the following:<sup>386</sup>

- The bus service in a virtual scheme is dependent on an existing operator who can cancel the service within 56 days, the highway authority being virtually powerless to prevent the service ceasing. The scheme proposed would be secured by the planning obligation and associated gross cost contract for ten years.
- The bus operator in a virtual scheme would set fares and would, not unreasonably, want to be consistent with other existing bus users. As a consequence, fares would be likely to be higher and less attractive than the discounted tickets normally made available to attract new Park and Ride users. With a full Park and Ride, the promoter set the prices for the service which can include discounts (eg the potential to charge per car not per passenger) and special offers, particularly in the early days of the scheme to attract commuters and visitors.
- Because the Park and Ride is a dedicated service, with the car park as the terminus, it will never be full on arrival. Since a virtual scheme is based on existing bus routes, buses may be full by the time they reach the car park. An example cited was the Warwick No 68 bus (the nearest service to the appeal site) which could be full of Warwick school pupils on arriving at the parking site, with insufficient capacity at peak times for Park and Ride users. The same concerns would apply to the return leg.

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<sup>384</sup> Inquiry Doc 31

<sup>385</sup> CD 3.39 page 280

<sup>386</sup> Benefits are also set out at Appendix A to the proof of Mr Pinkett

- The consistency/punctuality of service is likely to be better with the scheme proposed than a virtual scheme, given the penalties included in the contract for not operating in accordance with the prescribed timetable. In respect of a commercial bus operator, there are no such sanctions.
- Unlike a virtual Park and Ride, a conventional scheme can guarantee a good standard of vehicles through the contract specification, making the route more attractive to patrons.
- Complementary facilities would also be provided at the car park with a conventional scheme, including ticket machines, toilets, shelters, and on-site staff.
- A virtual facility is less likely to be marketed in an integrated fashion. It is likely to comprise a standard local bus with no distinctive livery or branding to advertise the service, since the vehicles could also be used for non-Park and Ride services at other times. As a consequence, there would be limited opportunity to offer higher quality vehicles to attract car drivers. The contract for the Park and Ride proposed confirms that the developer is responsible for the publicity and promotion of the Bus Service to users and potential users, which otherwise would be a cost falling to the Council if they were the ones promoting the scheme.

14.95 In addition, it was agreed that the scheme proposed was deliverable and was fully funded, including set up costs and operating costs for ten years, whereas the County Council had not been able to deliver any form of bus-served Park and Ride in all the time that it formed part of its aspirations.

14.96 Mr Pinkett, for the appellant, who has considerable experience, including time as a bus operator and as Head of Passenger Transport at Hampshire County Council before entering private practice, explained the difficulties associated with virtual Park and Ride services and pointed out the absence of any successful working example. The only such scheme he knew of had failed after a couple of years. In contrast, there are a number of examples of very successful dedicated Park and Ride services operating in a number of historic towns where, among other things, they are perceived to lessen the impact of traffic on the heritage assets of those places.

14.97 All in all it seems to me, having regard to the way the facilities operate, that there is a contradiction in the County Council supporting a virtual Park and Ride, but objecting to the conventional Park and Ride proposed. Indeed, all other matters aside, there would seem to be significant benefits attached to a conventional scheme, particularly one that is fully funded at no cost to the highway authority for the first ten years. Thus, in as much as the scheme proposed would include a conventional Park and Ride as opposed to a virtual facility, I find no inherent conflict with current and emerging planning policy, or the authority's transport strategy.

**Traffic Generation** [1.5, 6.6, 7.150-7.152, 7.160-7.163, 8.64(5), 9.1(d)(e), 9.48-9.58, 9.61, 10.24, 10.38, 10.80-10.92, 10.99-10.106, 10.110, 10.115-10.120, 10.131, 11.6]

14.98 Following refusal of the application, the appellant continued to work with the highway authority, leading to the submission of a revised Transport



Assessment 2014,<sup>387</sup> which was followed by further traffic modelling carried out using the County Council's S-Paramics model. That work informed the highways Statement of Common Ground (SOGC2) and led to the related reason for refusal not being pursued at the Inquiry by the Council.

- 14.99 As set out in the proof of Mr Benison (dated March 2015) and SoCG2, the highway authority was satisfied that the development impact of scheme proposed on the local highway network, even without the Park and Ride in operation, would be acceptable and that traffic could be accommodated subject to delivery of mitigation measures,<sup>388</sup> which could be secured by planning condition.
- 14.100 However, SWAG was concerned that no mitigation measures were proposed for the town centre, drawing attention in particular to the current queuing problems during peak hours at the A425 Banbury Road/A429 junction, which had not been modelled, with other queries raised relating to the alleged reduction in traffic movements that might be expected with the Park and Ride scheme proposed.
- 14.101 Dealing with the latter point first, the calculation of traffic movements is not an exact science and numbers will be subject to variations. The appellant's highway witness was able to explain a number of apparent discrepancies in his proof relating to the traffic movements associated with the Park and Ride during evidence in chief and cross examination, supplemented by notes submitted during the Inquiry.<sup>389</sup> The matter has been complicated in this case by assessments of some of the parties of traffic movements associated with the proposed Park and Ride considered on its own, separate from the rest of the development proposed, which has meant that, in some case, like figures are not being compared with like. That said, whilst the method adopted by the highway authority (through the RSTA) differs from that used by the appellant, the figures do provide a useful comparison, once adjustments are made to ensure like is being compared with like.<sup>390</sup> For example the total number of vehicles that would be removed from the network traffic as calculated by the appellant (575) is not significantly different in the scheme of things, from the highway authority (Atkins) figure of 495 (for the morning peak of 07.00-09.00).
- 14.102 At the Inquiry, the highway authority expressed concerns that, without a corresponding facility to the north of the towns as envisaged by the RSTA, the Park and Ride proposed would increase traffic movements across Castle Bridge and through Leamington Spa. I recognise, in this regard that, in providing only 'part' of the total Park and Ride package envisaged by the RSTA there might be unintended consequences in terms of traffic movements. However, it seems unlikely that every single element of the 'package' would or could be

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<sup>387</sup> CD 2.1

<sup>388</sup> Gallows Hill Roundabout Potential Mitigation Scheme Dwg No 28353-5501-001; Banbury Road/Myton Road Potential Mitigation Scheme Dwg No 28353-5501-002; Greys Mallory Roundabout Potential Mitigation Scheme Dwg No 28353-5501-003; Banbury Road/Gallows Hill Potential Mitigation Scheme Dwg No 28353-5501-004; and Europa Way Corridor Potential Mitigation Scheme Dwg No 28353-5501-005.

<sup>389</sup> Inquiry Docs 20 and 22

<sup>390</sup> As set out at paragraph 7.1/7.2 Inquiry Doc 20, it should be noted that the highway authority's figures are based on two hour peaks, whereas The appellant's are based on a one hour peak, with the agreed growth factor being applied to different time periods.

delivered at exactly the same time. Concerns that, in isolation, the Park and Ride proposed might not, of itself achieve the improvements envisaged seems to me to miss the bigger picture, the whole being greater than the sum of the parts, and I am not persuaded that that is sufficient reason to resist the scheme proposed. Indeed, it seems to me that the provision of a conventional Park and Ride scheme, with the benefits outlined above, provided entirely at the appellant's expense and contracted to run (whatever the level of patronage) for ten years by which time it might reasonably be expected, on the basis of the only figures before me, to be viable, without any reliance on funding from the County Council, would make a valuable contribution to the sustainable transport package envisaged by the Council.

14.103 Moving on to concerns that the operation of the A425 Banbury Road/A429 junction, which currently causes queuing during peak hours, had not been modelled. At the Inquiry, it was confirmed that whilst following initial modelling, the highway authority requested further testing of some junctions, it did not identify this particular junction for further testing on the basis that the impact of traffic from the development proposed on that junction would be imperceptible at that point.

14.104 Mr Hanafin, for SWAG, also argued that the appeal scheme should be assessed on a worst case, without Park and Ride, scenario and that higher trip rates should have used. However, the appeal scheme comprises a residential led development that *includes* an operational Park and Ride guaranteed for at least ten years. The Park and Ride is not proposed in isolation and, were the appeal to succeed, there would not be a scenario whereby the residential development would exist without the Park and Ride. I recognise that SWAG and others take issue with the figures that fed into the modelling. However, the trip rates used were agreed with the highway authority, together with the strategic distribution of traffic on the highway network. The trip rates are also the same as those used to assess the impact of other allocated developments in the District, ensuring a consistency of approach.

#### *Overall Conclusion on Highway Matters*

14.105 I have found that the conventional Park and Ride proposed would not conflict with current policy and guidance. Indeed, all other matters aside, there would seem be significant benefits over and above the virtual scheme now apparently preferred by the highway authority. Moreover, the District Council, as planning authority, took no issue at the Inquiry with the appeal scheme in terms of highway safety or congestion.

14.106 I have considered carefully the concerns of others, particularly in relation to traffic generation and existing congestion in the town centre at peak times. Some of the differences between the parties appear to be due to parties extrapolating from a network effect on all routes leading in to Warwick town centre to infer an increase in movements across the Bridge, whereas the modelling used by the highway authority involves dynamic assignment of traffic. The consequence of that, is that not all increases on a particular link in a modelled scenario with the proposed development are directly attributable to the development itself.

14.107 All in all though, I am persuaded by the highways evidence of the appellant, which has been guided and informed throughout by advice from the highway authority, who have ultimate responsibility for these matters. On balance therefore, I consider that the evidence demonstrates that the appeal scheme would not be likely to lead to any material harm in terms of the safe or efficient operation of the local highway network. There would be no conflict, in this regard, with Local Plan policies DP6 or DP7. Indeed the evidence suggests that the scheme would have the potential to reduce traffic movements across the bridge to the south of Warwick on a scale comparable with the results presented in the RSTA. Paragraph 32 of the Framework makes it clear that, development should only be prevented or refused on transport grounds where the residual cumulative impacts of development would be severe. In this instance, I am not persuaded, even if there were a residual impact pending, for example, implementation of the complete package of sustainable transport measures promoted by the Council, that it could be considered as severe.

**Accessibility**<sup>[6.2, 7.162(ii), 7.169, 9.1(c), 9.19-9.28, 10.127]</sup>

14.108 Although not a matter raised specifically in the reasons for refusal, SWAG and others had concerns about the accessibility of the appeal site in terms of the facilities and services that would be required by future residents of the development proposed on an everyday basis. This was explored at the Inquiry with the relevant witnesses.

14.109 The appeal site lies some 2.5 kilometres from Warwick town centre, well beyond the 200 metre desirable walking distance set out in the Local Transport Plan, beyond even the preferred maximum distance of 800 metres.<sup>391</sup> The appellant sought to rely on the Park and Ride provision, which would provide a bus stop within about 400 metres of future residents on the site. However, the service, which is aimed principally at commuters, shoppers and tourists, would only run from 07.00 - 19.24/19.25 hours Monday-Friday and 07.30/07.45 – 18.54/18.55 hours on Saturdays. There would be no evening service and no service on Sundays. At those times, future residents would, it seems to me, be reliant on the private car.

14.110 The nearest secondary schools<sup>392</sup> are 3.6-4.9 kilometres walking distance away. Whilst the appellant sought to argue that this was within the 3 mile 'basic need distance' beyond which the education authority could provide assistance in getting to school, I am not persuaded that that is a good indicator necessarily for assessing accessibility in terms of land use planning. The nearest doctors' surgeries /pharmacy lie between some 2.8-4.2 kilometres walking distance away. Again, these facilities lie well beyond the walking distances set out in the Local Transport Plan. In any event, there is no continuous footway along the Banbury Road towards the town centre (the existing footway, such as it is, finishes a short distance past Turnbulls Garden and is very degraded for much of its length) even were future residents not dissuaded by the distance involved. In terms of cycling, Banbury Road is

<sup>391</sup> CD 3.39 page 387

<sup>392</sup> Excluding independent schools which SWAG accepts would be likely to attract few pupils from the development (Table 1a in proof of Mr Hanafin )

subject to a 50 mph speed limit and carries a high volume of traffic and is unlit. On that basis, I agree with SWAG that it is not conducive to an attractive or safe cycling environment. Whilst there are cycle routes within half a mile or so of the site, there is no link from the site to those routes.

14.111 The 2014 Transport Assessment, and the evidence of the appellant to the Inquiry, was that pedestrian and cyclist connectivity would be integral to the design of the site layout, to ensure not only permeability through the site but also to allow connectivity with the wider external infrastructure network of infrastructure. The Transport Assessment indicates that the scheme would create a sustainable mode link to connect to Banbury Road, which in turn would facilitate cyclist access to Myton Road and into Warwick town centre through St Nicholas Park via National Cycle Route 41. In addition a shared footway/cycleway would be provided from the Europa Way site access to connect to the existing shared footway/cycleway flanking Gallows Hill to the north of The Asps.<sup>393</sup> However, whilst the appellant's witness maintained, in cross examination, that a cycleway would be provided, it became clear both then, and in the discussion on possible conditions and the planning obligation, that no such provision was actually secured. The sum relied on in relation to the obligation was £13,320 set out in the planning obligation. However, that is secured towards improvements to public rights of way within a 1.5 mile radius of the development. It was agreed that that is different from footway improvements and, in any event, does not provide for a cycleway.

14.112 Towards the end of the Inquiry, following a related discussion as part of the conditions session, the wording of a possible Grampian type condition to deal with this was mooted.<sup>[12.1]</sup> The suggested wording reads as follows:

*Details of improvements to footways/cycleways in the vicinity of the site, either on Banbury Road or Europa Way to be submitted and agreed prior to the commencement of development. The improvements to footways and cycleways are to be implemented prior to first occupation of a dwelling in accordance with the approved details.*

*R: To allow connections from the site to the local footway/cycleway network and facilitate travel by those modes.*

14.113 However, I have some reservations as to whether the suggested wording meets the necessary tests, particularly those of precision and reasonableness. The planning guidance advises that, where the land or specified action in question is within the control of the local authority determining the application (for example, as highway authority where supporting infrastructure is required) the authority should be able to present clear evidence that this test will be met before the condition is imposed.<sup>394</sup> No such evidence was provided in this case.

14.114 As noted above,<sup>[14.109]</sup> there is no continuous footway along the Banbury Road towards the town centre. Neither is there a footway or cycleway on Europa Way. The condition would not secure any new footway to connect the development to the town - it simply refers to improvements to footways. Similarly, whilst there are cycle routes within half a mile or so of the site,

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<sup>393</sup> CD 2.1 paragraph 10.1.2

<sup>394</sup> ID: 21a-009-20140306

there is no link from the site to those routes which could be improved. Even were the condition to be altered to include reference to the *provision* of footways/cycleways, it is clear that Banbury Road in particular (which would present the shortest route to the town from the site) is especially sensitive to change along that part which runs adjacent to the Castle Park. No evidence was before me in this regard to suggest the likely extent of any necessary works, whether there would be sufficient land within the public highway to facilitate such works, or the implications in terms of visual impact on this rural approach to the town adjacent to a grade 1 registered park and the Conservation Area. In the absence of more detailed information therefore, I cannot be sure about the reasonableness of the suggested condition. In such circumstances, the advice in the planning guidance indicates that it should not be used. That would leave the site without the connections necessary in terms of accessibility, notwithstanding the distances involved.

#### *Overall Conclusion on Accessibility*

14.115 All in all, given the separation of the site from the town, I am not persuaded that local facilities and services required by future residents on a daily basis would be readily accessible, particularly at times when the Park and Ride was not running and future residents would not have a real choice about how they travel. There would be conflict in this regard with policy DP6 of the Local Plan and corresponding policy TR1 in the emerging Local Plan, both of which require the provision of safe, suitable and attractive access routes for pedestrians and cyclists. There would be conflict too with paragraph 29 of the Framework, which to ensure that people have a real choice about they travel.

#### **Other Matters**

14.116 **Air Quality:**<sup>[6.2, 7.162(iv)(v)(v1)(vii), 9.61, 10.90-10.103, 10.105, 10.106, 10.110, 10.115, 10.116, 10.119, 10.131, 11.6]</sup> Warwick has four Air Quality Management Areas (AQMAs) including the Warwick AQMA and Leamington Spa AQMA, both of which were declared for exceedences of both the annual and hourly mean nitrogen dioxide objectives. The appeal site lies within 3 kilometres of the AQMAs.

14.117 The Council's Air Quality Action Plan 2008<sup>395</sup> notes that Park and Ride has a role to play in reducing pollution levels in the AQMAs. Indeed, at that time, the County Council was promoting a £12 million SPARK Major scheme bid to the Department for Transport to secure funding for Park and Ride and other sustainable transport measures, although that bid was subsequently withdrawn partly, it would seem, on the basis that the County Council did not want to be exposed to the financial risks that such a scheme presented.

14.118 Section 13 of the Environmental Statement<sup>396</sup> sets out that the model used in assessing impact on air quality is dependent on the inputted traffic data. It is highlighted that there is a disparity between the road transport emission projections and measured annual mean concentrations of nitrogen oxides and nitrogen dioxide - whilst the projections suggest that the annual mean concentrations should have fallen by around 15-20% over the past 6-8 years,

<sup>395</sup> CD 3.38

<sup>396</sup> Paragraph 13.43

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the levels at many of the monitoring sites have remained relatively stable, or have even shown a slight increase.

- 14.119 That said, the modelling is based on 2015 emission factors and background concentrations, whilst utilising future traffic flows for the completed development (2028). The model has been verified against 2012 monitoring data and represents a conservative assessment. The modelling shows that, in 2028, predicted baseline concentrations of nitrogen dioxide and PM<sub>10</sub> and PM<sub>2.5</sub> particulates would be below the relevant objectives at all but one of the existing receptors whether the development proceeds or not. The exception is receptor 10, which is located outside the AQMA. I note that the relevant objective is exceeded in the 2012 and 2028 baselines without the development proposed (a predicted nitrogen dioxide annual mean of 41.7µg/m<sup>3</sup> in both instances) but the 2028 baseline with the development shows a very slight decrease.
- 14.120 I understand that (with the exception of receptor 10) the predicted lower concentrations reflect reductions in vehicle emissions between the assessment years and the effect of redistributing traffic around the network resulting in lower flows on the roads adjacent to the receptors. Overall, the operational effect of the development proposed is judged to be of negligible significance in relation to existing receptors. In relation to future occupiers of the appeal scheme, predicted concentrations are well below the relevant objectives.
- 14.121 No mitigation measures are recommended in relation to the completed development, the inclusion of the Park and Ride being assumed to reduce traffic across the wider road network, potentially leading to improvements in air quality over what would be the case without the development in place. Mitigation during construction is a matter that can be dealt with by conditions were the appeal to succeed.
- 14.122 As set out above, there was much discussion at the Inquiry in relation to the alleged benefits of the Park and Ride and the figures used and highways modelling used. However, I have found that the scheme proposed would, in all likelihood, result in a reduction in traffic movement through the town centre, particularly as part of the more comprehensive package of sustainable transport measures being promoted by the Council. As a consequence, in the longer term, I am satisfied that there would be no material harm in this regard and thus, no conflict with policy DP9 of the Local Plan
- 14.123 **Biodiversity:**<sup>[6.2, 7.137, 7.168(vi), 13.2, 13.21]</sup><sup>397</sup> The appeal site comprises some 50 hectares or more of mainly grade 2 agricultural land, with a narrow belt comprising grades 3a and 3b across the southern end of the site. It is characterised by arable land and sheep pasture, the large field parcels being bounded by a degraded network of remnant hedgerows.
- 14.124 Land management practices since the late C18 have resulted in the removal of a significant number of hedgerows and ponds from the site. As a consequence, habitat features present around the site, namely mature trees,

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<sup>397</sup> Evidence on biodiversity is found in the evidence of Mr Wigglesworth and Section 8 of the Environmental Statement

scrub, rough grass and ponds, represent a small fraction of the total area and, of themselves, are not of greater than local value. The only area of the site which is of higher value is a narrow land parcel in the north-eastern corner of the site, comprising a mix of rough grass and scrub and two large ponds. That land parcel is bounded to the north by the Tach Brook. Together with the Brook and other off-site habitats, this area falls within a local Ecosite designation.

14.125 Unsurprisingly, given the poor quality of the habitats, the populations of protected and/or notable species recorded are of generally low significance. The site was found to support modest assemblages of foraging bats and breeding birds (both typical, or even below average, for urban edge lowland farmland) together with potential bat roosting in trees, a small population of grass snake and small populations of amphibians. I have no reason to come to a different view from that of Mr Wigglesworth, that the appeal site is not distinctive in ecological terms from the surrounding agricultural landscape. The low ecological value of the site is in stark contrast though, to the parkland and woodland habitats to the west in Warwick Castle Park.

14.126 The application was accompanied by an Ecological Strategy.<sup>398</sup> The principal features for ecological enhancement proposed, include:

- use of approximately 42% of the site as open space, enabling retention and buffering of key habitats and provision of new green infrastructure;
- net increase in woodland habitat of 4.98 hectares, including 3.9 hectares of advance strategic woodland planting forming a significant new habitat corridor running north/south down the western half of the appeal site;
- net increase in wetland/pond habitat of 2.25 hectares created as part of the sustainable drainage system located within the more sensitive north-eastern corner of the site;
- net increase in native-rich species hedgerows of some 2.8 kilometres together with restoration of 2 kilometres of retained hedgerows;
- and the retention of some 7.78 hectares of grassland fields to be grazed by livestock with potential for increased biodiversity.

14.127 All in all, whilst there would be some losses/impacts, primarily from the loss of sections of the existing hedgerow, loss of existing poor quality ponds, and loss or modification of existing arable land or species poor grassland, the submitted evidence indicates that the replacement of low value habitats with woodland, meadow, new wetlands, allotment, orchards and gardens would yield a net biodiversity gain overall. I recognise that the new planting etc., would take time to establish, but I agree with the appellant that such is the current lack of ecological interest, that a net increase in interest would occur within a relatively short time frame, before the new habitats reached full maturity.

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<sup>398</sup> In particular EDP's Baseline Report (ref C, Chapter 8 of the Environmental Statement, and the Design and Access Statement, all of which feed into Mr Wigglesworth Appendix 4 and his Proof Plan TW3 (No EDP1871/195).

- 14.128 As mentioned in Section 13 above, the County Council sought a financial contribution towards biodiversity offsetting on the basis that the calculations of the relevant officer<sup>399</sup> indicated that there would be an overall loss of biodiversity. However, no details were submitted to support that assertion (or to support the similar assertions of SWAG and the Town Council as set out in their statements of case).
- 14.129 I am mindful that, as set out earlier, the District Council takes no issue in relation to any impact of the development proposed on biodiversity, and impact on ecology did not form part of the reasons for refusal. In particular, it is no part of the District Council's case that a biodiversity offsetting contribution is required.
- 14.130 There was no robust challenge to the appellant's evidence on biodiversity offsetting. As such, I am satisfied, subject to appropriate conditions, that no contribution for off-site improvements to biodiversity is necessitated by the appeal scheme. On that basis, the contribution provided for does not meet the statutory tests and, as such, it fails to comply with Regulation 122(2) of the Community Infrastructure Levy Regulations.
- 14.131 **Loss of Agricultural Land:** [7.136, 7.137, 9.36, 10.111, 10.124, 10.128] As set out in the Framework, grades 2 and 3a comprise best and most versatile agricultural land. This is a finite resource with paragraph 112 of the Framework requiring that account be taken of the economic and other benefits of such land and, where significant development of agricultural land is demonstrated to be necessary, areas of poorer grade land should be used in preference to that of higher quality.
- 14.132 The appeal site is currently in agricultural use. Almost 45 hectares of it is grade 2, whilst 6.5 hectares is grade 3a and 4.0 hectares is grade 3b and 1.4 hectares is in non-agricultural use. The agricultural statement that accompanied the application advises that the land is part of a viable and productive set of farms currently operating. As such, it clearly has an economic value to both the farmer and the country as a productive unit. Even allowing that almost 8 hectares of grassland fields would be retained along the Banbury Road frontage, planned to be grazed by livestock, the development would remove from production approximately 50 hectares of what is, for the most part, best and most versatile agricultural land. There would be conflict, in this regard, with Local Plan policy DP3 and policy NE5d of the emerging Local Plan, both of which seek to protect such land, as well as with the guidance in the Framework. Indeed, as was recognised for the appellant, this is a disbenefit to be weighed in the overall planning balance.
- 14.133 **Bishop's Tachbrook Neighbourhood Plan** [1.9, 1.10, 7.23(iv), 7.59-7.79, 8.66, 8.67, 9.1(b), 9.8-9.18] The Neighbourhood Plan was the subject of public consultation in September 2014, following which the Submission version of the Plan<sup>400</sup> was presented to the District Council for formal consultation. However, solicitors acting on behalf of the appellant issued a Judicial Review Pre-Action Protocol letter relating to the alleged failure of the District Council to act in relation to

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<sup>399</sup> Ms M Eaton (County Ecologist) – she did not give evidence to the Inquiry in either written or oral form.

<sup>400</sup> Inquiry Doc 37



the exercise of its public functions in respect of the preparation work by the Parish Council on the Neighbourhood Plan.<sup>401</sup> As a consequence, the District Council has decided not to publish the Neighbourhood Plan until the Parish Council has re-consulted under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012.<sup>402</sup>

14.134 When the Inquiry opened, the Neighbourhood Plan had not progressed beyond Step 3: Pre-submission publicity & consultation.<sup>403</sup> On conclusion of the consultation, consideration will need to be given to the responses received and to the possibility of making amendments. A consultation statement will also need to be prepared. The Plan can then be submitted to the Council. If the Plan is found to comply with the relevant legislation (and I am mindful, in this regard, that the Pre-Action Protocol letter alleges more fundamental problems than just issues with the consultation process) it will then need to be subject to further publicity inviting representations, followed by an examination into the Plan by an independent Examiner. Depending on the findings of the Examiner, the Council will then need to come to a view as to whether to send the Plan to referendum. If successful at referendum, the Plan would then need to be considered against EU obligations and Convention rights. Only then could the Council 'make' the Plan.

14.135 SWAG suggests that the Neighbourhood Plan is at a fairly mature stage in its preparation, just a few months behind the emerging Local Plan. However, whilst it may well provide an indication of how local people wish to see the Parish evolve in the future, its adoption process still has quite a way to go, and it could be that its policies change along the way. In my view, notwithstanding the Woodcock judgement, the Plan remains at a relatively early stage, with the pre-action protocol letter raising some significant concerns that may well impede its progress for the time being.

14.136 In any event, following the Woodcock judgement, since I have found that the Council cannot demonstrate a five year supply of housing land, policies in the emerging Neighbourhood Plan relevant to the supply of housing, which would include policies BTH2 and BTRE2, are to be considered as out of date, with the policies in the Framework carrying greater weight in this instance.

### **Planning Obligations** [1.4, 6.2, 7.167(iv), 9.21-9.25, 9.59, 11.3-11.5, 13.1-13.21, 14.89-14.93, 14.110]

14.137 The planning authority is of the view that the Park and Ride is not required to make the scheme acceptable and thus does not meet the relevant tests. However, given the distance of the site from the town centre and other services and facilities that would be required by future residents on a day to day basis, the Park and Ride would, were the appeal to succeed, be essential in terms of making those local services more accessible than they otherwise would be, providing a realistic alternative to the private car during the hours of operation of the Park and Ride. For that reason, I consider that the arrangement secured complies with sustainable transport policy and meets the relevant tests.

<sup>401</sup> Appendix 14 to the proof of Mr Halman

<sup>402</sup> See letter attached to Inquiry Doc 3

<sup>403</sup> Planning guidance ID: 41-080-20150209

- 14.138 Affordable Housing: Affordable housing is an important element of the overall housing need in the area and, to that end, policy SC11 of the Local Plan requires a minimum of 40% affordable housing. The arrangement secured complies with the policy and meets the relevant tests.
- 14.139 Education: There is no dispute that education contributions are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly and reasonably related in scale and kind to it. Moreover, since the places are required as a direct response to this development, and thus would not be a pooled contribution or tariff (possibly with the exception of the SEN contribution). What is at issue however, are the precise figures for each of the agreed places.
- 14.140 The Secretary of State is asked to come a view as to which would be the most appropriate – that arrangement is provided for in the wording of the Deed. To assist, a Planning Statement by the County Council, and a discussion paper on this matter, are attached as Appendix 1 to SoCG3.<sup>404</sup>
- 14.141 The higher figures set out in the Deed are based on the calculations that applied at the time that the planning application was lodged, back in early 2014, and are derived from the Cost Multipliers provided by the then Department for Children School and Families (now the Department for Education (DfE)) for 2008-09 based on projected pricing levels at Quarter 4 2008, as adjusted to reflect regional factors and further updated according to increases or decreases in the Public Sector Index. The contributions based on these multipliers would be commensurate with those secured in relation to other housing developments in the area considered at that time.
- 14.142 However, revised local multipliers for the period 2015-2017 have since been issued which, I understand, the County will be using for applications falling within that time span. Those revised multipliers produce a set of lower figures.
- 14.143 In coming to a view on which set of figures might be the most appropriate in this case, I am mindful that Government has been seeking to encourage more cost effective procurement of public sector buildings, including through the James Review (published in 2011) which was funded by the DfE. The Review found that substantial savings in both time and money were possible, whilst also improving the quality of the finished product. As a consequence, Building Bulletins 98 and 99<sup>405</sup> (on which the earlier multipliers were based) have been withdrawn and replaced with Building Bulletin 103 which sets out lower space requirements for education places with commensurately lower costs.
- 14.144 It has been a longstanding tenet in determining planning appeals that the decision should be taken having regard to the most up to date policies, guidance and advice at that time. We are now in 2015. It seems to me therefore, that it is the lower set of figures, which are based on the *current* cost multipliers for education provision, which are the most appropriate in this instance. To require the higher figure would, to my mind, not meet the relevant tests set out above, particularly that of necessity.

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<sup>404</sup> Which itself comprises Appendix A to the CIL Compliance schedule submitted on 2 April 2015.

<sup>405</sup> Those Bulletins set out briefing frameworks for secondary and primary school projects

- 14.145 GP Surgery (NHS): At the time that the CIL Schedule was compiled, the Council felt that it had not seen sufficient evidence to confirm that the contribution sought was CIL compliant and the appellant was of the view that the contribution was not compliant. However, no evidence was before the Inquiry to support those concerns.
- 14.146 Having seen the comments of the main parties, the South Warwickshire NHS Clinical Commissioning Group submitted a further statement to the Inquiry in support of its request.<sup>406</sup> It confirms that the two existing GP practices to the south of Warwick, who would be under the greatest pressure to accommodate patients from the development proposed, are already overburdened with no spare capacity. Without mitigation therefore, I have no doubt that the scheme would have an unacceptable impact on healthcare provision in the area.
- 14.147 The NHS confirms that the most sustainable and appropriate way to deal with the primary healthcare needs of future residents of The Asps scheme, and the various other residential developments planned for the southern side of the town, is a new facility in a central location, large enough to accommodate a practice of five (whole time equivalent) GPs plus nursing and support staff. I am advised that this is likely to be delivered on land close to the Gallows Hill roundabout, within a site that already benefits from planning permission<sup>407</sup> and which lies within 1 kilometre of the appeal site.
- 14.148 The written submission sets out how the contribution sought has been calculated. However, there is potential for it to be pooled with others to provide the facility. That said, there was no suggestion that the contribution would not be compliant with CIL Regulation 123, which limits pooled obligations to five. Accordingly, on the basis of the evidence that is before me, I have no reason to suppose that the contribution would not meet the relevant tests. In the alternative, if the contribution fell foul of the Regulations, the NHS submission indicates that it would be used to extend the existing Warwick Gates Family Health Centre to provide the additional capacity directly required as a consequence of the development proposed, although I recognise that it would not be as sustainable an option as would be the construction of a new surgery in the Gallows Hill area. Again, I am satisfied that that arrangement would meet the relevant tests.
- 14.149 Healthcare (South Warwickshire NHS Foundation Trust - SWFT): In support of the contribution sought, SWFT provided a statement supported by Counsel's opinion.<sup>408</sup> SWFT is the major provider of acute and community health services to the local population. The Counsel's opinion provided suggests that those services (and consequential additional costs) do not fall within the definition of 'infrastructure' for the purposes of the CIL regime and, consequently, can lawfully be the subject of planning obligation following April 2015 (so long as the sums sought meet the statutory tests in regulation 122). Whilst the Council felt that it had not see sufficient evidence to confirm that the contribution sought was CIL compliant, with the appellant being of the

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<sup>406</sup> Inquiry Doc 44

<sup>407</sup> W/14/0967 approved 3 April 2015

<sup>408</sup> Correspondence dated 24 March 2015

view that the contribution was not compliant, no evidence was before the Inquiry to support those concerns.

14.150 The evidence provided by SWFT, which includes an Impact Assessment Formula, demonstrates the financial implications placed upon the service by new development proposals and how these would adversely impact upon the health of the community (a core planning principle in the Framework<sup>409</sup>). The Formula demonstrates what is necessary to make the development acceptable in planning terms by addressing those adverse impacts and is based upon robust and up-to-date data producing a clear and transparent correlation between the size of a proposed development and its likely impact on SWFT.

14.151 Although SWFT is paid a set rate for the eligible activities it delivers, that is limited to a 'ceiling activity volume' that is premised upon the previous year. As a consequence, residents from new developments would burden SWFT with additional and unfunded costs for a limited period. These external costs associated with new development, and calculated pursuant to the SWFT Formula, are focussed only upon the additional expenditure in providing the required NHS services pursuant to the obligations in their licence.

14.152 It has prepared to address planned and predicted population and demographic projections through the provision of new capital infrastructure at Warwick and Stratford, for which no developer contributions are sought. However, unanticipated population increases, such as that associated with the development proposed, generate additional activity beyond the 'ceiling activity volume' until the following year, when contracted activity volumes are raised to accommodate the population increase. In essence, there is no funding for those additional activities during the first year in which they are generated and there is no retrospective element in the National Tariff Payment by Results System (or loan scheme) to reimburse SWFT for the additional activities they are obliged to undertake. Moreover, the terms of its licence mean that SWFT cannot refuse to admit or treat a patient on the grounds that it lacks the capacity to provide the services required.

14.153 I am satisfied therefore, that the sum sought meets the tests and does not amount to a generalised tariff on development and would not be a pooled contribution. Whilst each application is to be considered on its individual merits I note, in this regard, that this approach has recently been endorsed in an appeal decision concerning development at Radford Semele, Leamington Spa.<sup>410</sup>

14.154 Police: As set out in the CIL Compliance Schedule, the appellant is not satisfied that the arrangement is CIL compliant, with the Council being of the view that insufficient evidence was available to come to an informed view on the matter. However, no evidence was before the Inquiry to support those concerns.

14.155 Having had sight of the Schedule, Warwickshire Police and West Mercia Police submitted further correspondence on the matter, dated 10 April 2015. They

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<sup>409</sup> paragraph 17.

<sup>410</sup> CD 7.27

demonstrate that the arrangement has been arrived at after careful analysis of the current and planned levels of policing in the area. With reference to existing local deployment reflecting actual policing demands and local crime patterns, it is confirmed that five additional staff would be required to serve the development proposed. Policing of the area is delivered currently from three separate premises (in Warwick, Leamington and Leek Wooton) all of which are already maintained to capacity. I am in no doubt therefore, that a new police office would need to be provided on the site, and fitted out, in order to accommodate the additional staff. I consider the arrangement to be necessary to make the development acceptable, it is directly related to the development proposed and to mitigating the impacts that it would generate, and it is fairly and reasonably related in scale and kind to the development. The arrangement therefore meets the relevant tests. Moreover, as a discrete project to which no more than five developments would contribute,<sup>411</sup> I have no reason to suppose, on the basis of the information before me, that there would be any conflict with CIL Regulation 123.

14.156 Public rights of way: The development proposed clearly has the potential to increase the use of local rights of way. However, no information was available at the Inquiry to demonstrate exactly what works might be required to address the impact of the anticipated increased use of public rights of way within 1.5 miles of the site, or to indicate how the sum secured had been arrived at. As a consequence, the District Council felt that it had not seen sufficient evidence to confirm that that the contribution sought was CIL compliant, with the appellant being of the view that the contribution was not compliant.

14.157 With the consent of all the parties, supporting evidence on this was submitted after the close of the Inquiry.<sup>412</sup> The information, informed by the County Council, specifies the works required and demonstrates that the contribution is proportionate to the scale of development proposed. The obligation provides for a set figure based on a development of 900 units. Were any reserved matters scheme comprising 900 units to be approved, the contribution would meet the relevant tests. However, were the scheme to be built out with fewer dwellings, the contribution secured would be more than would be justified and thus would not meet the tests.

14.158 Sustainable Travel/Welcome packs: Accessibility to the surrounding area for future residents by means other than the private car is important in terms of the sustainability of the site. I am satisfied that the contribution secured complies with the policies and meets the relevant tests. Moreover, it is a discrete project solely for occupiers of the development proposed. As such, it is not a measure towards which more than five developments would contribute. There would be no conflict in this regard with CIL Regulation 123.

14.159 Biodiversity offsetting: As set out in their joint Statement of Case, the Save Warwick Group and Warwick Town Council<sup>413</sup> asserted that the scheme would result in a net loss of significant ecology. However, no details were submitted

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<sup>411</sup> As confirmed by the Police letter dated 10 April 2015 (and attachments)

<sup>412</sup> Inquiry Document 58

<sup>413</sup> Both of which groups joined forces at the Inquiry as the Rule 6(6) Party referred to herein as SWAG.

to support that assertion and, whilst further detail was sought by the appellant, no further information was forthcoming.

14.160 There is no dispute between the appellant and the District Council in relation to any impact of the development proposed on biodiversity. Indeed, as set out at paragraph 6.1 above, impact on ecology did not form part of the reasons for refusal and it is agreed that the outline proposal is capable of delivering net biodiversity enhancement which can be secured through a management plan. It is no part of the District Council's case therefore, that a biodiversity offsetting contribution is required.

14.161 There has been no robust challenge to the appellant's evidence on biodiversity offsetting. Indeed, as set out in more detail in the following section of this Report, the evidence that is before me indicates that, rather than a loss, the arrangements proposed would result in a positive gain to biodiversity. As such, I am satisfied, subject to appropriate conditions, that no contribution for off-site improvements to biodiversity is necessitated by the appeal scheme. On that basis, the contribution provided for does not meet the statutory tests and, as such, it fails to comply with Regulation 122(2) of the Community Infrastructure Levy Regulations.

**Benefits** [7.133(e)(f), 7.135, 7.137, 7.149, 7.150, 7.157, 7.159, 7.162(viii), 7.167, 8.64, 8.65, 8.69, 8.70, 9.19, 9.51, 9.56, 9.60, 9.61, 9.100, 9.103, 10.2, 10.29]

14.162 The appellant argues a number of benefits in support of the scheme.

14.163 Given the likely shortfall in the five year supply of housing, there is clearly a benefit in the provision of up to 900 homes, 40% of which would be affordable, on a site that can be developed without significant delay. That is a substantial benefit.

14.164 The provision of a Park and Ride would also be a substantial benefit of the scheme, allowing the highway authority to realise a long term ambition. It is identified as an integral part of the authority's sustainable transport package and has the potential to reduce vehicular traffic not only on the town centre, but also on the surrounding highway network. It would also help alleviate parking congestion in the town centres. Since it would be funded entirely by the developer, it may also allow contributions from other developments already consented to be spent on delivering other measures recommended in STA4 although that would depend on the justification for the specific contributions and what the terms of the respective obligations are.

14.165 Reference is made to the New Homes Bonus as a benefit. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. However, New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. I am mindful, in this regard, that the planning guidance<sup>414</sup> makes it clear that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority. Accordingly, whilst the Bonus is a material planning consideration, it is not one to which positive weight can be attached.

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<sup>414</sup> ID: 21b-011-20140612

- 14.166 It is proposed that part of the site would be developed as a community woodland plus sports provision, children's play space and informal public open space. Whilst those facilities are aimed at future residents of the site, I can see that they would have the potential to be used by others. However, any benefit in this regard is tempered by poor accessibility by means other than the private car at times when the Park and Ride was not in operation.
- 14.167 Although reference was made in closing to new opportunities for appreciating the historic context of this area of Warwick, such is not listed in Section 10 of the evidence of Mr Halman for the appellant, which sets out benefits of the scheme. In the event that this refers to the views of the tower of the church of St Mary, which are currently not available from any public vantage viewpoint within the site, that would be a relatively long distance view. As such, if it could be weighed as a benefit at all, any weight would be very limited.
- 14.168 Reference is made to a high quality layout, but that would be expected of any new development scheme and to my mind is not a 'benefit' of the scheme. Rather, it is simply an absence of harm. Similarly, the absence of any identified harm in relation to matters such as flood risk, noise, buried archaeological remains, and waste does not weigh in favour of the proposal.
- 14.169 The development would also bring economic benefits in terms of job creation. The Environmental Statement<sup>415</sup> identifies that the new households would attract some 986 additional workers to the area. In addition, it identifies that some 83 construction industry jobs for the build phase would be created, 59 jobs would be created from development of the associated retail and service provision at the proposed local centre, with a further 59 jobs as a result of additional household spend in the area.
- 14.170 There would also be an overall benefit to biodiversity, given the current lack of ecological interest in the site, which would accord with the requirement of paragraph 109 of the Framework.

## **15. The Planning Balance and Overall Conclusion**

- 15.1 I have found that, in all likelihood, the Council cannot demonstrate a five year supply of housing land. In those circumstances, policies for the supply of housing cannot be considered as up to date, with paragraph 14 of the Framework advising that permission should be granted unless any adverse impact of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole, or where specific policies in the Framework indicate that development should be restricted. What does not follow from paragraph 14 is that the mere presence of a housing shortfall means that housing developments must automatically be allowed. Rather, the development needs to be considered in the context of the presumption in favour of sustainable development, defined by the Framework as encompassing economic, social and environmental dimensions, which give rise to corresponding roles for the planning system.

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<sup>415</sup> Chapter 16

- 15.2 I have set out above the benefits that would accrue from the proposal. In total they are substantial and would resonate with the economic, social and environmental dimensions of sustainable development. The combination of those benefits accords with the principal thrusts of the Framework of securing economic growth and boosting significantly the supply of housing, and are sound arguments carrying considerable weight in favour of the proposal.
- 15.3 However, other planning and policy considerations cannot simply be set aside. Whilst there would some benefit in terms of the environmental role as a consequence of a net increase in biodiversity, the environmental dimension of sustainability is also concerned with protecting and enhancing the natural and built environment. I have found that there would be a significant adverse impact on the character and appearance of this part of the District, which carries very substantial weight. There is also the problem of poor accessibility of the site to the services and facilities likely to be required by future residents on an everyday basis, and the loss of almost 50 hectares of best and most versatile agricultural land. Again, considerations that attract substantial weight. There would, in addition, be considerable harm to the setting of the grade 1 registered Castle Park (and, by association, the Conservation Area) with the setting making a valuable contribution to the significance of those designated heritage assets. I give that important harm significant weight. All in all therefore, there would be very substantial environmental harm. There would also be conflict with the economic dimension of sustainability, which seeks to ensure, among other things, the delivery of land in the right place.
- 15.4 Paragraph 8 of the Framework makes it clear that the roles of sustainable development are mutually dependent. Having regard to the policies of the Framework as a whole, including the balance required by paragraphs 14 and 134, I consider that the significant shortcomings of the scheme, particularly in terms of the environmental dimension, would significantly and demonstrably outweigh the benefits set out above, even were it to transpire during the Local Plan process that the FOAN is greater than suggested by the Council. As a consequence, the appeal scheme cannot be considered as sustainable development and it does not enjoy the presumption in favour of such development, as set out in the Framework.

## **16. RECOMMENDATION**

- 16.1 On balance, for the reasons set out above, I recommend that the appeal should not succeed. Should the Secretary of State come to a different conclusion, the conditions set out at Appendix C attached hereto are recommended.

*Jennifer A Vyse*

INSEPECTOR



**APPENDIX A:  
APPEARANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr T Leader, of Counsel	Instructed by Ms C Gutteridge, Solicitor, Warwickshire County Council
He called	
Mr A Mayes IHBC RIBA	Conservation Officer with the District Council
Mr R Morrish CLMI	Richard Morrish Associates
Mr J Gardner BSc, MSc	Justin Garner Consulting
Mr D Barber BA(Hons), MRTPI	Planning Policy Manager with the District Council
Mr N Benison BSc, IEng	Principal Engineer for Warwickshire County Council (The Highway authority)
MICE	
Mrs T Darke DipTP, MRTPI, DMS	Head of Development Services with the District Council

**FOR THE APPELLANT:**

Mr J Cahill, Queen's Counsel Assisted by Ms T Osmund-Smith	Instructed by Mrs Lizzie Marjoram*, Bird, Wilford and Sale Solicitors
They called	
Mr M Parkinson BSc(Hons), MICE, MIHT, MIRSO	Partner at Peter Brett Associates LLP
Mr B Pinkett BA(Hons), FCILT	Partner at Peter Brett Associates LLP
Mr D McInerney BSC(Hons), MLD, CMLI	Founding Director of Environmental Dimension Partnership Limited
Mr A Crutchley BA(Hons), PGDip(Oxon), MCIfA	Director at Environmental Dimension Partnership Limited
Ms C Howick MA, MSc	Partner at Peter Brett Associates LLP
Mr G Halman BSc, FRICS, MRTPI	Managing Partner at HOW Planning LLP
Mr T Wigglesworth* BSc(Hons), MSc, MCIEEM	Associate at Environmental Dimension Partnership Limited

\* Mrs Marjoram spoke during the discussion in respect of the planning obligation and conditions. Mr Wigglesworth's evidence was taken as read and he did not appear before the Inquiry.

**FOR THE SAVE WARWICK ACTION GROUP (RULE 6(6) PARTY):**

Mr G MacKenzie, of Counsel	Instructed by the Save Warwick Action Group
He called	
Dr H Fryer PhD, MLI	Garden Historian and Landscape Consultant
Mr J Birkbeck MA, DipLA, DipTP, Cert Mgt, CMLI (Ret'd), CMRTPI (Ret'd)	Save Warwick Action Group
Mr P S Hanafin* CMILT, MCIHT, MTPS	Director in the Infrastructure Business Line of Royal HaskoningDHV
Councillor R Bullen DipArch, RIBA	Bishop's Tachbrook Parish Council

\*Mr Hanafin gave evidence to the Inquiry based on the proofs prepared by Ms J Kerry from the same company.

**FOR HALLAM LAND MANAGEMENT/WILLIAM DAVIS (RULE 6(6) PARTY):**

Mr Hill, Queen's Counsel

Instructed by Montagu Evans

He called

Dr C Miele MRTPI, IHBC

Senior Partner Montagu Evans

**INTERESTED PERSONS:**

Mr N A D Molyneux FSA, IHBC

Historic England

Dr C Hodgetts

Warwickshire Gardens Trust

Professor J M Bishop MD. FRCP

Local resident

Mr D M Crips BSc(Eng) CEng MIET

Local resident

Councillor J Holland

Warwickshire County Council and Warwick Town Council

Mrs B Law

Local resident

Mr J Mackay

Chair of Warwick Civic Society and local resident

Mrs J Russell

Local resident

Mr M A Sullivan MRTPI CMILT

Technical Secretary CPRE Warwickshire Branch

Councillor R Brookes

Warwick District Council (current vice chair of the planning committee)

Councillor A B Rhead

Warwick District Council and Barford Parish

Ms H Maclagan

Local resident

**APPENDIX B:****CORE DOCUMENTS**

<b>CD 1.0</b>	<b>Application Documents (Original submission)</b>
CD 1.1	Supporting Planning Statement February 2014
CD 1.2	Design and Access Statement January 2014
CD 1.3	Site Location Plan (EDP 1871/125)
CD 1.4	Illustrative Masterplan (EDP 1871/140a)
CD 1.5	Parameter Plan – Land Use Plan (EDP 1871/116c)

<b>CD 2.0</b>	<b>Additional Application Plans/ Documents</b>
CD 2.1	Transport Assessment April 2014

<b>CD 3.0</b>	<b>Local Policy Guidance and Supporting Documentation</b>
CD 3.1	Warwick District Local Plan 1996-2011 September 2007
CD 3.2	Local Plan Inspector's Report
CD 3.3	Residential Design Guide Supplementary Planning Guidance April 2008
CD 3.4	Open Space Supplementary Planning Document June 2009
CD 3.5	Affordable Housing Supplementary Planning Document January 2008
CD 3.6	Vehicle Parking Standards Supplementary Planning Document November 2007
CD 3.7	Coventry & Warwickshire Joint Strategic Housing Market Assessment November 2013
CD 3.8	Coventry and Warwickshire and South East Leicestershire Economic Prosperity Board: <i>Process for addressing the HMA's Full Housing Requirement</i> 21 November 2014
CD 3.9	2012-Based Sub-National Population Projections and Economic Forecasts: Implications for Housing Need in Coventry & Warwickshire ( SHMA Addendum) September 2014
CD 3.10	Strategic Housing Land Availability Assessment May 2014
CD 3.11	Strategic Housing Land Availability Assessment Amendments July 2014
CD 3.12	Five Year Land Supply of Housing 2014-2019 (Inc. Spreadsheet showing 5 year supply at 1 April 2014) April 2014
CD 3.13	An Update of the Five Year Housing Land Supply Situation from 1 April 2014 to 11th November 2014 (Inc. Spreadsheet showing 5 year supply at 11 November 2014) November 2014
CD 3.14	Warwick District Local Plan Publication Version The Housing Trajectory May 2014
CD 3.15	Estimating a Windfall Allowance Publication Stage April 2014
CD 3.16	Coventry & Warwickshire Strategic Employment Land Study Final Report October 2014
CD 3.17	Coventry and Warwickshire LEP <i>Strategic Economic Plan</i> 31 March 2014
CD 3.18	Annual Monitoring Report 2013 February 2014
CD 3.19	Annual Monitoring Report 2012 December 2012
CD 3.20	Annual Monitoring Report 2011 December 2011
CD 3.21	Annual Monitoring Report 2010 December 2010
CD 3.22	Annual Monitoring Report 2009 December 2009

CD 3.23	Housing Monitoring Report 2008 March 2009
CD 3.24	Housing Monitoring Report 2007 December 2007
CD 3.25	Housing Monitoring Report 2006 November 2006
CD 3.26	Housing Monitoring Report 2005
CD 3.27	Housing Monitoring Report 2004
CD 3.28	Housing Monitoring Report 2003
CD 3.29	Coventry Joint Green Belt Review January 2009
CD 3.30	Landscape Character Assessment for Land South of Warwick and Leamington February 2009
CD 3.31	Landscape Character Assessment for Land South of Warwick and Leamington Addendum March 2014
CD 3.32	Warwick District Council Green Infrastructure Study October 2010
CD 3.33	Warwick District Green Infrastructure Delivery Assessment February 2012
CD 3.34	Options for Future Urban Expansion in Warwick District Considerations for Sustainable Landscape Planning November 2012
CD 3.35	Options for Future Urban Expansion in Warwick District Considerations for Sustainable Landscape Planning 2014 Addendum March 2014
CD 3.36	Garden Towns, Villages and Suburbs A Prospectus for Warwick District Council May 2012
CD 3.37	Core Topic Paper 9: Transport February 2006
CD 3.38	Air Quality Action Plan (Addendum) <i>Low Emission Strategy Guidance for Developers</i> April 2014
CD 3.39	Warwickshire Local Transport Plan 2011-2026
CD 3.40	Warwickshire County Council Strategic Transport Assessment Phase 4 <i>Revised Development Allocation Testing Report</i> April 2014
CD 3.41	Warwick and Leamington Transport Strategy <i>Review of Sustainable Transport Alternatives</i> 27 January 2015
CD 3.42	Regional Spatial Strategy for the West Midlands January 2008
CD 3.43	Examination of the Uttlesford Local Plan <i>Inspector's Conclusions</i> 19 December 2014
CD 3.44	Report on the Examination into Eastleigh Borough Council's Eastleigh Borough Local Plan 2011-2029 11 February 2015
CD 3.45	Guide to Warwickshire, Coventry and Solihull Biodiversity Offsetting Biodiversity Impact Assessment Calculator 18 March 2014
CD 3.46	Direction under Paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act: Policies Contained in the Warwick District Local Plan Adopted 21 September 2007. <i>Letter from Government Office for the West Midlands</i> 15 June 2010
CD 3.47	Warwickshire Landscape Guidelines 1993
CD 3.48	Warwick Conservation Area – Section 1 to 3 2007
CD 3.49	Warwickshire Historic Landscape Characterisation Project June 2010
CD 3.50	WDC Strategic Housing Market Assessment Executive Summary March 2012
CD 3.51	WDC Strategic Housing Market Assessment Final Report March 2012
<b>CD 4.0</b>	<b>Emerging Local Policy Guidance and Supporting Documentation</b>
CD 4.1	Warwick District Local Plan 2011-2029 Publication Draft April 2014
CD 4.2	Publication Draft Local Plan: Focused Consultation October 2014
CD 4.3	Publication Draft Local Plan Focused Consultation: Public Participation

	Report January 2015
CD 4.4	Publication Draft Local Plan: Public Participation Report January 2015
CD 4.5	Bishop's Tachbrook Neighbourhood Plan
CD 4.6	The Setting of Heritage Assets, The Asps (Draft as at 6 February 2014)
CD 4.7	Local Plan: Preferred Options May 2012
CD 4.8	Local Plan: Revised Development Strategy June 2013

<b>CD 5.0</b>	<b>National Policy Guidance</b>
CD 5.1	National Planning Policy Framework March 2012
CD 5.2	Planning Practice Guidance: Housing and Economic Development Needs Assessment (ID 2a) March 2014
CD 5.3	Planning Practice Guidance: Housing and Economic Land Availability Assessment (ID 3) October 2014
CD 5.4	Planning (Listed Buildings and Conservation Areas) Act 1990

<b>CD 6.0</b>	<b>Delegated &amp; Committee Reports</b>
CD 6.1	Delegated Report – Land at Asps Farm, bounded by Europa Way and Banbury Road, Bishop's Tachbrook, Leamington Spa: W/14/0300 10 September 2014
CD 6.2	Committee Report - Land at Lower Heathcote Farm, Harbury Lane: W/14/0661 19 August 2014
CD 6.3	Committee Report & Decision Notice – Brookside Willows (formerly Turnbull Gardens), Banbury Road, Warwick: W/09/0909 September 2011
CD 6.4	Committee Report – Land between Myton Road and Europa Way: W/14/1076 11 November 2014

<b>CD 7.0</b>	<b>Appeal Decisions</b>
<b>Planning Proof of Evidence</b>	
CD 7.1	Land south of St Fremund Way, Whitnash, Leamington Spa, CV31 1AB(APP/T3725/A/13/2190334)
CD 7.2	Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa & Land north of Pulley Lane and Newland Lane, Newland, Droitwich Spa (APP/H18408/A/13/2199085 and APP/H1840/A/13/2199426)
CD 7.3	Land at Burgess Farm, Hilton Lane, Worsley, Manchester (APP/U4230/A/11/2157433)
CD 7.4	Bishop's Cleeve, Gloucestershire (APP/G1630/A/11/2146206 and APP/G1630/A/11/2148635)
CD 7.5	Ivanhoe, Holmes Chapel Road, Brereton, Congleton, CW12 4SP (APP/R0660/A/13/2209327)
CD 7.6	Land east of Egerton Arms, Pinfold Lane, Little Budworth, Tarporley, Cheshire (APP/A0665/A/12/2167830)
CD 7.7	Smart Systems Ltd, Arnolds Way, Yatton (APP/D0121/A/13/2203356)
CD 7.8	Land off Stratford Road, Hampton Lucy (APP/J3720/A/14/2215757)
CD 7.9	Land West of High Street, Irchester (APP/H2835/A/14/2215925)
CD 7.10	Land off Dovehouse Drive, Wellesbourne (APP/J3720/A/14/2216615)
CD 7.11	Land off Coate Road and Winsor Drive, Devizes (APP/Y3940/A/13/2206963)
CD 7.12	Land to the South of Mallory Road, Bishop's Tachbrook, Warwickshire

	(APP/T3725/A/14/2216200)
CD 7.13	Land to the west of Close Lane and north of Crewe Road, Alsager (APP/R0660/A/13/2203282)
CD 7.14	Land between Station Road and Dudley Road, Honeybourne (APP/H1840/A/12/2171339)
CD 7.15	Highfield Farm, Tetbury, Gloucestershire (APP/F1610/A/11/2165778)

#### ***Housing Need Proof of Evidence***

CD 7.16	Land between Laurels Road and Leasowes Road, Offenham (APP/H1840/A/13/2203924)
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#### ***Heritage Proof of Evidence***

CD 7.17	Land at Penland Farm (APP/D3830/A/14/2218078)
CD 7.18	Homewood, 19 Kenilworth Road, Leamington Spa (APP/T3725/A/12/2186672)
CD 7.19	Land east of Wellesbourne Road/north of Wasperton Lane, Barford (APP/T3725/A/14/2215618)
CD 7.20	Land east of Wellesbourne Road/north of Wasperton Lane, Barford (APP/T3725/A/12/2184225)
CD 7.25	Land at Javelin Park, near Haresfield, Gloucs (APP/T1600/A/13/2200210)

#### ***WDC Housing Supply Proof of Evidence***

CD 7.26	Land north of Milcote Road, Welford on Avon (APP/3720/A/14/2217495)
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#### ***Planning Proof of Evidence***

CD 7.27	Land North of Southam Road and East and West of Church Lane, Radford Semele (APP/T3725/A/14/2222868)
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<b>CD 8.0</b>	<b>High Court and Court of Appeal Decisions</b>
CD 8.1	Wainhomes (South West) Holdings Ltd v SSCLG and Wiltshire Council [2013] EWHC 597 (Admin)
CD 8.2	Cotswold DC v SSCLG and Fay and Son and Hannick Homes and Development Limited [2013] EWHC 3719 (Admin)
CD 8.3	Milne, R (on the application of) v Rochdale Metropolitan Borough Council [2000] EWHC 650 (Admin)
CD 8.4	South Northamptonshire Council v SSCLG and Barwood Land and Estates Limited [2014] EWHC 573 (Admin)
CD 8.5	Timmins and Lymn v Gelding Borough Council and Westerleigh Group Limited [2014] EWHC 654 (Admin)
CD 8.6	Anita Colman and SSCLG v North Devon District Council and RWE NPower Renewables Limited [2013] EWHC 1138 (Admin)
CD 8.7	St Albans v R (on the application of) Hunston Properties Limited and the SSCLG [2013] EWCA Civ 1610
CD 8.8	<i>Number not used</i>
CD 8.9	Bloor Homes East Midlands Ltd v SSCLG & Anor [2014] EWHC 754 (Admin)
CD 8.10	Hopkins Homes Ltd v SSCLG and Suffolk Coastal District Council [2015]

	EWHC 132 (Admin)
CD 8.11	Stroud Council v SSCLG and Gladman Developments Ltd [2015] EWHC 488 (Admin)
CD 8.12	Dartford Borough Council v SSCLG and Landhold Capital Limited [2014] EWHC 2636 (Admin)

<b>CD 9.0</b>	<b>Miscellaneous</b>
CD 9.1	Plan and table showing nearby application sites (March 2015)
CD 9.2	National Character Area 96 Dunsmore and Feldon (Natural England) 2013
CD 9.3	Bus based Park and Ride – a Good Practice Guide (English Historic Towns Forum) 2000
CD 9.4	British Parking Association Parking Practice Note 2: Park and Ride (2005)
CD 9.5	TAS – Park and Ride Great Britain (2007)
CD 9.6	A Housing Strategy for England (November 2011)
CD 9.7	Planning and Housing Supply <i>House of Commons Debate</i> (24 October 2013)
CD 9.8	Eastleigh Borough Local Plan 2011-2029 Examination: Inspector's preliminary conclusions on housing needs and supply and economic growth 28 November 2014
CD 9.9	Examining Inspector - <i>Examination of the Derbyshire Dales Local Plan</i> 29 July 2014
CD 9.	Examination of the Cheshire East Local Plan Strategy <i>Inspector's Interim Views on the Legal Compliance and Soundness of the Submitted Local Plan Strategy</i> November 2014
CD 9.11	Land between Laurels and Leasowes Road - <i>Proof of Evidence of Cristina Howick, The Housing Requirement of Wychavon</i> December 2013
CD 9.12	DCLG Strategic Housing Market Assessments Annexes (April 2007)
CD 9.13	DCLG Strategic Housing Market Assessments Practice Guidance (2 August 2007)
CD 9.14	Planning Advisory Service Objectively Assessed Need and Housing Targets: Technical Advice Note June 2014
CD 9.15	English Heritage Guidance: The Setting of Heritage Assets (October 2011)
CD 9.16	Consultation Draft English Heritage Guidance: The Setting of Heritage Assets (2014)
CD 9.17	Conservation Principles, Policies and Guidance English Heritage (2008)
CD 9.18	English Heritage Consultation Advice on Allocation of Site for the Emerging Local Plan Correspondence to Dave Barber (23 July 2013)
CD 9.19	English Heritage response to 'glamping' application (W/14/1293)
CD 9.20	Heritage and Landscape Assessment 'glamping' application (W/14/1293)
CD 9.21	English Heritage response to application W/14/0967: Land North of Gallows Hill

## APPENDIX C:

### DOCUMENTS SUBMITTED DURING THE INQUIRY

- Doc 1 Appeal Notification letters
- Doc 2 Email correspondence re possible need for third sitting week
- Doc 3 Appellant opening, including a copy of a letter from the County Council dated 10 April 2015 in relation to the appellant's Pre-Action Protocol Letter regarding the Bishop's Tachbrook Neighbourhood Plan
- Doc 4 Hallam/Davis opening
- Doc 5 Save Warwick Action Group opening
- Doc 6 Council opening
- Doc 7 Mr Crips supporting material
- Doc 8 Mrs Law submission
- Doc 9 Mr MacKay submission
- Doc 10 Committee report and decision re caravan park at Turnbolls Garden (see also Doc 43)
- Doc 11 Warwickshire Gardens Trust submission (Dr Hodgetts)
- Doc 12 English Heritage Note 3 'The Setting of Heritage Assets' (March 2015)
- Doc 13 Conservation comments on Application No W/14/1293 chalets and glamping tents, visitor reception and banqueting tent etc within the Castle Park
- Doc 14 Bundle comprising an extract from historic correspondence referring to the Park, an extract from 'The Beauties of England and Wales' by John Britton, Joseph Nightingale et al, and dictionary definition of 'embower'.
- Doc 15 Appeal decision APP/L2630/A/13/2196884 Land at Chapel Lane, Wymondham, Norfolk (referred to by Dr Hodgetts)
- Doc 16 Appellant's Heritage Setting Assessment submitted with the planning application
- Doc 17 Email confirmation re change of heritage witness for the appellant
- Doc 18 2007 Local Plan Proposals Map plus extract showing amended location for potential Park and Ride sites and area to be removed
- Doc 19 Mr Morrish Revised Summary (WDC/RM/1a)
- Doc 20 Appellant's rebuttal to Mr Benison's Highways Note
- Doc 21 Agreed list of application drawings
- Doc 22 Appellant's responses to Mr Benison's Highways Witness Notes
- Doc 23 Ten Year Park and Ride Bus Service Contract
- Doc 24 Extract relating to Mr Birkbeck's quote 'Abercrombie' quote
- Doc 25a Draft suggested conditions v1
- Doc 25b Draft conditions v2
- Doc 25c Draft conditions v3, including suggested cycleway condition (see Inquiry Doc 54)
- Doc 26 Supplementary Planning Document *Managing Housing Supply* (September 2005)
- Doc 27 Mr Barber revised summary and attachments (Appendix A: Permissions granted 2014-2015. Appendix B: Housing Land Position Statement, including comments of the appellant on individual sites)
- Doc 28 Letter from Warwickshire County Council as Highway authority dated 21 April 2015 to the appellant
- Doc 29 Mr Gardener – update note on jobs in Warwick
- Doc 30 Email correspondence of various dates between the appellant and Mr



- Benison on the Park and Ride plus an email dated 21 April from Stagecoach bus company to the appellant
- Doc 31 Letter from Ms Fogarty (Strategic Director for Communities, Warwickshire County Council) dated 22 April 2015, relating to the highway authority's position on Park and Ride
- Doc 32 Draft Highways S106 (superseded)
- Doc 33a Councillor Bullen: Update to his Table A
- Doc 33b Councillor Bullen: Housing delivery compared with targets
- Doc 33c Councillor Bullen: Dwelling stock estimates 2001-203
- Doc 33d Councillor Bullen: Vacant dwellings from 2004
- Doc 34 Submission Plan - Bishop's Tachbrook Neighbourhood Plan
- Doc 35 Officer's report recommending approval for up to 520 dwellings at Grove Farm, Harbury Lane, Bishop's Tachbrook (No W15/0271).
- Doc 36 Amended Table showing Warwick housing completions and net migration (evidence of Ms Howick)
- Doc 37 Neighbourhood Plan Submission Statement
- Doc 38 Planning Practice Guidance extracts (What is Neighbourhood Planning ID: 41-004-20140306 through to 41-009-20140306) (Neighbourhood Planning ID: 41-021-20140306 through to 41-022-20140306; ID: 41-081-20150209; ID: 41-023-20140306) (Neighbourhood Planning (ID: 41-065-20140306 through to 41-068-20140306; ID: 41 -080-20150209)
- Doc 39 Gallagher Estates Ltd and Another v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) 30 April 2014
- Doc 40 Planning Practice Guidance (Housing and economic Development Needs Assessments ID: 2a-014-20140306 through to 2a-029-20140306)
- Doc 41 Updated Tables 8 and 9 to the proof of Mr Halman
- Doc 42 Letter from Barwood to the County Council as Highway authority dated 24 April 2015 setting out matters agreed by Mr Benison in relation to the proposed Park and Ride and seeking confirmation regarding contradictory positions set out in the County Council's letter of 22 April 2015 (Doc 31)
- Doc 43 Steps taken by the appellant to confirm whether the caravan park planning permission on land at Turnbolls Garden was extant. (see also Doc 10)
- Doc 44 South Warwickshire NHS Clinical Commissioning Group – written statement (April 2015)
- Doc 45 General S106 – unsigned (superseded by Inquiry Doc 56)
- Doc 46 Park and Ride S106 (superseded by Inquiry Doc 57)
- Doc 47 Amendments to Table 4 at Appendix C to Mr Parkinson's proof
- Doc 48 Closings on behalf of the Save Warwick Action Group (including Persimmon Homes & Others vs Stevenage Borough Council [2005] EWCA Civ 1365) and Mark Wenman vs Secretary of State for Communities and Local Government and Waverley Borough Council [2015] EWHC 925 (Admin)
- Doc 49 Closings on behalf of Hallam/Davis
- Doc 50 Closings on behalf of the Council
- Doc 51 Corrected viewpoint photos (Appendix DM10 sheet 1 of 6 to the evidence of Mr McInerney)
- Doc 52 Schedule of superseded text in relation to the proof of Mr Halman

- Doc 53 Composite table provided by Mr Benison comparing his highway figures with those of Mr Parkinson
- Doc 54 Draft condition relating to footways/cycleways
- Doc 55 Closings on behalf of the appellant

**DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY**

- Doc 56 General S106 as amended
- Doc 57 Park and Ride S106 as amended
- Doc 58 Correspondence from the County Council setting out the calculations for the requested public rights of way contribution.
- Doc 59 Additional comments from SWAG re weight to be given the emerging Neighbourhood Plan
- Doc 60 Additional comments from the Council re weight to be given the emerging Neighbourhood Plan
- Doc 61 Additional comments from the appellant re weight to be given the emerging Neighbourhood Plan

## **APPENDIX D:**

### **RECOMMENDED CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED**

#### **Reserved Matters**

- 1) Details of appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') relating to each phase of development shall be submitted to and approved in writing by the local planning authority before any development begins in respect of that phase. Development shall be carried out in accordance with the approved details.
- 2) The first application for the approval of reserved matters as set out in condition 1 above shall be submitted to the local planning authority within three years from the date of this permission. All subsequent reserved matters applications shall be submitted to the local planning authority for approval no later than ten years from the date of commencement of the development.
- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the approval of the first application for reserved matters, whichever is the later.

#### **Plans**

- 4) Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with the following plans: Europa Way Access Peter Brett Associates plan 28353/015/003 Rev A; and Banbury Road Access Peter Brett Associates plan 28353/015/004 Rev B.

#### **Phasing**

- 5) The development hereby permitted may be carried out in phases. No development shall take place until a phasing plan for the construction of the development as a whole has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in full accordance with the duly approved phasing plan. The phasing plan shall include a programme of works detailing location, size, timing and delivery as applicable for:-
  - (i) each phase of housing within the site;
  - (ii) the local centre;
  - (iii) the shelter belt facing the Banbury Road;
  - (iv) the Banbury Road and Europa Way site accesses;
  - (v) the Highway Works identified in condition 18 below;
  - (vi) the on-site public open space, to include (but is not confined to) a sports pitches, community orchard, allotments and play areas
  - (vii) the Park and Ride car park.

#### **Development Parameters and Mix**

- 6) The development hereby permitted shall be carried out substantially in accordance with the details described on the following plans:  
Site Location Plan EDP 1871/125

Illustrative Masterplan EDP 1871/140a

Parameters Plan: Land Use EDP 1871/116c

Parameters Plan: Maximum Building Heights EDP 1871/117b

Parameters Plan Advanced Planting EDP/1871/143

- 7) An area of land measuring no less than 0.5 hectare shall be reserved for a local centre. This area of land should broadly be in the location identified on drawing No EDP 1871/116C. Any reserved matters proposal for development on this land must provide a mix of A1 and A2 and A3 and A4 and D1 floorspace, and a police post and associated off-street servicing and parking facilities, all of which shall be delivered in accordance with the phasing plan.
- 8) Prior to the commencement of development in any phase, details of the mix of type and size of market dwellings to be provided in that phase, informed by the most up to date version of the Council's "*Development Management Policy Guidance: Mix of Market Housing on New Development Sites*" shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **Design Code**

- 9) All reserved matters applications shall be informed by a Site Wide Design Code which shall previously have been submitted to and approved in writing by the local planning authority. The Design Code shall be substantially in accordance with the principles and parameters set out within the Design and Access Statement, the plans and documents listed in conditions 4 and 6 above and the Council's "*Garden Towns, Villages and Suburbs: A Prospectus for Warwick District Council, May 2012*" (or any subsequent addendum and/or approved plans/strategy available at the time). The Design Code shall include, but is not confined to the following matters:
  - Hierarchy of streets/routes/sections (including the extent of adoptable highways and associated areas)
  - Development blocks including built form and massing and relationship with adjoining development areas/blocks, including areas of transition between development parcels (including the relationship between built form and adjoining open space);
  - Building types
  - Building heights
  - The means to accommodate the parking of vehicles and cycles
  - Key spaces, open spaces and green features
  - Palette of architectural materials and details

- Design principles for street tree planting and other structural planting landscaping areas
- Design principles for hard and soft landscaping treatments (including surfacing materials for all public realm) and proposals for their long term management
- Design principles for waste disposal and recycling
- Design principles for the colour and texture of external materials and facing finishes for roofing and walls of buildings and structures
- Design principles for street lighting and any other lighting to public space (including parking areas)
- A mechanism for periodic review, and refinement if necessary, of the approved Design Code

### **Construction**

- 10) No phase of development shall commence until a Construction Method Statement for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction Method Statement shall thereafter be adhered to throughout the construction period for that phase. The Construction Method Statement shall include, but is not limited to, the following matters:
  - the parking of vehicles of site operatives and visitors;
  - the loading and unloading of plant and materials;
  - the storage of plant and materials used in constructing the development;
  - the erection and maintenance of a security hoarding including decorative displays and facilities for public viewing where appropriate;
  - wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway;
  - measures to control the emission of dust and dirt during construction;
  - and a scheme for recycling/disposing of waste resulting from construction works.
- 11) No phase of development shall commence until a Construction and Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved Construction and Environmental Management Plan shall thereafter be adhered to throughout the construction period for that phase. The Construction and Environmental Management Plan shall address, but is not limited to, the following matters:
  - pre-commencement checks for protected and notable species, with subsequent mitigation as deemed appropriate; and

- appropriate working practices and safeguards for other wildlife (dependent on further survey work) that are to be employed whilst works are taking place on site.
- 12) No phase of development shall commence until a detailed Landscape, Arboriculture and Ecological Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Plan shall include details of maintenance of all new planting. The plan shall also include details of habitat management, such as for pond, wildflower grasslands, and habitat for protected species. Development shall be carried out in accordance with the approved Plan.
- 13) No phase of development shall commence, nor shall any equipment machinery or materials for the purpose of the development hereby permitted be brought onto any phase, until all existing trees and hedges to be retained within that phase have been protected by fencing in line with *BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations*, pursuant to a scheme that shall previously have been submitted to and approved in writing by the local planning authority. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved protection measures shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

### **Energy**

- 14) No phase of development shall take place under any reserved matters consent until a scheme for that phase showing how either:
- a) at least 10% of the predicted energy requirement of the development will be produced on or near to the site from renewable energy resources;
  - or
  - b) a scheme showing how at least 10% of the energy demand of the development and its CO<sub>2</sub> emissions would be reduced through the initial construction methods and materials has been submitted to and approved in writing by the local planning authority.
- No dwelling within that phase shall be occupied until all the works within the scheme that relate to that dwelling have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturers specifications.

### **Archaeology**

- 15) No phase of the development shall commence unless and until a programme of archaeological works has been secured in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority in respect of that phase. Development shall be carried out in accordance with the approved scheme. The details to be submitted shall include provision to be made for publication and dissemination of the analysis and recording, and provision

to be made for archive deposition of the analysis and records of the site investigation.

### **Contamination**

- 16) No phase of development shall commence until the following information has been submitted and approved by the local planning authority in respect of that phase: -
- (1)(a) A site investigation has been designed for the site using the information obtained from the desk-top study as identified at Chapter 10 of the Environmental Statement and any diagrammatical representations (conceptual model). This should be submitted to and approved in writing by the local planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:
- a risk assessment to be undertaken relating to human health;
  - a risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected;
  - an appropriate gas risk assessment to be undertaken;
  - refinement of the conceptual model; and
  - the development of a method statement detailing the remediation requirements.
- (b) The site investigation has been undertaken in accordance with details approved by the local planning authority and a risk assessment has been undertaken.
- (c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation, has been submitted to the local planning authority. The method statement shall include details of how the remediation works will be validated upon completion and shall be approved in writing by the local planning authority prior to the remediation being carried out on the site.
- (2) Development of the site shall accord with the approved method statement.
- (3) If during development, contamination not previously identified, is found to be present at the site then no further development shall take place (unless an addendum to the method statement, detailing how the unsuspected contamination shall be dealt with, has been submitted to and approved in writing by the local planning authority). This addendum to the method statement must detail how this unsuspected contamination shall be dealt with.
- (4) Upon completion of the remediation detailed in the method statement, a report shall be submitted to the local planning authority that provides verification that the required works

regarding contamination have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

### **Sustainable Drainage**

- 17) No phase of development hereby permitted shall commence until details of surface water drainage works for that phase have been submitted to and approved in writing by the local planning authority, demonstrating means of disposing of surface water and associated SUDS facilities from the development, that surface water runoff would not exceed runoff from the undeveloped site and would not increase the risk of flooding off-site, in accordance with the Flood Risk Assessment dated November 2013 ref: 28353/019 and The Asps Hydraulic Modelling Report prepared by Peter Brett Associated Ref. 28353. The scheme to be submitted, which shall be based on an assessment of the hydrological and hydrogeological context of the site, shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation in relation to each phase of the development; and,
  - iii) provide 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, or any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved scheme shall be installed in strict accordance with the approved details and timetable. It shall be retained thereafter and shall be managed and maintained in strict accordance with the approved details.

### **Highways**

- 18) The development hereby permitted shall not be commenced until a Highways Agreement has been entered into with the Highways Authority to secure the design, construction and completion of the following Highway Works and their subsequent adoption as publically maintainable highway. The Highway Works comprise the works identified on the following drawings:

28353-015-003 Rev A – Europa Way Access Interim Signal;  
28353-015-004 Rev B – Banbury Road Access Indicative Design;  
28353-5501-001 – Gallows Hill Roundabout Potential Mitigation Scheme;  
28353-5501-002 – Banbury Road/Myton Road Potential Mitigation Scheme;



28353-5501-003 – Greys Mallory Roundabout Potential Mitigation Scheme;  
28353-5501-004 – Banbury Road/Gallows Hill Potential Mitigation Scheme;  
28353-5501-005 – Europa Way Corridor Potential Mitigation Scheme.

- 19) The development hereby permitted shall not be commenced until Stage 1 Road Safety Audits, with extended briefs to include linings, for the Highway Works referred to in condition 18 above, have been submitted to and approved by the local planning authority.
- 20) Each phase of development hereby permitted shall be carried out in strict accordance with details of a scheme for the provision of onsite footpaths which link with the wider public rights of way network, that shall previously have been submitted to and approved in writing by the local planning authority in respect of that phase.

### **Park and Ride**

- 21) Prior to commencement of development, the Specification for the Park and Ride shall be submitted to and agreed by the local planning authority. Development shall be carried out only in accordance with the approved Specification which shall include, but is not limited to;
  - the layout, surfacing and demarcation of a 500 space car park, to include disabled parking provision;
  - any necessary supporting infrastructure including signage, ticket machines, toilets, shelters, lighting;
  - marketing and branding, including creation and maintenance of a dedicated website;
  - the contracted operator and the contract term;
  - staffing and operational information;
  - routing;
  - timetable and operating days and hours to provide two services, one to Warwick running Monday to Friday 07:00 to 19:24 (except on public holidays) and Saturday 07:45 to 18:54, and the other to Leamington Spa Monday to Friday 07:00 to 19:25 (except on public holidays) and Saturday 07:30 to 18:55;
  - maintenance standards;
  - financial viability information;
  - long term management of the Park and Ride, including flexibility to allow for the possibility of the District or County Council to operate the Park and Ride.

### **Lighting**

- 22) No phase of development shall commence until a detailed lighting scheme for public areas in that phase, including roads and footways, has been submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **Fumes/Noise Mitigation**

- 23) No phase of development shall commence until a scheme for that phase, detailing arrangements to protect future residents of the development hereby permitted from traffic noise, in accordance with the mitigation

measures set out in Chapter 14 of the Environmental Statement, has been submitted to and approved in writing by the local planning authority. No dwelling within a phase shall be occupied until the commensurate noise mitigation measures have been implemented in accordance with the approved details, which measures shall be retained thereafter.

- 24) Noise arising from any plant or equipment installed at any of the commercial units hereby permitted (i.e. any unit falling within Use Classes A1, A2, A3, A4 or D1), when measured one metre from the façade of any noise sensitive premises, shall not exceed the background noise level by more than 3dB(A) (measured as LAeq(5 minutes)). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone (whine, screech, hiss, hum etc) or if there are discrete impulses (bangs, clicks, clatters, thumps etc) or if the noise is irregular enough to attract attention, 5dB(A) shall be added to the measured level.
- 25) None of the commercial units hereby permitted shall be used for purposes falling within Use Classes A3 or A4 unless and until:
- (a) an odour assessment has been undertaken to assess the impact of odour arising from cooking and any proposed fume extraction system that is required to serve that unit;
  - (b) the results of the odour assessments carried out to comply with criterion (a), together with details of any necessary mitigation measures, have been submitted to and approved in writing by the local planning authority; and
  - (c) any necessary mitigation measures approved under (b) have been implemented in full accordance with the approved details.

The odour mitigation measures installed and shall be retained thereafter and shall be operated and maintained in accordance with manufacturer's instructions.

### **Fire Safety**

- 26) No phase of the development shall commence until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes in that phase, has been submitted to and approved in writing by the local planning authority. That phase of development shall not then be occupied until the scheme has been implemented in accordance with the approved details.

### **Reasons for the Conditions:**

The numbers in bold below reflect the numbering in the above schedule and not the numbering on Inquiry Doc 25c.

**Conditions 1, 2 and 3** relate to the submission of reserved matters and commencement of development. The suggested 15 years for submission of the reserved matters was reduced to 10 at the Inquiry. The period is longer than the usual three years in recognition of the scale of the development proposed.

For the avoidance of doubt, and in the interests of proper planning, it is necessary to identify the plans to which the decision relates, but only insofar as they relate to the matter of access, which is not reserved for subsequent approval (**condition 4**).

Given the scale and complexity of the development proposed, it is likely that the scheme would be delivered in phases. A phasing strategy is required therefore, to ensure that the necessary infrastructure and facilities are provided in a timely manner and in order to protect the visual amenities of the area and the living conditions of future occupiers (**condition 5**).

Although this is an outline application with all matters other than access reserved for future consideration, a considerable amount of supporting information accompanied the application. The Environmental Impact Assessment was based on that information. It is necessary, therefore, to ensure that the development relates to the EIA, the Design and Access Statement, the masterplan and the parameters plans (**condition 6**).

**Condition 7** is necessary to ensure that the full mix of uses proposed, and the police post, are provided in the local centre in the interest of creating a sustainable development. The suggested condition refers to an area of *at least 0.5 hectares*. During the related discussion, concern was expressed that 0.5 hectares would not be sufficient to provide the mix of uses proposed plus the police post and necessary parking and servicing areas. My attention was drawn, in this regard, to the concept masterplan (page 85 of Mr McInerney) and the Final masterplan contained in the Design and Access Statement, both of which indicate an area of some 1.5 hectares for the local centre. The appellant preferred to rely on the Illustrative masterplan (No 1871/140a). I agree that 0.5 hectares seems a very small area in which to accommodate all that is proposed/required. Having said that, the wording of the condition ensures that the full range of facilities is provided and the area cited is expressed as a minimum, which would allow for a larger area to be developed within that particular phase. Any detailed reserved matters application would be for consideration by the local planning authority in the first instance. I have not, therefore, altered the area specified by the condition. In response though to concerns of others raised at the Inquiry, I have added the reference to the provision of associated servicing areas.

In the interest of creating a balanced sustainable community, and in order to ensure that the scheme meets the needs of the District as required by Local Plan policy SC1 and the Framework, **condition 8** requires that the mix of type and size of market dwellings for each phase accords with the Council's *Development Management Policy Guidance: Mix of Market Housing on New Development Sites* and is agreed in advance with the local planning authority. The provision of affordable housing is dealt with by the planning obligation.

In order to ensure that the scheme as a whole is of high quality and integrates satisfactorily with its surroundings pursuant to good urban design, the submission of detailed Site Wide Design Code is required, which would inform all reserved matters applications (**condition 9**).

Construction is likely to take place over a number of years. Whilst local residents and those travelling through this part of the District may well be inconvenienced

by that, adverse impacts can be reduced if an effective Construction Method Statement is in place (**condition 10**). In the interest of nature conservation and to ensure that protected species would not be harmed, a Construction and Environmental Management Plan is also required (**condition 11**).

Suggested condition 9, which relates to the submission of a detailed landscape, arboriculture and ecology management plan, was included as an alternative to the provisions set out in the planning obligation. For the appellant, it was argued that if the Secretary of State accepted the evidence of Mr Wigglesworth, the provisions in the planning obligation relating to biodiversity offsetting could be disapplied and the matter dealt with simply by this suggested condition. As set out in paragraph 14.157, I am satisfied that no financial contribution is required in this regard and that necessary details can be secured by condition (**condition 12**). Such is necessary to ensure a net gain in biodiversity in accordance with the provisions of the Framework.

In the interests of visual amenity, it is necessary to ensure that existing trees and hedges to be retained are protected during construction (**condition 13**).

In pursuit of sustainable development, a condition is required to ensure that provision is made for the generation of energy from renewable sources, or to achieve required carbon savings pursuant to Local Plan policy DP13 (**condition 14**).

Section 9 of the ES, and the associated archaeological report at Appendix 9, suggest that the appeal may contain buried archaeological deposits of possible prehistoric and mediaeval date. A condition is necessary therefore, to safeguard that potential interest. (**condition 15**).

Chapter 10 of the Environmental Statement identifies some risk associated with the use of farming chemicals and two localised potential sources of contamination – two historical landfills adjacent to the north of the appeal site. On that basis, a condition requiring an assessment and, if required, a programme of remediation is necessary to safeguard human health, the built and natural environment, and nearby watercourses (**condition 16**).

**Condition 17** relating to surface water drainage is necessary to avoid increasing the risk of surface water flooding both on the site and elsewhere. At the Inquiry, it was agreed that a condition based on the wording of the PINS model sustainable drainage condition would be more appropriate than suggested condition 15.

A number of off-site highway improvement works are required to mitigate the impact of traffic generated by the development proposed on the local highway network. To that end, a Grampian type condition is required preventing development from taking place until those measures are secured (**condition 18**). Stage 1 Road Safety Audits are required to ensure that the off-site highway works would not give rise to highway safety concerns (**condition 19**). In order to provide a safe and accessible development that with clear and legible pedestrian routes to encourage the active and continual use of public areas, in accordance with the aims and objectives of the Framework, it is necessary to ensure that on-site footpaths are provided which link with the wider public rights of way network (**condition 20**).

The Park and Ride facility is a part and parcel of the development proposed and is secured by one of the planning obligations. However, a condition is required to secure the specifications which need to be agreed with the Council. Concerns in relation to the definition of viability/profitability are dealt with in paragraphs 14.90 and 14.92 above. (**condition 21**).

A detailed lighting scheme for public areas, including roads and footways, is necessary in the interest of the visual amenity of the area, in the interest of protecting the living conditions of nearby residents and to minimise disturbance to wildlife (**condition 22**).

The appeal site is bounded by Banbury Road and Europa Way, both of which are main arterial routes. It is also close to the M40 motorway. In addition, the proposal includes a Park and Ride Scheme and a school. Chapter 14 of the Environmental Statement identifies that noise mitigation measures will be required for proposed residential properties in close proximity to those roads and facilities. A condition to secure implementation of those mitigation measures is therefore necessary in order to provide suitable living conditions for future occupiers in terms both of internal rooms and garden areas (**condition 23**). Conditions to protect the living conditions of future occupiers living in close proximity to the commercial floor space proposed are also necessary in relation to noise and cooking fumes (**conditions 24 and 25**).

In the interest of public safety, given the scale of development proposed, a condition is necessary to secure the provision of a water supplies and fire hydrants for fire fighting (**condition 26**).

-----end of schedule-----



## **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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **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 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 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.