



Department for
Communities and
Local Government

Mrs Sally Tagg
Foxley Tagg Planning Ltd
Normandy House
305-309 High Street
Cheltenham
Gloucestershire
GL50 3HW

Our Ref: APP/H1840/A/13/2202364
Your Ref: Long Marston

02 July 2014

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CODEX PROMOTIONS LTD
SITE AT LAND ADJACENT TO SIMS METALS UK (SOUTH WEST) LIMITED,
LONG MARSTON, PEBWORTH (WYCHAVON DC)
APPLICATION REF: W/13/00132**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI, who held a public local inquiry between 12 and 25 November 2013 into your clients' appeal against a decision by Wychavon District Council ("the Council") to refuse planning permission for a mixed use development comprising up to 380 dwellings, up to 5,000m² of employment (Class B2) floor space, a minimum of 400m² of community (Class D2) building(s), public open space with associated landscaping and infrastructure, in accordance with application Ref: W/13/00132.
2. On 6 August 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and outline planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Jean Nowak, Decision Officer
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London, SW1E 5DU

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Procedural matters

4. A related application for a 4 arm roundabout to serve the appeal scheme was approved by Stratford District Council on 1 August 2013 (Ref. 13/00126/OUTA) (IR2).
5. The Secretary of State notes (IR3) that an Environmental Statement was submitted by your clients with the application for planning permission, and that the Council subsequently issued two Regulation 22 notices requiring submission of further information. Like the Inspector, the Secretary of State is satisfied that, taken together, these meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State considers that sufficient information has been provided for him to assess the environmental impact of this appeal.
6. The Secretary of State has noted the Inspector's Legal note at IR10-11, but agrees with her (IR11) that, as BARD's counsel withdrew his questions, there is no need to take the matter further.
7. The Planning Inspectorate wrote to interested parties on 23 December 2013 on the Court of Appeal decision on *Hunston Properties Limited*, and on 12 March 2014 following the publication of new planning guidance on 6th March. In both cases they invited representations on any implications of these documents for this case. The representations received were then forwarded to the Inspector who has taken them into account in writing her report. You wrote to the Planning Inspectorate on 10 and 21 February 2014, and the Council wrote on 9 April 2014, drawing attention to further developments in relation to the emerging South Worcestershire Development Plan (SWDP) (see paragraph 11 below) but, as the enclosures referred to in that correspondence are public documents, these were not circulated further in the context of the consideration of this appeal.

Policy considerations

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Wychavon District Local Plan 2006 (LP) as well as the Worcestershire Waste Core Strategy (November 2012).
9. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); the planning guidance referred to in paragraph 7 above; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

10. The Secretary of State agrees with the Inspector that the main issues in this case are those set out at IR395.

Development plan and national policy

11. The Secretary of State also agrees with the Inspector (IR397) that, although the proposed development would fundamentally conflict with adopted LP policies with regard to accommodating most new development in specific locations and within

defined boundaries and/or on allocated sites, there are important material considerations to be taken into account in assessing the weight to be given to this conflict. These include the terms of the Framework and the emerging SWDP which is currently being produced jointly by Wychavon DC, Malvern Hills DC and Worcester City Council. However, for the reasons at IR398-404, the Secretary of State agrees with the Inspector at IR405 that very little weight can be accorded to that emerging Plan in respect of its housing policies.

Housing requirement and housing land supply

12. The Secretary of State has carefully considered the Inspector's analysis of the Council's objectively assessed housing needs (IR413-419), and considers her conclusion at IR420 - that the agreed requirement for the current five year period is 4,861 dwellings - to be reasonable. He has also carefully considered her analysis of housing land supply at IR421-446 and, for the reasons she gives, agrees with her conclusion (IR447) that the Council has not demonstrated unequivocally that it has a 5 year supply of housing - so that paragraph 14 of the Framework is engaged. Furthermore, for the reasons given at IR448, the Secretary of State agrees with the Inspector that there is a serious shortfall in meeting objectively assessed affordable housing needs in the District, which neither saved policy GD1 of the LP nor the emerging SWDP is able to meet.

Whether the appeal proposal would amount to sustainable development

13. The Secretary of State notes the Inspector's comment at IR449 that, as things stand, there are no more sustainable sites in the District than the appeal site which can be relied upon to meet the identified 5 year housing needs in place of the appeal scheme; and he agrees with her that the site must consequently be assessed in the context of the housing needs having to be met somewhere. He also agrees that, for the reasons given at IR450-451, the appeal scheme should, like the adjoining St Modwen scheme, be regarded as being in accordance with paragraph 17 of the Framework as being a location which can be made sustainable; but that this will depend on a Connectivity Scheme being agreed without which the appeal scheme must fail. Like the Inspector and your clients, the Secretary of State considers this to be absolutely crucial.

Economic and social benefits

14. For the reasons given at IR452-453, the Secretary of State agrees with the Inspector that the appeal scheme would provide significant employment opportunities within a short distance, thereby providing a significant economic benefit. He also agrees that, for the reasons given at IR454-455, there would be some opportunities available for those employed further afield to travel to and from work by sustainable means including the proposed community bus service to be provided using a s106 contribution (see paragraph 24 below).
15. For the reasons at IR456-458, the Secretary of State agrees with the Inspector that the residents of the appeal scheme would have access to a good range of recreational and community facilities, including shopping. He also agrees with the Inspector that, for the reasons at IR459-468, the contributions being offered by your clients in relation to school travel and community bus services would make more than adequate provision for the funding of bus services to provide access to education and other social facilities (see paragraph 24 below); and he agrees (IR469) that the proposed

contribution towards extending the Meon Medical Centre is appropriate to meet the needs of the residents of the new development (see paragraph 24 below).

16. Overall, for the reasons given at IR470-476, the Secretary of State agrees with the Inspector's conclusion at IR476 that, considering the appeal scheme on its own individual merits, it would contribute to the achievement of the economic and social roles of sustainable development.

Environmental impacts

17. For the reasons given at IR477-481, and having given careful consideration to the objections raised by BARD in respect of landscape/AONB impact, the Secretary of State agrees with the Inspector that, subject to adequate detailed design implementation and management/maintenance through the imposition of conditions (as set out at Annex A to this decision letter), the proposed development would not create landscape or visual impacts of major significance so that BARD's concerns are unfounded.
18. The Secretary of State also agrees with the Inspector (IR482) that, as an area of land has now been agreed with the Council to be set aside and managed as grassland, there is no basis for BARD's claim that there has been a failure to assess significant ecological effects of the appeal scheme; and he does not intend to make any further Regulation 22 requests for additional work. Noting also (IR483) that your clients accept that, if the condition with regard to the creation of a bund cannot be discharged within the lifetime of the permission, the development cannot be implemented, the Secretary of State agrees with the Inspector's overall conclusion (IR484) that the appeal scheme would contribute to the achievement of the environmental role of sustainable development.

The benefits of the appeal scheme

19. The Secretary of State agrees with the Inspector (IR485) that the provision of 220 dwellings in the period up to 31 March 2018 would boost the Council's supply of dwellings deliverable within 5 years in line with paragraph 47 of the Framework and that this represents a significant benefit. To this, he adds the benefit (IR486-487) of delivering a significant additional supply of affordable housing to meet local needs in accordance with paragraph 54 of the Framework. The Secretary of State also agrees with the Inspector at IR493 that, for the reasons given at IR488-493, there are advantages to be derived from the appeal scheme in terms of enhancing the appearance of the site in a situation where it is difficult to see what other practical use the site could have which would generate the income necessary to secure its enhancement. He also agrees with her that, for the reasons at IR494-497, there is no basis for refusing the appeal scheme on grounds of prematurity.

Concerns regarding impacts from Sims Metals site

20. For the reasons given at IR498-499, the Secretary of State agrees with the Inspector that the various concerns raised can be overcome by the imposition of conditions (as set out at Annex A to this decision letter) and through the environmental health legislation.

The objection from HSE

21. The Secretary of State shares the Inspector's difficulties in understanding HSE's objection, given that they did not attend the inquiry to be cross-examined (IR500). However, he also agrees with her conclusion (IR501) that the precise number of houses to be located within the Middle Zone is a reserved matter to be determined at a later stage.

Local involvement in the planning system

22. The Secretary of State has noted the concerns raised by interested parties (IR502-505) about the relationship of this case to the Government's intention, as stated in paragraph 17 of the Framework, of empowering local people to shape their surroundings. However, he agrees with the Inspector that there remains doubt as to when the emerging SWDP will be adopted. He also understands that the Pebworth Neighbourhood Plan is also still at an early stage in the preparation process. He therefore agrees with the Inspector (IR505) that, in the meantime and having regard to the terms of the Framework, planning permission should be granted for the appeal proposal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Conditions

23. The Secretary of State has considered the proposed conditions (IR393-394) and the Inspector's reasoning and conclusions thereon (IR510-538); and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance.

Section 106 obligations

24. The Secretary of State has also considered the Planning Obligations as described by the Inspector at IR377-392 and considered by her at IR455, IR466-468, IR469, IR506 and 539-544. He is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations. He therefore sees no reason to refer back to your clients as suggested at IR545.

Overall Conclusions

25. Although the proposed development conflicts with the relevant development plan policies, these are out of date and the Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. The site is available now, will provide a significant proportion of much-needed affordable housing, and the scheme would be well-located in terms of proximity to the basic facilities to be provided as part of the St Modwen development. Overall, the Secretary of State is satisfied that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, and he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

Formal Decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants outline planning permission for a mixed use development comprising up to 380 dwellings, up to 5,000m² of employment (Class B2) floor space, a minimum of 400m² of community (Class D2) building(s), public open space with associated landscaping and infrastructure, subject to the imposition of the conditions set out at Annex A, in accordance with application Ref: W/13/00132.
27. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
28. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
30. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

CONDITIONS

Plans

1. The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:
 - Location Plan 13070/1030/D
 - Development Plan 13070/1070/C
 - Context Plan 13070/3202 D
 - Constraints Plan 13070/2000 C
 - Proposed Access Plan 13070/3203A
 - Framework Plan 13070/3200/H
 - Proposed Access Plan 13070/3203/A
 - Campden Road – Proposed Access Arrangement Fig 3.1 21216 02

Masterplan

2. The first of the reserved matters applications shall be accompanied by a Masterplan incorporating a landscape masterplan to be submitted to and approved in writing by the local planning authority. The Masterplan shall set the framework for all of the reserved matters applications. Any subsequent variations to the Masterplan must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Masterplan.

Phasing strategy

3. The first of the reserved matters applications shall be accompanied by a Phasing Strategy to be submitted to and approved in writing by the local planning authority. The Phasing Strategy should define timescales and triggers for commencement of each phase of the development, the arrangements to prevent interruption of delivery across phase boundaries, and details of the coordination of infrastructure and housing delivery within the relevant phases. Any variations to the Phasing Strategy must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Phasing Strategy.

Reserved matters applications

4. Applications for approval of details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each of the Phases identified in the approved Phasing Plan shall be submitted to and approved in writing by the local planning authority before any development in that particular Phase begins, and the development shall be carried out as approved.
5. Application for approval of the reserved matters for Phase 1 of the development (as identified in the Phasing Strategy approved under condition 3 above) shall be made to the local planning authority not later than two years from the date of this outline permission and the development to which the Phase 1 reserved matters approval relates must be begun not later than the expiration of 2 years from the final approval of the reserved matters for Phase 1. The reserved

matters applications in respect of all other Phases shall be made to the local planning authority within 3 years of the date of this outline Planning Permission, and the development of each of those Phases shall be begun respectively not later than the expiration of 2 years from the final approval of the last reserved matter to be approved for the respective phase.

Landscape Management Plan

6. All landscape reserved matters applications shall be accompanied by a Landscape Management Plan which includes the long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned domestic gardens) to be submitted to and approved in writing by the local planning authority. The landscape areas to be provided as part of the proposed development shall thereafter be managed in accordance with the approved Landscape Management Plan. The Landscape Management Plan should demonstrate how the undeveloped land will be controlled as the construction of the phased development proceeds. Any variations to the Landscape Management Plan must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Landscape Management Plan.

Ecological Management Plan

7. An Ecological Management Plan which shall include detailed specifications and management regimes to protect existing habitats and wildlife species, as well as enhance biodiversity shall be submitted to and approved in writing by the local planning authority. The plan shall include details of the responsibilities of an ecological Clerk of Works to be appointed to monitor construction activities and shall detail the management practices and retention of the off-set "Ecological Land" as defined under the provisions of the associated s106 Agreement dated 12 November 2013. The Plan shall include an implementation timetable. The approved measures to protect and enhance biodiversity shall be carried out in accordance with the approved plan and implementation timetable.

Survey

8. Survey information shall be submitted with the first of the reserved matters applications showing all existing trees and hedges on the appeal site, and branches from trees on adjacent land that overhang the site. The survey shall include for each tree/hedge:
 - (i) The accurate position, canopy spread and species plotted on a plan;
 - (ii) An assessment of its general health and stability;
 - (iii) An indication of any proposals for felling or pruning;
 - (iv) Details of any proposed changes in ground level, or other works to be carried out, within the canopy spread.

Connectivity scheme

9. No development shall commence until details of a Connectivity Scheme including a timetable for the actual provision of the linkages have been submitted to and approved in writing by the local planning authority indicating how the approved development shall integrate with the adjacent development permitted by Stratford on Avon District Council under permission Ref. 09/00835/FUL (as amended). Development shall then be carried out as approved.

Approval of landscaping before commencement

10. Any reserved matters application seeking approval of details of landscaping shall include the following:

- (i) A plan/plans showing the planting layout of proposed tree, hedge, shrub and grass areas.
- (ii) A schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants.
- (iii) A written specification outlining cultivation and other operations associated with plant and grass establishment.
- (iv) A schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

Landscaping to be carried out and maintained

11. All soft landscaping comprised in the approved details of landscaping for each Phase shall be carried out in the first planting and seeding season following the first occupation of any of the buildings in the respective Phase of development approved. All planting, all shrubs, trees and hedge planting shall be maintained in accordance with the schedule of maintenance as required under the provisions of condition (9).

Protection of retained trees

12. In respect of any tree shown to be retained as part of any reserved matters approval scheme:

- a) no tree shall be cut down, uprooted or destroyed within 5 years of the date of the commencement of the respective Phase of development.
- b) If any retained tree is removed, uprooted or destroyed or dies within 5 years from the date of the commencement of development, another tree of the same size and species shall be planted at the same place within the first planting season following the loss of the retained tree.
- c) No development hereby approved shall begin until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with the British Standard 5837 (2005): Trees in relation to construction has been submitted to and approved in writing by the local planning authority. Protective fencing in accordance with the approved scheme shall be erected prior to any equipment, machinery or materials being brought onto the site for the purpose of the approved development.
- d) Fencing shall be maintained until all construction equipment, machinery and surplus materials have been removed from the development site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Highways

13. The construction of the development of any Phase hereby permitted shall not begin until the construction specifications of the roads (including visibility splays), footpaths, cycleways and parking areas to be included as part of the

development have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is provided with access constructed in accordance with the approved details to the established highway network.

Highway works & Transport

14. No more than 150 dwellings on the site shall be occupied prior to the highway works as shown on plan Fig 3.4-21216-TA Ad-Rev02 being implemented. The access to the site shall be laid out in general accordance with plan Fig 3.1-21216-01.

Employment buildings & facilities for cyclists

15. The employment Phase of the development hereby permitted shall not begin until details of secure covered cycle parking, as well as changing and shower facilities in respect of the employment buildings have been submitted to and approved in writing by the local planning authority. These facilities shall be provided in accordance with the approved details and made available for use prior to the first occupation of the employment development hereby permitted and shall be retained for use at all times thereafter.

Cycle parking/storage for residential development

16. The reserved matters details required under the provision of condition (5) shall include details of cycling storage/parking to serve each of the proposed dwellings hereby approved. Each individual dwelling shall not be occupied until the approved cycling storage/parking facilities have been provided and these facilities shall be retained and not be used for any other purpose.

Full Travel Plan

17. The development hereby permitted shall not begin until a Full Travel Plan has been submitted to and approved in writing by the local planning authority. The Full Travel Plan shall include details of implementation and monitoring. Measures and actions set out in the approved Full Travel Plan shall be implemented in full and monitoring carried out as approved. The results of the implementation and monitoring shall be made available to the local planning authority on request, together with any changes to the plan arising from those results.

Drainage

18. The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include information on:
- Any works proposed to existing waterways/ditches on the development site, including de-culverting or culverting works. This information should be supported by a hydraulic modelling exercise, findings of which are to be submitted with the required drainage details:
 - Measures to ensure surface water run-off (particularly from the proposed employment element of the development) does not lead to ground/water pollution; and

- Rainwater harvesting and grey water harvesting measures to be incorporated in the development; and
- How the proposed drainage systems are to be maintained.

No building shall be occupied until all drainage works to serve that building have been carried out in accordance with the approved details. Once constructed the foul and water drainage systems provided on site shall be maintained in accordance with the approved details.

Levels

19. The layout and landscape details required in the reserved matters applications (condition (5)) shall include details of existing and proposed site levels, including finished floor levels of any buildings. The development shall be constructed in accordance with the approved details.

Contamination

20. No development shall be carried out, other than that required to be carried out as part of an approved scheme of remediation until criteria 1-5 have been complied with, as follows:
1. A scheme for detailed site ground contamination investigation has been submitted to and approved in writing by the local planning authority. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment.
 2. A detailed site investigation and risk assessment shall be undertaken and a written report of the findings submitted to and approved in writing by the local planning authority.
 3. Where identified as necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors shall be submitted to and approved in writing by the local planning authority. The remediation scheme must ensure that the site will not qualify as Contamination Land under Part 2A of the Environmental Protection Act 1990 (or any equivalent provision in any statutory instrument revoking and re-enacting that Act with or without modification) in relation to the intended use of the land after remediation.
 4. The approved remediation scheme has been carried out in full.
 5. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be submitted to and approved in writing by the local planning authority. Following the completion of any measures identified in the approved remediation scheme and before construction work is continued a validation report must be submitted to the local planning authority for approval in writing.

Screen walls/fences and/or hedges

21. The layout and landscape details required under condition (5) shall include details of proposed screen walls/fences and/or hedges to be submitted to and approved in writing by the local planning authority. Development shall then be carried out as approved. No individual dwelling shall be occupied until such walls/fences or hedges associated with that dwelling have been erected or planted.

Emergency vehicular access

22. The approved emergency vehicular access from the site onto the Long Marston Road via Sherry Lane shall only be used by emergency vehicles and shall not be used by general traffic. The development hereby permitted shall not commence until details of the control mechanism for the emergency vehicle access (so as to prevent general vehicular movements to and from the site via the emergency vehicular access) have been submitted to and approved in writing by the local planning authority. The details to be provided shall include a timetable for the completion of the emergency vehicle access and provision of the vehicle access control mechanism. Development shall be carried out in accordance with the approved plans and timetable.

Controls during construction

23. No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays or Sundays. Work shall not be undertaken outside the hours of :
- 08:00 and 18:00 on Mondays to Fridays;
 - between 08:00 and 13:00 on Saturdays.

Construction Management Plan

24. The development hereby permitted shall not begin until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall provide for:
- The parking of vehicles for site operatives and visitors
 - Loading and unloading of plant and materials
 - Storage of plant and materials
 - Storage of plant and materials used in constructing the development
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - Wheel washing facilities
 - Measures to control the emission of dust and dirt during construction
 - A scheme for recycling/disposing of waste resulting from demolition and construction works
 - A soil management strategy as referred to in the approved Environmental Statement.

The approved Construction Management Plan shall be adhered to throughout the construction period.

Limit on the number of dwellings

25. The number of dwellings constructed within the development hereby permitted shall not exceed 380.

Sustainable design

26. The dwellings hereby approved shall achieve a Code Level 3 in accordance with the requirements of the *Code for Sustainable Homes: Technical Guide*. No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

27. The employment and community buildings shall achieve the BREEAM 'Good' standard. These buildings shall not be occupied until a Final Certificate has been issued for it certifying that the proposed level has been achieved.

28. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of the National Planning Policy Framework). Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition (5). The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.

Bund

29. No development hereby permitted shall commence until such time as the bund works permitted on 16 April 2013 by Worcestershire County Council under application 11/000052/CM (C11/02215/CM) shall have been completed as per the approved plans.

30. No development hereby permitted shall begin until a noise mitigation plan has been submitted to and approved in writing by the local planning authority. This plan shall show how noise levels within the dwellings hereby approved will not exceed those set out in BS 8233:1999 (Sound Insulation and Noise Reduction for Buildings) and noise levels within any garden areas will not exceed the upper limit recommended within that document. The report shall include mitigation measures and the approved measures shall be completed before any individual dwelling is first occupied.

Public amenity/open space

31. The reserved matters details required under conditions (4) and (5) shall include details of at least 9.3ha of public amenity/open space to be included as part of the proposed development. These areas shall include:

- Green corridor along the southern boundary of the site:
- Equipped play area(s).

The information submitted shall include details of any landscape features (including ponds, play equipment etc) to be included within the public open space/public amenity area(s).

Prior to the commencement of development details of when the public amenity/open space land is to be provided (delivery timetable) and how it is to be maintained (maintenance plan) shall be submitted to and approved in

writing by the local planning authority. The amenity/open space shall be laid out in accordance with the approved details and delivery timetable and thereafter maintained in accordance with the approved maintenance plan.

Report to the Secretary of State for Communities and Local Government

by Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI

Date 23 April 2014

TOWN AND COUNTRY PLANNING ACT 1990

WYCHAVON DISTRICT COUNCIL

APPEAL MADE BY

CODEX LAND PROMOTIONS LTD

Inquiry opened on 12 November 2013

Land adjacent to Sims Metals UK (South West) Limited, Long Marston, Pebworth

File Ref: APP/H1840/A/13/2202364

File Ref: APP/H1840/A/13/2202364

Land adjacent to Sims Metals UK (South West) Ltd, Long Marston, Pebworth

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Codex Land Promotions Ltd to Wychavon District Council.
- The application Ref W/13/00132 is dated 17 January 2013.
- The development proposed is outline planning permission for a mixed use development comprising up to 380 dwellings, up to 5,000m² of employment (Class B2) floor space, a minimum of 400m² of community (Class D2) building(s), public open space with associated landscaping and infrastructure straddling the administrative boundaries of Wychavon and Stratford District Councils. Proposed access arrangements and associated infrastructure (comprising a new roundabout at the access/egress onto Campden Road) lying within Stratford District Council.
- The appeal was recovered for decision by Secretary of State on 6 August 2013 for the reason that the appeal involves proposals for residential development of over 150 units or on sites of over 5ha, which would significantly impact on the government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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

Procedural Matters

1. I sat on 12, 13, 14, 15, 18, and 25 November 2013, I made an unaccompanied pre-Inquiry visit to the area on 12 November 2013, and I undertook a comprehensive accompanied visit on 25 November 2013 visiting Sims Metals premises, the appeal site, the St Modwen development, all of the neighbouring settlements including Honeybourne Station, and I walked along part of the Heart of England Way.
2. A related application for a 4 arm roundabout to serve a mixed use development comprising up to 380 dwellings was approved by Stratford District Council on 1 August 2013 (Ref. 13/00126/OUTA).
3. Prior to the submission of the application the subject of this appeal, both the LPA and the Secretary of State (SoS) defined the proposal as being EIA development. An ES was submitted with the application for planning permission. Subsequently, the Council issued 2 Regulation 22 notices requiring submission of further information.
4. The appeal was lodged on 23 July 2013. By letter dated 6 August 2013 the SoS directed that he would determine this appeal himself. At a meeting on 15 August 2013 the Council resolved to object to the appeal against non-determination on 5 grounds [CD A34].
5. The documents refer to both Sharry Lane and Sherry Lane but they are one and the same lane. I shall refer to it as Sherry Lane.
6. An executed s106 Agreement (document 17a) was submitted at the Inquiry. I discuss the content and implications of that Agreement below [377].

7. The Appellant's counsel (Mr Banner) was not available on the day appointed to hear the closing submissions. In order to complete the Inquiry in a timely manner, Mr Banner sent a colleague to read out his closing submissions on his behalf. This was arranged following agreement from the other 2 advocates at the Inquiry and with my permission on the basis that the 3 advocates would electronically exchange their closings over the previous weekend, so that no surprises would be sprung on Mr Banner's colleague.
8. The Government's Planning Practice Guide (PPG) was published on 6 March 2014 and the parties were given the opportunity to comment. This Report takes into account the comments received.

Environmental Statement

9. The application was accompanied by an Environmental Statement [CD-A7] made in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the EIA Regulations")¹. The ES includes a non-technical summary [CD-A20]. It covers all of the matters normally associated with large-scale housing development; it includes site specific matters and sets out mitigation proposals. I am satisfied that all of this represents the necessary environmental information for the purposes of Regulation 3 of the EIA Regulations, and I have taken this information into account in making my recommendations.

Legal note

10. At the end of the Appellant's closing submissions, BARD raised various previously unmentioned questions concerning whether an e-mail dated 8 November 2013 (produced to the Inquiry during Mrs Tagg's evidence in chief on 18 November 2013) from the Health and Safety Executive (HSE) ought now to be subject to Environmental Impact Assessment (EIA) pursuant to the EIA Regulations. Oral questions were put to the Appellant by BARD's counsel, which he himself indicated by way of submission, what he considered to be the answers to those questions. In summary, those questions/issues were:
 - Reference was made to the HSE's e-mail dated 8 November 2013. BARD's counsel stated that the e-mail does not form part of the Environmental Statement (ES) and asked the question "was the e-mail submitted under Regulation 16 of the EIA Regulations?"
 - By virtue of the fact that the e-mail was not submitted under Regulation 16, have the EIA Regulations not been complied with?
 - Is the consequence of this that the application does not comply with the EIA Regulations?

It was BARD's clear submission/contention that the answer to the final question ought to be 'yes'.

¹ Inspector's note: Circular 02/99 – *Environmental Impact Assessment (1999) and Environmental Impact Assessment: A Guide to Procedures (2000)* were referred to as part of the submitted EIA, however both documents have now been cancelled by PPG. Nevertheless, the NPPF pays close reference to the Town & Country Planning (Environmental Impact Assessment) Regulations 2011 upon which the submitted EIA is considered to be compliant with regard to content, submission and publicity.

11. BARD's counsel ultimately withdrew his questions. I therefore take the matter no further. However, in order to put the Secretary of State (SOS) in a position to properly consider those legal matters, the Appellant set out, by letter dated 27 November 2013 [document 22] what it considers the legal position to be by reference to an appended judgement: *Davies v. Secretary of State for Communities and Local Government [2008] EWHC 2223 (Admin)*. Sullivan J held that the provision of environmental information at an Inquiry amounts to a substantial compliance with the EIA Regulations and the EIA Directive, and therefore such information does not need to be subjected to the Regulation 22 process (or Regulation 19 as it was at the time of that case). The Appellant refers to paragraphs 32-47 and in particular paragraph 47, where Sullivan J stated:

I do not accept the novel proposition that if additional environmental information, i.e. environmental information that is in addition to that which was contained in the ES and the responses thereto under the Regulations, is produced at an Inquiry, that additional information either should not be considered by the decision taker, or should not be considered by the decision taker unless it has been subject to the same degree of publicity and consultation as the information in the original ES.

Accordingly the Appellant considers BARD's point to be entirely without merit.

The Site and Surroundings

12. The site within the red line of the application drawings covers 22.7ha with 22.574ha of the site lying within Wychavon DC and 0.123 hectares within Stratford-on-Avon DC (SoADC). It is located between the B4632 Campden Road and Long Marston Road.
13. Historically, the site has been used as a MOD Engineers Depot as well as storage (including scrapping of vehicles and rail rolling stock). Although there is little evidence of any previous buildings or structures remaining, I saw various remnants of concrete bases on site.
14. The site lies outside any settlement boundary as defined by the Wychavon Local Plan 2006, and it does not benefit from any allocation for development.
15. Two water courses cross the site – Quinton Brook crosses to the east part of the site (flowing north) and Gran Brook enters the site midway on the southern boundary along which it flows before heading north.
16. The application site within Wychavon DC is not located within the Cotswold AONB. The AONB boundary lies 55m to the east of the proposed site.
17. There is an existing bund running adjacent to the western boundary which provides noise attenuation from the adjacent Sims recycling facility. Planning application Ref: 11/00052/CM (Worcestershire County Council) was approved in April 2013 for the extension of this bund [document 20].
18. To the north, the site adjoins the Long Marston Storage Depot Site (the Depot) which has an extant planning permission Reference 09/00835/FUL approved in April 2009 by SoADC.
19. The nearest villages to the application site are Long Marston (to the north) Broad Marston, Pebworth and Honeybourne (to the west). Mickleton (to the south) and

Upper and Lower Quinton (to the east). The nearest towns are Stratford-upon-Avon and Evesham.

Planning Policy

20. The development plan consists of the saved policies of Wychavon District Local Plan 2006 as well as the Worcestershire Waste Core Strategy November 2012. This follows the revocation of the West Midlands Regional Spatial Strategy and saved Worcestershire Structure Plan Policies on 20 May 2013.

The Case for Codex Land Promotions Ltd

21. This case is a test of the Secretary of State's commitment to "boost significantly the supply of housing" (NPPF, para. 47).
22. Wychavon District has not met its annualised objectively assessed housing needs in any year since 2006. Last year, an Inspector stated that "*the Council has serious housing land supply problems*" and that "*it is imperative that restorative action should be taken*".² Despite its protests at this Inquiry that it has now found a five year supply, the evidence has not substantiated this. The shortfall remains.
23. The position in relation to affordable housing is even more stark. The last six years combined have not delivered one single year's worth of the objectively assessed affordable housing need. Going forward, there is at most a 2.5 year supply of deliverable affordable dwellings compared to what is needed. The Inspector last year was right to conclude that "*there is a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Wychavon*".
24. Action has to be taken now to address these twin shortfalls. Sustainable planning means providing for the District's needs. Allowing the under provision to continue is not an option. The restrictive approach of the Council's out of date Local Plan to new growth should be put aside, and waiting for the adoption of the emerging South Worcestershire Local Plan (which has suffered a major set-back at the first stage of examination with the EiP Inspector concluding that the proposed housing requirement is likely to be a significant under-estimate) at some indeterminate point in the future is a luxury that this District cannot afford.
25. The appeal scheme would provide 380 new dwellings, including 133 affordable units – more than half the affordable homes delivered in this District over the last six years. It is to be located adjacent to an emerging 500-dwelling mixed use development, including a range of employment, leisure and community facilities, for which St Modwen obtained permission in February 2010. Stratford on Avon District Council ("SoADC") in granting permission for this scheme was advised by their planning officers that the site "*has the potential to deliver a sustainable new community*".
26. The St Modwen development is being built out apace. The end product will include (amongst other things) 500 dwellings, a leisure village, a convenience store, sports pitches and a pavilion, an outdoor activity centre, a multi-use games area, woodland areas for public use, together with over 70,000 m² of

² SB17, para. 72.

employment uses (providing some 918 jobs).³ A bus service will provide regular connections to Stratford and Moreton-in-Marsh as well as various other destinations en route.⁴

27. The appeal scheme would build on the opportunity for a sustainable new community which the St Modwen permission presents. The employment and community facilities and the new bus service at the St Modwen site would be given further lifeblood through the provision of 380 new homes, and further employment opportunities would be provided by up to 5000 m² of new commercial floorspace (on top of the employment opportunities available at Sims Metals which is walking distance away). An additional community building will be provided together with a new sports pitch. A second bus service will be established which will provide residents of the appeal scheme and the St Modwen Scheme with connections to Honeybourne station. The station will also be accessible by bike in only 18 minutes, just 5 minutes longer than it would take to drive there (and without the additional time and hassle of finding a parking space).
28. As well as enhancing the sustainability credentials of the new community at the St Modwen site, the appeal scheme will also benefit the nearby Pebworth village, which will be served by the new bus route to and from Honeybourne station and whose school will be given a much needed boost of new pupils, something which has drawn support from residents of Pebworth (several dozen of whom have signed a petition in support of the development) and the school's headmaster.
29. The Ministerial Foreword to the NPPF said, *"sustainable development is about change for the better"*. This is precisely what the appeal scheme involves.
30. Notwithstanding all this, the Council and perennial objectors BARD are asking the SoS to refuse planning permission for the appeal scheme on the nebulous ground that it is "not in a sustainable location". The Council's planning witness Mr Edwards said in cross-examination that even if just 50% of the trips generated by the appeal scheme were by car (which would be over 20% lower car usage than in the District's two main towns, Evesham and Pershore) he would still object on the basis that development of this scale should be located in or adjacent to existing settlement boundaries. For him, it is preferable to reject the 380 homes that this appeal scheme offers and wait until such time when the Council's housing needs can be met somewhere else (in the absence of a deliverable five year supply, he cannot point to where this would be). Any shortfall in the intervening time is, he says, just a temporary problem.⁵
31. If the SoS were to uphold the Council's approach, the consequences will be far-reaching. Local planning authorities across the country with housing shortfalls will rely on the SoS's decision to resist necessary housing growth outside urban areas on the ill-defined ground that it is "not in a sustainable location", even if (as here) it provides a range of opportunities for residents to walk, cycle or take public transport to their work and leisure destinations. This will have serious implications for the Government's objective of boosting significantly the supply of housing. It would also mean that rural areas are effectively written off by the

³ Tagg paras. 3.16-3.17.

⁴ Roderick 2.28-2.29.

⁵ Para. 92.

planning system, instead of allowing new growth to increase their vitality and sustainability in accordance with the NPPF's objectives (as the current appeal scheme would do here).

B. The relative weight to be given to the Local Plan, the emerging SWDP and the NPPF

32. The Appellant's central proposition under this heading is that if the development is in compliance with the NPPF and in particular the presumption in favour of sustainable development in para. 14, that outweighs any breach of the dated policies in the Local Plan (in particular GD1) and the draft policies in the SWDP (in particular SWDP2).

33. The reasons for this are as follows.

(i) The Local Plan is out of date (regardless of whether there is a five year housing land supply) because it is time expired and routinely disapplied by the Council in favour of the more up to date policies in the NPPF.

34. The Local Plan (CD-B3) only purports to "aim to meet the employment, housing and other needs of Wychavon to 2011" (see the forward on p.ii and the Introduction at para. 1.1.1). Policy GD1 itself is only expressed to apply to "new development to 2011". Whilst still an extant part of the development plan due to having been saved, it is clearly out of date since it does not even attempt to provide for the Council's post-2011 needs.

35. In the August 2012 Lioncourt Homes appeal decision (CD-G2 at SB17), the Inspector held at para. 23 that:

"In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the NPPF."

36. At para. 24 he continued (emphasis added):

"I note that the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing" would clearly conflict with the NPPF. In respect of housing supply, Policy SR1 sought to provide 7,450 dwellings in the District between April 1996 and March 2011 (497 dpa). The plan is therefore time expired in respect of housing provision policies."

37. A similar approach was taken in the September 2013 Bloxham decision (CD-G2 at SB8) in which the Inspector held in respect of the time-expired Cherwell Local Plan "as the adopted development plan is dated, the second bullet point in paragraph 14 of the Framework becomes particularly important in the determination of this appeal" (IR 13). The Secretary of State expressed general agreement with the Inspector at para. 3 of his decision letter ("DL") and specific agreement with para. 13 of the Inspector's Report at DL para. 11.

38. The Council's reliance on the Dawlish decision (CD-H2 Appendix 5) is misplaced. In that case the Inspector concluded in the specific circumstances of the Teignbridge Local Plan that its time-expired nature did not on its own render it out of date for the purposes of the NPPF (see IR 12.7-12.14, with which the Secretary of State agreed at DL 14). In the present case, however, there is a specific appeal decision in the context of the Wychavon District that the particular local plan with which we are concerned is out of date on account of it only providing for the Council's needs until 2011. That decision should be preferred to the conclusions made in the Dawlish decision about a different local plan in a different district.
39. Further, unlike in the Dawlish case (see IR 12.12 therein), in the present case the Council has acknowledged in its October 2013 Housing Land Supply report (CD-G2 at SB3) and in its November 2013 update [CD-C6] that, notwithstanding the Council's position that it now has a five year supply of deliverable sites, there is a "*continuing need to approve housing proposals*" in locations beyond the Policy GD1 settlement boundaries (see e.g. CD-G2 SB3 para. 2). The grant of permission for 20 dwellings at South Littleton on 10 October 2013 (CD-G2 at SB26) is an example of this happening in practice. If the Council itself is acknowledging a need to grant planning permission contrary to Policy GD1, then it must follow that Policy GD1 is considered out of date even by the Council itself.
40. Reflecting this, in cross-examination, the Council's housing and planning policy manager Mr Davies accepted that in the District's current circumstances, NPPF-compliant sustainable development which contributes to the Council's supply of sites that are deliverable within five years should be granted permission even if it is in breach of Policy GD1 and even if the Council is already able to demonstrate a five year supply of deliverable sites to meet its objectively assessed needs. The Appellant submits that this is the approach that should be taken by the Secretary of State in the present case.

(ii) The Council is unable to demonstrate a five year supply of deliverable sites to meet its objectively assessed housing needs. Neither GD1 nor the SWDP are therefore able to meet the Council's housing needs.

41. The context for considering this issue is that the Council has on three occasions since August 2012 been found by Inspectors to lack a five year supply of deliverable sites. See the Lioncourt decision (CD-G2 at SB17), the Wychbold decision (CD-G2 at SB19), and the Cheltenham Road decision (CD-G2 at SB18).
42. As the Wychbold Inspector noted, this is a District where there has been "*a pattern of under-delivery*" (CD-G2 at SB19, para. 14). Mr Brown's Table 2 (CD-G1 on p.42) demonstrates the extent of this under-delivery: in not a single year since 2006-07 has the Council met its cumulative requirement when measured against the RSS Panel Figure which is agreed to represent the objectively assessed need.
43. Housing land supply debates can sometimes be complex. Happily, in the present case, the issues are easy to understand and easy to resolve.
44. On the demand side, the parties are agreed. In particular, it is common ground that the RSS Panel figure represents the objectively assessed need, that the Sedgfield approach of making up the shortfall within the five year period is

appropriate, and that a 20% buffer is required due to the persistent record of under-delivery.

45. On the supply side, the Council contends that it has exceeded its five year requirement by 319 dwellings. The Appellant contends that significantly more than 319 dwellings in the Council's supply figures have not been demonstrated to be deliverable (i.e. *"available now, offer a suitable location now, and achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development is viable"*: NPPF para. 47 footnote 11). The Council has therefore not demonstrated a five year supply of deliverable sites.
46. The starting point for considering this is that, as Mr Davies acknowledged in cross-examination, the onus is on the Council to demonstrate through evidence that the sites relied upon are indeed deliverable (except for sites with permission, in which Footnote 11 of NPPF para. 47 states are to be treated as deliverable unless the evidence indicates that they are not). Mere assertion is not enough. See e.g. the Bloxham decision (CD-G2 at SB8) where the SoS considered that the LPA had to *"demonstrate conclusively"* that it had a five year supply. The provision in the draft National Planning Guidance that *"local authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgments on deliverability are clearly and transparently set out"* ⁶is not a new requirement but a statement of what LPAs are already expected to do.
47. This evidential onus is why the five year supply debate in the present case can easily be resolved. For a large portion of its supply, the Council relies simply upon Mr Davies' assertion that he is satisfied they are deliverable and has not produced any evidence (let alone robust evidence) to back up that assertion. That is not sufficient to demonstrate that the sites are deliverable. Otherwise, in any case, the LPA could simply tell the Inspector that it was satisfied that the sites it relied upon were deliverable and that would be the end of the matter. The reason why that is not good enough is that the need to boost significantly the supply of housing and to ensure a deliverable supply of five year sites is such an important objective (and one which authorities across the country have struggled to fulfil) that proper scrutiny is required to ensure that what the LPA says is, in fact, the case. Moreover, in the present case, this is not an authority whose record entitles it to the benefit of the doubt. Quite the contrary.
48. The sites which the Council has included in its supply figures without providing evidence to demonstrate their deliverability:
 - a) Council owned brownfield sites: total 43 dwellings. ⁷ The totality of the evidence produced by the Council was p.53 of Mr Davies' evidence (CD-H5), as he confirmed in cross-examination. That is simply a table setting out the names of the sites and the numbers relied upon. There is no evidence demonstrating that they in fact meet the test of deliverability in NPPF footnote 11.

⁶ Inspector's note: the published version of the PPG maintains the requirements relating to the assessment of site deliverability as per the draft version.

⁷ Brown para. 3.128 (not challenged in CROSS-EXAMINATION).

- b) Local plan allocations carried forward to the SWDP: total 53 dwellings. Mr Brown's SB20 explains how two of these sites are not deliverable within five years due to particular constraints. He was not challenged on this in cross-examination and no evidence is produced by the Council to rebut his evidence and/or to support the conclusion that these sites are in fact deliverable.
- c) SWDP allocations in relation to which there is no evidence at all: 310 dwellings. This is what Mr Brown's 12/11/13 rebuttal note [CD-G6] calls 'Tab 3' of Mr Davies' spreadsheet and accompanying tables regarding SWDP allocations. Nine sites are relied upon for a total of 310 dwellings but the only information before the Inquiry about these sites is the mere fact that they are allocated (which Mr Davies rightly accepted in cross-examination was not sufficient to demonstrate deliverability) and the number of dwellings the Council anticipates they will deliver. Mr Davies accepted in cross-examination that the Inspector and SoS were therefore "*not in a position to assess the robustness*" of the inclusion of these sites. These three deductions alone leave the Council without a five year supply. What follows is therefore relevant only to the extent of the shortfall.
- d) SWDP allocations in relation to which the only evidence is that they are subject to a pre-application enquiry: 74 dwellings. These are in what Mr Brown's 12/11/13 [CD-G6] rebuttal note calls 'Tab 2' of Mr Davies' spreadsheet and accompanying tables regarding SWDP allocations. NPPF footnote 11 is clear that it is only when sites have planning permission that they are presumed to be deliverable and the evidential onus is no longer on the LPA to prove that they are deliverable but on the applicant/appellant to prove that they are not deliverable. Despite this, Mr Brown has generously accepted that sites with a planning application and/or with a resolution to grant permission should be included, even though they have not reached the stage where footnote 11 switches the onus of proof. The sites which are merely subject to a pre-application enquiry should not, however, be included. The Council has produced no evidence to demonstrate that these sites are in fact deliverable. It has therefore not discharged the evidential onus in relation to these sites.
- e) SWDP allocations in relation to which the only evidence is the questionnaire responses and the officer comments in Mr Davies' questionnaire: 238 dwellings These are in what Mr Brown's 12/11/13 rebuttal note [CD-G6] calls 'Tab 1' of Mr Davies' spreadsheet and accompanying tables regarding SWDP allocations. The spreadsheet includes 238 dwellings which are not subject to a planning application and do not have planning permission. The onus is on the Council to demonstrate that these sites are deliverable. The landowner answers to the questionnaire cannot amount to sufficiently persuasive evidence since it is plainly in the interest of a landowner to talk up the prospects of their site being deliverable in order to maximise the chances of their allocation remaining in the draft SWDP and surviving scrutiny at the EiP. Indeed the Council itself does not accept the questionnaire as providing sufficient evidence on its own, since in a number of occasions in the spreadsheet officers have adjusted the landowners' predictions as to the quantum of dwellings that will be provided in the first five years. So the real question is whether the "officer's comments" section of the spreadsheet, where the officers purport to evaluate the deliverability of the sites in the light of the questionnaire responses, amounts to sufficiently compelling evidence to demonstrate that these sites are deliverable. The Appellant submits that they are not. The comments are very thin – sometimes no more than the assertion "*no issues*" - and do not grapple with the footnote 11 test (see also the

issues raised in Mr Brown's rebuttal note of 12/11/13 [CD-G6] regarding some of these sites).

49. Additionally, Mr Brown (CD-G2 at SB20) explains how two of the sites with planning permission are not in fact deliverable within 5 years. These sites amount to 33 dwellings. Mr Brown's evidence on this was neither cross-examined nor rebutted by the Council's evidence.
50. In relation to windfalls,⁸ these may only be included in the five year supply if there is "*compelling evidence*" first, "*that such sites have consistently become available in the local area*" and secondly that they "*will continue to provide a reliable source of supply*" (NPPF para 48). The Council have only addressed the first limb of this test (see CD-H5 p.65). There is no analysis let alone compelling evidence that windfalls will continue to be a reliable source of supply (compare for example the 84-page Tunbridge Wells windfall analysis as an illustration of good practice). The Lioncourt appeal Inspector considered that there was no compelling evidence of windfalls as of August 2012 (CD-G2 SB17 paras 40-41) and Mr Davies confirmed that he had no new evidence that was not before that Inspector. The SWDP EiP Inspector did not make any conclusive findings on windfalls and was looking at the longer-term plan-making context, and so there is nothing in his interim report which justifies a departure from the Lioncourt Inspector's decision in this regard.
51. In relation to lapse rates,⁹ the Lioncourt Inspector concluded in August 2012 that a 10% discount was appropriate because the District's poor track record has demonstrated that delivery is often less than expected (CD-G2 SB17 para. 39). Mr Davies confirmed in cross-examination that the only new factor which he could point to since the Lioncourt decision was the SWDP EiP Inspector's interim report, which concluded that a 5% lapse rate was appropriate in the context of the SWDP. However, as Mr Davies accepted in cross-examination and as already noted above, the SWDP EiP Inspector was looking at the plan-making context which looks at the longer term than the 5 year housing land supply context which this s.78 appeal is looking at, and he was also looking at the three SWDP authorities collectively. The Lioncourt decision therefore remains the most up to date analysis of the appropriate lapse rate to apply to this particular District in the specific context of a s.78 planning appeal. Accordingly a 10% lapse rate is appropriate.
52. It follows from the above that the Council has not demonstrated a five year supply of deliverable sites and that the shortfall remains a significant one regardless of its precise extent. The Council's continued failure to recognise that it has a shortfall is troubling since it is unlikely that the shortfall will be permanently eliminated until the Council appreciates the true state of the situation that it is in.
53. Even if the above submissions are rejected, the position is at best equivocal as the Council's own housing land supply reports indicate (see e.g. the reference in the October 2013 report CD-G2 at SB3 para. 3.1 to the "*uncertainty of the robustness of the 5YHS position*"; the November 2013 update at CD-C6 is in similar terms). Moreover, a sizeable chunk of the supply relied upon – 250

⁸ See generally Brown 3.140-3.146

⁹ See generally Brown 3.129-3.139

dwellings in total – comes from the static caravan site at Landgon Caravan Park¹⁰, which Mr Davies accepted in cross-examination is a “niche product” unlikely to appeal to the full range of those looking for a home.¹¹ In all the circumstances, therefore, even if the Council’s case is accepted at its highest, the housing land supply is equivocal and therefore the same approach as in the recent Hayling Island appeal decision (CD-G2 at SB1 para. 21) should be adopted, namely to continue to apply the presumption in favour of sustainable development in NPPF para. 14 in order to continue to boost the housing land supply in an area which has previously experienced consistent under-provision.

54. Finally, it should also be noted that there is a serious affordable housing shortfall in the District. This is discussed in more detail below when looking at the benefits of the appeal scheme, but the headline points are: (i) that the last six years in total have not delivered one year’s worth of the objectively assessed affordable housing need; (ii) the Council currently has no more than 2.5 years’ supply of deliverable affordable units; and (iii) the SWDP does not even purport to meet the future affordable housing need. Neither Policy GD1 nor the SWDP are therefore able to meet the Council’s objectively assessed affordable housing needs.

(iii) The emerging SWDP can only carry limited weight given the uncertainty surrounding its future evolution

55. The SWDP EiP Inspector’s interim conclusions published on 28 October 2013 concluded that *“the analysis in the February 2012 SHMA does not provide a reliable basis for identifying the level of housing needed in South Worcestershire over the plan period”* (CD-C5 para 41). The Inspector observed that *“it appears from the evidence before me so far that the objectively assessed housing need figure for the Plan period is likely to be substantially higher than the 23,200 figure identified in the submitted plan”* (para. 49). The Inspector’s covering letter (CD-C5) stated that *“it may well be that, once the housing requirement has been established, the Councils will need to consider alternative or additional site allocations to those in the submitted Plan”* and that accordingly *“it is not possible at this point to estimate when the examination will progress to Stage 2”*.

56. There is therefore considerable uncertainty about the future content and timescale of the SWDP. The stages that will need to be completed before it can be adopted are: (i) the Council to undertake further work on its objective housing requirement, which will not be completed until the end of January 2014 at the earliest, (ii) the new proposed housing requirement to be consulted upon and tested at EiP, (iii) the Inspector’s report into the new requirement (iv) the identification of new site allocations to meet the likely increase in the housing requirement (work on this is not going to proceed until the housing requirement is known – see the Council report at CD-C6 para. 4.4), (v) sustainability appraisal / strategic environmental assessment of the new site allocations and the reasonable alternatives to them, and public consultation upon the sustainability appraisal, in accordance with the SEA Directive 2001/42/EC, (vi) the new allocations to be tested at Stage 2 of the EiP, (vii) the Inspector’s report into

¹⁰ Referred to by the Council as Leedons Park

¹¹ See Brown para. 3.102.

* Inspector’s note: referred to by the Council as Leedons Park

Stage 2 of the EiP, (viii) consideration of the Inspector's conclusions and adoption by the three Councils. In cross-examination, Mr Davies accepted that a best case scenario for all these steps to be completed was unlikely to be much before February 2015.¹²

57. The characterisation in para. 16 of the Council's closing submissions of these 8 stages and the likely 'best case' timescale that they would involve as being suggested "*unilaterally*" by the Appellant's counsel ignores the fact that the Council's own witness Mr Davies specifically accepted that these 8 stages would have to be gone through and that they were unlikely to be completed much before February 2015. Mr Brown also gave evidence to similar effect at para. 3.17 of his rebuttal.
58. Applying NPPF para. 216 in these circumstances, the conclusion must be that the SWDP carries little weight in the planning balance. Dealing with the three bullets in turn:
- a) In terms of the stage of preparation, although it has been submitted for examination, it has stalled at the first hurdle of examination and as Mr Brown observed in re-examination, as things currently stand its adoption is not significantly nearer in sight than a plan which is still to be submitted for examination.
 - b) In terms of unresolved objections, there are plainly forceful objections as to whether the current housing requirement meets the objective needs of the area, as well as uncertainty as to whether any necessary new allocations will be objected to. There are also unresolved objections to policy SWDP2 as the Council accepts [151].
 - c) In terms of consistency with the NPPF, the plan and its evidence base as they currently stand have been found not to be NPPF compliant – hence the need for further work.
59. In these circumstances, the SWDP does not carry sufficient weight to justify dismissing the appeal on the grounds of prematurity.
60. Further, and in any event, the criteria for a prematurity objection in paras. 17 & 19 of the *Planning System: General Principles* have not been met since the Council has not satisfied the obligation to "demonstrate clearly" how granting permission will predetermine policy decisions in the SWDP about the scale, location or phasing of new development. In particular, Mr Edwards confirmed in cross-examination that it would not necessarily follow from the appeal being allowed that any amendments would have to be made to the SWDP. Therefore the Council's and the Inspector's future decisions as to the appropriate terms of the policies of the SWDP will not be fettered by allowing the appeal. The same point can be made by reference to the draft National Planning Practice Guidance on prematurity (CD-G6 Brown rebuttal para. 4.11) but with even greater force given the requirement therein for "*exceptional circumstances*" and for the prejudiced decisions to be "*central*" to the emerging plan.
61. Moreover, if it is concluded that the Council has not demonstrated a five year supply of deliverable housing sites, then it follows that the SWDP sites are not

¹² See also Brown rebuttal at 3.17

able to meet the District's current, immediately objectively assessed needs. This is in any event true in relation to affordable housing, in respect of which there is an acknowledged shortfall to meet the objectively assessed needs and in relation to which the SWDP does not even purport to meet future need (see further below).

62. In cross-examination Mr Edwards conceded that if the Council was unable to demonstrate a five year supply of deliverable housing sites and if the appeal scheme was found to be compliant with the NPPF, prematurity would not justify the refusal of permission. He was right to make that concession.

C. The appeal scheme is sustainable development within the meaning of para. 14 of the NPPF and the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits

63. The question of whether the appeal scheme is "sustainable development" and the question whether the adverse impacts "significantly and demonstrably" outweigh the benefits are generally considered in parallel by the Secretary of State (see e.g. the Worsley decision in CD-G2 at SB11 at paras. 27-29) given the overlap between them. The same approach is appropriate here.

(i) The approach to assessing whether the appeal scheme is "sustainable development" and the need for perspective

64. Whether the appeal scheme represents sustainable development needs to be looked at in the round, having regard to the three dimensions referred to in NPPF para. 7: economic, social, and environmental. It is clear from the SoS's decision in the Worsley appeal (CD-G2 at SB11) that the SoS's approach is that even if development would have significant disbenefits when looking at one of these dimensions in isolation (in that case, the permanent loss of open countryside, encroachment into a wildlife corridor, a significant intrusion into a village's setting, serious degradation of character and appearance and residential amenities, and conflict with one of the core planning principles: see DL 21) it can still be sustainable development when viewed overall and having regard to its contribution to the other two dimensions of sustainable development (see DL 27-29).
65. The holistic approach to be taken to assessing sustainability contrasts with the Council's narrow objection to the appeal scheme on the ground that development of the scale proposed cannot be sustainable in transportation terms unless it is within or adjacent to a settlement boundary, without undertaking an in the round assessment of how the scheme fares overall against each of the three dimensions of sustainable development. Lest it now be protested by the Council that this is not its case, it is worth recalling Mr Edwards' answer in cross-examination to the question whether he would be objecting to the appeal scheme even if it would have a 50% non-car modal split: he said yes because development of this scale should be in or adjacent to the District's towns.
66. The proper approach would be to consider the Council's sustainable transport objection in context rather than in isolation. Just as the environmental objections to the Worsley scheme (CD-G2 at SB11) were considered in the round rather

than treated as an in-principle knock-out, so too should the allegations made against the appeal scheme in the present case.

67. Considering the Council's objection in context means having regard to:

- a) Taking as a starting point that the continued failure of the Council to meet its objectively assessed housing needs (in particular the lack of a five year supply of deliverable sites and the woeful affordable housing shortfall) is not a sustainable position for the District to be in.¹³ The provision of 380 dwellings, including 133 affordable homes, will significantly contribute towards improving the position and moving the District towards a situation where it is able to sustain its housing needs.
- b) The lack of a five year supply of deliverable sites means that there is no other development that the Council can point to which can do this job instead of the appeal scheme. Such deliverable sites as the Council can point to are needed in addition to, and not instead of, the appeal scheme. Mr Edwards was therefore right to accept in cross-examination that there are no more sustainable sites in the District which can be relied upon to meet the identified five year housing needs in place of the appeal scheme.
- c) As Mr Edwards also accepted in cross-examination, the concept of sustainability must be applied in such a way that the District's objectively assessed housing needs can be met. In other words, the sustainability of the appeal scheme cannot be looked at in a vacuum – it must be viewed against the premise that the District's housing needs have to be met somewhere¹⁴ (and if not here, then where?)
- d) As greenfield opportunities for housing development of this scale go, the appeal scheme is unusually unconstrained. There are no allegations of significant harm from the Council in relation to a range of issues that frequently come up in relation to schemes of these nature (including schemes that merit the grant of permission: see e.g. the Worsley scheme CD-G2 at SB11), such as landscape, ecology, highway impact, noise, heritage, loss of agricultural land, impact on amenity of neighbouring properties, or flood risk.

¹³ Accepted by Edwards in cross examination.

¹⁴ Accepted by Mr Edwards in cross examination.

(ii) Compliance with sustainable transport policy in NPPF paras. 29-41¹⁵

What does the NPPF actually require?

68. The overarching principle to which this section of the NPPF seeks to give effect is the penultimate core planning principle in NPPF para. 17, namely 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.”

69. The Appellant advances five general submissions about this core planning principle and paras. 29-41.

70. First, and fundamentally, this core planning principle does not require that development is only permissible on sites which currently are sustainable. It also embraces development on sites which “*can be made sustainable*” even if they currently are not. This very important point was lost on Mr Edwards, who in cross-examination insisted that the NPPF imposed a sequential test whereby sites that can be made sustainable are permissible only if sites which are currently sustainable are unavailable, an approach which amounts to rewriting the terms of the NPPF (in any event in the absence of a five year supply of deliverable sites Mr Edwards’ sequential test is satisfied in the present case).

71. Secondly, there is nothing in the NPPF which indicates that development of a scale such as that proposed in the present case is inherently unsustainable in transport terms unless it is located within or adjacent to an existing settlement boundary. If there were such an absolute requirement, the NPPF would say so. It is instead expressed in considerably more flexible terms; see e.g. the reference in para. 17 to locations which “*can be made sustainable*”, the reference in para. 55 to the objective of promoting “*sustainable rural development*” (the clearest acknowledgment that rural areas can play their part in meeting identified needs through sustainable development) and the observation in para. 52 that sometimes the delivery of new homes can be achieved by new settlements. These provisions indicate that a more nuanced approach is called for than that advocated by the Council in the present case.

72. Thirdly, there is nothing in the NPPF which sets any specific empirical criteria to be met in order for a location to be considered sustainable or capable of being made sustainable. There is no provision to the effect that a particular percentage, or indeed the majority, of trips must be made by non-car means in order for the site to be considered sustainable. Note in particular para. 29, which states that “*opportunities to maximise sustainable transport solutions will vary from urban to rural areas*” (in other words the para. 17 objective of ensuring “*the fullest possible use*” of sustainable transport does not mean rejecting development in

¹⁵ The Appellant notes that the transport submissions and evidence to the appeal included a full detailed Transport Assessment and Travel Plan which were prepared in compliance with the relevant DfT guidance, which includes the document *Guidance on Transport Assessment* published in 2007. The DfT guidance has not been replaced by the PPG and is in fact referred to by it. In relation to transport issues the Appellant says its submissions and evidence are in compliance with PPG’s overall aims and objectives.

rural areas on the ground that towns and cities will always be better), the reference in the first bullet of para. 32 to the objective of taking up sustainable transport modes *“depending on the nature and location of the site”*, the reference in para. 38 to the benefits of providing a mix of uses *“in order to provide opportunities”* to undertake day-to-day activities including work on site” (the key being the provision of opportunities rather than guaranteeing a particular percentage of internal trips) and the provision in the same paragraph that key facilities should be located within walking distance of most properties *“where practical”* (a proviso that appears lost on the Council).

73. Fourthly, the reference to making the *“fullest possible use”* of public transport, walking and cycling has to be read alongside the requirement for the District’s objectively assessed needs to be met somewhere. Since the Council cannot demonstrate a five year supply of deliverable sites to meet its objectively assessed requirement, there is no other *“possible”* means of the Council meeting the District’s immediate housing needs.
74. Fifthly, the key development control policy in the sustainable transport section of the NPPF is para. 32, which states that *“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”*. The Council is wrong to interpret this as applying only to highway capacity objections. The wording is clear: it applies to all *“transport grounds”* relied upon by opponents of a development.

How does the appeal scheme perform?

75. The starting point for addressing this question is that the Officer’s Report on which the decision of SoADC to grant permission for the adjacent St Modwen scheme was based concluded that *“concerns...regarding the sustainability of a large scale residential development in this location”* should be rejected because *“the proposal has the potential to deliver a sustainable new community”* (in other words, to use NPPF para. 17 language, the location *“can be made sustainable”*). This was because *“people living on the site will have the opportunity to access job opportunities, both within the existing employment area and through the new leisure uses which will be created”* and *“the residents will also benefit from the central facilities which will be provided to support the range of uses on the site”*, and *“the provision of on-site facilities is supported by improved walking, cycling and public transport links to new settlements”* (CD-G5 Tagg Appx 3, p.93). The objection by BARD and others that the scheme *“would act as an isolated housing estate in a rural area”* was rejected at p.94, the report commenting that *“the applicants have agreed to fund a post for a community officer which will help to create a community on the site”* and *“design features (such as the central facilities hub building which would incorporate a bar, restaurant, café, retail, changing rooms for sports pitches, swimming pool, business/community hall/suite) [would] create a better integrated community”*. The subsequent approval of reserved matters confirmed that the proposal continued to be considered sustainable development following the adoption of the NPPF.
76. The appeal scheme is located next-door to the St Modwen development. Subject to ensuring appropriate integration/connectivity between the two sites (discussed further below), the above observations apply equally here. Moreover, the appeal

scheme will provide over 100 further employment opportunities¹⁶ by the provision of up to 5000 m² commercial floorspace as well as an additional community building and a new sports pitch. As Mr Roderick observed in re-examination, had the appeal site been within SoADC's administrative area, and the St Modwen application had included the appeal scheme as part of its proposed development, it is inconceivable that the conclusions expressed in their Officer's Report would have been any different. That is a useful sense-check in considering the Council's sustainability objection in the present case.

77. The amount of employment opportunities that residents of the appeal scheme will have on their doorstep, as Mr Edwards acknowledged in cross-examination, is unusual for a non-urban location. They include:

- a) Over 73,000 m² of employment floorspace at the Long Marston depot site, amounting to some 918 job opportunities;¹⁷
- b) The Sims Metals Group head office, a substantial employer with a range of employment opportunities including professional positions in managerial, administrative legal and accountancy roles.¹⁸
- c) Employment opportunities on the St Modwen site, including those associated with the leisure village and community facilities;¹⁹
- d) The 5000m² employment floorspace proposed by the appeal scheme, providing over 100 job opportunities.²⁰ (Note: whilst the Appellant proposes that this new floorspace should be brought forward in line with market demand, if the Secretary of State considers that a planning condition or s.106 obligation ought to be imposed in order to secure the delivery of this element of the appeal scheme by a certain trigger point, this is simply a matter of the mechanics of the planning permission to be granted).²¹

78. There are therefore over 1000 job opportunities within a stone's throw of the appeal scheme.

79. For those employed further afield, opportunities will be available to travel to and from work by sustainable means. In particular:

- a) The bus stop on the St Modwen development will be less than 10 minutes' walk away²² and will offer public transport links to Stratford and Moreton-In Marsh as well as intervening stops.²³
- b) The new bus service provided by the appeal scheme will offer public transport links to Honeybourne, including the station from where there is a good railway service to Worcester, Pershore, Oxford and beyond.²⁴ The bus service will also provide connections to Pebworth and will enhance the connectivity of Pebworth

¹⁶ Tagg para. 4.36

¹⁷ Tagg 3.17 and Table 1 (not challenged in cross examination).

¹⁸ Tagg cross examination and re-examination, and proof paras. 3.18-3.20.

¹⁹ Tagg proof 3.21.

²⁰ Tagg proof 3.22.

²¹ As Mr Edwards acknowledged in CROSS-EXAMINATION.

²² Roderick main proof 3.20

²³ Roderick main proof 2.28.

²⁴ Roderick main proof 2.35 and following.

with the facilities and station in Honeybourne. There is no merit in the suggestion by Worcester County Council, whose written representations have not been able to be tested in cross-examination and should on that account carry limited weight, that the bus service will not be viable. The 20 year business plan prepared by Mr Roderick (CD-G3 Appendix 4: see also paras 3.21-3.26 of his proof) uses the County Council's own methodology and guidance and it demonstrates that the service will be viable. As a belt and braces approach, Mr Roderick has also subjected the business plan to a series of sensitivity tests where certain variables are altered, and in each scenario the service remains viable (CD-G3 Appendix 4). He has also drawn on the example of the bus service in Evesham (CD-G3 Appendix 3). His written rebuttal to the County Council's comments (Report No. AR/21216/03) was not challenged in cross-examination.

c) Honeybourne Station will also be in cycling distance from the appeal site, a ride of around 6.8 km or 18 minutes, which given the more circuitous 10km route for motor vehicles is only 5 minutes longer than driving there by car (the difference will be less if those driving by car have to spend time finding a parking space at this busy station²⁵). The s.106 obligations include a contribution to fund improvements to the cycling facilities at the station, including cycle parking. The cycle route down Sherry Lane between the site and the public highway network will be secured by a combination of the s.106 unilateral undertaking (which requires the landowners to make the route available up to the edge of their ownership) and the landowner's right of way down Sherry Lane which is expressed to pass to all successors in title (see the DAC Beachcroft correspondence on the subject). The suggestion that cyclists will not want to use the route to/from Honeybourne in the dark because it is not lit is without merit. Cyclists are required by law to wear lights,²⁶ and if the absence of street lighting to augment bike lights is deemed to be a deterrent to all potential cyclists, half the country might as well give up on promoting cycling as a viable option for sustainable transport. That is not what the NPPF tells us to do. As Mr Roderick explained in his oral evidence, the key factor in terms of influencing the perception of people about the attractiveness of a potential cycle route is the degree to which it is trafficked; in the present case the route is lightly trafficked and therefore will perform well in this regard.

80. Residents of the appeal scheme will also have direct access to the community facilities at the St Modwen scheme, facilities which SoADC considered were sufficient to make that scheme capable of becoming a sustainable community. The additional footfall which the appeal scheme will provide will only serve to enhance the prospects of these facilities succeeding. In addition, a new community building will be part of the appeal scheme.
81. Significant recreational opportunities will also be available. Residents of the appeal scheme will have the Cotswolds AONB – by definition, one of the country's finest landscapes - on their doorstep, as well as the sports and leisure facilities at the St Modwen site. The appeal scheme will add to these existing opportunities by providing a further sports pitch, as well as funding towards the new athletics circuit and cycle track in Honeybourne which will be supported by the s.106

²⁵ See Roderick rebuttal 2.29.

²⁶ Roderick EIC.

- agreement.²⁷ Whilst the Council and BARD may sneer that Honeybourne is not within walking distance, the sporty types who will be using this facility will plainly be just the kind of people predisposed to travelling by bike, who will think nothing of an 18 minute ride to Honeybourne.²⁸
82. The convenience shop at the St Modwen scheme will provide sufficient opportunities for top-up shopping, as Mr Edwards accepted in cross-examination. Whilst it is true that people seeking to undertake their weekly shop at a supermarket will not be able to do so in the immediate vicinity of the site, Mr Edwards rightly agreed in cross-examination that (i) weekly shops are less significant in terms of vehicle trips by virtue of their less frequent nature and (ii) the NPPF envisages at paras. 22-27 that supermarkets are generally to be located in town centres or on edge of centre sites, and yet at the same time the NPPF also envisages that sustainable development is achievable in rural areas (see above), which means that the lack of a supermarket in the immediate vicinity cannot of itself mean that a site is not a sustainable location for development. Indeed this did not preclude the St Modwen scheme from being considered sustainable. Moreover, as Mr Roderick explained in his oral evidence, the new bus service to be provided as part of the St Modwen scheme will provide an opportunity to access the Stratford Waitrose by public transport.
83. In addition to the facilities on site and at the St Modwen scheme next-door, the village facilities at Long Marston, Pebworth, Mickleton and Lower Quinton are all well within the 5km range within which it is generally accepted that cycle trips have the greatest potential to replace car journeys.²⁹ At 2.3km Lower Quinton is sufficiently near that trips on foot will be possible. Whilst Mr Edwards made a great deal out of the nature of the route, it is unrealistic to suggest that the entire population will be put off simply by the prospect of having to cross a road and walk along a stretch of unlit road (neither of which are particularly uncommon features for non-urban locations). After all, we are dealing with people who will have chosen to live in this location.
84. For those families with children of primary school age, Pebworth First School is only c.2 miles away. It currently has only a third of places full (some 30 out of 92 – see Mrs Summers’ oral evidence). The School’s Headmaster expressed support for the appeal scheme *“in the strongest possible terms”* in his consultation response dated 10 May 2013 (CD-G5 Tagg Appx 7) on the basis that the additional footfall will *“help the school stay open and continue to give the families of this area the very best in education”*.³⁰ There is no evidence that there is any potential new development nearer to the school that would be able to fill its spare capacity.
85. The County Council has confirmed that it will provide buses for secondary school children (whether to Chipping Campden or Evesham) and the s.106 unilateral undertaking commits the appellant to provide the necessary funding for this. The provision of opportunities for secondary school children to travel to and from school by bus is plainly consistent with sustainable transport policy. As the bus

²⁷ Tagg para. 4.44.

²⁸ For the 18 minute time, see Roderick para. 2.28 which was not challenged in CROSS-EXAMINATION.

²⁹ Roderick proof para. 2.23 and Table 2.1.

³⁰ Whilst he has now left his position at the school, there no correspondence on the school’s behalf indicating a contrary view.

- timetables produced by Mr Edwards indicate (and as he accepted in cross-examination), there is nothing unusual in this area about children taking the bus to school.
86. Overall, therefore, there is a commendable range of opportunities for walking to employment, community, and recreational facilities and for using sustainable transport means to access those facilities which are further afield. Given that, as noted above, the NPPF accepts the principle that housing development in rural areas can be sustainable, it is significant that as a rural location goes, this site performs really very well against NPPF paras. 29-41 and the penultimate core planning principle which these paras. reflect.
87. Indeed, it does not just perform well compared to rural locations. It is also of considerable significance that the 2011 census data shows that the existing travel-to-work modal split in the Quinton ward, which covers the appeal site, has a lower percentage of car trips than Honeybourne (86% versus 88%) despite the latter having a mainline railway station and being a bigger settlement.³¹ Indeed, Honeybourne has been considered a sustainable location for significant housing growth in two recent appeal decisions (CD- G2 SB17 & SB27) which on their own totalled over 110 new dwellings. Even without any of the new opportunities for internal trips or use of sustainable transport which the appeal scheme and the St Modwen Scheme will present, and even if the travel plan achieves zero modal shift (which not even the Council alleges), the statistical evidence indicates that the propensity to use the car will be lower here than in Honeybourne. Taking on board the range of opportunities which the scheme provides for avoiding car trips, however, as well as the Travel Plan which para. 36 of the NPPF acknowledges will be a “*key tool*” in facilitating modal shift, there can be no serious doubt that there will be a significant improvement on the current 86% mode share by private car. Even if the Travel Plan only achieves two thirds of its target of a 15% modal shift, the 10% improvement would mean that the private car mode share would be almost identical to that currently experienced in Pershore (75%), the District’s administrative headquarters. And if the Travel Plan does achieve its 15% target shift, the private car mode share would be comparable to Evesham (70%).³²
88. There was no serious challenge to the contents of the Travel Plan. It should be noted that Mr Edwards has no professional qualifications in transport or travel planning, unlike Mr Roderick.
89. In the light of all this, it is little wonder that the Council and BARD focused their efforts at the Inquiry on seeking to question the ability of the appeal scheme to achieve satisfactory links into the St Modwen scheme (although it should be noted that Mr Edwards acknowledged in any event that the facilities on the St Modwen site would not be an objectionable distance away even if such links were not possible: see para. 83 of CD-H1). This is doubtless a recognition by the appeal scheme’s opponents that if satisfactory connections are achievable, there really can be no valid reason for concluding that the site is a sustainable location given the opportunities available and the conclusions of SoADC that the St Modwen site was capable of delivering a sustainable new community. Despite

³¹ See Roderick Rebuttal 2.15 & 2.30 and Rebuttal Appendix 2

³² Roderick Rebuttal 2.15.

their best efforts, their attempts to cast doubt on the ability to deliver appropriate connections went nowhere. The particular reasons are set out below.

90. *First*, a Grampian condition (no. 11 in the suggested draft conditions) [document 18] is proposed which will require submission and written approval of a **Connectivity Scheme** indicating connections to and from the St Modwen site, and the subsequent implementation of that scheme. The mechanics of this condition are discussed further below in the 'conditions' section of the Appellant's submissions, but the crucial point is that this condition will ensure that appropriate connections are provided. If a satisfactory connectivity scheme is not provided, the permission cannot be implemented and therefore the prospect of the appeal scheme being built out without satisfactory connections will not arise. That does not present a legal or policy obstacle to the imposition of such a condition because the criterion for a Grampian condition to be appropriate is simply that there be "some prospect" of it being discharged within the lifetime of the permission.³³ ³⁴Not even the Council or BARD alleges that there is no prospect at all of satisfactory connections being provided – the highest that they put it is that there is 'no guarantee' or 'no certainty' which is not the relevant test.
91. *Secondly*, there is no evidence that St Modwen and their development partners Persimmon will be anything but co-operative in relation to the provision of such connections. They have now written three letters indicating their support with increasing force each time (CD-G3 Appendix 5, CD-G5 Appendix 22 and Appendix 22A). The most recent letter dated 14 November 2013 (CD-G5 Appendix 22A) confirms that their view is that connectivity between the two sites will be *"mutually beneficial to allow the residents to benefit from the transport services that we will respectively provide"*. There is therefore a commercial interest to St Modwen/Persimmon to ensure that the occupiers of their houses can access the appeal site in order to use the proposed bus service.
92. *Thirdly*, when St Modwen/Persimmon apply for reserved matters approval of their Phase 3, SoADC will be able to scrutinise the application to ensure that it allows for appropriate integration with the appeal scheme and refuse reserved matters approval if it does not.
93. *Fourthly*, there is no merit in the suggestion by BARD that the 6 August 2012 Barton Willmore letter on behalf of St Modwen (CD-12 Appendix AM32) indicates that the leisure village element of the scheme (i.e. the caravan & camping pitches) which forms part of Phase 2 is not currently viable and that this casts doubt on Phase 3. This letter was made in conjunction with an application that was subsequently withdrawn. It is therefore not an extant statement. It is post-dated by a unilateral undertaking entered into by St Modwen on 6 December 2012 which undertook to complete 30 touring pitches and 30 camping pitches by the time of the 85th occupation of the Phase 1A residential units. It is extremely unlikely that St Modwen would have entered into a binding obligation to commence a significant part of Phase 2 if it did not consider that this Phase is viable. This unilateral undertaking also commits St Modwen to building out the

³³ See the ODPM letter to Chief Planning Officers dated 25 November 2002 modifying para. 40 of Circular 11/95 so that only where there are *"no prospects at all"* of a Grampian condition being complied with during the lifetime of the permission was it inappropriate to impose such a condition.

³⁴ Inspector's note: the PPG has not changed the principle of the use of a Grampian condition.

greenway in its entirety and the central facilities building by the same trigger point, namely the 85th occupation of Phase 1A. As Mr Roderick stated in oral evidence, and as the phasing plan in Mr Murphy's Appx 4 shows, the completion of the greenway will be sufficient to enable connections to be made between the appeal scheme and the St Modwen scheme even in advance of Phase 3 of the latter. It should also be noted that there is nothing in the phasing condition of the St Modwen permission (CD-G5 Appendix 13, condition 18) or the phasing plan (CD-12 Appendix 4) that requires the completion of one phase prior to the commencement of another phase. Planning law is clear that there is no room for implied conditions in planning permissions: see e.g. *R (Hart Aggregates Ltd.) v. Hartlepool BC* [2005] 2 P.& C.R. 81 per Sullivan J. at para. 56.³⁵ Accordingly, there is nothing which prevents St Modwen commencing Phase 3 before completing the earlier phases. The uncontested evidence is that the demand for the residential units at the St Modwen site is significantly greater than had been anticipated and that building is proceeding at 85 units per year with 4-6 private houses being sold per month (up to 72 per year) in addition to the affordable housing (see the Persimmon letter at CD-G5 Appendix 21). The trigger point of the 85th occupation by which time the greenway and community facilities building must be in place is therefore plainly not very far away, and the construction Phase 3 is a matter of "when", not "if".

94. Finally, references by the scheme's objectors to the eco-town proposal are entirely misconceived. Just as SoADC noted that the St Modwen scheme was an entirely different proposal to the eco-town when granting permission for it (see CD-G5 Appendix 3 p.86), so too is the appeal scheme. The scale of development of the eco-town, and the nature and extent of its impacts, are in a different league to what is proposed here. Moreover, there has been a significant change in circumstances since the eco-town was considered by the RSS panel, in that the St Modwen scheme has now obtained approval on the basis that it is capable of delivering a sustainable new community and it is in the process of being built out.
95. In conclusion under this heading, the Appellant submits that the appeal scheme performs well against the sustainable transport objectives in NPPF paras. 29-41 and the penultimate core planning principle which these paras. reflect. It certainly cannot be said that the transport impacts are "severe" within the meaning of para. 32; indeed the impacts are in fact positive for the reasons outlined above.

(iii) The benefits of the appeal scheme³⁶

96. Housing: For the reasons already outlined above, the development's contribution of 380 new dwellings in a District which has long been unable to meet its annualised objectively assessed housing needs is a benefit to which considerable weight should be accorded. Mr Brown's unchallenged evidence was that the appeal scheme is capable of delivering some 220 dwellings in the period to 31st

³⁵ "There is no scope for implied conditions in a planning permission. If a local planning authority wishes to impose any obligation upon an applicant by way of a requirement or prohibition, it should do so in express terms, because failure to comply with the condition may, ultimately, lead to prosecution for failure to comply with a breach of condition notice and/or an enforcement notice".

³⁶ See generally Section 4 of Mrs Tagg's proof.

March 2018.³⁷ In line with para. 47 of the NPPF, that will significantly boost the Council's supply of dwellings deliverable within five years.

97. *Affordable housing*: The provision of 133 affordable homes is a material consideration which should also be given significant weight, as Mr Edwards and Mr Murphy both agreed in cross-examination. In the Lioncourt Homes appeal decision (CD-G2 at SB17) at para. 44 the Inspector noted that there is “a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Wychavon”. He was plainly correct to do so. As Mr Brown's unchallenged evidence on this issue demonstrated,³⁸ only 262 affordable homes were delivered in the District between 2006/07 and 2011/12 overall against an objectively assessed need of 268 units per year. In other words, the total affordable housing delivery in the last six years is less than the objectively assessed need for a single year. The situation is nothing short of a crisis. There is no indication that the position is likely to be turned around any time soon. Mr Brown's evidence was that there is only a 2.5 year supply of deliverable affordable housing dwellings compared to the objectively assessed need, and over the longer term the draft SWDP does not even purport to meet the total affordable housing need, noting that its target “is about 2,150 below the total level of potential need” (CD-C1 p.39 para 14). It is therefore a matter of considerable significance in the overall planning balance for this appeal that the proposed development would deliver half the annual objectively assessed annual affordable housing requirement in one fell swoop.³⁹ The insistence of the Council's housing policy manager, Mr Davies, in cross-examination that this was not a matter of significant weight was deeply troubling and underlines the unlikelihood of the District's affordable housing crisis being turned around without the SoS taking a clear stance on the issue.
98. The weight to be given to the affordable housing is augmented by the fact that some 2338 households on the Council's Home Choice Plus database have expressed a desire for an affordable home in Pebworth (CD-A32). The appeal scheme will give 133 of these households a chance of seeing their aspirations for a home here come true. Without it, they would have virtually no chance at all. It is no answer for objectors to say that that the proportion of those who currently have a local connection with Pebworth is small, because it is a lot harder to have a local connection with an area if you can't afford to live there. Moreover, the Council's suggestion in cross-examination of Mrs Tagg that a number of the jobs in the vicinity of the appeal scheme will be not be high-earning (the insinuation being that they would not appeal to professionals in the market housing – an insinuation rebutted by Mrs Tagg's evidence of the professional jobs associated with industrial uses, such as the administrative and management positions at Sims Metals) highlights that those working in such jobs may well be deprived of the chance of being able to afford to live near their workplace if the appeal scheme is not allowed.
99. *Maintaining and enhancing the vitality of rural communities*:⁴⁰ in furtherance of this objective of NPPF para. 55, the appeal scheme will provide the new

³⁷ Brown main proof paras. 3.170-3.175.

³⁸ See Mr Brown's main proof, paras. 2.105-2.116.

³⁹ 133 units as compared to a requirement of 268 per annum.

⁴⁰ See Mrs Tagg's paras. 4.27-4.30.

community at the St Modwen site with additional sustainable transport and employment opportunities as well as further demand for its community facilities which will enhance their prospects of succeeding. It will also maintain and enhance the vitality of Pebworth by providing much needed opportunities to fill the available places at Pebworth First School (which is currently operating at about 1/3 capacity) and providing a new bus service to and from Honeybourne station as well as the facilities on the appeal site. Pursuant to the s.106 agreement, the nearby Meon Medical Centre in Lower Quinton will also receive enhancements, the benefits of which will be enjoyed not only by residents of the appeal scheme but also by the existing users of the medical centre.⁴¹

100. *Other social benefits*: the provision of a sports pitch together with a community/changing room facility will broaden the range of leisure/recreational facilities in the area, as will the new athletics circuit and cycle track in Honeybourne which will be supported by the s.106 agreement.⁴²

101. *Other economic benefits*: the delivery of up to 5000 m² of new employment floorspace, which could provide approximately 106 full time jobs, together with the employment opportunities associated with the construction of the appeal scheme, will deliver significant economic benefits.⁴³ So too will the provision of 380 new homes in the vicinity of the existing employment at Sims Metals, Long Marston Depot and the emerging St Modwen scheme, boosting the local workforce from which these businesses can benefit.

102. *Other environmental benefits (in addition to the sustainability credentials of the scheme described above)*: Mrs Tagg did not go as far to say that the appeal site is PDL within the NPPF Annex 2 definition (it has to be said that if anything this was a conservative approach) but the site has clearly been heavily disturbed and intensively used over the years as a MOD Engineers Depot and for storage uses including the scrapping of vehicles and railway rolling stock. This has resulted in a number of contamination hotspots where remedial work will be undertaken. The return of this derelict site to beneficial use and the associated remediation and visual enhancements, as well as the provision of off-site ecology habitats, are environmental benefits that weigh in favour of the appeal scheme. So too is the provision of housing stock that is built to current environmental standards set out in the Code for Sustainable Homes and which will be required to derive at least 10% of its energy from renewable resources.⁴⁴

(iv) Other matters

103. The application has been subject to EIA and further information has been provided in compliance with Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. It forms no part of the Council's or BARD's statement of case that there has been non-compliance with the 2011 Regulations. BARD's belated suggestion that the differences between the area of ecological land shown in Figure 6.10 of the Environmental Statement

⁴¹ Tagg para. 4.42.

⁴² Tagg para. 4.44.

⁴³ Tagg paras.4.36.

⁴⁴ Tagg paras. 4.49-4.50.

and the area of ecological land shown in the s.106 agreement give rise to a potential breach is without merit for the following reasons:

- a) The assessment of environmental effects on ecology was in Chapter 10, specifically referred to and relied upon the accompanying ecological technical appendix (see para. 10.1 of the ES). That technical appendix concluded: *"An area of land will be identified and set aside to be managed as grassland (including restoration to grassland if currently in other use) in compensation for the loss of grassland habitat that will result from the development. This will need to be located as close to the existing site as possible. The precise location and the area required is subject to agreement"* (emphasis added) (see the second document within CD-A12 at p.33). Therefore reading the ES as a whole, it is clear that it was not purporting to fix the precise area and location of the ecological mitigation land once and for all. The assessment of ecological effects was on the basis that a suitable location and area would be agreed with the LPA. This has now been done – the area required has been agreed at 5ha (see the ecology section of the Officer's Report CD-A33) and the location has been agreed in the s.106 agreement.
- b) In any event, there is no evidence produced by BARD to indicate that the environmental effects of the location and amount of the ecological land shown in the s.106 plan would be significantly different to that shown in the ES Figure 6.10. The Council's ecology officer plainly does not consider that they would be significantly different since s/he has agreed that the area shown in the s.106 would provide acceptable mitigation. There is therefore no basis for concluding that there has been any failure to assess the significant ecological effects of the development.
- c) Finally, even if there were anything in BARD's point, it is open to the Secretary of State to make a further Regulation 22 request requiring assessment of the ecological effects on the basis of the s.106 plan as opposed to the Figure 6.10 plan.

104. There is also no merit in BARD's objection on the ground of landscape/AONB impact. This issue was comprehensively assessed in the LVIA (CD-A11) by specialist landscape experts at Crestwood Environmental (see para. 9.1.2 therein). Having reviewed this document, neither the Council's planning officers nor its landscape officers had any objection, despite acknowledging that the appeal site is closer to the AONB than the St Modwen site (CD-A33). The SoADC Officer's Report also expressed no objection on landscape grounds (CD-I2 Appendix 3 p.12). Nor did the Cotswold Conservation Board (CD-I2 Appendix 26), who are under a statutory duty to protect the AONB. Mr Murphy agreed in cross-examination that it would have been a dereliction of their duty to remain silent had they considered that the appeal scheme would harm the AONB. Despite having no landscape qualifications, Mr Murphy is asking the decision maker to prefer his view on this issue to the consensus of expert opinion which has concluded that there is no basis for a landscape/AONB objection. The Appellant submits that the conclusions of Crestwood, the Council officers, SoADC and the Cotswold Conservation Board should carry greater weight than Mr Murphy's non-expert evidence. Mr Murphy's lack of expertise in this subject was evident from the basis on which he put his objection in his oral evidence: namely,

that views of the appeal scheme from the AONB might be possible. A proper LVIA does not take this simplistic approach but evaluates the magnitude of impact based upon the considerations referred to in Section 9.2.6 of the LVIA (see CD-A11 Tables 9.6 & 9.8 in particular, which Mr Murphy accepted in cross-examination was the proper approach to evaluating magnitude of impact).

105. BARD's entirely unmeritorious ecology and landscape objections are reflective of their approach of doing anything they can to resist development in this area, undeterred by their failure to persuade SUDC not to grant permission for the St Modwen scheme based upon similar objections to those advanced now.⁴⁵ Mr Murphy acknowledged in cross-examination that BARD do not speak for all the local community, as is evident from Mrs Summers' letter of objection and petition containing dozens of signatures in support of the development (CD-G5 Appendix 5). BARD also plainly do not speak for the many people who would like to live in this area but cannot afford a home. They would do well to remember the observation in the Ministerial forewords that: *"Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations"*.

106. There is also no merit in the HSE's objection (CD-E8). This is for the following reasons:

- a) The highest the HSE put their case is that the chances of an incident occurring in relation to the pipeline are "very low". They do not attempt to weigh this very low risk against the benefits of the appeal scheme in order to reach a balanced conclusion as to whether the risk outweighs the case for granting permission. That, coupled with the untested nature of the HSE's evidence (it being by way of written representations alone) must limit the weight to be given to their objection.
- b) Further, and fundamentally, once the basis for the HSE's objection is understood, it is revealed to be entirely arbitrary. Where, as here, part of the housing element of a proposed development falls within what is termed the 'Middle Zone' of proximity to a pipeline, i.e. between 65m and 205m from the pipeline (see para. 20 of CD-E8), the HSE objects if that part amounts to more than 10% of the overall amount of proposed housing but does not object if it amounts to less than 10% of the overall housing. See the PADHI methodology at CD-B11 and the email from Jonathan Birch to the Appellant dated 8/11/13 at 10:23 confirming that if the element of the appeal scheme in the present case which is within the Middle Zone had been less than 10% of the total amount of houses then the HSE wouldn't have objected. In other words, what determined whether the HSE objected was not the number of houses within the Middle Zone but their percentage as a proportion of the overall development (a methodology which Mr Edwards rightly described as a "nonsense" in cross-examination). So if the appeal scheme had incorporated a larger amount of proposed dwellings outside the Middle Zone but precisely the same number of dwellings inside the Middle Zone, there would have been no objection. Even on the HSE's own case,

⁴⁵ See the reference to the BARD objection at p.93 of the SOADC Officer's Report on the St Modwen Scheme (CD-G5 Tagg Apx 3) and note Mr Murphy's acknowledgment in cross examination that their objection to that scheme was in similar terms to those advanced now against the appeal scheme.

therefore, it cannot be that the presence of this number of houses in the Middle Zone creates an unacceptable risk.

- c) Accordingly, there is no evidential basis whatsoever to justify either refusal of planning permission or require the imposition of a condition on the basis that some of the proposed houses are located within the Middle Zone. To do so would be irrational and unlawful.

D. The proposed section 106 obligations and conditions

107. The package of section 106 obligations has already been discussed at the Inquiry and, insofar as is relevant to the principle of the appeal scheme, in the submissions above. The Appellant reiterates its request that, if for some reason the SoS has concerns with the content of the s.106 agreement and/or unilateral undertaking which are capable of being addressed by variations to them, it is given an opportunity to make such variations as the SoS considers necessary prior to the final determination of the appeal.
108. On the question of emergency access, the application makes provision for such access through the Sims Metals site but the Appellant has also offered to make Sherry Lane available for emergency vehicles pursuant to the s.106 unilateral undertaking. This would not entail any development and therefore does not require any amendment to the application. If for some reason the SoS would prefer to exclude the possibility of emergency vehicles using Sherry Lane, that can be achieved by the imposition of a condition and if necessary a minor variation to the unilateral undertaking.
109. As requested by the Inspector, the Appellant hereby acknowledges and accepts that the Connectivity Scheme and Noise Bund conditions (draft suggested conditions nos. 11 and 26) will, if expressed in Grampian form in their final versions, mean that the development cannot be implemented in the event that for some reason these conditions cannot be discharged within the lifetime of the permission. As noted above, this does not present a legal or policy obstacle to the imposition of these conditions because the threshold is simply that there needs to be "some prospect" of them being discharged within the lifetime of the permission.⁴⁶ As already stated, there is plainly considerably more than just some prospect of an acceptable scheme of connectivity between the appeal scheme and the St Modwen scheme coming forward within three years; and in relation to the noise bund the Bird Group has confirmed that it intends to implement the permission to construct this and there are no obstacles that would prevent it from doing so.

⁴⁶ See the ODPM letter to Chief Planning Officers dated 25 November 2002 modifying para. 40 of Circular 11/95 so that only where there are "*no prospects at all*" of a Grampian condition being complied with during the lifetime of the permission was it inappropriate to impose such a condition (**Inspector's note:** these have now been cancelled with the publication of the PPG but the principle has not changed).

E. The overall balance

110. Pulling all the above together, the Appellant submits that the overall balance falls to be determined as follows:

- a. Viewed overall, the appeal scheme represents sustainable development within the meaning of the NPPF;
- b. Such adverse impacts as there are do not significantly and demonstrably outweigh the benefits;
- c. Accordingly the grant of planning permission would be in accordance with NPPF para. 14;
- d. This, and/or the specific benefits of the appeal scheme, outweigh the breach of Policy GD1 of the Local Plan and the emerging SWDP for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004.

F. Summary of the Appellant's case on the Inspector's list of main issues

(i) Whether the Council can demonstrate a 5 year supply of deliverable housing sites; and in turn whether the Council's policies for the supply of housing are up-to-date (NPPF 49)

111. The Council cannot demonstrate a 5 year supply of deliverable housing sites. The Council's policies for the supply of housing are out-of-date because of this and in any event because they do not even purport to meet post 2011 housing needs and are disapplied by the Council even when it considers it has a 5 year supply.

(ii) What weight should be afforded to Policy GD1; and what weight should be afforded to the emerging South Worcestershire Development Plan, in particular Policy SWDP2?

112. Little weight in each case; in particular, any breach of these policies is outweighed by compliance with the NPPF and by the benefits of the scheme.

(iii) In the event that little or no weight should be attached to these housing policies, would there be a presumption in favour of the proposed housing having regard to its location outside any defined settlement boundary, and to the nature and scale of the development proposed?

113. Yes. For the reasons outlined above, the appeal scheme represents sustainable development.

(iv) What are the sustainability credentials of the proposals?

114. These are outlined above. They include but, are not limited to:

- (a) the location of the appeal scheme in the immediate vicinity of a range of employment, community and recreational uses;
- (b) the availability of opportunities (both new and existing) to access other

employment, community and recreational uses by sustainable means;

- (c) being located in an area which already has a greater non-car modal split (14% vs 86%, based upon census data that pre-dates the St Modwen scheme and therefore does not take account of any further improvements resulting from it) than Honeybourne (12:88), which has been held in recent decisions to be a sustainable location for significant development;
- (d) in the light of points (a) and (b) above, providing an opportunity through the Travel Plan to achieve a non-car modal split equivalent to that currently in Pershore (25:75) if the Travel Plan is only 2/3 successful in meeting its target of a 15% modal shift from the current baseline or Evesham (30:70) if the Travel Plan meets its target;
- (e) in furtherance of the objective of the first sentence of NPPF para. 55, (i) maintaining and enhancing the vitality of the neighbouring St Modwen community, by providing new sustainable transport and employment opportunities as well as additional demand for its community facilities which will enhance their prospects of succeeding, and (ii) maintaining and enhancing the vitality of Pebworth by providing much needed opportunities to fill the available places at Pebworth First School (which is currently operating at about 1/3 capacity) and providing a new bus service to and from Honeybourne station as well as the facilities on the appeal site; and
- (f) contributing to redressing the market and housing shortfall in Wychavon District, which is not a sustainable position for the District to remain in.

(v) The impact of the proposals on local communities and the environment. If there would be adverse impacts, could these be addressed by the contributions and provisions which could be secured via the s.106 unilateral undertaking.

115. Such impacts as there are can adequately be mitigated by the proposed s.106 obligations. Any residual impacts do not significantly and demonstrably outweigh the benefits of granting permission.

(vi) Whether the proposals would be premature in respect of the emerging SWDP and prejudicial to the development plan process?

116. There is no basis for an objection on this ground given the limited weight to be accorded to the SWDP and its inability in any event to meet the Council's current and immediate five year objectively assessed housing needs.

G. Response to the Council's and BARD's closing submissions

117. The following additional submissions are made by way of response to certain specific points made in Council's closing submissions (referred to in [square brackets below]), without prejudice to the generality of the Appellant's submissions outlined above which deals with almost all of the points made by the Council in closing.

118. First, the assertion [see paragraph 208 of this Report] that residents of the appeal scheme will be drawn in particular to Stratford and therefore insofar as

they use the car to go there, they will drive a 20km round journey must be viewed against the context that the appeal scheme is as close to Stratford-upon-Avon District as one can get within Wychavon District. It is adjacent to the border. Insofar as new development within Wychavon District is going to result in trips to and from Stratford, locating it on the edge of Stratford District is plainly going to result in shorter journey trips than locating it further away from Stratford.

119. Secondly, the comment [see paragraph 219 of this Report] that the St Modwen bus service is only funded for 5 years goes nowhere. There is not a shred of evidence that the bus service will fail to be commercially viable thereafter. Warwickshire County Council would not have considered the s106 package offered by St Modwen to be acceptable unless they were satisfied that the 5 year funding for the bus service was sufficient for that service to stand on its own two feet and become commercially viable.
120. Thirdly, the suggestion [see paragraph 220 of this Report] that Mr Roderick expressed "*concern*" in cross-examination about the matters referred to in those paragraphs is not accepted as an accurate description of the evidence.
121. Fourthly, the assertion [see paragraph 223 of this Report] that Mr Roderick accepted that walking to the nearby villages other than the St Modwen community was unrealistic is not a correct account of his evidence. His evidence was that some people would walk to Quinton.
122. Fifthly, [see paragraph 227 of this Report] it is said that "*the circumstances of this case in terms of sustainability are similar to those in the Chichester case*" yet in cross-examination of Mr Roderick, Ms Sharif stated that she accepted assessing the sustainability of a location was a matter that turned on the facts of each case and that she was only relying on this case to establish the point of principle that the sustainability of a proposed development's location was an important material consideration. As Mr Edwards accepted in cross-examination, the circumstances of that case were significantly different to the present – for example the presence of a level crossing which presented a barrier between the development and the facilities which it proposed to use.

H. Conclusion

123. In the light of all the above, the Appellant respectfully asks the Inspector to recommend that the appeal be allowed and the Secretary of State to allow the appeal.

The Case for Sharon Summers

124. Ms Summers strongly supports the appeal proposal as it would guarantee a future for Pebworth which currently has no shop, and no Post Office; and the village primary school currently has only 33 pupils. With these low numbers comes the threat of closure and once a facility like this has gone it is rarely replaced.
125. Whilst there are houses currently being built in Pebworth, none of these offer the affordability or urgent necessity for small houses in a village like Pebworth. The most affordable houses on the one site cost some £250,000 and many people in the village cannot afford that.

126. Invariably, the villagers find that those who purchase large, expensive houses do not support the school. They have just lost the pre-school through lack of children and without an influx of children she fears the school will close.
127. Ms Summers says the village desperately needs a greater mix of properties to fulfil the needs of single people facing eviction from 3 bedroom properties that belong to the housing association. Currently the only one bedroom properties are bungalows for elderly or disabled. Some of these people who are under threat of eviction could not cope anywhere else – Pebworth, both the village and the parish, are the only places they have known.
128. Whilst Ms Summers was collecting signatures for her petition in favour of the appeal proposal, she spoke to those people under this threat and they would be more than happy to have a house on this new development. She collected the signatures as she knew the families on a lower income would be in favour of such a development. Those objecting have their own, often large homes. Whilst she does not begrudge them this, giving villagers an opportunity to be able to afford a local home of their own would be nice. It is through no fault of their own that they do not have large incomes, but surely they should still be given the right to own a house in an area which meets their needs and which they consider to be their home.
129. The development would be in the parish, but would not be clearly visible from the main village. The objections raised by both BARD and the Parish Council are unfounded. The site is not attractive – it is heavily disturbed given its former uses. Had they walked over the site they would have found out. Additional traffic would not be coming though the village and the appeal site would support and link to the facilities being built on the St Modwen Site.
130. Ms Summers says they were not overrun with cars when the Army Camp was open and there were many, many more vehicles commuting to that site. Unfortunately, the majority of objectors who have 'jumped on the bandwagon' did not even live in the area when the camp was operational.
131. Any claims that local schools could not cope with the impact of the development certainly do not apply to Pebworth First School. The school has capacity for 90 but currently only has 33 pupils. The Leader says any way to ensure the numbers increase at the school has to be welcomed. The proposal would be a much needed lifeline for this important facility at the heart of the village and community. It would be a tragedy if the local school were to close.
132. Ms Summers says that she has lived in Pebworth all of her life but she is unable to afford a house in the village. Further, she is unable to apply for a housing association property as there are no one bedroom properties in the housing stock. Without the injection of new housing and people, the village will die.
133. When the Council stated that the appeal site was unsustainable because you could not walk to a shop, it made a mockery of the current status of Pebworth village. Currently, to be able to walk to a shop you would need to be able to walk at least 2.5 miles. Ms Summers understands that the St Modwen site is providing a shop which would be highly accessible to future residents on the Appeal site. Indeed, it would create the closest shop to Pebworth village which would be good news for its villagers. Furthermore, the community bus that would be provided by

the development would provide a link from Pebworth to both the facilities on the new development and to Honeybourne railway station, which would be a real boon for the village. It would provide for those people searching for employment the opportunity to widen their search. Currently, buses in the village are not suitable for those who wish to work in Evesham, Pershore or Worcester.

134. In conclusion, Ms Summers urges the SoS to allow the appeal and grant planning permission because the development is needed to sustain and support the village.

The Case for Wychavon District Council

INTRODUCTION

135. As indicated at the outset of this Inquiry, the Council maintains its objections to this scheme and relies essentially on three of its putative reasons for refusal. Its fundamental objection to the proposal arises primarily from the location of the appeal site, remote from existing villages and towns in the wider area and the failure of the scheme to maximise the use of sustainable transport modes, resulting in significant dependency on private vehicles to access necessary employment and other facilities, thereby failing to achieve reductions in greenhouse gas emissions.

136. The matters set out by the Council in its opening statement [document 4] remain pertinent to the determination of this appeal and are reinforced by the evidence before this Inquiry. On any view, this appeal involves a careful assessment of issues relevant to policy considerations and fact, in the context of the necessary balancing exercise that has to be undertaken in the decision making process. In the light of the prevailing development plan policies and the progress of the South Worcestershire Development Plan (SWDP), undertaking the balance in the context of paragraphs 49 and 14 of the National Planning Policy Framework (NPPF), requires consideration of the weight to be attributed to the presumption in favour of sustainable development, if it applies, against any significant and demonstrable adverse impacts. Whether the adverse impacts are in fact significant and demonstrated, is of course a matter of planning judgment.

137. The Council maintains that on the evidence before this Inquiry, its conclusions and planning judgment in relation to this scheme and the appeal site, leading it to resolve that permission should be refused, are entirely reasonable. For the reasons set out in the Council's evidence, the Local Planning Authority (LPA), invites the Inspector to recommend that the appeal is dismissed as the site and scale of development proposed on it, is unsustainable and significant adverse impacts on sustainable development objectives set out in the NPPF, arise from it.

THE DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

138. Paragraph 11 of the NPPF endorses the plan-led system in the context of decision-taking and reaffirms that under S38(6) of the Planning and Compulsory Purchase Act 2004, applications should be determined in accordance with the development plan unless material considerations indicate otherwise. As paragraph 12 of the NPPF confirms, the development plan remains the start point for decision making. It is agreed by the parties in this appeal that the development plan consists of Wychavon District Local Plan 2006 (WDLP) (CD-

- B3). Relevant policies are set out in the Statement of Common Ground (SCG) (CD-E1). Many of its policies were saved by a direction made by the Secretary of State (29th May 2009). In the Council's submission, the effect of the saving direction is that the policies remain effective until replaced and due weight should be given to those relevant policies in existing plans according to their consistency with the NPPF, in accordance with paragraph 215.
139. The NPPF is clearly a material consideration of significant weight in this appeal. The Council contends that the SWDP is also a relevant material consideration which should be given weight.
140. The most significant policy of the adopted WDLP is policy GD1 (see CD-B3). It is a policy which identifies the strategy for the location of new development within the main built-up areas of Droitwich Spa, Evesham and Pershore, with limited provision in specified villages. In all cases, the policy confirms that development is to be within defined development boundaries and/or on allocated sites. Its objective is to foster the concentration and accommodation of development within existing towns and settlements in the District to "*Further sustainability objectives*", including reducing the need to travel and making best use of infrastructure (see paragraph 2.3.2 – page 10 WDLP – CD-B3).
141. Whilst the date of 2011 referred to in policy GD1 has clearly expired, the purpose of the policy, to further sustainable development objectives, remains extant and is entirely consonant with the sustainable objectives of the NPPF, particularly in relation to managing the patterns of growth and reducing the needs to travel by non-sustainable modes.
142. The fact that this appeal falls to be determined beyond the 2011 date of the Plan, does not automatically render the policy out of date. In the Council's view it is essential to consider the purpose of the policy. It is plainly not one which simply seeks to restrain the quantum of housing development within the District, but rather a policy which aims to ensure development occurs in sustainable locations. To that extent and significantly in the Council's view, it is entirely in accord with the NPPF's overarching objective to secure sustainable development. Policy GD1 can accordingly be given significant weight.
143. It is artificial and selective to adopt the Appellants' approach to suggest that this policy is now out of date as the 2011 period has passed, and thereby carries little weight. In order to support that approach the Appellants' witnesses rely extensively on the decision at the Lioncourt, Honeybourne appeal, 24th August 2012 (Appendix SB17 of CD-G2). Inspector Stephens did not expressly find policy GD1 out of date in paragraph 24 of his decision. He refers to Policy SR1, which identified the quantum of housing supply between 1996 and 2011. Policy GD1 in the Council's view is not simply a housing supply policy. It seeks to achieve sustainable development objectives by directing development to specific locations. The Council disagrees with the contention that Policy GD1 is out of date and carries no weight, for the reasons set out above.
144. The Council's position and interpretation of the relevance and weight to be attached to policy GD1, is reinforced by a more recent consideration of a similar policy issue by Inspector Jessica Graham in the Shutterton Lane, Dawlish decision (see Appendix 5 – Edwards CD-H2). In considering the weight to be given to a settlement boundary set in a local plan which expired in 2001, where policies had been saved by direction in 2007, Inspector Graham noted at

paragraph 4.2 of her decision that "...while the period that the saved policies were originally intended to cover has now expired, they will remain an extant component of the development plan until they are replaced by the adoption of a new local plan".

145. At paragraph 12.9, Inspector Graham found no inconsistency between the NPPF and the Teignbridge Local Plan which sought to designate settlement boundaries. She confirmed at paragraph 12.10:

"In my judgment paragraphs 14 and 25 of the NPPF cannot be properly interpreted, in these circumstances as requiring that until such time as the settlement limit is amended by the new local plan, its existence be disregarded as 'out of date'. To take that approach would effectively be to sanction residential development in the countryside, without regard to the quantified need for it".

146. In paragraph 12.13, Inspector Graham observed that the existing settlement limit was not out of date by operation of paragraph 215 of the NPPF. It remained part of the adopted development plan until it is replaced by the adoption of the emerging plan, which was examining the issue of settlement boundaries and the extent of housing need.
147. The Council contends that the same approach applies to the consideration and weight to be given to policy GD1, in this appeal. It plainly remains part of the development plan and should be given significant weight, given its consistency with the sustainable development objectives of the NPPF.

THE SWDP

148. This plan sets out the planning policy, strategy and objectives for the 3 districts of Worcester City, Malvern Hills and Wychavon, for the period 2006-2030. It covers the whole of the Wychavon District including the area in which the appeal site lies. The SWDP was submitted to the Secretary of State for consideration in May 2013. The examination commenced in stages, with stage 1 in October 2013. The Inspector has issued interim conclusions in respect of matters considered at stage 1, in relation to the levels of employment, housing and retail provision set out in Policy SWDP3 (see paragraph 1 – Inspector's covering letter 28.10.13 CD-C3).
149. The examination will proceed to stage 2 following the submission of additional material relating to three elements of the housing requirement evidence base, which the Inspector has requested. Following the Inspector's conclusions, the examination process has not been suspended, nor has the Council been invited to consider withdrawing the Plan. In the context of the housing requirement set out in the plan and the evidence base underpinning it, including the 2012 SHMA, the Inspector has concluded at paragraph 42 (Interim Conclusion CD-C4), that the underlying methodology "*is essentially sound*". He also found that none of the other analyses of housing need presented to the examination, provided a sufficiently firm basis on which to derive an overall housing requirement for the plan period (paragraph 43 CD-C4). He has however, identified three important issues which require further analysis, to support the Council's objective assessment of housing need. The Councils are in the process of commissioning

that additional analysis and a timetable for its submission has been submitted to the Inspector.

150. The Council accepts that until that additional analysis has been undertaken and considered, the SWDP will not progress to the stage 2 hearing sessions. It is not however, accepted that it will necessarily take at least 15 months to advance to the potential 8 stages suggested unilaterally by Mr Banner at the Inquiry. Clearly, Inspector Clews will determine the process and its timetable in due course and he may adopt a very different approach to the one suggested by Mr Banner. What is clear is that subject to the completion of additional analysis and its consideration through the examination, there is as yet no indication as to when the SWDP will progress further. Accordingly, it is accepted by the Council that a degree of delay is inevitable, but that is neither unique nor surprising in the context of plan-making.
151. Under paragraph 216 of the NPPF, the Council contends that notwithstanding the interim conclusions and request for further analysis in respect of three issues relevant to the housing requirement, weight may be given to the policies in the SWDP. The degree of weight of course depends on the stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies of the NPPF.
152. In the context of this appeal, the Council's putative reasons for refusal refer to policy SWDP2 (see Appendix 4 – Edwards CD-H2), a policy which relates to development strategy and settlement hierarchy. The policy seeks to direct development to defined settlements, identifying that the scale of development needs to be commensurate and appropriate to the size of the settlement. The policy seeks to safeguard the open countryside, defined as land beyond any development boundary.
153. The appeal site lies outside any settlement boundary as defined in the SWDP and is not allocated for development in the plan. It is therefore contrary to the provisions of Policy SWDP2. In the Council's view, policy SWDP2 is consistent with the provisions in the NPPF as it seeks to focus development in locations that are already served by a range of facilities, to maximise the use of non-vehicle modes, as set out in paragraph 17. It supports a pattern of development that reduces reliance on private vehicles, thereby reducing greenhouse gas emissions, in accordance with paragraphs 30 and 95 of the NPPF. It seeks to ensure that development generating significant movements is located in the main towns of the Districts, where the need to travel will be minimised, in accordance with paragraph 34 of the NPPF. It also defines development boundaries for rural villages, where some development will be permitted, in line with the advice in paragraph 55 of the NPPF.
154. There are unresolved objections to policy SWDP2. In the Council's view, despite these objections, given the fact that the objectives of policy SWDP2 are consistent with the NPPF and seek to achieve sustainable development by locating significant scale of development in the most accessible areas, considerable weight can be given to policy SWDP2. It is wholly consistent with the NPPF.
155. I now turn to consider the Council's putative reasons for refusal.

PUTATIVE REASON FOR REFUSAL 1 – HOUSING LAND SUPPLY AND SUSTAINABILITY
HOUSING LAND SUPPLY:

156. The Council has taken account of the need to deliver a wide choice of high quality homes as set out in Section 6 of the NPPF. It accepts that under paragraph 47, there is a requirement to boost significantly the supply of housing. This includes the identification of a supply of specific deliverable sites sufficient to provide 5 years worth of housing, with additional buffers to ensure choice and competition.
157. Paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should “*not be considered up to date*” if a 5 year land supply of deliverable housing sites cannot be demonstrated. In such circumstances, the presumption in favour of sustainable development set out in paragraph 14 applies and confirms that where relevant policies are silent, absent or out of date, permission should be granted, unless the adverse impact of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.
158. In terms of housing land supply, the Council contends on the basis of Mr Davies’ evidence in particular, that it has demonstrated a 5 year supply of deliverable sites. Mr Brown accepted that Mr Davies’ Table 1 in his proof (CD-H5), represents an acceptable start point for debate of the 5 year housing land supply position and it emerged in the course of the evidence that significant components of the Council’s calculation, are in fact accepted by the Appellants.
159. Land supply is a relatively complex and undeniably dynamic issue, which is not always easy to resolve. Although based on factual evidence, it ultimately involves the exercise of planning judgment in relation to the issue of deliverability.
160. The fact that at an earlier point in time a shortfall was established within a District, does not mean that the position remains static, if as here, the LPA takes proactive steps to address the issue. In this case, the Council has taken affirmative action since the Lioncourt, Honeybourne decision in 2012 (Brown Appendix SB17 CD-G2), to boost the supply of housing land by granting planning permission in sustainable locations. In the Council’s view, endorsed by Mr Davies’ evidence, matters pertinent to the land supply position have advanced considerably since Inspector Stephen’s decision in 2012.
161. There is clear evidence that the Council has taken positive steps to improve the housing land supply position by granting a significant number of permissions and that it continues to do so, not because it is uncertain of its housing land supply position or regards it as vulnerable, but to meet the objectives of national policy and to foster growth in sustainable locations, through the planning system.
162. In the Council’s view Mr Davies’ approach to the 5 year land supply calculation is robust and realistic. He has considered testing the supply against the housing requirement identified by the West Midlands Regional Spatial Strategy Phase 2 Panel’s figures, as they are the last publicly tested figures. He has therefore started with the Panel target of 9,500 dwellings for the period 2006-2026. That

- is an approach consistent with paragraph 218 of the NPPF, and accepted by Mr Brown.
163. In setting out the figures in Tab 1, which includes completions between April 2013 to October 2013, Mr Davies adopts the Sedgefield approach, again accepted as appropriate by Mr Brown and as the footnotes to his Table 1 disclose (CD-H5) Mr Davies demonstrates that he has either excluded sites which in his view are not deliverable within 5 years (footnote 1) or has reduced the capacity of specific sites to reflect his assessment of the likely number of dwellings coming forward within 5 years, on the basis of his knowledge of the sites and his planning judgment.
164. Mr Davies has also tested the land supply figure against the housing requirement including a 20% buffer (i.e. 4529 – Table 1 CD-H5), again representing a robust approach. Mr Brown accepted the figure of 2017 – commitments not started at 31.10.13, subject to 2 sites, High Street, Evesham and Leedons Caravan Park, which Mr Davies contends will deliver the stated number of dwellings within 5 years. Whether or not Leedons Caravan Park appeals to those seeking an alternative type of housing does not mean it should be discounted from the housing supply calculation. It plainly adds to the choice and mix of sites and it is appropriate to include it.
165. In terms of local plan allocations carried forward, this is a relatively small figure of 63 which Mr Davies considers as reasonable to include. Mr Brown accepts the permissions approved from 1st April 2013 to 30th September 2013, totalling 502 and the 369 dwellings relating to permissions approved on allocated sites in the SWDP awaiting S106 agreements. He also accepted the figure of 73 dwellings on large sites approved and awaiting S106 agreements.
166. The largest component in dispute relates to the 1328 dwellings relating to deliverable allocated sites in the draft SWDP. Mr Brown accepts 589 units from this component, leaving 739 in dispute.
167. In his evidence, Mr Davies justified the inclusion of the Wychavon owned brownfield sites on the basis that there was every incentive for the Council's Property Team to promote these sites for development and secure housing delivery on them within 5 years, in order to capitalise on Council owned assets. In Mr Davies' view there is a realistic prospect that these dwellings will be delivered in 5 years.
168. In terms of total commitments not started, a 4% lapse rate has been applied to 4,395, yielding a figure of 4,219. By adding windfalls, commitments under construction and large site commitments (328, 231, and 70 = 629) a total supply figure of 4,848 arises, which in turn yields a supply figure against the requirement of 6.12 years (5%) or 5.35 years (20%). The Council is content for the latter figure to be considered as the land supply figure for the purposes of this appeal.
169. Mr Davies gave evidence, inter alia, of the basis on which he included deliverable allocated sites in the draft SWDP (1,328 dwellings), windfalls and Council owned sites. In relation to the former, the Council contends this

component of supply is deliverable in the context of footnote 11⁴⁷ of paragraph 47 of the NPPF. The sites have been considered by Mr Davies in that context and were confirmed to be available now, offer a suitable location for development now and are achievable with a realistic prospect that housing will be delivered on the sites within 5 years.

170. The SWDP allocated sites attracted the most significant criticism from the Appellants. In order to demonstrate their deliverability, the Council obtained information from landowners to assess whether they satisfy the footnote 11 criteria. The fact that these sites are allocated in the SWDP, in accordance with its strategy, indicates they are in a suitable location.
171. The Council's evidence in respect of deliverability is clear and although it is criticised by Mr Brown as incomplete, he produces no evidence to contradict Mr Davies' information.
172. In terms of deliverability, the Council relies on Mr Davies' analysis of responses received from landowners of the sites. The information supports Mr Davies' assessment that there is a realistic prospect that housing development will in fact be achieved in 5 years.
173. There was considerable debate relating to the quality of the evidence submitted by Mr Davies. It is not an explicit requirement of the NPPF that there must be "*robust*" evidence in the context of footnote 11. The draft planning guidance referred to by Mr Brown carries very limited weight at this stage⁴⁸.
174. The spreadsheet produced by Mr Davies, with its accompanying tables, represents evidence about specific sites and details concerning the questions posed by the Council and answers given by the landowners, which relate directly to the footnote 11 criteria, upon which he has exercised his planning judgment to assess whether or not in fact the sites should be considered deliverable.
175. In the context of the High Court's decision in Wainhomes (South West) Holdings Ltd v. Secretary of State for Communities and Local Government and Wiltshire Council and Others [2013] EWHC 597 (Admin), paragraph 35, as a starting point, the inclusion by a planning authority of sites within a local plan is some evidence that they are deliverable. That of course is not the end of the matter. As Mr Justice Stuart-Smith confirmed, the weight to be attached to that inclusion has to be determined by reference to the quality of the evidence base, the stage of progress the draft document has reached and the number of outstanding objections. Importantly, it was held that the "*weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the Inspector...*"
176. In this appeal, the Council has submitted site specific evidence to demonstrate that the sites and numbers of dwellings relating to them are deliverable. Of the 1,328, planning permission has been granted to 74 and 515 are subject to planning applications not yet determined. Mr Brown accepts that these dwellings

⁴⁷ The Council considers that the NPPG advice has supplemented that provided in NPPF footnote 11 on when sites can be deemed deliverable. The Council considers that this significantly undermines the Appellant's criticism of the Council's evidence on housing land supply; and it contends that the PPG has strengthened its case in terms of sufficient housing land supply.

⁴⁸ Inspector's note: as of 6 March 2014 PPG has now been published.

are deliverable, in terms of numbers. The figure of 739 is disputed on the basis that they are not subject to pre-application discussions or have not reached application stage. The Council relies on the spreadsheet analysis to demonstrate they are in fact deliverable. The Council has taken positive steps to elicit information about deliverability from landowners. In all cases, the responses have indicated that the landowners consider the sites to be deliverable within 5 years. It is notable that the housing figures have not been increased and where a disparity has arisen, the Council has reduced the figures, to make the overall position more reliable.

177. As Mr Davies confirmed at the Inquiry, the sites set out in Table 2, are all deliverable and would be approved by the Council if they came forward with an application, as 3 already have been. It is therefore entirely reasonable and realistic to count these dwellings as part of the 5 year supply.
178. In terms of Tab 3, the owners of 9 sites responded to the questionnaire and confirmed deliverability of 310 units but the Council was unable to divulge the specific details due to Data Protection Act issues. That does mean that this material is not transparent or robust or has not been assessed by Mr Davies. It simply means that at the time the table was prepared and submitted to the Inquiry, the details could not be put in the public domain, for a legitimate reason. Mr Davies was clear that 310 dwellings derived from these sites was not a figure he was making up and that the landowners had all confirmed their answers to the questionnaire relating to a realistic prospect of delivery on the site within 5 years. In the Council's view, despite Mr Brown's criticisms, the spreadsheet and additional tables, represents clear evidence from the developers that 739 dwellings can realistically be expected to be developed within 5 years.
179. The spreadsheet (Tab 1) shows that of the 26 sites considered, 282 dwellings are regarded as deliverable (green and yellow elements). The Council disputes Mr Brown's suggestion that because there is no developer interest in respect of 11 of them, that means they should be disregarded. These are relatively small sites with all except 1 (Canal Basin), suggesting less than 25 dwellings. The absence of a developer partner now does not mean they will not be deliverable within 5 years in the context of footnote 11, because the scale of development on these sites makes it more likely that they will come forward for development.
180. References to commitments in the SHLAA have been superseded by more detailed analysis of sites in the evidence base for the SWDP, a matter Mr Brown accepted he had not considered. His comments about the SHLAA references are therefore disputed.
181. Council owned sites are expected to deliver 43 dwellings. Mr Davies' view was this figure was realistic and reliable. In the absence of any firm evidence demonstrating these sites have insuperable constraints or that the Council's Property Team will fail to promote them, there is a realistic prospect that the number of dwellings relied on, will come forward within 5 years. All of the 282 dwellings relied on in Tab 1 according to the Council's evidence, have been demonstrated as realistic prospects for development within 5 years and meet the other footnote 11 tests.
182. In respect of Tab 2, of Mr Davies' spreadsheet material, 736 dwellings are relied on by the Council. According to his rebuttal proof (CD-G6), Mr Brown accepts 545 dwellings as deliverable, leaving 191 dwellings which are the subject

of pre-application discussions, in dispute. Mr Davies identifies the Dilmore Lane (120), Fernhill Heath site within his Tab 2 as at pre-application stage. His view was that there is a realistic prospect of housing being delivered on the site within 5 years. It is therefore deliverable, notwithstanding objection. In relation to land north of Pershore (600) and land west of Leamington Road (59), Broadway, these are also considered deliverable, the latter being deferred at the last committee meeting not on the basis of an in principle objection to the site but a detailed design issue, which is capable of resolution. There is therefore every expectation that this site will be approved when referred back to the Planning Committee.

183. In terms of Tab 3, Mr Brown's assumption that developer intentions are unknown for these sites, is wrong as illustrated in cross-examination, by reference to the site off Abbey Road, Evesham, which is being promoted by Hallam Land Management, who have had a meeting with the Council about bringing the site forward. These sites are available on the basis of Mr Davies' Tab 3 and housing is deliverable.
184. The Council contends it has produced clear, site specific evidence relevant to the issues set out in footnote 11. In the Council's view, as set out by Mr Davies, this component of supply should be included. There is conclusive evidence upon which to exercise planning judgement.

Windfalls

185. As far as the other disputed elements of the land supply calculation are concerned, the Council contends its inclusion of 328 windfall dwellings is entirely realistic and is supported by the compelling evidence in the windfall calculation at page 65 of Mr Davies' appendices (CD-H5). It shows the position over the last 6 years, demonstrating that windfall sites have consistently become available in the local area and will continue to provide a reliable source of supply, in accordance with paragraph 48 of the NPPF.
186. By their very nature windfall sites are difficult to predict and the fact that this Council has not undertaken the approach adopted by Tunbridge Wells BC in assessing windfalls, is not conclusive of the issue as to whether windfalls should be included or not. The approach adopted by Tunbridge Wells is not prescriptive. Each LPA is entitled to make a windfall assessment depending on the circumstances relevant to its District, including environmental sensitivity, which in the case of Tunbridge Wells, is particularly important as 70% of the Borough is covered by AONB and 22% is within the Green Belt (paragraph 1-6 – Windfall document produced by Mr Brown). That is not the same situation as at Wychavon.
187. Significantly, the evidence in Mr Davies' Appendix (page 65) was tested in the SWDP examination process and was found to be acceptable by Inspector Clews (paragraphs 62 and 63, CD-C4), subject to clarification of the exclusion of garden land from this element of supply. It is entirely reasonable to include a figure of 328 as a windfall element and significant weight can be given to Inspector Clews' interim conclusion in this regard.

Lapse rates

188. Finally, in relation to lapse rates, the Council has applied a 4% figure as opposed to the 10% suggested by Mr Brown. This is on the basis of Mr Davies' table at page 66 of his Appendices (CD-H5), which gives an average of 4%. This material was also tested at the local plan examination and Inspector Clews concluded at paragraph 80 (CD-C4), that a robust and sound non-delivery discount figure would be 5%, on the basis of the figures produced by the 3 districts, not dissimilar to the Council's position at this Inquiry.
189. In the Council's view, on the basis of the clear evidence submitted by Mr Davies and taking account of his planning judgment, the LPA has demonstrated a 5 year supply of housing.
190. If that position is accepted, then clearly paragraph 14 is not engaged on the basis of an absence of a 5 year supply of housing land. Alternatively, if it is concluded that there is a housing land supply shortfall, or that the relevant policies are otherwise out of date, it is necessary to consider the appeal in the context of the paragraph 14 presumption.
191. In this context, it is important in the Council's view to recognise that the presumption applies in favour of sustainable development. The presumption does not apply to development that is manifestly unsustainable. In adopting this interpretation of paragraph 14, the Council's view is reinforced by the Secretary of State's decision in the Bloxham Road, Banbury appeal, (23.9.13 – App SB8 CD-G2). At paragraph 11 of the decision, the SoS accepts the Inspector's conclusions in respect of paragraph 14 of the NPPF as set out at paragraphs 7-14 of his report. Paragraph 14 of the Inspector's report confirms:

"In their putative reasons for refusal, the Council highlight a number of what they consider to be adverse impacts...Firstly however, I will address the issue of sustainability, as without sustainability credentials, the proposed development would not come within the remit of paragraph 14".

This is an important conclusion, endorsed by the SoS, which supports the Council's approach in this appeal. In order to benefit from the presumption, the appeal site here must benefit from sustainability credentials. The approach adopted to the consideration of this matter by Inspectors, in the context of a shortfall in housing land supply, in appeals at Oakwood Park, Felsted Essex (App 6 – Edwards CD-H2) and the decision submitted to the Inquiry on the first day, relating to Oak Tree Lane, Chichester (30.10.13) (Appeal Ref: APP/C3810/A/13/2196029) is instructive.

192. In both cases, planning permission was refused notwithstanding the housing land shortfall because the developments were found not to be sustainable. The Council invites that significant weight be given to both appeal decisions as representing the correct approach to the issue of sustainability and the weight it attracts in the overall balancing exercise.

SUSTAINABILITY:

193. The appeal site is in a remote location, a significant distance from Stratford-on-Avon (SoADC) (approximately 9.5km away) and even further from Evesham. Its doubtful sustainability credentials have been recognised for some time and

were highlighted by the Panel in 2009 following the EiP into the WMRSS Phase 2 revision, which considered an Eco-Town proposal at Long Marston, including the area of the appeal site. Although the Eco-Town represented a significantly larger scale of development than the appeal scheme, the disadvantages of the location highlighted by the Panel, remain valid, as the sustainability credentials of the area have not materially changed through the provision of enhanced public transport. Mr Edwards' Appendix 3 (CD-H2), sets out extracts from the Panel's report. At paragraph 8.66, the location of the Eco-Town is identified. It is noted at paragraph 8.67 that all the relevant authorities opposed the Eco-Town attacking its viability and sustainability. The key issue concerning sustainability is confirmed in paragraph 8.70 to turn on the principle of the location and whether the Eco-Town or new settlement could be deemed linked to a major centre by sustainable transport means, both at inception and thereafter. The site's remote location from SoADC was highlighted.

194. From paragraph 8.71, it is clear that the Panel also considered an alternative proposal for a smaller new settlement of 2,500 dwellings. It concluded at paragraph 8.73 that "*...the location of this Eco-Town would render it of very doubtful sustainability*".
195. In the Council's view, this conclusion in respect of the location of the site remains valid despite the St. Modwen development on the land to the north of the appeal site. The reason the Panel found the location to be remote was due to the site's distance from major centre and limited sustainable transport links thereto. That has not changed. The St. Modwen development has not significantly improved the sustainable transport links to SoADC or to Evesham. There are no direct trains from the Long Marston site to SoADC. Bus services remain relatively limited, with little or no provision in the evenings or on Sundays. The bus service provided by the St Modwen development has improved the position to a limited extent, but it does not overcome the fundamental remoteness of this location, which renders it of dubious sustainability.
196. The Council maintains the view that the appeal site is not in a sustainable location. Granting permission for this significant scale of development of up to 380 dwellings and employment provision, in this remote location, will not achieve sustainable development objectives as required by the NPPF. Taking the three dimensions of sustainable development together as set out in paragraph 7 of the NPPF, the Council contends that this development fails to achieve the social and environmental role in particular. The planning system should play an active role in guiding development to sustainable solutions (paragraph 8 – NPPF). In the Council's view, this scheme fails to achieve that important aim.
197. It also infringes the core planning principles set out at paragraph 17 of the NPPF, in particular the penultimate bullet point, which confirms that planning should 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.
198. The appeal scheme is undeniably a significant scale of development. The location of the appeal site means it is not possible to make the fullest possible use of public transport, walking or cycling. The location is patently not

sustainable at present and is not made sustainable by any improvements delivered by this scheme.

199. The objectives set out at paragraphs 30 and 34 of the NPPF are not achieved by this development. The need to travel will not be minimised by this scheme and the use of sustainable transport modes are far from maximised. Whilst the NPPF acknowledges it may be necessary to take a different approach in rural areas compared to urban locations, it is not envisaged that the overarching sustainable development objectives are less important in the former.
200. The poor sustainability credentials of this site are recognised by the highway authority, Worcester County Council and SoADC District Council. The highway authority maintains an objection to this development despite Mr Roderick's suggestion that its position sought a deferral of consideration. That is plainly wrong. SoADC District Council as the neighbouring authority, also objects to the development on sustainability grounds. It regards the appeal scheme as an opportunistic bolt on to the St Modwen's development. SoADC's view is particularly significant as it reflects a different position to that adopted in respect of the Long Marston site scheme. There, the Council "*on balance*" regarded the development in this location as acceptable to preserve the viability of the existing employment development at that site. In the report to Committee in which the appeal scheme was considered (Appendix 2, Murphy CD-12) under the heading "*Relationship to the Long Marston Storage Depot*", the Council confirms that when it granted permission for the St Modwen scheme, it sought to strike a balance between the importance of determining and securing the long term future of the site against the sustainability credentials of the comparative isolation of a new community (rather than the expansion of an existing settlement) in this location and the limited range of supporting infrastructure available or proposed. No balance of such considerations apply in this appeal. There is no existing employment development on the appeal site which requires securing for the long term. The comparative isolation of a further significant scale of development here, with a limited range of supporting infrastructure, militates against the grant of permission for this scheme.
201. SoADC has expressed concern about the effect of this scale of development at the appeal site will have on the careful balance of sustainability and raises doubt about the functional relationship between the new development and the St. Modwen scheme. In conclusion, SoADC District Council's view is that this appeal scheme compromises the sustainability of the St. Modwen scheme.
202. As set out in its evidence, the Council's primary concern about the appeal proposal relates to the remoteness of the location, away from defined settlement boundaries. In the context of the social dimension of sustainable development, it is important to provide housing development in appropriate locations. Mr Edwards sets out his view about the negative impact unsustainable development can have on both the social and economic dimensions of sustainable development.
203. In terms of the environmental dimension of sustainable development, the location of a significant scale of development as proposed in this case, is particularly relevant. Housing development that maximises the likelihood of residents travelling by foot or cycle to services will have a lesser environmental impact than those that do not. Whilst it is acknowledged that various factors will

affect an individual's choice of travel mode, distance to and from facilities and whether easy access to routes encouraging walking and cycling are available, play a part in the decision relating to mode of travel. A significant development that is remote from main centres and the higher order facilities required by residents, will result in longer trips and will not minimise travel.

204. In this appeal, development plan policy GD1 and SWDP2 both seek to direct most new development to the main urban areas in the District. Settlement boundaries are defined for some of the villages, and importantly the scale of the development proposed for these smaller settlements is limited and commensurate to the size and characteristics of the villages. In line with the strategy of the SWDP, small scale development is proposed for the largest category 1 villages in the District. The scale of the appeal scheme significantly exceeds the level proposed in the rural areas and, if permitted, would undermine the sustainability objectives the extant and emerging policies seek to achieve.

205. There are of course other elements of sustainability that are important to consider in the context of the adverse impacts arising from the proposed development. The Council's concerns in this appeal relates to three matters:

- (i) the distance between the site and larger towns and higher level services; and
- (ii) the distance and disincentives to walking and cycling between the site and local services at nearby villages; and
- (iii) the lack of a sufficiently broad range of services within reasonable walking distance to serve the scale of development proposed.

In terms of matter (i), it is inconceivable that significant numbers of residents will travel from the appeal site to Stratford on Avon (SoA) or Evesham by modes other than by private car. They cannot walk because of the distances involved. Cycling is unlikely to appeal to significant numbers of residents as an alternative and bus services are far from comprehensive.

206. The Appellants' evidence highlights the limited potential of trips to and from the site by public transport or cycling. Even if the modal shift predicted by the Appellants in the revised Travel Plan (TP) is accepted, this will still mean that 71% of trips to and from the site will be by private vehicles.

207. It does not assist the Appellant to suggest that this is a similar figure to other rural areas in the District, as the objective is to maximise travel by sustainable modes, not to deliver comparable rates of non-car usage.

208. SoADC accommodates a range of higher level services that residents of the proposed scheme will seek to access on a regular basis. A return journey to SoADC by car will be about 20km.

209. Evesham is further away from the site than Stratford. Blackminster Middle School lies some 14km from the appeal site and Evesham High School some 20km away. There will be significant reliance on private vehicles to travel to and from schools from this site.

210. The difficulties in accessing these schools by non-car modes are highlighted in Mr Edwards' proof (paragraphs 63-64, Page 29 CD-H1). Even with the proposed bus service linking the site to Pebworth and Honeybourne, factors such as the

distance, timing of services and practicability/convenience of using the bus link, are likely to discourage substantial numbers of residents or schoolchildren from using the bus, rather than private vehicles.

211. The distance to Honeybourne Station is also unlikely to encourage walking or cycling to access trains. The proposed three year bus service from the appeal site to Honeybourne is in the Council's view, unlikely to be effective, a matter endorsed by the highway authority's remaining concern about the long term viability of the service and reservations about the business case produced by Mr Roderick. These matters highlight the inappropriateness of the location in sustainability terms.
212. In terms of matter (ii) and accessibility to local villages, the appeal site does not lie within an established village, nor does it adjoin one. The nearest villages are identified in the SCG (CD-E1). Mr Edward's Appendix 7 (CD-H2), sets out the distances from the appeal site for pedestrians, cyclists and vehicles and identifies the constraints in terms of footways and lighting that will affect people's choice to use non-car modes. All of the nearest villages are shown outside the 800m pedestrian isochrone in Fig 3.1 of the Addendum Transport Assessment (CD-A25).
213. Mr Edwards cogently sets out his reservations about future residents walking to access the limited facilities in villages such as Lower Quinton and Pebworth (paragraphs 72-78 Edwards proof CD-H1). Mr Roderick accepted that walking to access these facilities was unlikely to be realistic, save in respect of those proposed at the St. Modwen site, if and when they materialise. They are in any event limited in nature.
214. Significant emphasis is placed on the employment development at Sims Metals recycling works and within the Long Marston site. Accessibility to such employment depends on the creation of links between the sites being secured, which is as yet uncertain.
215. The employment offer at both existing sites is relatively limited restricted to warehousing and industrial uses. Neither site offers a wide range of employment opportunities, with no retail or B1(a) office related jobs available. In any event, there is no degree of certainty as to the numbers of new residents who might take up jobs at the nearby sites and the TA assumes that significant trips from the site will be by private vehicles, no doubt including a substantial element of employment related journeys.
216. The proposed employment development on the appeal site itself is subject to market demand and is not likely to materialise until some unspecified point in the future.
217. The retail and community elements associated with the St. Modwen development are relatively limited and will not be delivered for some years. The Appellants have no control over the delivery of these facilities, which provide for "*top-up*" shopping and will not provide a substitute for the wide range of facilities elsewhere. Given the scale of the development proposed here, the level and range of facilities will not be commensurate to the needs of the residents and will not prevent significant traffic movements to and from the site.

218. The evidence has demonstrated that the availability of public transport from the site is very limited. Mr Roderick's suggestion that there are several bus services operating around the appeal site has been demonstrated to be incorrect by Mr Edwards. There are in fact three services, as Mr Edwards established by reference to the timetables, which are limited in terms of hours of operation and routes. Mr Edwards' evidence in this respect was not challenged. What is clear is that Mr Roderick's table 2.2 (page 17 of his proof, CD-G3) does not convey a reliable picture. These are not frequent services.
219. The St. Modwen bus service to SoADC and Moreton in the Marsh is limited and is only funded for 5 years. It will not operate in close proximity to the appeal site and will not therefore offer a convenient alternative mode of travel.
220. Mr Roderick accepted this scheme represents a significant scale of development and that it is conceivable that substantial numbers of residents will not work at the adjacent employment sites, because of the limited offer there, but will need to travel, which he accepted was a "*concern*". He also accepted it was highly unlikely that significant numbers of new residents would cycle to employment destinations from the site to SoADC or to other towns. He confirmed that linked trips had not been considered in his assessment.
221. To overcome the public transport limitations relating to the site, it is proposed to provide a community bus for three years, to connect to specific destinations, including the railway station at Honeybourne. Future provision after 3 years has not been fully substantiated and there is therefore no guarantee that this bus will be viable or will be taken up by an operator in the longer term. This issue remains unresolved. If the community bus is not a long-term measure, the site's unsustainability is reinforced. In the absence of certainty relating to the long-term delivery of this bus route, little weight should be attached to the point.
222. In terms of linkages with the St. Modwen scheme, in the Council's view, these are as yet undefined and uncertain, particularly as they rely on all of the phases of that scheme coming forward. It is wholly unrealistic to rely on a statement of intention from the developers of the St. Modwen scheme, to cooperate in the delivery of these linkages, which the Appellants obviously consider to be important. A suggestion that in principle the developers of the St. Modwen site are amenable to linkages, which are contingent on legal agreements, is no more than a willingness to consider the matter in the future. It does not guarantee the linkages will materialise, as an agreement would. Accordingly, the linkages the Appellants place so much reliance on, are aspirational rather than a reality and should be given limited weight.
223. On the basis of the TP before the Inquiry, it is clear that 71% of journeys to and from the appeal site will be by private vehicles. That is a significant percentage and is a result of the unsustainable location of the site. In his rebuttal proof (CD-G7) Mr Roderick refers to the census data relating to car travel in respect of various settlements in the District (page 8, paragraph 2.15), in order to show that the 71% is reasonable. The Council disputes his conclusions. It in fact shows that the TP target of 71% for this site is unrealistic as it is comparable to 70% at Evesham, where there are significantly more employment opportunities and facilities than at the appeal site. The census data shows 88% of journeys to work by car in relation to Honeybourne and Pebworth, highlighting the relative sustainability limitations of these locations. The appeal

site does not have the facilities available in Honeybourne or Pebworth, therefore car journeys are likely to be of a higher order than predicted in the TP.

224. These issues are significant in the context of the NPPF's objectives which seek to locate large scale developments in areas where the need to travel is minimised, and use of sustainable modes is maximised – in order inter alia, to reduce carbon emissions. It is generally accepted that vehicles contribute significantly to carbon emissions. There is no evidence here to establish that the alleged advantages of the transport measures will achieve that objective to any significant degree. Indeed, the acceptance of substantial car dependency arising from this development, confirms the opposite. The scheme again fails to meet an important objective of the NPPF.
225. In the light of the above, the Council invites that Mrs Tagg's characterisation of the public transport availability of the scheme and sustainability as "*pretty amazing*" be rejected. That is a view which the Council and the highway authority do not share and which is wholly unrealistic.
226. These matters give rise to clear and significant limitations of the site and the development in terms of sustainability credentials. The impact of such limitations is significantly and demonstrably adverse, and in the Council's view sufficient to outweigh the benefits of the scheme. The location of this scale of development at the appeal site in these circumstances, will make travel by car the most popular choice in the Council's view.
227. The circumstances of this case in terms of sustainability are similar to those in the Chichester case and the Council commends the approach adopted by the Inspector there, as being entirely appropriate. Significant weight was given to the unsustainable location, limited access to local services and dependency on travel by car, for a development smaller in scale than the appeal scheme. The Inspector found that to be the decisive factor (paragraph 52 – decision) and the Council invites you to adopt a similar approach in this appeal.
228. The Council accepts that disadvantages of the scheme should be considered along with any advantages of the proposal, in the context of the overall planning balance. Whilst the LPA does not accept the number or extent of alleged benefits set out in Mrs Tagg's proof of evidence (CD-G4) (Table 4, page 42) the delivery of market and affordable housing in particular, good design and an appropriate mix of dwellings, are obviously matters to which weight can be attached, if it is determined that there is a housing land supply shortfall, although the location of new dwellings in an unsustainable location has also to be considered.
229. Out of the 22 alleged benefits, the Council disputes 14 for the reasons set out in its evidence. The reference to the provision of open space, landscape and on-site ecological enhancement in addition to off-set land, is of course necessary to mitigate the adverse impacts of this large scale development. They are not therefore benefits.
230. The fact that the site is undesignated or described as "*significantly disturbed*", a definition unrecognised in policy terms, cannot be regarded as benefits either.
231. Support for existing employment and local facilities is disputed by the Council on the basis that it is not demonstrated that it is required or will necessarily be delivered. The provision of a financial contribution to the Meon Medical Centre is

not CIL compliant, for the same reasons that it was rejected by Inspector Graham in the Moat House Farm decision (APP/Q4625/A/11/2157515 paragraphs 55-58 attached to document 23) and support for economic development is disputed by Mr Edwards. The reduction of pollution in terms of carbon emissions has not been demonstrated. Benefits 21 and 22 in the table are not accepted by the Council for all the reasons set out in its evidence.

232. In the Council's view, the adverse impacts significantly outweigh the benefits in terms of the overall planning balance, as set out in Mr Edwards' proof (paragraph 89-95 CD-H1).
233. The matters set out in the S106 agreement and unilateral undertakings do not overcome the Council's fundamental concern that this scale of development in this remote location is unsustainable and is contrary to development plan policy and the NPPF in particular. The Council's responses to the obligations are set out in Appendix 12 of Mr Edwards' proof (CD-H1). The level of affordable housing is acceptable and CIL compliant. The contribution to the bus service is questioned in terms of future certainty.
234. Before dealing with prematurity, it is important to refer to the issue raised by the HSE in relation to the gas main. The Council has not raised an objection to the scheme on this basis and has not adduced evidence on the point. It is concerned however, that the matter is relevant to public safety. It does not accept Mrs Tagg's dismissal of the HSE's position as "*ridiculous*" and invites you and the Secretary of State to consider this issue very carefully in the wider public interest.

PUTATIVE REASON FOR REFUSAL 2 – PREMATURITY:

235. The Council's second putative reason for refusal relates to prematurity. The guidance in the "*Planning System – General Principles*" document⁴⁹ (paragraphs 17-19) identifies the circumstances in and basis on which prematurity can lead to the refusal of permission. In this case, the Council contends that due to the scale of the development proposed and its unsustainable location, approval of development now would undermine the SWDP strategy, which identifies a hierarchy of settlements and the quantum of development within them, to achieve sustainable development objectives.
236. The granting of planning permission for this scheme would manifestly prejudice the SWDP, which has reached an advanced stage and is under examination and can be given significant weight, notwithstanding the fact that there are unresolved objections to it and the process is not yet complete. Introducing this scale of development in an unsustainable location runs counter to the spatial vision and to the objectives of the SWDP and is thereby prejudicial to its strategy.

⁴⁹ The ODPM document has now been cancelled. NPPG explains circumstances where it might be justifiable to refuse planning permission on grounds of prematurity. The Council considers that the PPG supports its objections to the appeal scheme.

CONCLUSION

237. The significant adverse impacts of this scheme arising from its poor sustainability credentials, warrants refusal of permission. Sustainability should be the decisive issue in this appeal. For the reasons set out herein and on the basis of the evidence before the Inquiry, the Council respectfully invites that it be recommended that the Secretary of State dismisses this appeal.

The Case for BARD

238. BARD objects to the appeal proposal because it is unsustainable and premature. It will harm the appearance and character of the countryside, especially when viewed from the AONB. Key linkages with the neighbouring St Modwen scheme are unlikely to be deliverable. The EIA is also so deficient that the Secretary of State may not lawfully grant planning permission.

Sustainability

239. During the course of this Inquiry, much time and effort has been expended by the Council and the Appellant examining the extent to which the appeal proposal represents sustainable development measured in terms of its compliance with the NPPF. That was not always very illuminating. Sustainability is a relative concept. It depends on the social, economic and environmental characteristics of the place where a decision is made. The Secretary of State recognises that fact. That is why the advice he gives in the NPPF is necessarily expressed in somewhat vague and equivocal terms. The fact is that throughout the 219 paragraphs of National Planning Policy Framework, the Secretary of State is astute to avoid laying down any hard and fast rules to determine what is, or is not, sustainable development, except, perhaps, for one. That is, the sustainability of a scheme is to be judged in terms of policies and proposals set out in local plans.⁵⁰ They are intended to empower local people to shape their surroundings, i.e. they who are responsible for integrating local economic, social and environmental factors through the local plan to provide a practical framework within which decisions can be made with a high degree of predictability and efficiency.

240. The starting point is, therefore, to understand what the existing and emergent local plan identifies as the most sustainable pattern of development in rural Wychavon. That will provide a yardstick against which the appeal proposals may be judged objectively, subject only to the issue of how much weight should be accorded to each document.

The Wychavon District Local Plan

241. Saved policy GD1 of the Wychavon District Plan focuses growth within the main built up areas of Droitwich, Evesham and Pershore. Some new homes and jobs are also envisaged in the villages. In each case, development is to take place within defined settlement boundaries or on allocated sites. The object of that strategy is to: *"further sustainability objectives, including reducing the need to travel and making the best use of existing infrastructure and the long standing*

⁵⁰ NPPF, paragraphs 14 and 17

national policy of safeguarding the countryside for its own sake."⁵¹ The policy plainly accords with the "golden thread" of the NPPF.⁵² Notwithstanding its vintage, the development plan should therefore be accorded some weight.

Conflict with the submission draft South Worcestershire Plan

242. The South Worcestershire Plan is intended to replace the Wychavon District Local Plan. Policy SWDP2 specifies a development strategy and settlement hierarchy. The policy maintains the urban focus of the existing development plan. Most new development is directed to Worcester (tier 1), Droitwich, Evesham and Malvern (tier 2), and to other towns possessing a wide range of services, such as Pershore (tier 3). The fourth tier in the hierarchy comprises some 48 category "1, 2 and 3 villages". They provide *"varying ranges of local services and facilities"* [which] will meet *"locally identified housing and employment needs"*. The fifth tier is Lower Category Villages, which *"at best offer one or two local services"*. Generally only infill development will be allowed in these settlements. There is no proposal to accommodate development in a new settlement.

243. The policy has been formulated to give effect to the principles of sustainable development. The reasoned justification states that: -

*"The implementation of SWDP2 is essential to achieving sustainable development and the delivery of economic prosperity."*⁵³

244. The SWDP is at an advanced stage of preparation. The EiP has begun. The total number of new homes the plan must provide for is set to be increased compared with the provision made in the submission version of the document. There is no suggestion that the increase in housing numbers will require any review or modification of the development strategy and settlement hierarchy. Nor has the Appellant sought to argue SWDP2 is inconsistent with the NPPF. Policy SWDP2 should therefore be accorded substantial weight. SWDP2 integrates the three dimensions of sustainability in Wychavon. Therefore, the extent to which the appeal proposal complies with SWDP2 should be regarded as the litmus test of its sustainability. There is no need to delve at length into the NPPF.

Non-compliance with GD1 and SWDP2

The factual background

245. The Appellant's startling proposition is to build an estate of 380 houses and 5000 sq m of business premises on green fields about 6 miles south of Stratford on Avon. The development would be bolted on to another isolated estate of 500 houses promoted by St Modwen. That scheme at least was explained by the special need to cross subsidise the redevelopment of an historic employment use and the construction of a leisure village. The St Modwen scheme is located at Long Marston Depot in Stratford on Avon District. New homes have barely started

⁵¹ Subscript to policy GD1, paragraph 2.3.2

⁵² See e.g. paragraphs 14, 17 and 29 to 34

⁵³ Paragraph 8

to emerge from the ground. The Depot is not defined as an existing settlement. Even if it should be regarded as such, (and it should not), in terms of the criteria specified by SWDP2, the facilities it will provide are comparable with a "Wychavon tier 4 settlement": they amount in substance to a small village shop and a community hall.

246. The Appellant concedes the number of houses that will be provided will meet more than local needs.⁵⁴ That concession was inevitable. As Mrs Tagg agreed, local need should be assessed by reference to the Housing Market Area that was previously specified by St Modwen. That identified a local need for 779 market dwellings across 13 wards in Worcestershire, Warwickshire and Gloucestershire. Stratford on Avon Council considered it would be inappropriate to meet the whole of that need at the Depot. It does not quite do so. Mrs Tagg agreed the Appellant has not reassessed need and that it is unlikely to have changed significantly. The development of 380 homes on the appeal site will thus greatly exceed local needs, even if they are assessed at a HMA rather than settlement level. The Appellant also concedes, albeit cryptically, that there is no need for the employment development it proposes.⁵⁵
247. Access to Stratford is along the secondary road network. Most local roads in the vicinity of the site are narrow, winding and unlit country lanes, unsuitable for pedestrians and casual cyclists, whether adults or children. The site does not yet enjoy a bus service. Nor does the adjoining Depot site. The buses to be provided will be relatively limited in terms of their frequency and the destinations they will serve. It is unclear whether any of the bus services that the Appellant and St Modwen have promised to provide will be viable in the long run. Children of school age who live at the appeal site will have to travel to schools in other towns and villages, principally Pebworth, Evesham and Chipping Campden. None of those locations are within walking distance.
248. The existing employment use at the Depot does not employ local people in the sense of persons who live in the immediately surrounding villages. Of the 532 people who worked on the site in 2010, 350 travelled up to 10 miles. In other words, the majority of people probably commute to the site from Stratford and other towns. The remainder travel even further. The Depot is thus a major source of unsustainable journeys by car. That is unlikely to change. Only 32 people indicated they might wish to live at the Depot. There is no reason to suspect the appeal proposal will perform any better. On the contrary, the Appellant's site is likely to perform worse because it does not propose to reserve homes for people who work at the Depot. And the Appellant proposes to exacerbate the unsustainable travel patterns associated with the Depot site by providing a further 5000 sq m of business premises in the same remote location.
249. The Appellant attempts to side step the difficulties associated with the location of the appeal site by relying on the planning permission for the Depot site. It says that proves the location is sustainable. That argument is hopeless. Supplementary comments from Stratford on Avon District Council state unequivocally that planning permission was granted for the redevelopment of the Depot site to protect the long term future of the uses that were there. That done,

⁵⁴ Tagg XX

⁵⁵ Tagg p.10, para 3.23 "...the proposed 5000 sq m facility is not relied upon to demonstrate the sustainability of the appeal scheme."

the council regards the location as comparatively isolated, with access to only a narrow range of infrastructure and facilities, causing heavy reliance on the motor car. The appeal proposals are thus assessed as likely to “undermine the arguably fragile sustainability credentials attaching to the development already taking place”.⁵⁶

Analysis

250. The appeal proposals are plainly contrary to policy GD1 of the local plan. It promotes large scale housing and employment development, which exceeds local need, outside the main built up areas specified by the policy. It thereby fails to reduce the need to travel or to maximise the use of existing infrastructure.
251. The Appellant’s scheme conflicts with SWDP2 for similar reasons. Specifically, it will result in the building of many more homes than are required to meet local needs in the countryside, outside a settlement, adjacent to an unformed new settlement, which possesses only the minimal level of services and facilities associated with Lower Category Villages.
252. This assessment of the performance of the appeal proposals with policies designed to promote and foster sustainable development in this deeply rural part of Worcestershire drives home an inescapable fact: measured against the Secretary of State’s preferred yardstick, the scale of development in this remote location is obviously unsustainable.

Impact on the countryside and doubts about the deliverability of connectivity between the appeal site and the Depot

Impact on the countryside

253. The development’s lack of sustainability will be manifested by harm to the appearance and character of the countryside.
254. Mrs Tagg acknowledged the appeal site is part of the setting of the Cotswolds Area of Outstanding Natural Beauty. She said it is clearly visible from a nationally important public footpath, an extensive public access area and Scheduled Ancient Monument within the AONB. She also agreed it forms part of the backcloth to an extensive permissive footpath network that surrounds the appeal site⁵⁷.
255. Against that background, Mrs Tagg accepted the principal representative viewpoints selected by Crestwood represent the typical view in the vicinity of the viewpoint. She further agreed that viewpoints 7, 8 and 9 (amongst others) are highly sensitive, being locations from which views out of the AONB are obtained by people enjoying the Heart of England Way and the open access area. She specifically acknowledged that the existing Depot site is virtually invisible from the AONB, being shielded from view by tree belts in both summer and winter. Mrs Tagg accepted that the Appellant’s scheme would be clearly visible as “a

⁵⁶ Supplementary Comments from SoADC dated 3 September 2013, para 12.

⁵⁷ Which was agreed by reference to Diagram 9 of Crestwood’s Technical Report for Landscape and Visual Analysis

swathe" of urban development extending westwards in the middle distance. She agreed that the new business units and houses would be clearly visible from each viewpoint. She also accepted that structural landscaping would not screen the development, especially from more elevated positions, such as viewpoint 9.

256. What, then, would be the effect of the development? Viewed from the AONB, the existing scene is strongly rural. It is characterised by small hamlets set in a well maintained arable landscape contained by rising land to the north and south against the backcloth of deciduous woodland. It is an attractive landscape setting. The Appellant's scheme will introduce an alien and discordant element into this scene. It is impossible to argue that the development of the appeal site will conserve or enhance the setting of the AONB. BARD says that amounts to a significant adverse impact. That distinguishes this scheme from St Modwen's, which will have no perceptible effect on the enjoyment of the AONB. The harm caused by the appeal proposal therefore ought to weigh heavily in the balance against the grant of planning permission.

Deliverability of connectivity between the appeal site and the depot

257. Mr Roderick agreed that the development of linkages between the Appellant's and St Modwen's schemes is necessary for the development of a sustainable community. Access is not a reserved matter. The links that are intended to integrate the two schemes are those shown on Figure 6.3.
258. The St Modwen scheme is to be developed in 3 phases. Phase 1 abuts the north east corner of the appeal site. A "Greenway" runs from that corner towards the community facilities that will be built at St Modwen. It is part of Phase 1. Mr Roderick acknowledged that is the only link that the Appellant can be sure of developing between the 2 schemes. The 3 other pedestrian and cycle links that lie immediately to the west of the Greenway require the development of Phase 3 of the St Modwen Scheme. That may not be capable of being brought forward. Its development is contingent on the prior development of Phase 2 (the holiday village). That is required by condition 16 attached to the planning permission St Modwen is now implementing.⁵⁸ The reason for the condition states: -

"The phasing is required to be adhered to, to ensure the comprehensive redevelopment of the site in accordance with Policy CTY.18 of the Local Plan Review".

259. Mrs Tagg argued that the phasing plan will be adhered to if St Modwen merely provides 30 touring caravan pitches and 30 camping pitches instead of 150 self catering lodges and 150 holiday homes mentioned in the Fifth Deed of Variation of St Modwen's section 106 agreement. That is wrong. It overlooks the fact that the requirement to provide those facilities coincides with the completion of a substantial part of Phase 1. Were it then possible to move to Phase 3 without building the bulk of the holiday village the object of condition 16 will be frustrated. That is significant. By a letter dated 6 August 2012 St Modwen told Stratford on Avon District Council Phase 2 is not viable. Mrs Tagg agreed she has no evidence that its viability has improved. That sheds real doubt on whether the

⁵⁸ Reference number 12/00484/VARY

bulk of the Appellant's new homes, which lie well to the west of the Greenway, can be linked as planned with St Modwen's shop and community facility.

260. The Appellant's problems do not end there. Mr Roderick accepted that it is not sufficient to be able to demonstrate the potential to form a physical link between the 2 sites. It also needs to be shown that there is a reasonable prospect St Modwen's will give effect to those links through a legal agreement. Mr Roderick acknowledged the need for a legal agreement had been identified by St Modwen in July 2013⁵⁹. He agreed that St Modwen is a sophisticated and well advised developer, and that the need to acquire the necessary rights of access could give rise to a ransom. Mrs Tagg and Mr Roderick were unable to demonstrate any progress has been made since July in securing an agreement. They preferred instead to overlook the intriguing fact that letters of 3 October (from Persimmon) and 15 November 2013 (from St Modwen) make no reference to the need for an agreement. That is most surprising: if an agreement is a non-issue, there ought to be an agreement, or at least heads of terms. That there is neither speaks volumes.
261. The Appellant's difficulties are even more acute when it comes to linking their scheme with the neighbouring employment use via two further footpath and cycle links. Mrs Tagg confirmed she is unaware of any proposal by St Modwen to develop links to tie into those that might run to the edge of the appeal site. Nor has she investigated whether St Modwen would be able to do so, having regard to any rights of its business tenants to restrict any access across their demise.
262. In short, a key component of the Appellant's "sustainable development offer" appears to be more symbolic than real. It is uncertain whether it will be possible for the Appellant to secure "essential" (per Mr Roderick) linkages, which require the cooperation of a third party. That rules out the use of a Grampian condition to try and resolve the issue. If these concerns are borne out, the lack of connectivity that results will produce a freestanding housing estate in the middle of the countryside, tacked on loosely to another marginally sustainable community.

Prematurity

263. The most up-to-date exposition of the Secretary of State's policy on prematurity is set out the draft National Planning Practice Guidance.⁶⁰
264. There is no doubt that the appeal proposal falls foul of the policy. It is a substantial development. Wychavon's local plan is at an advanced stage of preparation. The need for housing outside the main built up areas is intended to be dispersed to help maintain numerous tier 3 and 4 villages. There is no plan for a new or expanded village.
265. Stratford on Avon District Council has also reached the stage of producing an Intended Submission Core Strategy.⁶¹ The draft development strategy continues

⁵⁹ Roderick appendix 2; letter of 11 July 2013

⁶⁰ The Planning Practice Guidance has subsequently been published on 6 March 2014.

⁶¹ Supplementary Comments of SoADC, p.2 para 6

the Council's previous policy of dispersed development.⁶² It has made a call for sites. A submission was received in respect of Long Marston. Technical work was commissioned to test its sustainability. The site was rejected because of the need for substantial investment in highway infrastructure and the resulting significant increase in car dependency.⁶³

266. If the appeal is allowed, 380 new homes and a large employment use will absorb all local need across the 2 authorities in the area to the south of Stratford. That will pre-empt decisions about the scale and location of allocations to meet local need and maintain service levels in the villages in each district. Both councils recognise that runs the risk of jeopardising the viability of local facilities or distorting the balance between housing in the urban compared with the rural area. There could not be a clearer case of a premature development being likely to prejudice the plan making process.

Inadequacy of the Environmental Impact Assessment

267. Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 prohibits the grant of planning permission for EIA development . Specifically, regulation 3(4) states: -

"The relevant planning authority or the Secretary of State or an Inspector shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so."

268. Regulation 2(1) provides "environmental information" means: -

"the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development;"

269. Regulation 2(1) defines an "environmental statement" as a statement—

- (a) *that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but*
- (b) *that includes at least the information referred to in Part 2 of Schedule 4;*

270. Schedule 4, Part 1, paragraphs 4 and 5 specify that the information for inclusion in environmental statements includes: -

"(4) A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and

⁶² Ibid, p.3, para 9

⁶³ Ibid, p.3, para 10

temporary, positive and negative effects of the development, resulting from—

- (a) the existence of the development;*
- (b) the use of natural resources;*
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant or appellant of the forecasting methods used to assess the effects on the environment.*

(5) A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment."

271. The minimal requirements of Part 2 include the following: -

"A description of the development comprising information on the site, design and size of the development.

A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

The data required to identify and assess the main effects which the development is likely to have on the environment.

An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects.

A non-technical summary of the information provided under paragraphs 1 to 4 of this Part."

272. The Health and Safety Executive has duly made representations on the environmental effect of the appeal proposals under cover of a Written Statement made by John Birch, HM Specialist Inspector of Health and Safety. The report is dated 5 September 2013.

273. The report assesses the potential impact of the scheme on the "2 Feeder Churchover/Wormington BG2452 pipeline"⁶⁴ using a methodology known as PADHI+⁶⁵ The assessment finds about 1/3 of the site lies within the Consultation Distance for the pipeline and about 1/5 lies in the middle zone.⁶⁶ This is said to constitute "significant housing" in the middle zone, and the author notes the HSE advises against such development.⁶⁷

274. The reason why the HSE advises against development in the middle zone is explained in graphic detail in paragraphs 31 to 36 of the statement. Such development poses a significant risk to human life. The report states that these risks cannot be dismissed as impossible or incredible.⁶⁸ The report concludes: -

"In this case, assessment using the PADHI methodology, taking account of the proposed development, leads HSE to conclude that the residual risk at the development site would be sufficiently high for HSE to advise against the granting of planning permission. Risk reduction measures, either

⁶⁴ Report, paragraph 18

⁶⁵ Report, paragraph 12

⁶⁶ Report, paragraph 27

⁶⁷ Report, paragraph 30

⁶⁸ Report, paragraph 31

providing additional provision for the pipeline or alternative layouts to further separate people from the pipeline, are available for the developer to consider.”⁶⁹

275. The statement gives advice on “possible” risk reduction measures which “could” reduce the risk to the development.⁷⁰ Nothing is certain. Doubtless that is why the objection was made and is sustained.

276. Paragraph 10 of the statement says: -

“When HSE advises that a planning application should be refused on safety grounds, local planning authorities are guided not to override HSE’s advice “without the most careful consideration”.

277. For the purposes of this appeal the LPA is, of course, the Secretary of State.

278. The EIA originally recognised that the gas main constrains development. It did not, however, specify the nature or extent of that constraint. It did not recognise the pipeline is likely to affect the environment (specifically the scheme’s population). Nor did it indicate an appreciation of the nature of those effects. It does not specify the information that is required to gauge the risk to people. No measures were envisaged as being necessary to prevent, reduce or offset those risks. Nor were any alternatives studied. The EIA was wholly inadequate. The EIA also gave no indication of technical difficulties or lack of know how in understanding the risk and formulating a solution⁷¹.

279. In October 2013 the Appellant incorporated Addendum 2 into the EIA. It is to be found at p.143 under paragraphs 15.1 to 15.6. Paragraph 15.5 does no more than state: -

“At the time of writing discussions are on-going with the HSE the [sic] HSE however it is considered [sic] that any objections can be overcome by conditions or indeed a revised layout submitted at any reserved matters stage.”

280. The most that can be said about paragraph 15.5 is that it contemplates how the risk identified by the HSE might be avoided. It does not evaluate different alternatives. There is no evidence those alternatives have been “studied”. The information that has been used to generate and evaluate alternatives is not specified. No reasons are provided for those “choices” (if that is what they are). There is no evidence of the appreciation of what effects might flow from those choices. The Appellant does not even produce a plan which shows how 380 homes might still be accommodated on the site with 5000 sq m of business premises if the middle zone continues to sterilise a significant part of the site. The Addendum is also an inadequate piece of work.

281. Mrs Tagg confirmed that (unsurprisingly) the HSE maintains its objection. She admitted she was unaware of any discussions with the HSE that indicate its

⁶⁹ Report, paragraph 39

⁷⁰ Report, paragraphs 37-38

⁷¹ See EIA p.141, 15.19 to 15.24

objections can be overcome by conditions or a revised layout. She was not aware of any information on her company's files which would support the contention at paragraph 5.15.

282. In the circumstances, it is submitted that because the necessary environmental information has not been incorporated into the EIA, the Secretary of State is unable to take the environmental information into consideration. This is a serious matter: it directly affects the health, safety and wellbeing of potential future residents. Regulation 3 therefore prohibits the grant of planning permission. Alternatively, in the absence of any evidence that a scheme can be designed to avoid the risk of harm to people living on the appeal site, or that it would be practicable to deal with the issue by the imposition of a condition, it would be unreasonable to allow the appeal.

Conclusion

283. BARD invites the Secretary of State to dismiss the appeal on the grounds: -

- (i) It conflicts with the adopted and emerging development plan for Wychavon;
- (ii) That conflict demonstrates the scheme is unsustainable;
- (iii) That lack of sustainability is underlined by the harm the scheme will cause to the setting of the Cotswolds AONB and doubts about its deliverability; and,
- (iv) The Appellant's EIA does not comply with the 2011 Regulations. Consequently, it has failed to demonstrate the scheme will not pose a serious risk to people who live on the site.

234. BARD says the harm caused by the scheme is so serious, that the decision should be the same whether or not there is a 5 year supply of land for housing.

1) The Case for Michael Brain a Parish, District and County Councillor living at Long Marston

284. Cllr Brain has been involved during every step of drafting the Masterplan for the development of Long Marston Storage Depot and subsequent planning applications for over a decade.

285. The Codex application for an urban estate larger than the nearby villages of Long Marston and Pebworth is unnecessary, damaging and unsustainable. Cllr Brain believes that it is also an example of prematurity.

Pre-maturity

286. The proposed development of 380 houses and 5,000m² of employment buildings is so large that it will prejudice the outcome of the emerging core strategies of 3 District Councils, namely Wychavon, Stratford-on-Avon and Cotswold. None of those 3 emerging Core Strategies identify the appeal site for development. The community engagement process heralded by the Localism Act which is being painstakingly formulated in 3 neighbouring districts should not be made a largely redundant exercise at a stroke as a result of an unnecessary and unwanted speculative development.

287. A core principle of the NPPF at paragraph 17 is that *"...planning should be genuinely plan led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area..."*. Paragraph 69 states that *"Local Planning Authorities should create a shared vision with communities --- of the residential environment and facilities they wish to see..."*.

288. This speculative application is not in accordance with "localism" as expressed by NPPF and it threatens the very essence of the Government's policy. Appeals are not often dismissed because of pre-maturity but Cllr Brain respectfully suggest that this appeal qualifies for such consideration.

Sustainability

289. Turning to sustainability, the proposed development is both socially and environmentally unsustainable. The site is in a remote location being a long distance from the strategic road network, shopping centres and services. Its public transport links are virtually non-existent, no bus lanes and only minor B and C class roads radiate from the site.

290. This means greatly increased traffic through local villages. It will become a commuter estate from the outset with high levels of car dependency caused by its isolation and limited local employment opportunities. Cllr Brain says "limited" because jobs deriving from offices and other professional services do not exist on the Depot site.

291. The nearest primary school is in Quinton (where he is a governor) has no spare capacity. The situation is worse in the case of the recently built Meon Medical Centre in Quinton. It has only 4 consulting rooms and is already full. The Depot development of 500 houses and Codex development of 380 houses would together increase total demand to 9.2 consulting rooms. I have seen no plans or financial reports demonstrating how, where and when the medical centre is supposed to more than double in size to accommodate both developments.

292. The shop proposed on the Depot site would be just a small convenience store and would not replace the need for regular visits to supermarkets, professional and financial services by future households. The proposed community bus service for 5 hours a day to Pebworth and Honeybourne, via a long and winding route, will hardly ever be used. In my estimation the proposed Codex development has the hallmark of being an unhappy satellite estate with many homes being put up for sale within 2 or 3 years of completion.

293. The approved Masterplan for development at Long Marston Storage Depot has many flaws in sustainability terms arising from its remote location. A future bus service passing through the Depot site will do little to reduce its car dependency. In granting planning permission for the Masterplan in 2010, Stratford on Avon District Council carefully balanced the drawbacks of its remote location and lack of facilities with the strategic policy need to find a viable long term use for a large brownfield site. The resulting Masterplan and phasing programme is a delicate exercise. It seeks to deliver just the right amount of housing, leisure and employment to be mutually supportive of each other and to meet local needs. Time will tell whether the balance succeeds. Unfortunately, St Modwen has written to Stratford on Avon District Council to say it is struggling to find a leisure operator for the Phase 2 development. If their search fails then the Masterplan

cannot progress beyond Phase 1A. If the Depot development stalls at Phase 1A, the development of 380 houses on fields to the south of the Depot can only be regarded as a large, isolated housing estate in the countryside and a glaring example for future generations of bad town planning.

294. In any event, no strategic policy exists in the case of the green field Codex site. Only the drawbacks of its unsustainable location are apparent. Accordingly, Stratford on Avon District Council and all the local parishes object to the Codex scheme.
295. Furthermore, it is estimated that approximately 90% of all traffic movements from this area travel north towards Stratford upon Avon and the major road networks, which will play havoc with the inadequate local road network. Cllr Brain recognises that Warwickshire County Council as Highway Authority does not object to the application. However, based on Cllr Brain's local knowledge, he predicts that the B4632 Campden Road will be unable to cope at peak periods. The Clopton Bridge over the River Avon in the centre of Stratford will present an even greater bottleneck with no by-pass to relieve the already severe traffic jams at peak periods. Increasing numbers of drivers will seek alternative routes through the local C class road structure and the impact on local villages will be made even worse than it already is. The B4632 between Stratford upon Avon and the county boundary just south of the application site has had an unhappy safety record with 58 injury road traffic collisions and 94 casualties including several fatalities between 01/01/2004 and 31/12/2012. These are terrible statistics for such a short stretch of road, which does not include damage-only RTCs. The increased traffic caused by the proposed development would not bode well for the future of these statistics which, as a retired police officer, Cllr Brain can fully appreciate.
296. One of the core principles of the NPPF is that *"Planning should...actively manage patterns of growth to make the fullest use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable..."*. The proposed development does not sit well with this objective.
297. Adjacent to the site is the Sims Metal Recycling facility which has a great potential to become a bad neighbour if the house building is allowed to go ahead. It is noisy, emits unpleasant odours and dust and has been the scene of a number of major fires of which the most recent during the summer of 2013 required the co-ordinated services of several fire services and took several days to extinguish completely
298. Cllr Brain has received a number of complaints about the dust and smell from this processing plant, including complaints from the St Modwen site whose land lies in line with the prevailing south-west wind.
299. Paragraph 115 of NPPF states *"great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty"*. The development site is at the gateway to the Cotswold Area of Outstanding Natural Beauty; one of the jewels in our country's national crown. Public access to the AONB is provided by the well-used Heart of England Way which links the hamlet of Upper Quinton with the Cotswold village of Mickleton. This footpath scours the lower north-west facing slopes of

Meon Hill providing open views for half a mile. From the footpath the Codex site is visually exposed and devoid of significant screening. The proposed development will harm the tranquillity and setting of this AONB.

300. Cllr Brain says the site is unnecessary and this applies to development for both residential and employment use. The site lies in the countryside, well away from existing settlements. If the 500 homes approved on the Depot site are completed, they would greatly exceed all market and affordable housing need deriving from nearby parishes. The local villages are already experiencing smaller scale residential developments within and adjacent to their boundaries. For example, 2 small housing sites totalling 23 homes are currently being built in Pebworth village, which will exceed the long term housing needs of the parish identified by the draft SWDP (20 homes). Therefore, the Codex large-scale residential estate is contrary to the housing needs contained in both saved and emerging local policy.

301. Development for employment use is equally unnecessary. When planning permission was granted in 2010, the retained employment buildings on the adjacent St Modwen land were supposed to meet the existing needs of the local area and also those of the future residents of the 500 home estate. Since 2010 several businesses have left the site, leaving some buildings empty. In light of the empty buildings and the presence of the Sims recycling facility nearby there is no need for more buildings for the foreseeable future.

- In conclusion there is no identified local need for this development.
- It will spoil the character of the rural neighbourhood and the Cotswold AONB.
- It will exacerbate our already chronic traffic problems beyond the immediate vicinity of the site and it will bring no benefits in return.
- The appeal should be dismissed.

2) The case for County Councillor Mrs Seccombe, Leader of Warwickshire County Council

302. The application relates to the formation of a 4 arm roundabout on the Campden Road (the B4632) at the junction with Tailor's Lane, which leads to Upper Quinton.

Cllr Seccombe's objections to the proposals

303. Although the development is in Wychavon area, most of the traffic movements and impacts will be the responsibility of Warwickshire County Council. In summary Cllr Seccombe's objections are:

- This is an unsustainable development because it has poor public transport links as potential employees would be reliant on key services in Stratford upon Avon and would have to rely on the use of the car. Therefore the development would be contrary to the policies contained in NPPF on sustainability.
- Additional traffic using unsuitable roads therefore will have negative and detrimental impacts on the rural locality and surrounding villages.
- There would be negative cumulative impacts on rural highway network in south Stratford on Avon District area.

The proposal is an unsustainable development

304. This site is in an unsustainable location because it has poor access to facilities, footpaths, cycleways, and inadequate access to public transport connections.
305. The additional traffic from the development would use unsuitable roads, therefore it would have negative and detrimental impacts on the rural locality and surrounding villages.
306. At present, traffic which flows along the B4632 is a mixture of cars, light goods and HGV, many turning at the existing junction to the Long Marston Storage Depot site. The proposed employment buildings will not be served by a bus route therefore the majority of residents will not be working in the proposed employment area, nor in the adjacent St Modwen employment area, and the proposal would create additional commuting. There is a serious concern regarding the volume of traffic generated by this development through the surrounding villages.
307. The B4632 is already a busy and heavily used road; the development would exacerbate adverse impacts for existing pedestrian, cyclist and equestrian safety. Further, there would be additional negative impacts on the existing local villages and associated minor roads.

Jobs and the economy

308. Stratford upon Avon town is an international tourist destination and the additional logistic traffic (HGVs) in the locality could have a negative impact on tourism and the local economy. The attractiveness of the locality could be undermined by the additional traffic; therefore, the development is not compatible with the local tourism economy.

Impact on Welford-on-Avon village/Stratford upon Avon/Quinton

309. This proposal would add to the cumulative impacts of the traffic generated over and above those already planned for the St Modwen development at Long Marston.
310. The main road through Welford-on-Avon is a well-known "rat run" for traffic coming from the south of Long Marston and those wishing to cut through to the A3400 and onto Birmingham (whilst avoiding the centre of Stratford). This road is already well used with the existing level of traffic particularly as it is single track in places and all traffic needs to cross the narrow Binton Bridges. An additional 380 houses and 5000m² of employment space at this location will exacerbate these existing problems to the detriment of the residents and infrastructure.
311. The development would add pressure on Stratford upon Avon highway infrastructure and the Clopton Bridge river crossings, which is already stretched. So a developer contribution should be made towards highway improvements at Clopton Bridge.
312. The increase in traffic on Taylors Lane will be detrimental to the character of the road leading to Upper Quinton. Heavy lorries passing through the villages would result in an adverse noise and disturbance and therefore impact on the amenity of the settlement significant road upgrading is required.

313. The development would require a significant mitigation package of measures to improve highways at some distance.

3) The Case for Cllr Alastair Adams District Councillor for Pebworth and Honeybourne, and County Councillor for the area.

314. Cllr Adams has lived in Pebworth for 20 years. He has been involved with all the local planning issues around this area over the last 2-3 years and he has attended many meetings involving the proposed development.

315. The Parish Council voted unanimously against the development; the planning committee of Wychavon District Council voted unanimously against it and to fight the appeal; and the leaders of the 5 councils surrounding the site (Wychavon DC, Cotswold DC, Worcestershire DC and Warwickshire CC) have signed a letter opposing the development.

316. Cllr Adams says he spoke passionately to the planning committee when it was on their agenda as to why the development should not go forward listing all the various planning reasons.

317. At the Inquiry he painted a picture. This area borders the Cotswolds, an area of outstanding natural beauty. As you would expect it is a rural area of cultivated fields and grazing land. The small villages of Pebworth, Honeybourne, Long Marston, and Quinton have all grown slowly over hundreds of years and there are many old houses built in Cotswold stone and blue lias, some with thatched roofs. In many ways these are idyllic villages.

318. Although the locals want to maintain the look and feel of their local communities, they are definitely not NIMBYs. The locals have also gained a lot of knowledge about the planning process over the last 3 years, and show keen interest in all things planning, and many have attended planning committees and appeals.

319. Over the last 3 years planning permissions have been granted for 23 new houses in Pebworth, 180 in new houses in Honeybourne, and 500 in Long Marston (all of these have approximately 35% affordable homes). This is easily more than the local need of the surrounding villages but does show that housing has been embraced for the better good and in line with national requirements and directives.

320. However, Cllr Adams says he and many of the residents have been very active in making sure the developers listened to the local population, understand their needs and requirements, and modify their plans – a true example of localism. He is proud to report that they have worked with developers like Cala Homes, Taylor Wimpey, David Wilson Homes, Lioncourt Homes, St Modwen/Persimmon Homes in the last 3 years, and they have all listened and radically modified their plans to accommodate local needs. The site plans have changed, the number and type of houses have changed, design of individual houses and type of materials used changed, real chimneys installed, beefed up flood prevention agreed, and much more. He notes that in Pebworth the Cala Homes site is well advanced and he suggests it can be seen how a small development of 23 homes can be blended into an existing village. Some of the houses have been built with real local stone and the design of the houses mirror the village vernacular. They have achieved

something similar with the houses being built in Honeybourne – even Taylor Wimpey modified their designs and they are building with blue lias stone.

321. He says that whilst the locals are not NIMBYs, the appeal scheme for 380 houses should be dismissed. It does nothing for the local community, nothing for the local needs, and will surely become a car-based isolated settlement dumped in the countryside.
322. Cllr Adams attended the early meetings between the developers CODEX and the WDC planning officers with the hope that they could work with them as they have with other developers, but it soon became obvious to him that their attitude was arrogant, they were not interested in listening, and only attending meetings and public exhibitions to merely “tick the box” in preparation for their appeal. He considers that this site is all about making money for the developer and the land owner; estimates for the land with planning permission is a cool £20million. No wonder, he says, that the developers are so keen to rush this through the planning appeal process whilst the SWDP is waiting for approval. They are in a rush because they are being opportunistic. In Cllr Adams opinion, the developers are not interested in the consequences to the local population, the existing villages, the schools, the roads or the medical centres.
323. If this development is built, there will be a crisis with the local schools, a crisis with the local health centres, and the roads would be gridlocked at rush hours. The Chairman of the nearest secondary school would confirm that it is full, as are most other schools in the area. And the ones that are not yet full will be very soon due to the houses that are being built that already have planning permission (703 new houses within 4 miles of Pebworth).
324. Cllr Adams says he and the local residents are not NIMBYs. They have worked with other developers in the area to build communities and houses that residents living in 100 years time would still be pleased with and proud of. They want sustainable development, not development that simply makes the landowners rich.
325. Finally, he draws attention to the site next door to the Codex development which is also owned by the same land owner. It is a huge recycling site that processes all types of scrap. It is noisy, it pollutes with dust and smell and suspect debris, and it spontaneously catches fire (5 times so far in less than 2 years). It caused a major incident on 30 April when it burnt for 7 days or more, polluting the skies with thick acrid smoke and hit the national headlines. Why, he asks would anyone want to live next door to this?
326. In summary Cllr Adams says the appeal amounts to a battle between the local communities with the full backing of their elected members and councils versus the opportunistic developers. As confirmed by very experienced town planners at Wychavon DC the appeal site is not in the local plan, or the emerging SWDP; it is unsustainable and contrary to what the developer would like the SoS to believe, Wychavon does have a 5 year land supply whichever way it is calculated.

4) The Case for David Cranage, Vice-chairman of Pebworth Parish Council (PPC)

Objection from within the Parish of Pebworth

327. PPC was both surprised and confused by the recent petition that has been presented in support of the development. The Council does not feel this is reflective of the views within the whole parish. The majority of Pebworth residents do not support this development. PPC has actively sought out the views of the local community on this proposal and on the long-term growth and general development of Pebworth village.
328. An extra-ordinary meeting of PPC was held on 22 February 2013 to consider the Codex planning application, where the plans and documents were tabled for public inspection. During the following public forum 94% of the attending parishioners objected to the proposal.
329. Codex's Statement of Community Involvement: at the developers' public exhibition on 23 September 2013, out of the 77 responses received, 96% were opposed to the development of the then 333 houses (later increased to 380).
330. Letters of objection on WDC planning portal: the summary of responses received in August 2013 totalled 202 objections, 2 general comments, 3 letters of support. 97% of letters received were objections.

Disproportionate development for this type of village

331. PPC considers the proposal to be a disproportionate development given its location and the fact that Pebworth is defined as a Category 3 village by the SWDP.

Definition of Category 3

332. SWDP 25: says "Category 3 villages are locations where limited development to address local housing needs are acceptable. The settlements have a small range of local services and facilities as well as a reduced level of public transport provision. Development, with respect to its scale and type, will always be commensurate with, and appropriate to, the size and characteristics of the host settlement and its capacity to assimilate change in accordance with the settlement hierarchy".
333. The village has no shop, Post office or retail facilities, no doctors' surgery, pharmacy or healthcare facility. New housing on the scale proposed will inevitably lead to an increase in unsuitable transport modes i.e. car use. There will be no reason for residents of the proposed development to come to Pebworth village or use the proposed unviable bus link. They will most likely drive to Stratford or Evesham or Honeybourne Station.
334. The majority of Pebworth village falls within a conservation area and it has many Grade II Listed Buildings. The parish is a rural community of 340 dwellings which contains working farms. The village has grown organically over a 1000 years. This development will substantially alter the character, heritage and sense of community of the parish.

Housing Needs for the Parish

335. The PPC can demonstrate, with evidence, that it has been proactive in engaging with the local community to identify housing needs and finding ways to satisfy these.
336. Recent enquiries to the Housing Development Officer at Wychavon DC established that there were 5 households with a Pebworth address who are on the Home Choice Plus list and a further 18 who have a connection with adjacent parishes (Honeybourne, North Littleton, Cleeve Prior and Bickmarsh) but have a preference for living in Pebworth.
337. Worcestershire County Council undertook a rural housing needs survey in the Parish of Pebworth during June 2011 that indicated 12 people with a local connection to the parish were likely to need affordable housing within Pebworth Parish within the next 5 years.
338. In January 2008, following previous surveys, the PPC handed over 6 newly-built affordable houses in New Road to a housing association.
339. The PPC consulted extensively prior to making a submission to the SWDP. A consultation event was held in Pebworth Village Hall on 4 November 2011, 81 responses to the following question were obtained: *"Please indicate what you feel would be the appropriate number of homes to be developed in Pebworth between 2013 and 2030"*.

	None	0-10	10-20	20-30	30-40	40-50	50 plus
Count	12	20	19	17	8	2	3

340. The PPC submitted to the SWDP that some small scale development was necessary and, if correctly sited and sympathetically constructed, was likely to prove very beneficial to the future of the village. The PCC considered that an appropriate level of development over the period up to 2030 would be 20-25 new dwellings and that these should be weighted towards affordable housing in line with the recognised requirements and housing needs of local people.
341. The draft SWDP policy proposal is for 20 houses to be built in the plan period up to 2030.
342. Two sites have been identified and planning permission has been granted for 23 houses within the village which are now being built by Cala Homes, 7 of these are affordable homes.

Other initiatives that support local housing needs

343. St Modwen's development of 500 homes adjacent to the parish boundary:
- 35% are affordable homes
 - Nomination rights under the s106 agreement have been given to Pebworth parishioners: they are in the 2nd tier priority group for allocation (the development is nearer to Pebworth than the appeal site – access from Station

Road- people in parish of Quinton would be 2nd tier takers for affordable homes).

344. In addition, the 3 housing developments in Honeybourne that have been granted planning permission, will deliver 190 dwellings (35% affordable). Honeybourne village is considerably closer to Pebworth than the Codex development, which only has an eastern exit. Honeybourne is a Category 1 village, with shops, a post office, 2 pubs, a garage and a railway station.

345. Therefore all local housing need will be met and exceeded by developments that are now being built.

Other current PPC initiatives

346. **A Community Land Trust** is currently being explored with Wychavon DC (the landowner) to build further affordable housing in Pebworth village – the current intention is to address local needs for smaller (one-bedroom) dwellings.

347. **Neighbourhood Development Plan (NDP)**: an application for an NDP registration was made to WDC in November 2012 and the application was approved in May 2013. The Pebworth application was one of 2 early applications and was awarded Front Runner Status and funding.

348. A questionnaire regarding future development of the parish was delivered to every home within the Parish and a 57% response rate achieved. From this, the working party has identified a limited need for starter homes to allow young people leaving home to remain in the Parish and also the need for a small number of bungalows that would provide owners of market houses the option of downsizing and remaining in the parish.

Schools

349. There is a huge amount of support for Pebworth First School in the Parish. Mr Cranage understands that current thinking is that approved developments in Pebworth, Honeybourne and the St Modwen's scheme (over 700 dwellings) would easily fill any vacancies. There is also a plan to start a full day pre-school nursery which would act as an important feeder to the school.

350. The Codex development would mean a long car or bus journey for school children:

- 7km to Pebworth
- 9km to Stratford
- 13km to Evesham High
- 6km to Chipping Campden
- 23 km to Alcester
- 14km to Shipston

351. It would be bad planning to build homes so far away from a school such that children cannot walk or cycle to school.

Other nearby developments

352. There are a large number of applications for planning permission in surrounding villages with huge implications for infrastructure, transport, education, public services etc:
- Honeybourne 190 approved
 - Long Marston 500 approved
 - Pebworth 23 under construction
 - Mickleton: applications for 200
 - Welford: applications for 200
 - Approximate total 1100; approximate total of affordable houses @ 35% = 385.
353. Mr Cranage says this extra, unsustainable and opportunistic development of another 380 houses is not needed. He says any development, first and foremost, must be sustainable – this would not be. Secondly, it must fit with the character of the environment in which it is placed – this would not. Thirdly, it should develop a long term sense of community and social cohesion – this would not.

5) The Case for Mr Hepworth

354. Mr Hepworth lives on the outskirts of Broad Marston to the north-west of Sims Metal Management and the proposed housing. He and his neighbour have communicated with the multiple regulators since 2010 in excess of 30 times with regard to excessive noise, light pollution and out of hours working.
355. The distance from Sims to his property, the farthest is 650m. The distance to the centre of the proposed development is approximately 700m. Their properties are partially shielded by a 400m by 5m bund, built at his neighbour's expense.
356. In the past, it has been impossible for them to have the windows open in summer due to noise which can start at 05:00 and which continues until 23:00 and sometimes through the night. The noise is primarily processing, but includes very loud, sharp noises caused by the movement and dropping of heavy metal objects. At the height of operations in 2011/12, it was possible to hear the noise through their double glazing and where he resorted to earplugs at night in order to be able to sleep.
357. It must be acknowledged that Sims reduced operations in recent months as a result of fraud at the Long Marston and Newport operations – and a cynic might say, in order to boost the chances of this application. Indeed, whilst this appeal has been ongoing, it would be hard to tell that the site even existed due to the cathedral-like silence. Whilst this is welcome, nothing prevents Sims returning to their historic highs.
358. In 2012, the Bird Group submitted planning applications to amend the Section 106 conditions to allow 24 hour working. Comments from residents included: "...I can hear the workers swearing at each other every single night, let alone the noise the machinery and vehicles produce; ..we live in close proximity...and experience...late night noise and heavy vehicles coming and going well into the

evening; already we have pollution from noise and smells...and bright lights during darkness hours."

359. As part of the s106 application, monitoring was conducted where the automotive shredder residue plant was in operation. The Bird Group's own report concluded that complaints are already likely (see Tables of results below) and that the noise will increase when the second plant is commissioned.

Table 5.3: BS 4142 Assessment – ASR Building 1 Operating

	Location 1	Location 2	Location 3
Specific noise level at Residential property	37.1dB(A)	39.8dB(A)	31.8dB(A)
Rating Level	37.1dB(A)	39.8dB(A)	31.8dB(A)
Background noise level during evening/night taken from December 2001 Survey Table 4.2	25.8	25.8	25.8
Result	+11.3	+14.0	+6.0
BS 4142 Outcome	Complaints likely	Complaints likely	Of marginal significance

Table 5.4: BS 4142 Assessment – ASR Buildings 1 and 2 Operating

	Location 1	Location 2	Location 3
Specific noise level at Residential property	37.1 + 3dB(A)	39.8 + 3dB(A)	31.8 + 3 dB(A)
Rating Level	40.1dB(A)	42.8dB(A)	34.8dB(A)
Background noise level during evening/night taken from December 2001 Survey Table 4.2	25.8	25.8	25.8
Result	+14.3	+17.0	+9.0
BS 4142 Outcome	Complaints likely	Complaints likely	Of marginal significance

Pollution

360. Mr Hepworth's neighbour, a farmer, was forced to condemn a 5 acre wheat crop due to contamination by Sims including PCBs, cadmium, chromium, lead and zinc.

361. In late 2012, a number of fires, each increasing in size occurred at Sims. The largest in May led to recommendations to stay indoors, the closures of schools and a 2 week operation to fully extinguish the fire. The proposed houses would be built next to the source of these hazards.

362. In conclusion, Mr Hepworth is certain that there would be complaints from residents due to noise and light pollution. There is also the continual risk of further fires and industrial pollution. He is confident that no matter the outcome of the appeal process, that Sims would resume normal working and that noise levels would return to their historic high norm and that the Bird Group would reapply for 24 hour working. He says their experience is a bellwether and asks for this to be taken into consideration.

6) The Case for Mr Ken Wood, Chair of the Board, Chipping Campden School (Academy)

363. Mr Wood notes the following:

- Chipping Campden School is full, no new buildings planned, they don't want to expand.
- Pebworth Parish route to education is Pebworth First School to Blackminster to Evesham High school.
- Chipping Campden catchment area includes Moreton in Marsh, which has lots of new development happening.
- Alcester and Kineton have only two secondary schools with limited spare capacity.
- Shipston on Stour school is full.

364. Further, he says there is no room to accommodate the students from this proposal or any other development planned in the area outside the catchment area at senior school level.

365. There is some spare capacity in their 6th form.

366. The amount of development taking place in most of the adjacent villages to Chipping Campden is becoming a logistical problem, which none of the three local education authorities have even looked at trying to solve.

Written Representations

In support of the appeal

367. **Mr Beck of Long Marston Road** believes that he is the closest resident to the appeal site. He considers the noise from the Sims Metals site to be at an acceptable level. Even so, he says the Sims Group are trying to reduce it further. As for pollution and smells, problems have only occurred when the fires occurred at Sims. Again this has been addressed and the risk minimised.

368. He considers that the proposed development for 380 houses should go ahead in order to safe guard the community and jobs.

369. When Long Marston camp was operational, there were a considerable number of soldiers in the area but when it closed there was a demise of businesses in the

area. He considers that the proposal is an opportunity to try and generate new commerce in the area for the younger generation.

370. A petition supporting the building of 380 houses was signed by 103 people.

Against the appeal

371. A letter was submitted signed by:

- the Leader of Wychavon District Council,
- the Leader of Cotswold District Council,
- the Leader of Stratford District Council,
- The Leader of Worcestershire County Council, and
- the Leader of Warwickshire County Council

The letter strongly recommends that the appeal be dismissed for the following reasons:

- 1) The proposal is a large scale development in conflict with saved policies in the Wychavon District Local Plan and Stratford-on-Avon District Local Plan Review. The site is not identified for large scale residential development in the Wychavon Local Plan. Development for the appeal site would represent a significant departure from the approved Masterplan for the Long Marston Storage Depot.
- 2) The development is of such a scale that it would prejudice decisions made about the future development needs in:
 - South Worcestershire Development Plan
 - Stratford-on-Avon District Intended Proposed Submission Core Strategy
 - Cotswold District Emerging Development Plan.
- 3) In terms of traffic movements, the proposal would be unsustainable development due to:
 - Its reliance on the private car.
 - Its countryside location.
 - Distance from the strategic highway network.
 - Distance from supermarkets, offices, secondary schools, higher education and medical facilities.
 - Isolation from existing settlements.
 - Unrealistic expectation that future residents will walk or cycle on the local roads.
 - Concern that there is no local affordable housing need for this development.
- 4) There are no physical connections with Long Marston Storage Depot. Promises of future travel links are not secured. The proposed Travel Plan and

community bus service is a temporary measure and cannot succeed in the long term.

- 5) Harm to the character of the countryside, historic local villages and the setting of the Cotswold Area of Outstanding Natural Beauty.
- 6) A history of noise pollution from the Sims Metals site means future households will experience harm to their amenity.

372. Five Councillors for **Pebworth Parish Council** wrote to say that they supported BARD's Statement of Case.

373. **Welford-on-Avon Parish Council** object to the appeal proposal on the basis of impact it would have on local road infrastructure. Residents are already concerned about the volume of traffic that will be generated by the Long Marston masterplan scheme, which will be channelled through their very quiet village.

374. They consider that the obvious route from Long Marston/Pebworth towards Birmingham is directly through the middle of their village then to the A3400 and on to Henley-in-Arden, the M40 and beyond. The route is already popular as it avoids the need to pass through the heavily congested centre of Stratford-upon-Avon. The addition of a further 380 houses at his location would only exacerbate the problem.

375. Unless and until, there is a proper bypass to alleviate traffic issues in the centre of Stratford, traffic will continue to clog the rural lanes, which were never designed for this volume of traffic.

376. They feel that the development is unsustainable and that the appeal should be dismissed.

Planning Obligations

377. As stated in the SCG, the main parties agree that the following obligations meet the objectives of sustainability or to ensure that the development can be accommodated with acceptable impacts on the community⁷². The contributions are considered to be fair and reasonable and directly relate to the proposed development. They are as follows:

- A contribution towards provision/enhancement of off-site education facilities in Worcestershire;
- The provision of a bus service linking the development site to Pebworth and Honeybourne, with the developer funding the service for the first 3 years after occupation of the 50th unit. The developer's contribution would be limited to no more than £90,000 per annum for 3 years making a total contribution of £27,000. However, the Council has concern that the provision of the proposed bus service for a 3 year period will not secure medium/long term public transport links between the site and facilities at Pebworth/Honeybourne;

⁷² Inspector's note: *Planning Obligations: Practice Guidance (2006)* and *Community Infrastructure Levy Guidance (2013)* have now been cancelled, with a new set of consolidated guidance on CIL published in February 2014. The *Community Infrastructure Regulations 2010* set out the key statutory tests against which the submitted obligations are assessed.

- A financial contribution to waste and recycling collections of £40 per unit;
- A financial contribution of £40 per unit to the provision of public art;
- A financial contribution to support the development of a new sports facility so as to provide facilities not available on the development or on the adjacent site. The funding will help to provide an 8-track circuit for athletics and cycle racing surrounded by an all-weather walking track;
- A financial contribution towards the implementation of the Travel Plan measures;
- A financial contribution towards Worcester Transport Strategy (WTS) and the Worcestershire Local Transport Plan (LTP3) (as per commitments from Worcestershire County Highways dated 6 August 2013);
- A financial contribution towards the monitoring and enforcement of the terms of the proposed legal agreement;
- The provision of a compensatory grassland on a site to the north of the application site;
- The provision of affordable housing.

s106 Agreement

378. A s106 Agreement dated 12 November 2013 [document 17A] executed **between** Risborough Developments Limited ("the first owner"); Anthony Patrick Michael Bird ("the second owner"); The Bird Group of Companies Ltd ("the third owner") – **collectively referred to as the Owner**; Santander UK PLC ("the first chargee"); and Barclays Bank PLC ("the second chargee") **and** Wychavon District Council **and** Worcestershire County Council was submitted and discussed at the Inquiry.
379. The Agreement makes provision for the payment of contributions towards providing Education Facilities; Waste and Recycling; Public Art; Leisure.
380. The Agreement makes provision for a Worcester Transport Strategy Contribution to be used by the County Council towards investment and enhancement of transport infrastructure services as set out in the Worcester Transport Strategy and the Worcestershire Local Transport Plan.
381. The Agreement makes provision for a contribution towards the Meon Medical Centre which is intended to be used to expand the facilities. Provision is made for the contribution to be paid to the Council prior to the occupation of no more than 100 dwellings and for the contribution to be held by the Council on trust for the benefit of the Owner for the specified purpose for a period of 7 years from the date of payment. Provision is also made for the repayment of such amount of any payment which has not been reasonably and properly expended or committed to be so expended in accordance with the provisions of the deed.
382. The agreement secures the provision of 35% (equivalent to 133) of the proposed dwellings as affordable housing with a tenure split of 80% Social Rented Housing and 20% Intermediate Affordable Housing with an agreed mix of types and sizes, and provides for their future affordability.

383. The Agreement provides for a contribution to be made to provide funding to the travel plan co-ordinator for the purposes of implementing the measures contained in the Travel Plan which themselves include improved cycle access, parking, signage and facilities related to the Honeybourne Station.
384. Finally, the Agreement provides for The Ecological Land to be retained as an area of undeveloped land and to be managed in accordance with the Ecological Management Plan.

s106 Undertaking

385. A s106 Undertaking dated 12 November 2013 (as varied) [document 17A] **made** by Risborough Developments Limited ("the first owner"); Anthony Patrick Michael Bird ("the second owner"); The Bird Group of Companies Ltd ("the third owner") – **collectively referred to as the Owner**; Santander UK PLC ("the first chargee"); and Barclays Bank PLC ("the second chargee") **IN FAVOUR OF** Wychavon District Council **and** Worcestershire County Council was submitted and discussed at the Inquiry.
386. The Undertaking submitted by the Appellant secures:
- financial contributions from the Owner to the Council and the County Council in respect of a Bus Service Contribution and Secondary Education Transportation.
 - The provision of a community/sports facility; and
 - The making available at all times to members of the public the cycle/emergency access route for use as a cycle and pedestrian way and to also serve as an emergency access route to the Development.

s106 Deed of Variation

387. A s106 Deed of Variation dated 22 November 2013 [document 17A] was **made between** Risborough Developments Limited ("the first owner"); Anthony Patrick Michael Bird ("the second owner"); The Bird Group of Companies Ltd ("the third owner") – **collectively referred to as the Owner**; Santander UK PLC ("the first chargee"); and Barclays Bank PLC ("the second chargee") **AND** Wychavon District Council **AND** Worcestershire County Council **collectively referred to as the Parties** which was submitted and discussed at the Inquiry.
388. The Parties agreed to enter into the Deed of Variation pursuant to Section 106A of the Act in order to vary the terms of certain of the planning obligations within the s106 Undertaking (described above) and the Council and the County Council agreed to enter into this Deed for the purpose of enabling such variation to be made. The variation involved a variation in the definition of "Secondary Education Transport Contribution"; and a variation to the trigger point for the contribution to be made as from prior to the occupation of more than '**150** dwellings' to '**50** dwellings'.
389. There was a disagreement between the parties as to the contribution which ought to be made in respect of the Secondary Education Transportation (documents 6, 7, 11, 28 & 30).
390. Whilst Cllr Mrs Seccombe of WCC has suggested that a developer contribution should be made towards highway improvements at Clopton Bridge, Stratford, no

information has been provided on the likely number of additional daily trips that would result from the proposal. Therefore there is no basis for properly ascertaining a reasonable contribution.

391. The Appellant requests that, if for some reason the SoS has concerns with the content of the s106 agreement and/or unilateral undertaking which are capable of being addressed by variations to them, it is given an opportunity to make such variations as the SoS considers necessary prior to the final determination of the appeal.

392. On the question of emergency access, the application makes provision for such access through the Sims Metals site but the Appellant has also offered to make Sherry Lane available for emergency vehicles pursuant to the s.106 unilateral undertaking. This would not entail any development and therefore does not require any amendment to the application. If for some reason the SoS would prefer to exclude the possibility of emergency vehicles using Sherry Lane, that can be achieved by the imposition of a condition and if necessary a minor variation to the unilateral undertaking.

Conditions

393. A list of suggested conditions was submitted to the Inquiry and discussed [document 18]. Following some suggestions and observations by me, both main parties submitted their own list of amended conditions [documents 18A and 19].

394. As a result of those discussions and having regard to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*⁷³, I have amended the construction or content of some of those conditions and amalgamated others and I have sought further representations in writing from the main parties on those amendments which might require further comment [document 19A]. I have attached my list of amended conditions as Annex A to this Report. Further, I recommend that those conditions be imposed if the SoS decides to allow the appeal and grant planning permission for the proposed development.

⁷³ Circular 11/95 has now been superseded by the National Planning Practice Guide, but the principles remain the same.

Inspector's Conclusions

References in square brackets [] are to the paragraph numbers contained in the main body of the report.

395. At the start of the Inquiry, I identified the main issues in this appeal as the following:

- Whether the Council can demonstrate a 5 year supply of deliverable housing sites; and in turn whether the Council's policies for the supply of housing are up-to-date (NPPF 49);
- Whether the proposal is acceptable in principle, having regard to the saved and emerging development plan policies, as well as the provisions of NPPF having regard to its location outside any defined settlement boundary; to the nature and scale of the development proposed; and to its sustainability credentials.
- The impact of the proposals on local communities and the environment. If there would be adverse impacts, whether these could be addressed by the contributions and provisions which could be secured via the s106 unilateral undertaking.
- Whether the scheme is premature in respect of the proposed SWDP and prejudicial to the development plan process.

Planning policy context

396. It is common ground that the development plan consists of the saved policies of Wychavon District Local Plan 2006 [CD-B3] as well as the Worcestershire Waste Core Strategy November 2012. And, that this follows the revocation of the West Midlands Regional Spatial Strategy (WMRSS) and saved Worcestershire Structure Plan (WSP) policies on 20 May 2013 [SCG CD-E1].

397. The proposed development would fundamentally conflict with adopted Development Plan policies aimed at accommodating most new development (to 2011) within the main built-up areas of Droitwich Spa, Evesham and Pershore, with some in the villages; where in all cases it will be within defined development boundaries and/or on allocated sites. However, conflict with Development Plan policies is not the end of the matter. Planning law⁷⁴ requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. One such material consideration is the fact that the Council is in the process of producing a new Local Plan: i.e. the emerging South Worcestershire Development Plan (SWDP) which is currently being produced jointly by Wychavon District Council, Malvern Hills District Council and Worcester City Council to guide development in the South Worcestershire Area. Another material consideration is the guidance set out in the NPPF.

Weight to be attached to the emerging South Worcestershire Development Plan (SWDP)

398. Paragraph 216 of the NPPF explains that weight may be given to relevant policies in emerging plans according to (1) the stage of preparation of the emerging Plan; (2) the extent to which there are unresolved objections to

⁷⁴ S38(6) of PCP Act 2004 and s70(2) of TCP Act 1990

relevant policies; and (3) the degree of consistency between relevant policies in the emerging Plan and those in the NPPF.

399. Whilst it was envisaged that the plan would be adopted in December 2013, there has been a set-back due to the EIP Inspector's interim conclusions expressing concern that the proposed housing requirement is likely to be a significant under-estimate, the figure for Wychavon being 8,900 dwellings.

The SWDP Inspector's interim conclusions on the matters considered at Stage 1 of the Examination

400. The SWDP Inspector has provided a covering letter [CD-C3] and interim conclusions [CD-C4] on the matters considered at Stage 1 of the Examination. The covering letter states: "*My most important finding is that the modelling and analysis in the February 2012 SHMA do not provide a reliable basis for identifying the level of housing need in South Worcestershire over the plan period*". Paragraph 49 of the interim conclusions says: "*As a general guide, therefore, it appears from the evidence before me so far as the objectively-assessed housing need figure for the Plan period is likely to be substantially higher than the 23,200 figure identified in the submitted Plan*" [CD-C3]. I therefore attach no weight to the Worcestershire Strategic Housing Market Assessment (2012).
401. Furthermore, the main parties agreed in cross-examination at the Inquiry that in circumstances where the SWDP Inspector concluded that the housing requirement to be met during the plan period needed to be reviewed in order to plan for a likely substantial increase on that set out in the SHMA means that no weight can be attached to the SWDP figure. The parties therefore agreed that the WMRSS Panel's housing requirement figure (2009) represents the only objectively assessed and tested figure. I have no reason to disagree with this conclusion.
402. In terms of unresolved objections there are clearly objections as to whether the current housing requirement meets the objective needs of the area, as well as uncertainty as to whether any necessary new allocations will be objected to [58].
403. As a consequence, further studies are required to identify a more appropriate housing requirement to be met during the plan period to 2030. Currently, there is no definitive timescale for the examination and adoption of the SWDP. Potentially the delay to the process could be of the order of one year [56, 150]. As such, I am unable to conclude that the SWDP has reached an advanced stage of preparation.
404. As acknowledged by the Council, there are unresolved objections to Policy SWDP2 [154]. Emerging Policy SWDP2 sets out the development strategy and settlement hierarchy. Although, in principle, the objectives of Policy SWDP2 may be consistent with the NPPF in that they seek to achieve sustainable development by locating a significant scale of development in the most accessible areas [154], the Council has yet to demonstrate that the proposed SWDP sites are able to meet the District's current, objectively assessed needs in terms of both market and affordable housing, given that those needs themselves are yet to be identified [62]. Accordingly, the settlement limits may yet be required to be amended. Nevertheless, the hierarchy may, in principle, remain the same or very similar.

405. In the light of paragraph 216 of the NPPF, I am therefore able to accord very little weight to the emerging SWDP in respect of its proposed housing policies.

The NPPF

406. The NPPF sets out the Government's national planning policies, and explains at paragraphs 2 and 12 that while it does not change the statutory status of the Development Plan as the starting point for decision making, it is a material consideration which must be taken into account in planning decisions.

407. Paragraph 14 of the NPPF then explains how the "**presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking," should operate⁷⁵. Its guidance concerning decision-taking covers situations where development proposals accord with the Development Plan (which as I conclude above is not the case here), and situations *where the development plan is absent, silent or relevant policies are out-of-date, granting permission 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 the Framework indicate that development should be restricted.*⁷⁶

408. For the purposes of the current appeal, Policy GD1 is one of the policies saved by a direction made by the SoS (29 May 2009). As such, Policy GD1 remains extant until it is replaced. In respect of paragraphs 214 and 215 of the NPPF, full weight cannot be given to the saved policies of WDLP because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, and any weight that is given will depend on the degree of consistency with the NPPF.

409. Policy GD1 sought to achieve sustainable development objectives by directing development to specific locations with defined development boundaries and/or on allocated sites. The strategy aims to concentrate and accommodate most development within the existing towns and settlements in the District to further sustainability objectives including reducing the need to travel and making best use of existing infrastructure and the long standing national policy of safeguarding the countryside for its own sake [CD-B3]. In principle, this would be consistent with the NPPF [141]. However, the strategy has clearly failed to deliver the housing requirement in the District over the plan period, resulting in a significant shortfall. Nevertheless, any review of that strategy, and/or of the settlement boundaries is a matter for the local plan Inquiry process (EiP) and not this Inquiry.

410. In these circumstances, I agree with my colleague Inspector's conclusions (CD-H2 Appendix 5APP/P1133/A/12/2188938 at paragraph 12.10) that

⁷⁵ Unless material considerations indicate otherwise.

⁷⁶ For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, and Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

paragraphs 14 and 215 of the NPPF cannot properly be interpreted, as requiring that until such time as the settlement limits are amended by the new Local Plan (in this case the SWDP), their existence be disregarded as “out of date”. Because as she says to take that approach would effectively be to sanction residential development in the countryside without regard to the quantified need for it [CD-H2 Appendix 5, 145].

411. Instead, the terms of paragraph 49 of the NPPF directly address the circumstances in which the existing Development Plan policies will be overridden by the need to provide sufficient housing. It does this by reference to the quantified housing need for the area, specifying that policies relevant to the supply of housing will be rendered out of date if the LPA cannot demonstrate a 5 year supply of deliverable housing sites.
412. I shall first consider the housing requirement for the next 5 years; and then assess whether the supply of deliverable sites is sufficient to meet it.

Housing requirement and housing land supply

Objectively assessed housing needs

413. I have considered the objectively assessed housing needs in the light of the evidence to this Inquiry and having regard to the Hunston Court of Appeal judgement.
414. The Phase 2 Revision Draft of the West Midlands RSS (WMRSS) is a material consideration in this appeal, and given the stage it reached (Panel Report) it would normally be accorded substantial weight: in particular because it has undergone an Examination in Public (EiP) and the housing figures are more up to date (than those in the previously adopted WMRSS) and have been properly examined. Indeed, the parties are agreed that the WMRSS Phase 2 Panel Report (2009) figure should represent the housing requirement (or objectively assessed need), as the Panel figures are the latest independently/publicly and objectively tested figures.
415. For the period 2006-2026 the Panel’s target was the provision of an annual average of **475** dwellings per annum (dpa) in Wychavon (total **9,500** dwellings).
416. For the purposes of establishing a housing [need] figure, this tested evidence was supplemented by up-to-date evidence for the purposes of preparing a Local Plan, a process the Council is currently engaged in with respect to the ongoing examination of the South Worcestershire Development Plan. This is consistent with paragraph 218 of the NPPF. Nevertheless, as I have already noted, the EiP Inspector has concerns regarding the housing needs figures.
417. For the purposes of decision-making (planning applications and appeals), the Council has consistently published, alongside the WMRSS Panel Report Housing Requirement, a figure from the SWDP (Proposed Submission Document, May 2013). The SWDP sets out a housing requirement of **8,900** dwellings (equivalent to **371** dwellings per year) for the plan period 2006-2030. However, the interim conclusions of the EiP Inspector (who has asked for further work to be done) are that the proposed requirement of 23,200 dwellings for South Worcester is likely to be “substantially higher” but not as high as was concluded by some representors (his paragraph 34). I note that when extrapolated over the period

2006-2030, the WMRSS Panel Report figure would equate to **11,400** dwellings (on the basis of **475** dwellings per year).

418. I note that the Hunston Court of Appeal judgement suggests figures should be taken from DCLG 2008 projections of new households as providing the most up-to-date figures (688 new households per annum in St Albans). In this case, the Department for Communities and Local Government's (DCLG's) 2008 Housing Projections for Wychavon District for the period 2010-2030 is **8,400** (equivalent to **420** dwellings per year) [document 27]. Given that the WMRSS Panel figure was tested in 2009, it is more accurate and more up-to-date than the DCLG projection which is based only on simple demographic projections. Furthermore, PPG says that the weight given to the household projections published by DCLG should take account of the fact that they have not been tested. I therefore conclude that it is appropriate to use the WMRSS Panel figures as the starting point in the consideration of housing supply in this Report. In any event, both figures (**475** & **420**) are higher than the proposed SWDP requirement of **371**.

419. Because the Council has not met its annualised objectively assessed housing needs in any year since 2006, the parties agree that the Sedgefield approach of making up the shortfall within the 5 year period is appropriate, and that a 20% buffer is required due to the persistent record of under-delivery [para 47 of the NPPF].

420. The agreed requirement figure for the current five year period (CD-G2 Appendix 1 to SB3) based upon the requirement of the WMRSS Panel Report is **4,861** dwellings (i.e. **972** dpa)

Whether the Council is able to demonstrate a five year supply of deliverable sites to meet its objectively assessed housing needs

Five Year Housing land supply

421. The starting point for the calculation of the 5 year land supply is the WMRSS Panel target of 9,500 dwellings for the period 2006-2026 (NPPF paragraph 218). Thus the objectively assessed annualised housing requirement is **475** dwellings per year. I shall now consider whether the Council has a 5 year housing land supply to meet this housing requirement by examining several of the components included in its Housing Land Supply calculation.

422. Council's Table 1A (10 October 2013) refers to a balance of 319 dwellings resulting in 5.35 years supply; SB3 Table 1 (1 October 2013) refers to a balance of 249 dwellings resulting in 5.26 years supply. In both Tables the Council claims to have more than a 5 year supply. The Council has confirmed that Table 1 was verbally amended at the Committee meeting on 10 October 2013 to take account of large site completions and large sites under construction from 1 April 2013 to 1 October 2013. The Table was subsequently corrected on 20 January 2014 (Table 1A) (document 30A). The overall totals are not affected but the text highlighted in green now reads (4395 – 4% lapse rate) not (4741– 4% lapse rate). The Council says the total figure of 4219 is correct and has not been changed. I shall therefore base my assessment on the 20 January 2014 version of Table 1A (document 30A).

423. The Council has continued to apply a 20% buffer to the target with the buffer applied once the annual housing requirement and the undersupply have been

added together (NPPF is not definitive about whether the buffer should be added before or after taking account of the undersupply). The Council says it has opted for the worse case scenario with a target of 972 dwellings per annum versus 905 per annum in order to make the Council's position as robust as possible [CD-H5 4.8 page 9]. However, Table 1A (document 30A) appears to be based upon a target of 906. I note that the 1 October 2013 version of the Table showed a requirement figure for the current five year period (CD-G2 Appendix 1 to SB3, & Appendix 1 of CD-H5) based upon the WMRSS Panel as 4,861 dwellings (972 per annum).

Wychavon housing land supply background date October 2013 (CD-B5)

424. On the supply side, the Council contends (Table 1A) that it has exceeded its five year requirement +20% by **319** dwellings, while the Appellant contends that significantly more than 319 dwellings in the Council's supply figures have not been demonstrated to be deliverable in the terms of the NPPF paragraph 47 footnote 11 [45]. I shall therefore examine these in turn.
425. Whilst the Council has on 3 occasions since August 2012 been found by my colleague Inspectors to lack a five year supply of deliverable sites [CD-G2 SB17, SB18, SB19] I accept that that, by itself, is not necessarily to say that it means the Council would be currently unable to demonstrate a 5 year supply. In particular, I acknowledge that following the Lioncourt decision [CD-G2 SB17] the Council took proactive steps to grant planning permission for sustainable housing proposals beyond Local Plan development boundaries unless there are very strong planning reasons for not doing so [160]. Nevertheless, in the light of the Council's very poor record of delivery, I have scrutinized very carefully the figures upon which it now relies in Table 1A (document 30A), albeit the Council says it has looked at the worst case scenario.
426. The final version of the Planning Practice Guidance (PPG) maintains the requirements of the draft NPPG as it was at the time the Appellant's proof of evidence (Mr Brown) was prepared (October 2013) in respect of the assessment of site deliverability. As to "*What constitutes a 'deliverable' site in the context of housing policy?*" – it says at ID 3-031-20140306:

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local Planning Authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe.

427. In support of its supply data the Council's witness Mr Davies produced 3 Tables or spreadsheets to the Inquiry, which I shall refer to as Tab 1, Tab 2 and Tab 3 (CD-E11).

(i) WDLP allocations being carried forward in SWDP (with permission being given to the Council to publish the response to the Council's questionnaire i.e. listed on coloured spreadsheet TAB 1 CD-E11)

428. The Council says that there are a total of 147 allocations being carried forward from the WDLP to SWDP, but that only **63** are deliverable within the first 5 years of the plan. However, first, the spreadsheet (Tab1 CD-E11) identifies only 53 as follows:

- *Canal Basin, Droitwich: 40 units will come forward in the next 5 years.*
- *Garage Court, Abbots Road, Pershore: 13 units*

429. Secondly, as set out by the Appellant [CD-G2 SB 20], the Canal Basin, Droitwich site has been allocated for a number of years in the Local Plan but the expectations for delivery have continually failed to materialise. The deliverability of the site for housing was assessed at the Lioncourt Inquiry and commented upon in the Inspector's decision (CD-G2 SB27). His DL8 notes that, at that time, there was no scheme for the site or any known developer interest. As confirmed by the Council's spreadsheet (CD-E11 Tab 1), this remains the case. Furthermore, no robust evidence was produced by the Council to support the conclusion that the site is deliverable.

430. Thirdly, as set out in CD-G2 SB20, the Council's current view (which is unsupported by an up to date housing trajectory) is that 13 dwellings can be brought forward at Abbots Road in the next 5 years. Its 2012 housing trajectory, did not expect delivery of the 13 dwellings until 2018/19. However, the spreadsheet appears to anticipate only 10 dwellings coming forward in the next 5 years. Whilst there is a promoter and a developer scheduled in the spreadsheet (Tab 1), there is no planning permission.

431. There is therefore considerable uncertainty as to the deliverability of these 63 (or 53) units. In particular, there is no robust evidence to demonstrate to me that the situation in respect of these 2 sites will be any different in the current 5 year period, than has been the case in the past. I shall therefore discount them (-63).

(ii) Council owned brownfield sites: total 43 dwellings

432. I have been provided with no robust evidence to demonstrate that the Council owned sites meet the test of deliverability in NPPF paragraph 47 footnote 11. Whilst it may well be corporate policy for the Council to promote these sites in order to maximise its assets and investment income [as stated at the Inquiry; 167], that is not necessarily to say that delivery will be achievable.

433. Although the Tables provided by the main parties differed in their figures for the Five Year Land Supply position at respectively the 1st and 10th October 2013⁷⁷ and respectively November 2013 and January 2014, they both showed a figure of 43 dwellings on Council owned brownfield sites in permitted development boundaries. Yet the Council in its closing submissions referred to an

⁷⁷ The Appellant's figures are from 1 October 2013 while the Council's figures were updated on 10 October 2013.

expectation that 35 units are expected to be delivered from Council owned sites. Whilst there is an absence of any firm evidence to demonstrate these sites have insuperable constraints, the onus is firmly on the Council to demonstrate that the sites meet the criteria for deliverability in footnote 11, and especially because of its poor track record of delivery. There is therefore doubt as to whether those sites will supply either 35 or 43 dwellings in the current 5 year period, or indeed any dwellings at all. I shall therefore discount them (-43).

Deliverable allocated sites in draft SWDP (1328)

434. The largest component in dispute between the parties is the 1328 dwellings relating to deliverable allocated sites in the draft SWDP [166]. I shall therefore examine carefully the sites included in the 1328 component. Of those 1328, planning permission has been granted to 74, and 515 are subject to planning applications not yet determined (total 589) [176]. The remaining 739 are disputed by the Appellant on the basis that they are not subject to pre-application discussions, or have not reached application stage [176].

(iii) Of the 1328 SWDP allocations: 310 dwellings (with no permission having been given to Council to publish the response to the Council's questionnaire i.e. listed in CD-E11 Tab 3)

435. Nine allocated sites are relied upon in the Council's spreadsheet for a total of **310** dwellings (Tab 3). As accepted by the Council in cross-examination the mere fact of allocation is not sufficient to demonstrate deliverability [48]. However, the Council maintains that the owners of the 9 sites responded to the Council's questionnaire and confirmed deliverability of 310 units (CD-E11) but they have not responded to say whether the Council is able to publish. As such, for reasons of Data Protection, the Council is unable to divulge any specific details.

436. In these circumstances, I am bound to conclude that whilst these sites may have the potential to come forward, I have no robust evidence which is transparently set out as to their viability. Accordingly, there is some doubt as to the viability of the proposed developments, and in turn their deliverability within 5 years in terms of footnote 11 to paragraph 47 of the NPPF and the guidance in the PPG. As such, they are in doubt and the 1328 figure could be reduced by 310 (1328-310=1018).

(iv) Of the 1328 SWDP allocations 74 dwellings have been subject to pre-application advice

437. **CD-E11 Tab 2** includes 74 dwellings which are the subject of pre-application enquiry only with. I note the Council's case that if a developer came forward with an application it would be approved by the Council, just as 3 already have been [177]. However, in the absence of robust, up to date evidence to support the deliverability of those sites, there is some doubt as to their deliverability within 5 years and the 1328 figure could be reduced by a further 74 (1328-310-74 =944).

(v) Of the 1328 SWDP allocations 282 dwellings (where the deliverability questionnaire has been responded to and where the Council has permission to publish the full response CD-E11 Tab 1)

438. The Council says that of the 26 sites considered in **CD-E11 Tab 1, 282** dwellings are regarded as deliverable. However, Table 1 includes **238** dwellings which are not the subject of either a planning application or a planning permission. That by itself is not a pre-requisite for a site being deliverable. Whilst the landowner answers to the Council's questionnaire might go some way towards providing evidence of their deliverability, the officer's comments on the spreadsheet evaluating the deliverability of the respective sites in the light of questionnaire responses are somewhat thin, sometimes saying no more than "no issues" [48]. Consequently, there is some doubt as to their deliverability within 5 years. Thus, the 1328 figure could be reduced by a further 238 dwellings (1328-310-74-238=706).

(vi) Windfalls

439. NPPF at paragraph 48 states that *LPA's may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.*

440. In this case, the Council has only addressed the first limb of the NPPF test by virtue of CD-H5 section 9 of Appendix 4 on p65 which demonstrates that it has had an average of 82 small windfalls not on Greenfield or garden land from 2006 to 2012 [50]. However, there is no evidence before me that this trend is likely to continue. Indeed, by the Council's own admission "*by their very nature windfall sites are difficult to predict*" [186].

441. My colleague Inspector considered in the Lioncourt case that there was no compelling evidence of windfalls as of August 2012 [CD-G2 SB17 DL40-41] and I have been provided with no new evidence that was not before that Inspector. Indeed, there is nothing in the EiP Inspector's interim conclusions which would justify a departure from the Lioncourt Decision [51]. I shall therefore make no allowance for windfalls (-328).

442. I agree with the Council that land supply is a relatively complex and dynamic issue, which is not always easy to resolve [159]. Further, that it ultimately involves the exercise of planning judgement in relation to the issue of deliverability [159]. But, in summary, I do not consider that the Council has demonstrated the deliverability of (i) 63 allocated sites carried forward in the SWDP, or (ii) the 43 brownfield sites, or (vi) the 328 windfalls (63+43+328 =434) i.e. a total of 434 dwellings.

443. Therefore, I consider 434 dwellings should be discounted from the Council's **total commitments not started** calculations before the 4% lapse rate is applied (4395-434=3961). Consequently, I do not agree that it has a balance of 319 dwellings against the 5 year target +20%. I also note that the January 2014 calculation was based on a 5 year target +20% of 906 (not 972). If a 10% lapse

rate is applied, the situation would be worse. Accordingly, I do not consider that it has demonstrated a 5 year housing land supply.

444. Furthermore, there is some doubt as to the deliverability of some of the SWDP allocations that I have identified in (iii), (iv), and (v) above i.e. (310+74+238=622) which adds further weight to my conclusion that the Council does not have a 5 year housing land supply.

Lapse rates

445. In respect of lapse rates, I find no reason to disagree with the conclusions of my colleague Inspector in the Lioncourt case who concluded that a lapse rate of 10% discount was appropriate because the District's poor track record has demonstrated that delivery is often less than expected [CD-G2 SB17 DL39]. The only new factor which the Council has been able to point to since that time was the SWDP EiP Inspector's interim conclusions which accepted a 5% lapse rate was acceptable within the context of the SWDP. However, that context is looking at a longer time frame (than 5 years) and 3 SWDP authorities. I therefore have insufficient reason to depart from a 10% lapse rate. Nevertheless, the above assessment demonstrates that even if a 4% lapse rate is used, it would not leave the Council with a 5 year supply of housing land. Thus, to my mind, there is an urgent need to boost the housing supply in the District.
446. Whilst the Appellant has criticised the inclusion of 250 dwellings on a static caravan site at Leedons Park on the basis of it being unlikely to appeal to the full range of those looking for a home, it would add to the choice and mix of housing on offer [164] in line with paragraph 50 of the NPPF.
447. From the foregoing, I do not consider that the Council has demonstrated unequivocally that it has a 5 year supply of housing. Paragraph 49 of the NPPF states that: *Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable sites.* It follows, therefore, that paragraph 14 of the NPPF is engaged.
448. In addition to the foregoing [97]:
- the last 6 years have not delivered one year's worth of the objectively assessed affordable housing need of 268 affordable units per year;
 - the Council currently has no more than 2.5 years' supply of deliverable affordable units; and
 - the emerging SWDP does not even purport to meet the future affordable housing needs.

As such, there is a serious shortfall in affordable housing in the District. Although around **246** affordable units are likely to be coming forward in the near future from the recently granted permissions in Pebworth, Honeybourne and Long Marston (i.e. 35% of 703 dwellings permitted) [319], they would still represent less than one year's requirement (i.e. **268** dwellings). Consequently, neither saved Policy GD1 nor the emerging SWDP is able to meet the Council's objectively assessed affordable housing needs. This reinforces my conclusion that Policy GD1 is not up to date.

Whether the appeal proposal would amount to sustainable development

449. I turn now to the 3 dimensions of sustainable development set out at paragraph 7 of the NPPF: an economic role; a social role; and an environmental role. Before doing so, I should say that as things stand, there are no other more sustainable sites in the District which can be relied upon to meet the identified 5 year housing needs in place of the appeal scheme [67]. Consequently, the site must be assessed in the context that the District's housing needs have to be met somewhere.
450. A significant material consideration in this case is the relatively recent grant of planning permission (by SoADC) for the St Modwen development on the adjoining site which is currently under construction. I acknowledge that the St Modwen scheme was considered in the light of the need to cross subsidise the redevelopment of an historic employment use and the construction of a leisure village [245]. Nevertheless, given that the Officer's Report in respect of that decision considered that that proposal had the *potential to deliver a sustainable new community* [75]; and that the NPPF at paragraph 17 points to focussing *significant development in locations which ... can be made sustainable*, I see no reason why the current proposal should not be evaluated along similar lines to that of St Modwen but in the present case the scheme needs to be considered in the light of the need to address the shortfall in housing land supply.
451. To ensure that the proposed development minimises the need to travel and maximises the sustainable modes of transport in order to access essential facilities a condition requiring a Connectivity Scheme is needed to successfully integrate the proposed development and to create a sustainable extension to the adjacent St Modwen development. It also depends upon the adjoining development progressing to the Phase where the shop and community facility are provided on the St Modwen site [259]. Whilst the correspondence confirms that the Appellant has been in active discussion with the adjoining developer, and whilst arguably the proposed links would be to the mutual advantage of both developments, it would require the co-operation of a third party [262]. Nevertheless, I am satisfied that there is a reasonable prospect of an agreement being reached, and the Appellant has accepted that in the absence of such a Connectivity Scheme coming forward if it was the subject of a condition, that any planning permission granted must fail [109]. Furthermore, I saw on site that the St Modwen development appears to be progressing and as stated elsewhere the development of the appeal site and the Connectivity Scheme would be to the mutual advantage of both sites [91, 93].

Employment opportunities

452. In addition to the employment opportunities on the St Modwen site, the appeal scheme would provide over 100 further employment opportunities as a result of the provision of up to 5,000m² commercial floorspace, as well as an additional community building and a new sports pitch [76].
453. In sum, the employment opportunities that residents of the appeal scheme would have on their doorstep would include the following [77]:
- Over 73,000m² of employment floorspace at the Long Marston depot site, amounting to 918 job opportunities;

- The Sims Metals Group head office, a substantial employer with a range of employment opportunities including professional positions in managerial, administrative legal and accountancy roles;
- Employment opportunities on the St Modwen site, including those associated with the leisure village and community facilities;
- 500m² employment floorspace proposed by the appeal scheme, providing over 100 job opportunities.

In combination, there would potentially be over 1000 job opportunities, offering a diverse range of roles, within a short distance of the proposed housing on the appeal site. Again, the proximity of jobs to housing is somewhat dependent on links between 2 sites. Nevertheless, I acknowledge, first, that is not to say that those who might choose to live on the appeal site would necessarily take up those job opportunities or vice versa [215]. Secondly, the proposed employment development on the appeal site is subject to market demand, so there is uncertainty as to when it might come forward [216]. But, potentially a significant number of future occupiers of the proposed dwellings could work within walking or cycling distance of their homes. In any event, the employment opportunities would provide a significant economic benefit.

Modes of transport

454. For those employed further afield, I am satisfied that some opportunities would be available to travel to and from work by sustainable means (i.e. modes other than the private car) for the following reasons:
- There would be a bus stop on the St Modwen development which would be around a 10 minute walk away which would offer public transport links to Stratford and Moreton-in-Marsh, as well as intervening stops [79], although it is unlikely that future residents would cycle to employment destinations in Stratford or any of the other local towns [220];
 - The proposed new bus service which would be provided by the appeal scheme would offer public transport links to Honeybourne which itself has a rail station providing a good service to Worcester, Pershore, Oxford and beyond. The proposed bus service would also provide connections to Pebworth. In turn, this means that it would enhance the connectivity of Pebworth with the facilities and station in Honeybourne [79].
 - I am satisfied that Honeybourne Station would be a viable cycle ride away from the appeal site along a lightly trafficked route; and that cycle facilities at the station would be improved via the s106 Agreement in line with the Travel Plan. I acknowledge that the cycle route would be unlit, which may not appeal to all potential cyclists. However, there is no suggestion in the NPPF that all cycle routes should be lit [79].
 - I am also satisfied that conditions can be imposed to require the provision of secure covered cycle parking in respect of the proposed employment buildings, prior to their occupation as well as changing and showering facilities; and that each of the proposed dwellings will be provided with cycle storage/parking [document 19]. Both measures would encourage future occupiers of the proposed dwellings to cycle.
455. The Council is concerned that the provision of the proposed bus service for a 3 year period will not secure medium/long term public transport links between the site and facilities at Pebworth/Honeybourne [377]. However, the Appellant has prepared a 20 year business case in support of the viability of the proposed community bus based on a bus mode share proportion in the range 2.5% - 5% [document 11]. The County Council has confirmed that the Appellant has used WCC Bus Operating Cost Figures, which it confirms is the correct approach for calculating the projected bus service costs and revenue. In combination, the St Modwen scheme and the appeal scheme would deliver 880 new homes and holiday accommodation which would be served by the community bus, which is not typical of a rural location in Wychavon. Furthermore, *Planning for Public Transport in Developments* published by the Institution of Highways and Transportation states that: *a development of 500-1000 houses would normally justify a new bus service, while a much smaller one could well justify an extension to an existing service*". So, whilst the proposed community bus service attracted criticism, I have found insufficient reason to doubt its viability. Further, I find the s106 contribution to be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Recreational, community facilities and shops

456. Sports and leisure facilities on the St Modwen site would be available to residents of the appeal scheme. In addition, the appeal proposal would provide a further sports pitch, as well as funding towards the new athletics circuit and cycle track in nearby Honeybourne via the s106 agreement. And, residents would have easy access to the AONB and all of the recreational opportunities that it presents. In combination, the proposed facilities from the 2 adjacent developments would provide a good range of recreational and community facilities for what would amount to a new rural settlement.
457. I am satisfied that the convenience shop on the St Modwen site would provide top-up shopping facilities in reasonable proximity to the appeal site. Whilst there would be no supermarket in the immediate vicinity of the site, first, this would be no different to the situation with the St Modwen scheme which was assessed as having the "*potential to deliver a sustainable new community*" [75]; secondly, the new bus service to be provided as part of the St Modwen scheme would provide an opportunity to access the Waitrose supermarket at Stratford (some 6 miles or 9.5km away) by public transport for weekly shops [82], albeit proximity of this service to the appeal site is dependent upon the Connectivity Scheme discussed elsewhere; and the service would be limited and it would only be funded for the first 5 years. Nevertheless, the business case points to it being commercially viable by that time.
458. In addition, residents of the site would be able to access existing village facilities at Long Marston, Pebworth, Mickleton and Lower Quinton, all of which are within a 5km range [83]. Whilst they are outside the 800m pedestrian isochrome [212], they would be within easy cycling distance.

Schools

459. Concern has been raised about the distance of the appeal site from the nearest schools [247, 350, 351]:
- 7km to Pebworth
 - 9km to Stratford
 - 13km to Evesham
 - 6km to Chipping Campden
 - 23km to Alcester
 - 14km to Shipston.
460. Pebworth First school is about 7km from the appeal site and currently about 30 places out of a possible 92 are taken. As such, places would be available to children living at the appeal site and in turn the appeal scheme could assist in keeping the school open [84, 131]. I do, however, note that the recently approved developments in Pebworth, Honeybourne and St Modwen's (over 700 dwellings) would also be likely to assist in filling the current vacancies [349].
461. In addition, there have been plans to start a full day pre-school nursery at Pebworth First School which could address nursery provision for the appeal

proposal. But, these require an influx of children to make the proposal viable and to keep the school open [126, 349].

462. Secondary school children could be bussed to either Evesham or Chipping Campden and the appellant has proposed within the s106 Undertaking (as varied by Deed on 23 November 2013) an index linked sum of £115,000 (Secondary Education Transport Contribution) for the provision by WCC of additional service capacity for school bus services to secondary schools in Evesham and Chipping Campden (document 30).

463. However, Worcestershire County Council (WCC) has objected to the contribution (document 28). It says that the site is in the unusual position that would require school transport to 4 different schools for “entitled” students under Worcestershire’s Home-to-School Transport Policy as follows:

- (1) Pebworth 1st School (as the walking route between the site and the school is unviable)
- (2) Blackminster Middle School (as the site is over 3 miles from the school)
- (3) Evesham High School (as the site is over 3 miles from the catchment High School)
- (4) Chipping Campden School (as the site is over 3 miles from the nearest High School).

464. WCC says that whilst it has existing transport services to (2), (3) and (4), there is insufficient capacity to accommodate all of the new students that the site would generate, and indeed transport to Chipping Campden School (i.e. (4)) is full to capacity at the present time (document 28). WCC says that the transport to Pebworth First School would be a new route that does not currently exist (document 28). Furthermore, in this area of the County, there are limited options in terms of available operators, and where many operators are already operating at the full capacity of the vehicle fleet (document 28).

465. WCC estimates the cost of transporting pupils to these 4 schools to be £115,000 per annum ad infinitum. It says the s106 contribution of £115,000 therefore represents only a one year cost of the new services (document 28). As such, it would be a legacy cost of the development which would subsequently fall to WCC to continue to pay thereafter which WCC considers renders the sustainability of the new residential development to be clearly questionable. Consequently, WCC considers it more appropriate for the developer to make a s106 contribution towards the procurement of vehicles to meet this new transport need. It considers a sum of £220,000 would reflect the vehicle procurement costs of an operator sourcing 3 second-hand (i.e. 3 to 4 year old) vehicles, which would help to reduce the contract cost faced by WCC for 5-10 years (document 28).

466. However, the Appellant has explained (document 30) first, that it is making 2 separate provisions for bus services in the s106 obligations:

- (i) An index-linked sum of £115,000 defined as “Secondary Education Transport Contribution” of additional service capacity for school bus services to secondary schools in Evesham and Chipping Campden;

- (ii) A total index linked contribution of £270,000 (payable in 3 instalments of £90,000) defined as the “Bus Service Contribution”. This contribution will fund for 3 years the provision of a community bus service linking the appeal site with Pebworth and Honeybourne. The “Bus Service” is defined in such a way that it will provide capacity for children travelling to Pebworth First School.

467. Secondly, if WCC’s estimated sum of £220,000 is broken down into a contribution of £73,000 towards each of 3 school bus services, then the estimated cost of procurement of coaches to serve schools in Evesham and Chipping Campden would be £146,000 (i.e. 2 x £73,000)– a figure not so different from that put forward by the Appellant (i.e. £115,000). Thirdly, the s106 Undertaking provides sufficient flexibility for WCC to apply the £115,000 contribution towards the procurement of coaches (document 30).

468. In combination the proposed contributions in respect of bus services including school travel would provide WCC with £385,000 (i.e. £115,000 + £270,000) a figure significantly in excess of that suggested by WCC (i.e. £220,000). In these circumstances, it seems to me that the contributions being offered by the developer in relation to school travel and community bus services combined would make more than adequate provision for the funding of bus services that would satisfactorily mitigate the impact of the development, and that they would meet the tests in CIL Reg 122.

Medical facilities

469. As confirmed by NHS Property Services, the medical centre covering the area of the appeal site would be the Meon Medical Centre, Lower Quinton, Stratford on Avon. Currently, the centre has no further capacity for accommodating new patients. From the NHS calculations, the appeal proposal would be likely to generate 5244 patient consultations per year. In turn this would result in a requirement for 1.5 new consulting rooms [document 7B]. There is no evidence to suggest that the Meon Medical Centre could not be extended to incorporate such additional facilities. In this case, it is clear, what the contribution will be used for, and it is not to be used to resolve existing deficiencies in infrastructure provision. Accordingly, it differs from the Moat House Farm decision to which the Council refers [231]. To my mind, a s106 contribution is necessary to secure the medical facilities for the proposed development to make it acceptable in planning terms; it is directly related to the needs of the development; and it is fairly and reasonably related in scale and kind to the development. As such, it meets the tests in CIL Reg 122.

Non-car usage

470. I acknowledge that the object of sustainable travel is not to deliver comparable rates of non-car usage to surrounding locations, but rather to maximise travel by sustainable modes [207]. However, in this case, bearing in mind the rural location of the site, there would be a not insignificant range of opportunities for walking to employment, community and recreational facilities and the Appellant has done its best to maximise the potential for using sustainable transport means to access those facilities which would be further afield. The Appellant’s proposal puts forward various means to encourage the use of non-car modes. The Travel Plan anticipates a 15% modal shift (from 86% mode share by private car) which would mean that 71% of trips from the site would be by private vehicles [87].

471. In the worst case scenario, if the Travel Plan achieved zero modal shift, the statistical evidence indicates that the propensity to use the car would be lower at the appeal site (86%) than Honeybourne (where it is 88%), which itself has been considered to be a sustainable location for significant housing growth. If the Travel Plan achieves only 2/3 of its target of a 15% modal shift, the 10% improvement would mean that the private car mode share (76%) would be almost identical to that currently experienced in Pershore (75%) a tier 3 town which is the location of the District's administrative headquarters. If the Travel Plan achieves its 15% target modal shift, the private car mode shift (of 71%) would be comparable to Evesham (70%) [87].
472. Given that the District urgently needs to provide housing somewhere, it is commendable that a rural location such as the appeal site has the potential to match the modal shift of Pershore or Evesham. Bering in mind that the NPPF accepts the principle that housing development in rural areas can be sustainable, I consider that the proposal would perform well against paragraphs 29-41 of the NPPF and the penultimate core planning principle that planning should: *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.*
473. In my conclusion, first, it would be possible for future residents at the appeal site to walk or cycle to a range of employment, community and recreational opportunities; or to use sustainable transport modes to access employment and facilities further afield.
474. Secondly, the appeal scheme would help to promote the retention and development of the facilities and services at the St Modwen site and Honeybourne, in line with NPPF at paragraph 28. To a point this will depend on there being appropriate integration between the appeal site and the St Modwen site via the Connectivity Scheme, which I have already concluded can be the subject of a condition.
475. Thirdly, in the light of the Council's shortfall in housing supply, I am mindful first, that the NPPF at paragraph 52 states that the supply of new homes can best be achieved through planning for larger scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities. To my mind, the current proposal in combination with the St Modwen development would be tantamount to a new settlement. Secondly, the NPPF at paragraph 55 points to promoting sustainable development in rural areas where housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. In this case, the appeal site is in reasonable proximity to Honeybourne, Pebworth, Long Marston, Lower Quinton, Upper Quinton, Mickleton and Broad Marston. Importantly, the new facilities at St Modwen and on those proposed on the appeal site could assist in making Pebworth more sustainable [133].
476. As with the St Modwen scheme, the current proposal should be considered as an entirely separate proposal to the former proposal for an eco town [94]. Indeed, the scale of the appeal proposal cannot be compared to the former proposal for an eco town. Nevertheless, in the more recent past, the St Modwen development was considered to be sustainable. In this case, I have considered

the current proposal on its own individual merits and for the foregoing reasons I consider that it would contribute to the achievement of the economic and social roles of sustainable development.

Impact on the countryside

477. Whilst the appeal site does not lie within the Cotswolds Area of Outstanding Natural Beauty (AONB), the Appellant has acknowledged that it is part of the setting of the AONB; and that it is clearly visible from a nationally important public footpath, an extensive public access area and Scheduled Ancient Monument [254, 255]. The Appellant also agreed that the appeal site forms part of a backcloth to an extensive permissive footpath network that surrounds the appeal site.
478. I undertook a comprehensive visit of the site and its surroundings including viewing the site from various viewpoints along the Heart of England Way from which there were panoramic views of the site in its context.
479. I could see that the existing Depot site is virtually invisible from the AONB as it is screened by tree belts which at the time of my site visit were not in leaf [255]. I could see that from the more elevated locations, such as Viewpoint 9, that any proposed structural landscaping would not completely screen the proposed development. Nevertheless, at the time I saw the site, it had the appearance of what might be described as a piece of derelict land, set against a backdrop of trees. Furthermore, the St Modwen development could clearly be seen under construction albeit it is further from the AONB than the appeal site.
480. I have considered very carefully the objections raised by BARD in respect of landscape/AONB impact but they are not based on any objective or structured methodology. I prefer the LVIA based approach used by the Appellant (CD-A11) which makes a comprehensive and careful assessment to evaluate the magnitude of any impact. I have looked at it in the context of my site visit and I have no reason to disagree with its conclusions that there would be no detrimental effects of Major significance on the existing landscape character that the site lies within, or on the adjacent Cotswolds landscape character area and AONB. Furthermore, I attach weight to the fact that the SoADC Officer's Report also expressed no objection on landscape grounds (CD-12 Appendix 3 p.12); and that there has been no objection from the Cotswold Conservation Board [104].
481. The landscaping and planting proposals, including increased public access/use of these areas would help strengthen the Green Infrastructure functions and recreational value afforded. The proposed impact avoidance and mitigation measures are such that the proposed development would not create unacceptable significant adverse landscape or visual impacts. Overall therefore, subject to adequate detailed design implementation and management/maintenance (which could be controlled by conditions) the proposed development would not create landscape or visual impacts of Major significance [CD-A11 9.4.9]. Consequently, BARD's concerns are unfounded.

Ecological impacts

482. The application the subject of this appeal has been subject to EIA and further information has been provided in compliance with Regulation 22 of the Town and country Planning (Environmental Impact Assessment) Regulations 2011. The

assessment of ecological effects was on the basis that a suitable location and area would be agreed with the LPA for an area of land to be set aside to be managed as grassland. That area has been agreed and the location has been agreed in the s106 [103]. Consequently, I find no basis for BARD's claim that there has been any failure to assess the significant ecological effects of the development. However, it would be open to the SoS to make a further Regulation 22 request requiring the assessment of ecological effects should it be deemed necessary [103].

Bund

483. Permission has been granted by Worcestershire County Council (Ref: 11/000052/CM) for a bund which itself would assist in mitigating noise impacts in the proposed dwellings. Accordingly, a condition should be imposed requiring that it should be completed before any of the dwellings are first commenced. Given that the bund would be on land in the ownership and control of the Bird Group, such a condition would be 'Grampian'. However, the Bird Group has confirmed to the Appellant that it intends to implement the permission and that there are no obstacles that would prevent it from so doing [109]. Accordingly, there is a reasonable prospect of the bund being built. Further, the Appellant has accepted that if the condition cannot be discharged within the lifetime of the permission, then the development cannot be implemented⁷⁸.

484. For the foregoing reasons, I consider that the proposals would contribute to the achievement of the environmental role of sustainable development.

The benefits of the appeal scheme

Housing

485. The proposal is capable of delivering 220 dwellings in the period to 31 March 2018. Accordingly, it would boost the Council's supply of dwellings deliverable within 5 years in line with paragraph 47 of the NPPF, which I regard as a significant benefit.

Affordable housing

486. The Lioncourt Homes appeal decision demonstrated an urgent need to provide affordable housing in Wychavon [CD-G2 SB17 at para 44]. As things stand, only 262 affordable units were delivered between 2006/07 and 2011/12 against an objectively assessed need of 268 affordable units per year [97]. By contrast, the appeal scheme would deliver 133 affordable homes [376] i.e. half of the objectively assessed annual requirement in one fell swoop.

487. Furthermore, I attach significant weight to first, the fact that some 2338 households on the Council's Home Choice Plus database have expressed a desire for a home in Pebworth [98]. Secondly, that a number of jobs in the local area are not in the 'high earning' category [98]. Thirdly, changes in benefit eligibility criteria are reportedly causing some single people to leave Pebworth against their wishes owing to the absence of smaller affordable units [128]. Accordingly, there

⁷⁸ Inspector's note: Based on the PPG it is still considered that a Grampian condition is suitable to restrict development until certain site works have been completed and that there is a reasonable prospect of such works being achievable.

is likely to be a demand for affordable homes in the vicinity of the appeal site which would be in line with the numbers to be delivered. Notably, the NPPF at paragraph 54 suggests that LPAs should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs. In this case, the s106 would secure 35% affordable housing.

Status of appeal site

488. The appeal site is not the subject of any designation (such as landscape, ecological, drainage or land use) albeit that it can be seen from the AONB. It is common ground that (1) subject to the imposition of planning conditions, the development would not have an unacceptable detrimental impact on the local landscape, the AONB or visual amenities of the area [CD-E1 6.4; and (2)] the proposed development would not cause any unacceptable impacts or harm to any heritage assets [CD-E1 6.11].
489. The site has very poor agricultural value [ES 16.68] and it is common ground that the development would not impact upon agricultural interests [CD-E1 6.2]. It is also common ground that subject to conditions, the development is unlikely to lead to the destruction of any breeding or resting places for European Protected Species and subject to conditions there would be no unacceptable ecological impacts [CD-E1 6.6].
490. Whilst the Appellant has not claimed that the appeal site meets the definition for PDL within the Annex 2 of the NPPF, the site has previously been intensively used as an MOD Engineers' Depot, and for storage uses including the scrapping of vehicles and railway rolling stock. As a result, it has been heavily disturbed since WWII and it has resulted in a number of contamination hotspots where remedial work will need to be undertaken. It is common ground that the planning issues associated with the contamination could be adequately dealt with through the imposition of conditions [CD-E1 6.9].
491. With the foregoing points in mind, it would not be unreasonable to regard the site as being derelict. It follows, therefore, that the proposed development of the site would be consistent with Core Planning Principle 7 of paragraph 17 of the NPPF which requires that: *Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this framework.*
492. Whilst the appeal proposal would result in a more urbanised appearance, first from the foregoing there would be little prospect of the appeal site having a future agricultural use. Secondly, the proposal could be made to blend into its surroundings by an appropriate landscaping scheme, which would in turn enhance its appearance in the context of views from the AONB.
493. Any improvement to the appearance of the site if it remains un-developed, would require investment, and it is difficult to see what other practical use the site could have to generate the income for such an investment. It seems to me therefore, that whilst not technically a 'benefit' there are advantages to developing the appeal site in terms of enhancing its appearance. Furthermore, due to the absence of any designations on the site itself, no harm would result to a designation.

Prematurity

494. The appeal proposal for up to 380 dwellings would amount to about 4% of the total SWDP requirement to be met in the plan period from 2006-2026 [CD-G1 4.12]. As such, I do not consider that it could be said to prejudice the outcome of the current plan-making process, let alone decisions which are central to the emerging plan; in particular in the light of the site's sustainability credentials which I have identified, and the significant shortfall in housing delivery that has accrued in the period from 2004.
495. In addition, the shortfall which I have identified in the Council's 5 year supply of deliverable housing land, together with the contribution the scheme would make to affordable housing provision, represent further mitigating factors weighing in favour of releasing the site for development now.
496. In any event, the Council has not satisfied the obligation to demonstrate clearly how granting planning permission for the appeal scheme would predetermine policy decisions in the SWDP about scale, location or phasing of new development [60].
497. In summary, I find no basis for an objection on the grounds of prematurity, given the very limited weight that can be attached to the housing policies of the emerging SWDP and the current doubt over its objectively assessed housing needs.

Concerns regarding impacts from Sims Metals site

498. Various concerns have been raised in respect of noise, odours and dust from the Sims Metals site and its impact on future residents of the proposed development [297, 325, 354, 367]. However, I am satisfied that these are matters which could be overcome by the imposition of conditions requiring the construction of a bund and the provision of a noise mitigation plan.
499. Concerns have been raised in relation to fires which have happened in the past on the adjacent site at Sims Metals [297, 325]. Indeed, mention has been made of 5 occurrences in less than 2 years [325]. However, Sims has addressed the problem and minimised the risk [367]. In any event they could be controlled by environmental health legislation.

The objection from HSE

500. The objection from HSE is hard to understand; and they did not attend the Inquiry to be cross-examined. Part of the proposed housing development would be likely to fall within what is termed the 'Middle Zone' i.e. between 65m and 205m from the pipeline [CD-E8 paragraph 20], albeit the application is in outline with all matters reserved except access. HSE would object if that part amounted to more than 10% of the overall housing but it would not object if it was less than 10% of the total amount of houses [document 7A]. On the face of it, the objection therefore appears to relate to the percentage as a proportion of the total development of housing as opposed to the actual number of houses. In these circumstances, it would appear as though the objection could then be resolved by increasing the number of houses outside the Middle Zone in order to reduce the percentage of the total lying within the Middle Zone, whilst keeping their precise number the same.

501. I am therefore unable to conclude that the number of houses currently proposed in the Middle Zone would present an unacceptable risk. But, in any event, layout is a reserved matter, and so the precise number of houses within the Middle Zone is not a matter for this appeal.

Local involvement in the planning system

502. I bring to the attention of the SoS the concern, raised by a number of interested parties, that to grant planning permission for this proposal would appear to undermine the Government's stated intention, set out in paragraph 17 of the NPPF of "empowering local people to shape their surroundings" [240, 287, 324]. Many local residents have been keen to take up new opportunities for involvement in the planning process. Notably, the Pebworth NDP was awarded Front Runner Status and funding; and the community engagement process has painstakingly informed the emerging Core Strategies of 3 District Councils (Wychavon, Stratford on Avon and Cotswold). I can well understand why those parties and persons might feel that their efforts would be made redundant at a stroke as a result of a proposal on a site not proposed for development in the adopted or the emerging development plan; and that to them it would seem to threaten the very essence of the Government policy.

503. However, paragraph 17 of the NPPF also explains that every effort should be made to identify, and then meet, the development needs of an area. Paragraph 47 states that "To boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing..."; the need to allocate sufficient land for housing is further emphasised by the terms and operation of paragraph 49.

504. The existence of widely differing views as to the amount of new housing (both market and affordable) that should be provided at existing settlements reflects the tension between the understandable concerns of local residents who wish to protect the qualities of their community and its environment, and the needs of other local people for housing. Similarly, there is a tension in policy between the desire for decisions to be taken locally and the requirement to ensure sufficient provision of a 5 year supply of deliverable housing sites.

505. There is currently doubt as to when the emerging SWDP will be adopted, but it could be another year or so [403]. In the meantime, the Council not only has a significant shortfall in its housing provision, but also in its housing land supply position. In these circumstances, it seems to me that the approach set out in the NPPF is not to delay action to address the housing shortfall to await the adoption of the emerging SWDP, but instead that planning permission for the current proposal should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

s106 & affordable housing

506. The current Development Plan policy (COM2) requires only 30% of the units to be affordable on qualifying sites while the emerging SWDP Policy 15 requires 40% of the units to be affordable. Accordingly, the s106 Agreement which would secure the provision of 35% of the proposed dwellings as affordable seems to strike a reasonable balance between the two and would deliver up to 133 affordable units which is a consideration that weighs in its favour.

The overall planning balance

507. The proposed development would conflict with Development Plan policy. However, my conclusion that the Council is currently unable to demonstrate unequivocally a five year supply of deliverable housing sites means that relevant policies for the supply of housing should not be considered to be up-to-date. This in turn means that by the operation of the "*presumption in favour of sustainable development*" set out in the NPPF, planning permission should be granted "*unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole*".
508. The site is available now and there is a realistic prospect that housing will be delivered on the site within 5 years. I have concluded that the proposals would contribute to the achievement of the 3 dimensions of sustainable development as set out at paragraph 7 of the NPPF. Furthermore, permitting the proposed development would have the substantial benefit of taking a positive step towards addressing the District's current shortfall in both open-market housing and affordable housing. The houses would be well located in terms of proximity to the St Modwen development in terms of basic facilities. Public transport links would be available, albeit somewhat limited to Stratford and Evesham and destinations beyond.
509. Whilst the proposal would result in the development of what by definition is open countryside, it does not form part of any landscape designation, and it is not a site of any real agricultural value and one which currently has the appearance of a derelict piece of land. I am satisfied that an area of land could be set aside and managed as grass land to mitigate the ecological impacts of the development. Although the proposal would result in an urban appearance, I consider that with an appropriate landscaping scheme, the site could be blended into its surroundings without any negative impact on views from the AONB. And this is a matter which can be secured by means of conditions.

Conditions and Obligations

Conditions

510. Conditions which might apply to a grant of planning permission for the proposals are annexed to this report [393]. They are based on the conditions agreed between the Appellant and the Council, modified after discussion at the Inquiry. In my view, the conditions are necessary for the reasons set out below.

Plans

511. It is necessary to attach the now standard condition requiring compliance with the submitted plans, in so far as they relate to matters not reserved for future determination.

Timing and phasing

512. The application was submitted in outline with all matters reserved except access, so it is necessary to attach conditions setting out the timetable for submission and approval of these reserved matters.
513. I note that the DAS envisages the development being carried out in 6 phases with construction taking an estimated period of 6 years. I accept that given the

scale of development, provision should be made for phasing of the development and consequently the phased submission of the reserved matters applications.

514. The Appellant has suggested that the first reserved matters application should be submitted within 3 years of the date of the outline permission with all remaining reserved matters applications being made within 5 years. However, given the urgent need to significantly boost the supply of housing in the District which justifies this proposal, and the desirability to connect with the adjoining site sooner rather than later, I consider that the reserved matters application in respect of Phase 1 should be made not later than the expiration of 2 years beginning with the date of the grant of outline planning permission; and that the development to which the Phase 1 reserved matters approval relates must be begun not later than the expiration of 2 years from the final approval of the reserved matters for Phase 1. The reserved matters applications in respect of all other Phases should be made within 3 years of the date of outline PP, and the development of each of those Phases should be begun respectively not later than the expiration of 2 years from the final approval of the last reserved matter to be approved for the respective phase.

515. Under no circumstances should the affordable housing be left until the last phase of housing development (currently proposed as Phase 5). Therefore, the details of the Phasing Strategy should make clear the order in which the phases will be carried out and the details of the housing mix with no less than 35% of the housing mix to be affordable housing in each phase.

Masterplan

516. Whilst a Masterplan was submitted as part of the outline application, it has only the status of an illustrative plan to which the developer is not committed. Furthermore, in the light of the HSE concerns, the layout may need to be changed. Consequently, I consider that the first of the reserved matters applications should be accompanied by a Masterplan incorporating a Landscape Masterplan to set a framework for the respective reserved matters applications and to steer the successive Phases of development in order to ensure a coherent whole, that is satisfactorily landscaped. This will then act as a benchmark to judge the later Phases. The Masterplan should be updated and reviewed with the approval in writing of the local planning authority until all of the reserved matters applications have been discharged. Each of the reserved matters applications should show the interim landscape treatment on the undeveloped part of the site.

Submission of a Landscape Masterplan

517. In order to provide a coherent landscape scheme for the whole site, which would be completed in phases, I consider it necessary for a Landscape Masterplan based upon accurate survey information to be submitted with the first of the reserved matters applications. Any subsequent variations should be approved in writing by the LPA and at each Phase the development shall be completed in accordance with the latest approved version of the Landscape Masterplan.

Landscape management plan

518. A Landscape Management Plan is required to control the use and maintenance of undeveloped land with a scheme of monitoring; and to set out the long-term

design objectives, management responsibilities and maintenance schedules for all landscape areas.

Approval of landscaping before commencement

519. In order to ensure that the proposed development provides sufficient and appropriate landscaping and maintenance of landscaping in line with the Landscape Masterplan a condition should be imposed for a landscaping scheme to be agreed for each phase of the development with corresponding interim landscaping on the remainder of the site.

Ecological Management Plan

520. To ensure that the proposed development protects and enhances features of ecological/biodiversity interest a condition requiring the submission of an Ecological Management Plan is required.

Protection of retained trees

521. To ensure that the proposed development incorporates sufficient and appropriate tree cover and to ensure that the construction of the development does not unduly harm the well-being of existing trees to be retained, conditions should be imposed for survey information in respect of trees; and for the protection of trees to be retained.

Connectivity Scheme

522. To ensure that the proposed development minimises the need to travel and maximises the use of sustainable modes of transport in order to access essential facilities a condition requiring a Connectivity Scheme is needed to successfully integrate the proposed development and to create a sustainable extension to the (already permitted) adjacent St Modwen development. Given the 'Grampian' nature of such a condition, the Appellant has demonstrated that there is a reasonable prospect of a Connectivity Scheme coming forward, but the Appellant has accepted [109] that in the absence of such a scheme coming forward, that the entire appeal scheme would fail.

Highways

523. A highways condition is needed to ensure the proposed development allows safe and convenient access for all users.

Highway works & Transport

524. To ensure that the development does not prejudice highway safety and that the traffic generated by the development can be accommodated on the local highway network, conditions are required to set out when and how the proposed highway works should be implemented (as put forward by Warwickshire County Council in their letter dated 8 July 2013 [CD-G3 Appendix 7]).

Provision of Facilities for cyclists and a Full Travel Plan

525. To ensure that the development promotes the use of sustainable modes of transport, conditions are required to secure the provision of cycle parking together with facilities for changing and showering in respect of the employment Phase; and cycle storage/parking in respect of each individual dwelling.

526. In addition a condition requiring the provision of a Full Travel Plan is required to minimise the need to travel and maximise the use of sustainable modes of travel to access facilities.

Drainage

527. To ensure that the proposed development incorporates sufficient drainage systems to avoid exacerbation of flood risk and/or pollution of groundwater, a drainage condition is required.

Levels

528. To ensure that the proposed development does not incorporate excessive changes to the existing ground levels to the detriment of the amenities of the area, a condition is required to control the finished levels of the proposed development.

Contamination – tiered investigation

529. To avoid pollution to the environment and to protect the users of the proposed development from pollutants a condition is required. No reference should be made to a particular document (e.g. CLR11), to avoid the condition becoming out of date⁷⁹.

Screen walling/Fencing/Hedging

530. To ensure a sufficient level of private amenity space a condition is required for the provision of appropriate screening and fencing.

Emergency access

531. A condition is required for the provision of a safe access for emergency vehicles and to prevent general vehicle usage of the proposed emergency access to the detriment of highway safety.

532. The Council expressed concern as to the 'Grampian' nature of this condition, as the land is outside the application boundary for the current proposal. However, as the land is currently within the Appellant's ownership, there is a reasonable prospect of this coming forward.

Controls during construction

533. To ensure the construction of the approved development is carried out without unnecessary and unacceptable impacts on the environment and general amenity, a condition is required to control working hours; and a further condition is required to secure a Construction Management Plan.

Limit on the number of dwellings

534. For the avoidance of doubt, and to define the permission, a condition is required to limit the number of dwellings permitted on the site.

⁷⁹ NB The suggested conditions require that: The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Contaminated Land, CLR11". However, as that document has the potential to go out of date, it would render the condition unenforceable.

Sustainable design

535. Conditions are required to ensure that the development hereby approved supports the move towards a low carbon future in accordance with paragraph 95 of the National Planning Policy Framework.

Noise mitigation - Bund

536. To ensure that the future residents of the permitted dwellings are not unduly affected by noise from the Sims Metals site, conditions are required in respect of the construction of a bund [document 20], and the provision of a noise mitigation plan.

537. As indicated above, given the 'Grampian' nature of a condition requiring the construction of a bund which is outside the control of the Appellant, the Appellant has demonstrated that there is a reasonable prospect of the bund being completed but has accepted that if it does not, then the whole permission would fail. In these circumstances, I consider that the construction of any of the permitted dwelling should not commence until the bund is completed to avoid a situation where the dwellings are constructed but cannot be occupied until the bund is completed.

Public amenity/open space

538. A condition is required to ensure that sufficient public amenity land is provided and maintained to serve the proposed development.

S106 Agreement

539. The obligations in the s106 Agreement are necessary to make the proposals acceptable in planning terms and to mitigate its effects on services and infrastructure in terms of education facilities; waste and recycling; public art; leisure; and transport infrastructure services. As I have already concluded a contribution is needed to expand the facilities at the Meon Medical Centre which would be directly related to the need arising from the development [468]. The Agreement would secure an appropriate quantum and mix of affordable housing that would be related in scale and kind to the development [505].

540. For sustainability and connectivity reasons a contribution is required to pay for a community bus service for 3 years to link the development site to Pebworth and Honeybourne [454].

541. Financial contributions are needed to fund a travel plan co-ordinator to implement the Travel Plan measures; and to contribute towards the costs to be incurred by the Council in the monitoring and compliance with the terms of the proposed legal agreement.

542. To mitigate the ecological effects of the development provision needs to be made to retain the Ecological Land as an area of undeveloped land and for it to be managed in accordance with the Ecological Management Plan.

S106 Unilateral Undertaking as varied by the s106 Deed of Variation

543. The obligations in the Appellant's Unilateral Undertaking are necessary to make the appeal proposals acceptable in planning terms. Due to the existing

school buses being up to capacity [463] a contribution is necessary in respect of Secondary Education Transportation to meet the needs of the development. For sustainability and social infrastructure reasons the provision of a community/sports facility is required. The undertaking is required in respect of the proposed emergency access/cycle link because it is on land excluded from the application boundary.

544. The Obligations as a whole are necessary to make the appeal proposals acceptable in planning terms. They are directly related to the development since their requirements stand in direct mitigation of its consequences. The obligations contribute to limiting the impact of the development on the local area and they would pay for the social and physical infrastructure to support and facilitate development. Having examined the content of the Obligations' requirements I find that they are fairly and reasonably related in scale and kind to the development. Consequently, the obligations meet the tests of CIL Regulation 122 (the Community Infrastructure Levy Regulations 2010).

545. However, I note the Appellant's request that, if for some reason the SoS has concerns with the content of the s106 Agreement and/or Unilateral Undertaking which are capable of being addressed by variations to them, it is given an opportunity to make such variations as the SoS considers necessary prior to the final determination of the appeal [107].

Overall conclusions

546. In my overall conclusion, subject to mitigation by the annexed conditions and the s106 Obligations, the adverse impacts of granting planning permission for the proposed development are not such as would significantly and demonstrably outweigh the benefits; instead, the benefit of reducing the District's housing shortfall through the provision of 380 dwellings as part of a mixed use development of the appeal site would outweigh the harm caused in other respects and it would outweigh the breach of Local Plan Policy GD1 and emerging Policy SWDP2.

547. The proposed development would meet the requirements of the National Planning Policy Framework, and would perform the economic, social and environmental roles of sustainable development towards which it aims. In my opinion the proposals would be acceptable.

Inspector's recommendation

548. I recommend that the appeal should be allowed, subject to the conditions set out in the attached Annex A.

Jane V Stiles

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Nadia Sharif

Of Counsel, No 5 Chambers,
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She called

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Policy Manager
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Jonathan Edwards BSc(Hons) DipTP MRTPI CLMS

Development Manager (Planning)
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Wychavon District Council

FOR BARD (Better, Accessible, Responsible Development):

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He called

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Director of Stansgate Planning

FOR THE APPELLANT:

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He called

Steven Brown BSc(Hons) DipTP MRTPI

Aled Roderick BSc(Hons) MCILT MCIHT

Associate of Woolf, Bond, Planning
Technical Director
PTP Planners

Sally Tagg BSc(Hons) MRTPI

Managing Director
Foxley, Tagg Planning

INTERESTED PERSONS:

AGAINST THE APPELLANT

Michael Brain

Parish, District and County Councillor
living at Long Marston

Cllr Izzy Seccombe

Leader Warwick County Council

Cllr Alisdair Adams

Wychavon District Council

David Cranage

Pebworth Parish Council

W Hepworth

Local resident

Ken Wood

Chair of the Board,

Tim Langford
Chipping Campden School
Local farmer

SUPPORTING THE APPELLANT
Sharon Summers

Pebworth resident

DOCUMENTS

- 1 Council's letter of notification of the Inquiry and list of persons notified.
- 2 Appearances on behalf of the Appellant
- 3 Opening submissions on behalf of the Appellant.
- 4 Opening submissions on behalf of the Council.
- 5 Bundle of bus time tables put in by Council
- 6 E-mail dated 11 November 2013 from Mr Edwards to Sally Tagg in respect of the s106 contribution towards a bus service provision linking the appeal site with Pebworth and Honeybourne.
- 7 E-mail dated 6 November from Worcestershire County Council to Mr Edwards
- 7A E-mail from HSE dated 8 November 2013
- 7B Bundle of correspondence relating to requirement for contributions for Primary Care Facilities
- 8 Appeal Decision Ref APP/C3810/A/13/2196029 dated 30 October 2013
- 9 Steven Brown Rebuttal Note to Council's SWDP Deliverability Schedule issued on 11 November 2013
- 10 Tunbridge Wells Borough Local Development Framework Windfall: Housing land supply: Making windfall Allowance, February 2013
- 11 Aled Roderick response to Worcester County Council Comments received on 11 November 2013
- 12 Extract from a report in respect of the St Modwen reserved matters approval, put in by Mr Roderick, which continued to consider that development sustainable.
- 13 DACbeachcroft letter of 14 November 2013 in respect of access rights over Sharry Lane (otherwise referred to as Sherry Lane).
- 14 Planning permission Ref: 12/00484/VARY dated 31 October 2012
- 15 S105 Fifth Deed of Agreement and Variation dated 4 December 2012 in respect of the St Modwen development
- 16 Partly signed S106 Undertaking dated 12 November 2013 in respect of the appeal proposal
- 17 Partly signed S106 Agreement dated 12 November in respect of the appeal proposal.
- 17A Planning Inspector's Copies of:
 1. Section 106 Agreement dated 12/11/13
 2. Section 106 Undertaking dated 12/11/13 (as varied)
 3. Section 106 Deed of Variation dated 22/11/13
- 18 Draft list of conditions dated 5 November 2013
- 18A Council's suggested list of revised conditions dated 20 November 2013, following discussion at the Inquiry
- 19 Appellant's suggested list of revised conditions dated 22 November 2013 following discussion at Inquiry with attached comments from Mr Edwards on behalf of the Council.
- 19A Council's comments on amended conditions dated 11 February 2014.

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- 20 Letter dated 21 November 2013 from the Bird Group of Companies with attached plans for planning permission Ref. 11/02215/CM dated 16 April 2013 in respect of bunding.
 - 21 Bundle of statements from interested persons
 - 22 Closing submissions on behalf of BARD
 - 23 Closing submissions on behalf of Wychavon District Council with attached copy of Appeal Decision APP/Q4625/A/11/2157515
 - 24 Closing submissions on behalf of the Appellant
Letter dated 27 November 2013 from DACbeachcroft in respect of the Environmental Statement's compliance with the EIA Regulations.
 - 25 Approved Judgement of the Court of Appeal in respect of Hunston Properties Ltd (2013)
 - 26 Appellant's comments on Hunston Court of Appeal judgement
 - 27 Council's comments on Hunston Court of Appeal judgement
 - 28 Letter dated 21 November 2013 from Worcestershire County Council Re: school transport provision
 - 29 Letter of 25 November 2002 from ODPM Re: Use of Negative Conditions put in by Appellant
 - 30 Response dated 26 November 2013 from PTP on behalf of the Appellant to Worcestershire County Council's letter of 21 November 2013
 - 30A E-mail enclosing corrected version of Mr Davies' Table 1 dated 20 January 2014
 - 31 E-mail from Appellant dated 10 February 2014 Re: conditions and plan refs
 - 32 Redacted version of Appellant's comments on National Planning Practice Guidance
 - 33 Council's comments on National Planning Practice Guidance
 - 34 Council's comments on Redacted version of Appellant's comments on National Planning Practice Guidance

CORE DOCUMENTS LIST AS AT : 11/11/13

Planning Application Documents

Ref	Document Name
CD-A1	Application forms and Certificates
CD-A2	Site Location Plan Ref 13070/1030/D
CD-A3	Development Plan Ref 13070/1070/C
CD-A4	Highway Plan (east) Ref 13070/3203/A
CD-A5	Email 21/02/2013 including additional information on peak hour journey movements.
CD-A6	Planning Statement – May 2013
CD-A7	Environmental Statement October 2013
CD-A8	Technical Appendix 1 (TA 1)Scoping Response.
CD-A9	Technical Appendix 2 (TA 2)Transport Assessment.
CD-A10	Technical Appendix 3 (TA 3) Flood Risk Assessment
CD-A11	Technical Appendix 4 (TA 4)Landscape and Visual Impact Assessment.
CD-A12	Technical Appendix 5 (TA 5)Protected Species Assessment and Preliminary Ecological Appraisal.
CD-A13	Technical Appendix 6 (TA 6)Desk Study and Preliminary Geo-Environmental Ground Investigations.
CD-A14	Technical Appendix 7 (TA 7)Archaeological Desk Based Assessment.
CD-A15	Technical Appendix 8 (TA 8)Air Quality Assessment.
CD-A16	Technical Appendix 9 (TA 9)Noise and Vibration Assessment.
CD-A17	Technical Appendix 10 (TA 10)Utilities, Services & Energy.
CD-A18	Technical Appendix 11 (TA 11)Agricultural Land.
CD-A19	Technical Appendix 12 (TA 12)Community Maps
CD-A20	Non-Technical Summary October 2013

CD-A21	Replacement DAS – June 2013
CD-A22	Replacement Framework Masterplan Ref 13070/3200/H
CD-A23	Replacement Travel Plan Framework – June 2013
CD-A24	Revised Heads of Terms – June 2013
CD-A25	Additional TA Addendum information – July 2013
CD-A26	Supplementary Access Plan – Fig. 3.1 21216 02
CD-A27	Case Officers Comments & Response to Case Officer comments 08/07/13 & letter dated 11/07/13
CD-A28	Letter from Johnsons 09/07/13
CD-A29	Letter from St Modwen 11/07/13
CD-A30	Letter from Bird Group – Bund – 13/0813
CD-A31	Entran Noise Response – 23/08/13
CD-A32	Internal consultation from Kirstie May-Jones – 23/04/13
CD-A33	Wychavon Planning Committee Report – 15.08.13
CD-A34	Wychavon Planning Committee Report Update – 15.08.13
CD-A35	BARD Objection 1 – 06/03/2013
CD-A36	BARD Objection 2 – 25/06/2013
CD-A37	Waste and Construction Management Plan Framework

Development Plan / Policy Documents

Ref	Document Name
CD-B1	National Planning Policy Framework
CD-B2	West Midlands Regional Spatial Strategy Phase 2 Panel Report
CD-B3	Wychavon District Local Plan
CD-B4	SoS Saving Direction (29 May 2009)
CD-B5	Wychavon Five Year Housing Land Supply Background Data October 2013
CD-B6	Residential design guide
CD-B7	Affordable housing SPG
CD-B8	Development Contributions for Educations Facilities SPD
CD-B9	Developer Contributions SPG
CD-B10	Water Management SPD
CD-B11	PADHI Guidance

Emerging SWDP Documents

Ref	Document Name
CD-C1	SWDP Proposed Submission Document May 2013
CD-C2	Stratford-on-Avon District Intended Proposed Submission Core Strategy July 2013
CD-C3	SWDP Stage 1 Interim Conclusions - Letter from Inspector - 28.10.13
CD-C4	SWDP Stage 1 Interim Conclusions
CD-C5	SWDP Stage 1 - Letter to Inspector - response to interim conclusions
CD-C6	Inspector's Report and Five Year Land Supply Thursday 07-Nov-2013

Inquiry Documents

Ref	Document Name
CD-E1	Statement of Common Ground (LPA and Appellant)
CD-E2	Statement of Case - Appellant
CD-E3	Statement of Case - LPA
CD-E4	Statement of Case - BARD
CD-E5	Email from Andrew Murphy (BARD) 07/10/113
CD-E6	Condition List
CD-E7	Legal Agreement
CD-E8	HSE Written Statement
CD-E9	Letter from Council Leaders
CD-E10	Response Letters to Council Leaders
CD-E11	Tab1, Tab 2, and Tab 3 in support of Fred Davies Housing Supply figures

Proofs of Evidence and Documents Submitted During the Inquiry by the Appellants

Ref	Document Name
CD-G1	Proof of Evidence of Mr. Steven Brown
CD-G2	Appendices Proof of Evidence of Mr. Steven Brown

CD-G3	Proof of Evidence inc Appendices of Mr. Aled Roderick
CD-G4	Proof of Evidence of Mrs. Sally Tagg
CD-G5	Appendices Proof of Evidence of Mrs. Sally Tagg
CD-G6	Rebuttal Proof of Evidence of Mr. Steven Brown
CD-G7	Rebuttal Proof of Evidence of Mr. Aled Roderick

Proofs of Evidence and Documents Submitted During the Inquiry by the LPA

Ref	Document Name
CD-H1	Jonathan Edwards Proof of Evidence
CD-H2	Jonathan Edwards Proof of Evidence - Appendices
CD-H3	Jonathan Edwards Summary of Proof of Evidence
CD-H4	Jonathan Edwards Supplementary Proof of Evidence
CD-H5	Fred Davies' Proof of Evidence including appendices.
CD-H6	Bus Timetables

Proofs of Evidence and Documents Submitted During the Inquiry by the BARD Group

Ref	Document Name
CD-I1	Andrew Murphy Proof of Evidence
CD-I2	Andrew Murphy Proof of Evidence Appendices
CD-I3	Andrew Murphy Proof of Evidence Summary

ANNEX A: SUGGESTED CONDITIONS

Plans

1) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:

- Location Plan 13070/1030/D
- Development Plan 13070/1070/C
- Context Plan 13070/3202 D
- Constraints Plan 13070/2000 C
- Proposed Access Plan 13070/3203A
- Framework Plan 13070/3200/H
- Proposed Access Plan 13070/3203/A
- Campden Road – Proposed Access Arrangement Fig 3.1 21216 02

Masterplan

2) The first of the reserved matters applications shall be accompanied by a Masterplan incorporating a landscape masterplan to be submitted to and approved in writing by the local planning authority. The Masterplan shall set the framework for all of the reserved matters applications. Any subsequent variations to the Masterplan must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Masterplan.

Phasing strategy

3) The first of the reserved matters applications shall be accompanied by a Phasing Strategy to be submitted to and approved in writing by the local planning authority. The Phasing Strategy should define timescales and triggers for commencement of each phase of the development, the arrangements to prevent interruption of delivery across phase boundaries, and details of the coordination of infrastructure and housing delivery within the relevant phases. Any variations to the Phasing Strategy must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Phasing Strategy.

Reserved matters applications

4) Applications for approval of details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each of the Phases identified in the approved Phasing Plan shall be submitted to and approved in writing by the local planning authority before any development in that particular Phase begins, and the development shall be carried out as approved.

5) Application for approval of the reserved matters for Phase 1 of the development (as identified in the Phasing Strategy approved under condition 3 above) shall be made to the local planning authority not later than two years from the date of this outline permission and the development to which the Phase 1 reserved matters approval relates must be begun not later than the expiration of 2 years from the final approval of the reserved matters for Phase 1. The reserved matters applications in respect of all other Phases shall be made to the local planning authority within 3 years of the date of this outline

Planning Permission, and the development of each of those Phases shall be begun respectively not later than the expiration of 2 years from the final approval of the last reserved matter to be approved for the respective phase.

Landscape Management Plan

- 6) All landscape reserved matters applications shall be accompanied by a Landscape Management Plan which includes the long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned domestic gardens) to be submitted to and approved in writing by the local planning authority. The landscape areas to be provided as part of the proposed development shall thereafter be managed in accordance with the approved Landscape Management Plan. The Landscape Management Plan should demonstrate how the undeveloped land will be controlled as the construction of the phased development proceeds. Any variations to the Landscape Management Plan must be approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the latest approved version of the Landscape Management Plan.

Ecological Management Plan

- 7) An Ecological Management Plan which shall include detailed specifications and management regimes to protect existing habitats and wildlife species, as well as enhance biodiversity shall be submitted to and approved in writing by the local planning authority. The plan shall include details of the responsibilities of an ecological Clerk of Works to be appointed to monitor construction activities and shall detail the management practices and retention of the off-set "Ecological Land" as defined under the provisions of the associated s106 Agreement dated 12 November 2013. The Plan shall include an implementation timetable. The approved measures to protect and enhance biodiversity shall be carried out in accordance with the approved plan and implementation timetable.

Survey

- 8) Survey information shall be submitted with the first of the reserved matters applications showing all existing trees and hedges on the appeal site, and branches from trees on adjacent land that overhang the site. The survey shall include for each tree/hedge:
- (i) The accurate position, canopy spread and species plotted on a plan;
 - (ii) An assessment of its general health and stability;
 - (iii) An indication of any proposals for felling or pruning;
 - (iv) Details of any proposed changes in ground level, or other works to be carried out, within the canopy spread.

Connectivity scheme

- 9) No development shall commence until details of a Connectivity Scheme including a timetable for the actual provision of the linkages have been submitted to and approved in writing by the local planning authority indicating how the approved development shall integrate with the adjacent development permitted by Stratford on Avon District Council under permission Ref.

09/00835/FUL (as amended). Development shall then be carried out as approved.

Approval of landscaping before commencement

- 10) Any reserved matters application seeking approval of details of landscaping shall include the following:
- (i) A plan/plans showing the planting layout of proposed tree, hedge, shrub and grass areas.
 - (ii) A schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants.
 - (iii) A written specification outlining cultivation and other operations associated with plant and grass establishment.
 - (iv) A schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

Landscaping to be carried out and maintained

- 11) All soft landscaping comprised in the approved details of landscaping for each Phase shall be carried out in the first planting and seeding season following the first occupation of any of the buildings in the respective Phase of development approved. All planting, all shrubs, trees and hedge planting shall be maintained in accordance with the schedule of maintenance as required under the provisions of condition (9).

Protection of retained trees

- 12) In respect of any tree shown to be retained as part of any reserved matters approval scheme:
- a) no tree shall be cut down, uprooted or destroyed within 5 years of the date of the commencement of the respective Phase of development.
 - b) If any retained tree is removed, uprooted or destroyed or dies within 5 years from the date of the commencement of development, another tree of the same size and species shall be planted at the same place within the first planting season following the loss of the retained tree.
 - c) No development hereby approved shall begin until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with the British Standard 5837 (2005): Trees in relation to construction has been submitted to and approved in writing by the local planning authority. Protective fencing in accordance with the approved scheme shall be erected prior to any equipment, machinery or materials being brought onto the site for the purpose of the approved development.
 - d) Fencing shall be maintained until all construction equipment, machinery and surplus materials have been removed from the development site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Highways

13) The construction of the development of any Phase hereby permitted shall not begin until the construction specifications of the roads (including visibility splays), footpaths, cycleways and parking areas to be included as part of the development have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is provided with access constructed in accordance with the approved details to the established highway network.

Highway works & Transport

14) No more than 150 dwellings on the site shall be occupied prior to the highway works as shown on plan Fig 3.4-21216-TA Ad-Rev02 being implemented.

15) The access to the site shall be laid out in general accordance with plan Fig 3.1-21216-01.

Employment buildings & facilities for cyclists

16) The employment Phase of the development hereby permitted shall not begin until details of secure covered cycle parking, as well as changing and shower facilities in respect of the employment buildings have been submitted to and approved in writing by the local planning authority. These facilities shall be provided in accordance with the approved details and made available for use prior to the first occupation of the employment development hereby permitted and shall be retained for use at all times thereafter.

Cycle parking/storage for residential development

17) The reserved matters details required under the provision of condition (5) shall include details of cycling storage/parking to serve each of the proposed dwellings hereby approved. Each individual dwelling shall not be occupied until the approved cycling storage/parking facilities have been provided and these facilities shall be retained and not be used for any other purpose.

Full Travel Plan

18) The development hereby permitted shall not begin until a Full Travel Plan has been submitted to and approved in writing by the local planning authority. The Full Travel Plan shall include details of implementation and monitoring. Measures and actions set out in the approved Full Travel Plan shall be implemented in full and monitoring carried out as approved. The results of the implementation and monitoring shall be made available to the local planning authority on request, together with any changes to the plan arising from those results.

Drainage

19) The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include information on:

- Any works proposed to existing waterways/ditches on the development site, including de-culverting or culverting works. This information should be

supported by a hydraulic modelling exercise, findings of which are to be submitted with the required drainage details:

- Measures to ensure surface water run-off (particularly from the proposed employment element of the development) does not lead to ground/water pollution; and
- Rainwater harvesting and grey water harvesting measures to be incorporated in the development; and
- How the proposed drainage systems are to be maintained.

No building shall be occupied until all drainage works to serve that building have been carried out in accordance with the approved details. Once constructed the foul and water drainage systems provided on site shall be maintained in accordance with the approved details.

Levels

20) The layout and landscape details required in the reserved matters applications (condition (5)) shall include details of existing and proposed site levels, including finished floor levels of any buildings. The development shall be constructed in accordance with the approved details.

Contamination

21) No development shall be carried out, other than that required to be carried out as part of an approved scheme of remediation until criteria 1-5 have been complied with, as follows:

1. A scheme for detailed site ground contamination investigation has been submitted to and approved in writing by the local planning authority. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment.
2. A detailed site investigation and risk assessment shall be undertaken and a written report of the findings submitted to and approved in writing by the local planning authority.
3. Where identified as necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors shall be submitted to and approved in writing by the local planning authority. The remediation scheme must ensure that the site will not qualify as Contamination Land under Part 2A of the Environmental Protection Act 1990 (or any equivalent provision in any statutory instrument revoking and re-enacting that Act with or without modification) in relation to the intended use of the land after remediation.
4. The approved remediation scheme has been carried out in full.
5. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme

must be submitted to and approved in writing by the local planning authority. Following the completion of any measures identified in the approved remediation scheme and before construction work is continued a validation report must be submitted to the local planning authority for approval in writing.

Screen walls/fences and/or hedges

22) The layout and landscape details required under condition (5) shall include details of proposed screen walls/fences and/or hedges to be submitted to and approved in writing by the local planning authority. Development shall then be carried out as approved. No individual dwelling shall be occupied until such walls/fences or hedges associated with that dwelling have been erected or planted.

Emergency vehicular access

23) The approved emergency vehicular access from the site onto the Long Marston Road via Sherry Lane shall only be used by emergency vehicles and shall not be used by general traffic. The development hereby permitted shall not commence until details of the control mechanism for the emergency vehicle access (so as to prevent general vehicular movements to and from the site via the emergency vehicular access) have been submitted to and approved in writing by the local planning authority. The details to be provided shall include a timetable for the completion of the emergency vehicle access and provision of the vehicle access control mechanism. Development shall be carried out in accordance with the approved plans and timetable.

Controls during construction

24) No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays or Sundays. Work shall not be undertaken outside the hours of :

- 08:00 and 18:00 on Mondays to Fridays;
- between 08:00 and 13:00 on Saturdays.

Construction Management Plan

25) The development hereby permitted shall not begin until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall provide for:

- The parking of vehicles for site operatives and visitors
- Loading and unloading of plant and materials
- Storage of plant and materials
- Storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- Wheel washing facilities
- Measures to control the emission of dust and dirt during construction
- A scheme for recycling/disposing of waste resulting from demolition and construction works

- A soil management strategy as referred to in the approved Environmental Statement.

The approved Construction Management Plan shall be adhered to throughout the construction period.

Limit on the number of dwellings

- 26) The number of dwellings constructed within the development hereby permitted shall not exceed 380.

Sustainable design

- 27) The dwellings hereby approved shall achieve a Code Level 3 in accordance with the requirements of the *Code for Sustainable Homes: Technical Guide*. No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 28) The employment and community buildings shall achieve the BREEAM 'Good' standard. These buildings shall not be occupied until a Final Certificate has been issued for it certifying that the proposed level has been achieved.
- 29) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of the National Planning Policy Framework). Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition (5). The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.

Bund

- 30) No development hereby permitted shall commence until such time as the bund works permitted on 16 April 2013 by Worcestershire County Council under application 11/000052/CM (C11/02215/CM) shall have been completed as per the approved plans.
- 31) No development hereby permitted shall begin until a noise mitigation plan has been submitted to and approved in writing by the local planning authority. This plan shall show how noise levels within the dwellings hereby approved will not exceed those set out in BS 8233: 1999 (Sound Insulation and Noise Reduction for Buildings) and noise levels within any garden areas will not exceed the upper limit recommended within that document. The report shall include mitigation measures and the approved measures shall be completed before any individual dwelling is first occupied.

Public amenity/open space

- 32) The reserved matters details required under conditions (4) and (5) shall include details of at least 9.3ha of public amenity/open space to be included as part of the proposed development. These areas shall include:
- Green corridor along the southern boundary of the site:
 - Equipped play area(s).

The information submitted shall include details of any landscape features (including ponds, play equipment etc) to be included within the public open space/public amenity area(s).

Prior to the commencement of development details of when the public amenity/open space land is to be provided (delivery timetable) and how it is to be maintained (maintenance plan) shall be submitted to and approved in writing by the local planning authority. The amenity/open space shall be laid out in accordance with the approved details and delivery timetable and thereafter maintained in accordance with the approved maintenance plan.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

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