



Department for
Communities and
Local Government

Mr Dean Fisher
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB

Our Ref: APP/D3125/W/15/3005737

24 August 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY GLADMAN DEVELOPMENTS LTD
BURFORD ROAD, WITNEY, OXFORD OX28 6DJ**

APPLICATION REF: 14/1215/P/OP

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Frances Mahoney DipTP PGDipTP MRTPI IHBC, who held a public local inquiry between 5-8 January and 12-15 January 2016 into your appeal against the decision of West Oxfordshire District Council (“the Council”) to refuse planning permission for your application for outline planning permission for 270 residential dwellings, access, public open space and associated works, in accordance with application ref 14/1215/P/OP, dated 9 May 2014.
2. On 15 June 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties, and proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on 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 planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes (IR15-18) that your company requested at the inquiry that the appeal proposal be considered on the basis of a scheme for 260 dwellings within the

same redlined application site to reflect a development set away from the hazardous installation; and that a planning condition should be imposed restricting the composition of the proposed development to no more than 260 dwellings. The Secretary of State is satisfied that the focus of the evidence from the main parties reflected this intention and, as he is content that no party is prejudiced by this matter, he has determined the appeal on that basis.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises the saved, but now out-of-date, policies of the West Oxfordshire District Local Plan 2006 (LP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR28.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the guidance'), as well as section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act).

Emerging plan

7. The emerging plan comprises the West Oxfordshire Local Plan 2031 (eWOLP). However, the examination of the eWOLP has been suspended until December 2016 to enable the Council to undertake further work to address their housing requirement; the housing needs of Oxford City; and the duty to co-operate. As yet, there is no timetable for its adoption. Therefore, having regard to paragraph 216 of the Framework, the Secretary of State attaches limited weight to its policies.

Main issues

Planning Policy/5 Year Housing Land Supply

8. For the reasons given at IR244-245, the Secretary of State agrees with the Inspector's assessment in relation to the eWOLP that the findings of the EiP Inspector should be afforded significant weight in the consideration of the relevant aspects of this proposal and that only limited weight can be attributed to the eWOLP policies. He also notes that the specified settlement boundary would have been fixed in the LP having regard to the need to accommodate development planned up to 2011 (IR246) and, for the reasons given at IR 247- 248, he agrees with the Inspector's conclusion at IR249 that LP policies NE1 and H7 are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework.
9. For the reasons given at IR250-252, the Secretary of State agrees with the Inspector that it is necessary to consider the Full Objectively Assessed Need (FOAN), the method to be used for assessing past under-delivery and the percentage buffer to apply. In this regard, the Secretary of State agrees with the Inspector's findings at IR253-257 that a figure of 598 dwellings per annum is not justified on the strength of the evidence before the Inquiry (IR255) and that the 5% buffer is appropriate in this instance (IR257). He has also considered the Inspector's assessment of the Council's approach which favours the use of the Liverpool method of dealing with undersupply, as set out at IR258-269; and he

agrees that, in all probability, even on that basis, the Council would not be able to supply sufficient specific deliverable sites to provide the required 5 year housing land supply (IR269). The Secretary of State therefore agrees with the Inspector's conclusions at IR270-272 that the deficiency in land supply should carry substantial weight in the balancing exercise and that the terms of paragraph 14 of the Framework should come into play. The Secretary of State has therefore gone on to consider whether the impacts arising from granting planning permission would be adverse and whether they would significantly and demonstrably outweigh the benefits to be obtained from addressing the housing shortfall.

Effect on character and appearance of the landscape

10. Given that the appeal site forms part of the wider river valley setting of the River Windrush and that the Windrush Valley through Witney is a fundamental component of the town's attractive character (IR278), the Secretary of State agrees with the Inspector (IR273-282) that the appeal proposal would result in change which would cause some harm to the rural setting and would not enhance or protect the wider character of the Upper Windrush Valley. However, he also agrees with the Inspector that, taking into account the extent of development along the valley sides and the edge of settlement location of the appeal site, the proposal would not unacceptably diminish the special character of the green corridor through the town which is designated in the LP as the Windrush in Witney Policy Area (IR282).
11. Overall, the Secretary of State shares the Inspector's view (IR283) that the proposal would result in a conflict with the terms of LP Policies NE1 and NE3, in so far as they relate to taking account of impacts on the character and quality of landscape and he agrees that this weighs against the appeal proposal in the context of the environmental dimension to sustainable development.

Impact on heritage assets

12. In accordance with section 66(1) of the LBCA Act, the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.
13. For the reasons given at IR284-289, the Secretary of State agrees with the Inspector that the proposed development would not preserve the wider setting of the heritage assets, but that the identified harm is tempered by the inclusion of existing urban development within the river valley, particularly around Witney Mill. Like the Inspector, he concludes that the degree of harm is less than substantial in the context of paragraph 134 of the Framework. He agrees that this does not necessarily equate to a less than substantial objection to the grant of planning permission but is a matter to be included in the overall balance.

Impact on the safety of future residents – Health & Safety (HS) issues and air quality

14. The Secretary of State has carefully considered the advice of the Health & Safety Executive (HSE) and the Inspector's assessment at IR291-311. For the reasons given at IR300, he shares the Inspector's view that the assessment by the HSE of an overall Safety Level rating of SL3 for the appeal development has been justified within the terms

of the Land Use Planning (LUP) methodology. He also agrees (IR 303) with regard Development Proximity Zones (DPZ), that the nature of the Flogas site itself, in terms of its scale and of the substances stored, is quite different from the installations to which the HSE advice document relied upon by the Council relates. The Secretary of State therefore agrees with the Inspector (IR298) that the amended scheme for 260 dwellings with no development or public access within the HSE Inner consultation zone and a maximum of 26 dwellings at a density of no more than 40 dwellings per hectare within the HSE Middle consultation zone, has been designed in accordance with HSE advice and the outcome of the LUP Methodology, generating a “Do not Advise Against” the grant of planning permission.

15. Overall (IR311), the Secretary of State agrees with the Inspector’s conclusion that the proximity of the appeal proposal to the Flogas site would result in a residual risk to the safety of future residents, but that the identified risk is limited and does not go beyond the general risk of everyday life (IR311). Like the Inspector, the Secretary of State considers that the residual risk must be weighed against planning considerations, including the benefits of the scheme both nationally and locally.

Air Quality/Highways

16. The Secretary of State has carefully considered the Inspector’s arguments at IR312-321 and, for the reasons given therein, he agrees with the Inspector’s conclusion at IR322 that, on the basis of the Transport Assessment undertaken in February 2015 (IR320) and the matters agreed between your Company and the Highways Authority, the impact of the appeal scheme on the environment would be minimised and the terms of LP policies BE3 and BE18 would not be compromised. In coming to this conclusion, the Secretary of State agrees in particular with the Inspector that the Shore Green Slip Road scheme (SGSR), when in place, would result in a significant reduction in the amount of traffic using Bridge Street at peak times and that this would consequently improve air quality within the AQMA (IR314). He also agrees with the Inspector that the significant contribution of £1.16m towards the SGSR may serve to hasten progress on the East Witney Strategic Development Area (IR316).

Flooding

17. Noting that the whole of the appeal site lies within Flood Zone 1, the Secretary of State agrees with the Inspector (IR323) that it is at a low risk of flooding and so is sequentially preferable for the location of sensitive land uses such as residential development. He further notes that the Environment Agency raised no objection to the proposal subject to the agreement and implementation of a detailed surface water drainage scheme, along with a scheme for the disposal of foul water drainage.

Living conditions of existing residents

18. For the reasons given at IR324, the Secretary of State agrees with the Inspector that the proposed site is sufficiently distant from neighbouring dwellings to minimise any material harm to the outlook or privacy of existing residents.

Contribution to the achievement of sustainable development

19. For the reasons given at IR326-328 the Secretary of State agrees with the Inspector that the proposed scheme would provide a positive outcome for the economic role which should be ascribed considerable weight in the assessment of sustainability (IR329). He

also shares the Inspector's view that elements described by the Inspector at IR330-333 would enhance local facilities and support the well-being of the local community and warrant a positive weighting of substance (IR334). In terms of the impact of the development in terms of its environmental role, as set out by the Inspector at IR335-337, the Secretary of State agrees that these positive factors in the balance contribute to the overall sustainability of the appeal site, but that this is tempered by the identified harm to the character and appearance of the landscape and to the wider setting of heritage assets, as well as by the residual risk to the safety of future residents of the proposed development. He agrees that these factors should be weighed in the balance of the overall sustainability of the development (IR338).

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR214-231, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector and set out at Annex A to this letter, including the limitation to 260 dwellings, comply with the policy test set out at paragraph 206 of the Framework.

Planning obligations

21. The Secretary of State has considered the Inspector's assessment of the planning obligations to both the Council and Oxfordshire County Council as submitted to the Inquiry (IR232-241), and he is satisfied that these Unilateral Undertakings comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

Planning balance and overall conclusion

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with the development plan, and he has therefore gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. As the Council cannot demonstrate evidence of a five year supply of deliverable housing sites across the local authority area, the Secretary of State concludes that the relevant development plan policies for the supply of housing (NE1 and H7) are out-of-date. Therefore, limited weight is attached to the conflict with these policies and, in line with the presumption in favour of sustainable development at paragraph 14 of the Framework, he considers that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.

24. Weighing in favour of the proposal is its contribution to addressing the deficiency in the District's five year housing land supply, coupled with the importance of providing much needed homes, both market and affordable, and this carries substantial weight. It would also serve to hasten improvements to the air quality and highways conditions within the Bridge Street area and, on this basis, the Secretary of State considers it reasonable to give this contributing element to the environmental role of sustainability some weight.

However, notwithstanding the positively weighed elements of the environmental role, these need to be balanced against the limited identified harms in this regard.

25. The appeal proposal would have a social and economic role to play in achieving positive growth now and into the future. Therefore, although the harms relevant to the environmental role do weigh negatively in the balance of the decision, the Secretary of State considers that such impacts are not sufficiently weighty to significantly and demonstrably outweigh the benefits of the scheme, particularly the contribution of the proposed development to the identified housing need in the District. Overall, therefore, having carefully assessed the evidence before him, the Secretary of State is satisfied that there are no adverse impacts which, either individually or together, are of sufficient weight to indicate that the development should be restricted. He finds that, when taking the policies of the Development Plan and the Framework as a whole, the adverse impacts of granting the proposed development are limited and that there are no material harms that significantly and demonstrably outweigh the substantial benefits which would result from the provision of new housing and affordable housing to boost supply as required by the Framework.

Formal decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your appeal and grants planning permission for 260 residential dwellings, access, public open space and associated works, subject to the conditions set out at Annex A.
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. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
30. A copy of this letter has been sent to West Oxfordshire District Council, Rule 6 parties and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A – Conditions

1. Details of the layout, scale, appearance and landscaping (both hard and soft), including boundary treatments, laying out the new footpath link to the existing footpath network, the proposed wooded area in the north part of the site, and the provision, timing, laying out and equipping of the Neighbourhood Equipped Play Area (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The reserved matters shall follow the general parameters and broad design/layout concepts set out in the Design and Access Statement dated February 2015, Development Framework (dwg no 5857-L-102 rev M), the HSE Consultation Zones defined on Drawing Ref. H0527 Rev1 and dwg no 5857-L-110. The reserved matters shall also comply with the following limitations:
 - there shall be no development within the HSE Consultation Zone - Inner zone as defined on HSE Drawing Ref. H0527 Rev1 (mirrored in dwg no 5857-L-110) and a scheme to prevent public access to this zone shall be included in the reserved matters;
 - no more than 10% of the area proposed for residential development shall be located within the Middle zone of the HSE Consultation Zones, identified on the Development Framework (mirroring that on HSE Drawing Ref. H0527 Rev1); and
 - no more than 26 dwelling units at a density of less than 40 dwelling units per hectare within that part of the residential development that lies within the HSE Consultation Zone - Middle zone identified on the Development Framework (mirroring that on HSE Drawing Ref. H0527 Rev1).
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the details contained within the following plans:
 - Location Plan - Red Line Plan (Drawing no. 2013-065-100); and
 - Site Access Arrangements Plan (Drawing no. C13584 004).
5. Notwithstanding the description of development, the maximum number of dwellings constructed within the site shall be 260.
6. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation to include details of how any matters of archaeological interest that may be found are notified to the Local Planning Authority and how any such finds shall be recorded and/or preserved/protected which will be submitted by the applicant to and approved in writing by the Local Planning Authority. The work shall be carried out strictly in accordance with the approved scheme.
7. Prior to the commencement of development, full details of the proposed site access junction and emergency access shall be submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details and no dwelling hereby permitted shall be occupied until these specified works have been implemented.

8. Prior to the commencement of development, a scheme for the provision of the off-site highway works, to include alterations to the junction of Tower Hill and Burford Road, toucan crossing on Burford Road, shared use footway/cycleway along the north side of Burford Road, and specified works to the bus stops, in accordance with drawing 1468/01/B, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for the delivery of the proposed scheme and the agreed improvements shall be carried out strictly in accordance with that timetable.
9. No development shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and means of draining roads to an acceptable outfall have been submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable for the implementation of the approved details. The prescribed elements shall be constructed in accordance with the approved details and timetable.
10. No development shall take place until details of access, parking and turning areas to serve each dwelling have been submitted to and approved in writing by the Local Planning Authority. Prior to first occupation of the dwelling to which it relates, the approved access, parking and turning areas shall be provided in accordance with the approved details and shall thereafter be made available at all times for their designated purposes.
11. None of the dwellings hereby permitted shall be occupied until a detailed Travel Plan has been submitted to and approved in writing by the Local Planning Authority. Among other things, the Travel Plan shall include a timetable for implementation and provision for monitoring and review. The Travel Plan shall be implemented in accordance with the agreed timetable and details and shall remain operative as long as any part of the development is occupied.
12. The development hereby permitted shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to, and approved in writing by, the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing set out in the Glossary to the National Planning Policy Framework or any future guidance that replaces or amends it. The scheme shall include:
 - 1) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be pepper-potted throughout the development and which shall consist of not less than 40% of the dwellings;
 - 2) 65% of which shall be Affordable Rented Housing and 35% of which shall be Intermediate Housing;
 - 3) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - 4) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - 5) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - 6) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

13. No development shall take place until a Phase II Contamination Site Investigation is carried out and the results submitted to, and approved in writing by the Local Planning Authority. If the investigations indicate that remediation is necessary, a remediation scheme, including details of the timescale for the work to be undertaken, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme must be carried out in accordance with its terms prior to the commencement of development (other than that required to carry out remediation) unless otherwise agreed in writing by the Local Planning Authority. Following completion of the measures identified in the remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out, must be submitted to, and approved in writing by the Local Planning Authority prior to first occupation of any dwelling on the site.
14. Prior to the commencement of development a scheme for the landscaping of the area shown as blue land on the approved Site Plan: Drawing No. 2013-065-100 shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a timetable for the undertaking of the agreed works and these shall be carried out strictly in accordance with the approved details.
15. Prior to the commencement of development, a habitat (ecological) and landscape management plan, including long term design objectives, future management responsibilities, protection during construction, timetable for implementation, compliance with the recommendations and mitigation measures contained within the FPCR 'Ecological Assessment' (Feb 2015) and maintenance schedules for not less than 15 years for all areas of the appeal site, including a scheme in relation to the blue land shown on the approved Site Location plan Drawing No. 2013-065-100 shall be submitted to, and approved in writing by, the local planning authority. The management plan shall be implemented in accordance with the approved details and its requirements adhered to thereafter.
16. No development shall take place until an Environmental Management/Construction Management/Method Plan and Statement with respect to the construction phase of the development have been submitted to and approved in writing by the Local Planning Authority. Development works shall be undertaken in accordance with the approved Environmental Management/Construction Management/Method Statement/Plan. The details shall include, amongst other things, hours of work/deliveries; access arrangements for construction vehicles; contractors parking areas, compounds, including storage areas for plant and materials; specification of plant and equipment to be used; construction routes; details of wheel washing facilities; loading and unloading areas; minimisation of dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development; an undertaking that there shall be no burning of materials on site at any time during construction; details of any piling required, including method (to minimise noise and vibrations), duration and prior notification to affected neighbouring properties; overall monitoring methodology; and details of the responsible person (site manager/office) who can be contacted in the event of a complaint.
17. No external lighting, other than within a private residential curtilage or standard street lighting, shall be installed other than in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The details shall include the location, height, design and luminance of any lighting to minimise potential loss of amenity caused by light spillage. The

lighting scheme shall thereafter be installed and operated in accordance with the approved details and retained thereafter.

- 18.No development shall take place on site until a detailed scheme for the provision and future management and maintenance of surface water drainage, including any necessary attenuation, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be implemented in accordance with the approved details and timetable and shall be retained and maintained in working order thereafter.
- 19.No development shall take place until details of the existing and proposed ground levels across the site and the levels of the proposed floor slabs and ridge heights shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

Report to the Secretary of State for Communities and Local Government

by Frances Mahoney DipTP PGDipTP MRTPI IHBC

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

Date 19 May 2016

TOWN & COUNTRY PLANNING ACT 1990

WEST OXFORDSHIRE DISTRICT COUNCIL

APPEALS BY GLADMAN DEVELOPMENTS LTD

Inquiry held on 5-8 January & 12-15 January 2016

Burford Road, Witney, Oxford OX28 6DJ

File Ref: APP/D3125/W/15/3005737

File Ref: APP/D3125/W/15/3005737
Burford Road, Witney, Oxford OX28 6DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of West Oxfordshire District Council.
- The application Ref 14/1215/P/OP, dated 9 May 2014, was refused by notice dated 26 November 2014.
- The development proposed is an outline planning application for 270 residential dwellings, access, public open space and associated works.

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

CONTENTS

	Page
Preliminary matters	2
The Site and Surroundings	3
The Proposal/Planning History	4
Planning Policy	5
Agreed position on Full Objectively Assessed Need	8
Agreed position on Housing Land Supply	9
Agreed position on Highways & Transport, including Air Quality	10
General Matters not in Dispute	12
The case for the appellant company	13
The case for the Council	27
The case for the Health and Safety Executive – Health and Safety issues only	39
Third parties who addressed the Inquiry	48
Written representations from interested persons	50
Conditions and Obligations	51
Inspector's conclusions	54
Planning balance	73
Recommendation	75
Annex A – Schedule of Recommended conditions	76
Appearances	80
Inquiry Documents	82
Inquiry Plans	83
Core Documents	84

Preliminary Matters

1. The inquiry sat from the 5-8 January, and 12-15 January 2016, with an accompanied site visit on the 15 January 2016.
2. This appeal was recovered on the 15 June 2015 under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties, and proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities¹.
3. The Health and Safety Executive (HSE) appeared at the Inquiry as a Rule 6 party. Prior to the Inquiry they had engaged with both the appellant company and the Council in providing advice on public safety. While the HSE opposed the proposal for 270 dwellings, it had suggested changes which it considered could be made to the scheme to achieve a balanced outcome². It did not consider the HSE's position was fully described within the Council's case. It wished to add to the body of evidence of the Inquiry to explain its position, as statutory regulator, providing health and safety considerations for the site. Its case is set out at paragraphs 175-197 inclusive of this report.
4. Reason for refusal 2 deals with the impact of the proposal on highways and air quality. Prior to the Inquiry the appellant company and Oxfordshire County Council, as Highway Authority (HA), were negotiating to address these issues. The agreement reached³ is predicated on the development being reduced down to 260 dwellings. On the basis that off-site highway measures would be undertaken, secured through a S278 agreement, and that mitigating contributions towards enhancing and improving bus services, bus infrastructure, travel plan and the Shore Green Slip Road scheme (SGSR) (secured by the terms of a S106 agreement) would be promised, the terms of reason for refusal 2 were not defended by the Council or the HA. However, third parties did continue in their opposition to the proposal on highway and air quality grounds and these matters are addressed later in this report.
5. Similarly in respect of reason for refusal 4 which deals with ecological impacts, additional information was submitted by the appellant company. On this basis the Council was satisfied that appropriate opportunities to conserve and enhance biodiversity were being taken. This reason for refusal was not therefore defended by the Council.
6. Reason for refusal 5 deals with the absence of a satisfactory mechanism to secure financial contributions to local infrastructure and the provision of affordable housing. The parties have worked collaboratively to establish and agree the provisions within the completed Unilateral Undertakings (UU) for the

¹ Direction of recovery letter dated 15 June 2015.

² Building slightly fewer houses (260) further away from the hazardous installation – Flogas Britain Liquefied Petroleum Gas (LPG) Installation.

³ Statement of Common Ground: Highways & Transportation (SofCGHT) - Rowland Proof Appendix GR1 and the Addendum to Highways & Transport Statement of Common Ground (ASofCGHT) (Inquiry Doc 40).

appeal site⁴. The UU agreements made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) promise the delivery of sports and recreation facilities⁵, on-site public open space, the provision of a management company with responsibility for the open space, including a single neighbourhood equipped area of play⁶, and the payment of contributions towards education, public transport infrastructure, and highways, including a travel plan⁷. However, the appellant company contested the contributions sought by Oxfordshire County Council for Adult Day Care, Libraries and administration and monitoring the UU. Evidence was submitted to the Inquiry by the County Council to seek to justify these contributions.

7. Other than in respect of the disputed contributions, as the submitted evidence showed that the promised contributions and mitigating measures were necessary, reasonable and justified in accordance with Regulations 122 & 123 (3) of the Community Infrastructure Levy Regulations 2010⁸, the District Council did not defend reason for refusal⁹. Based on the justifying evidence the undisputed elements of the UUs will not be considered further.
8. The matter of the provision of affordable housing was agreed by the parties as being appropriately dealt with by means of a condition requiring the submission and implementation of a scheme for affordable housing which would need approval before work commenced.

The Site and Surroundings

9. The appeal site lies on the north-western edge of the town centre of Witney. It lies within the river valley of the River Windrush, in a low-lying, gently sloping position falling from Burford Road down to the flat valley bottom. The river is a dominant feature of the immediate landscape. It meanders its way through the Windrush Valley where remnants of Witney's historic connection with the blanket industry, that being Witney Mill, Crawley Mill¹⁰ and New Mill, still persist¹¹.
10. The flat valley bottom of the River Windrush includes a number of public footpaths, one of which skirts the northern appeal site boundary, allowing for ready access into the expansive open countryside which surrounds the town. The wider countryside character is one of predominantly arable farmland, with hedgerow bounded fields and scattered woodland.
11. Following the line of the river valley into Witney it becomes noticeably more enclosed by the urban development of the town, the closer into the town the river flows.

⁴ Inquiry Doc 8 - the promises of a UU to West Oxfordshire District Council and Inquiry Doc 7 which is a UU of promises to Oxfordshire County Council.

⁵ Scheme promoted in this instance is an up-grade to the changing rooms at West Witney Sports Ground, along with improving pitch drainage.

⁶ Within the promises of the UU to West Oxfordshire District Council – Inquiry Doc 8.

⁷ Within the promises of the UU to Oxfordshire County Council – Inquiry Doc 7.

⁸ Inquiry Docs 9, 10 and 11.

⁹ I shall return to the elements in dispute later in this report.

¹⁰ Both listed buildings Grade II.

¹¹ Production in the blanket industry is no longer centred on Witney – the three mills have been converted either to residential/office/commercial uses. They are nonetheless features of a bygone age of industry in the town, a heritage much celebrated and valued by local residents.

12. The appeal site comprises an open undistinguished agricultural field adjacent to the settlement boundary of Witney. To the south and east it lies adjacent to a modern urban extension to historic Witney, spreading out along connecting roadways from the central core of the town. This development along Burford Road and, to a lesser degree, Pope's Piece and Springfield Oval stands at a highpoint with particular visual dominance in the wider landscape.
13. To the west is the LPG installation (Flogas site) accessed via a track running from Burford Road along the western boundary of the appeal site.

The Proposal/Planning History

14. The appeal relates to an outline application with all matters, other than access, reserved for future consideration. Along with the site location plan (Red line plan 2013-065-100), the site access arrangements plan showing access (C13584-004) is relevant as it shows the proposed access point from Burford Road.
15. The planning permission the subject of this appeal was refused in November 2014¹². As a result the appellant company sought to address the reasons for refusal by way of a second planning application with a reduction in the number of dwellings to 260¹³. The reduction in dwelling numbers and their proximity to the hazardous installation was changed as a result of seeking advice directly from the HSE. The second application was refused for similar reasons to the first in June 2015¹⁴.
16. At the Inquiry the appellant company requested that the appeal proposal be considered on the basis of a scheme for 260 dwellings¹⁵. The redlined application site would remain the same¹⁶. However, Development Framework, dwg no 5857-L-102 rev G would be superseded by Development Framework, dwg no 5857-L-102 rev M¹⁷ to reflect a development of 260 dwellings set away from the hazardous installation. The appellant company also suggested the imposition of a planning condition restricting the composition of the proposed development to no more than 260 dwellings. This is proposed in conjunction with a promise within the submitted UU¹⁸ which includes reference to the public open space being a minimum size of 1.12 hectares and there being no development, nor any public access to the HSE Inner Consultation Zone (land closest to the hazardous installation)¹⁹.
17. Taking into account that whilst the description of development of this appeal proposal refers to 'for 270 dwellings', it is clear that it is the intention of the

¹² 14/1215/P/OP.

¹³ With amended redline boundary and illustrative masterplan – 15/00700/OUT (the second application)– CD16.1-CD16.17 inclusive.

¹⁴ Decision notice CD16.17.

¹⁵ That being the number applied for within the second application.

¹⁶ Dwg ref 2013-065-100 – CD1.3.

¹⁷ Shows the indicative relationship of the proposed development with open green space, woodland buffers, existing vegetation, access points/road layout, existing public rights of way, a proposed footpath and existing neighbouring land uses including the hazardous installation. The plan illustrates how the proposed development might be accommodated. The purpose of this illustrative plan is to inform consideration of the development.

¹⁸ Inquiry Doc 8 – UU of promises to West Oxfordshire District Council.

¹⁹ An explanation of the HSE Consultation Zones appears at paragraphs 179, 181 of this report.

appellant company to reduce the quantum of development down to 260 dwellings. The focus of the evidence from the main parties reflected this intention, it being centred on a development of 260 dwellings, giving close consideration to the parameters set out on the proffered amended plan²⁰.

18. It is not in the remit of the decision-maker to change the description of development. However, the appellant company, the Council and HSE were in agreement that the extent of the development proposed should be no more than 260 dwellings.
19. The amended Development Framework originated in the second planning application²¹ and is conceptual in its terms. However, the proffered changes, in themselves, were subject to consultation through the planning application process of the second application²². It is clear that all the parties have considered the development before the Inquiry in the context of a development of 260 dwellings, the amended Development Framework, the terms of the promoted condition relating to the limitation of the number of units to 260 and the UU limiting the area upon which building can take place²³.
20. The extent of publicity and responses in relation to the second application, along with the fact that the overall change in the quantum of development represents a reduction in the scale of the scheme are both important factors to be considered when assessing whether this appeal proposal would be so changed that to grant it would be to deprive those who should have been consulted on the change to development of the opportunity of such consultation²⁴.
21. With this in mind, the proposed changes would not materially prejudice the interests of others and so within this report, like the main parties, the reduction in numbers and amendment to the Development Framework and associated documents form the basis for the consideration of this proposal²⁵.

Planning Policy

22. The West Oxfordshire Local Plan 2031 (WOLP) was submitted for examination in July 2015. Hearings in relation to housing, provision for economic development and jobs as well as the duty to co-operate commenced in November 2015. Further hearings were programmed for February 2016. The Examining Inspector (EiP Inspector) cancelled these sessions and identified that further work was required by the Council in respect of housing need and the Full Objectively Assessed Need (FOAN) for market and affordable housing. Preliminary findings were subsequently published by the EiP Inspector in two parts. The first part

²⁰ Dwg no 5857-L-102 rev M.

²¹ As a result of the proposed changes minor amendments were necessary to some of the submitted supporting documents to the original planning application. As a result Inquiry Doc 2 sets out the documents relevant to the determination of this appeal.

²² The representations submitted in respect of the second application are set out in Inquiry Doc 4 and the relevant consultation responses and Planning Committee report at CD16.1-16.16 inclusive.

²³ Inquiry Doc 7.

²⁴ *Bernard Wheatcroft Limited v S of S for the Environment and Another* (1982) 43P & CR233 – CD16.1.

²⁵ Inquiry Doc 34 Submissions on behalf of the appellant in respect of the proposed amendment of the appeal scheme to 260 dwellings – Statement of Common Ground section 2.4 paras 2.4.1 & 2.4.2 (Inquiry Doc 1) and Inquiry Doc 39.

- (Part 1) dealt with the housing requirement, the needs of Oxford City and the Duty to Co-operate. The overall conclusion of the EiP Inspector was that the housing requirement in the submitted WOLP of 10,500 dwellings was not justified and had not been derived from a process which complied with the requirements of the National Planning Policy Framework (the Framework). Part 2 relates to Housing Supply and Delivery; affordable housing and requirements for particular housing needs; viability; and Traveller policy²⁶. The EiP Inspector concluded that if the housing requirement (in Part 1) were to be increased, the deliverability of a 5 year housing land supply would need to be reassessed.
23. As a result of the preliminary findings of the EiP Inspector, the WOLP examination has been suspended until December 2016 to enable the Council to undertake further work to address the Inspector's concerns.
 24. Therefore, the agreed position of the parties is that the emerging local plan is yet to be fully examined and, consequently, has not been found sound by the EiP Inspector nor subsequently adopted by the Council²⁷. The issues relating to the housing requirement, the consequences for the housing land supply and the resultant suspension in the progress of the examination are all factors which result in uncertainty in relation to the WOLP. In addition, the lack of confirmation of compliance with the terms of the Framework also diminishes the weight that can be attributed to the emerging local plan policies. The agreed position is that only limited weight can be attributed to it.
 25. Neither Witney Town Council nor Crawley Parish Council have given any indication that they intend to produce a Neighbourhood plan. No evidence was submitted of any preliminary works in this regard²⁸.
 26. Therefore, the development plan includes the saved policies of the West Oxfordshire Local Plan 2011 (LP) adopted in 2006. It was designed to guide development in the District up to 2011, with the plan period running to the same date²⁹.
 27. The LP pre-dates the Framework. Therefore, paragraph 215 of the Framework is engaged, setting out that the weight to be given to relevant policies, in such existing plans, depends on their degree of consistency with those within the Framework. This will be a matter addressed later in the report.
 28. The saved policies of the LP which do have relevance are as follows:
 - **LP Policy BE1** requires the provision of appropriate infrastructure and facilities in order to mitigate the impacts of development and make provision to safeguard the local environment.
 - **LP Policy BE2** new development should respect and, where possible improve the character and quality of its surroundings and provide, amongst other things, an interesting environment.
 - **LP Policy BE3** seeks to make provision for the safe movement of people and vehicles, whilst minimising impact upon the environment.

²⁶ Lomas rebuttal appendix 8 – IN 015 (Part 1) & IN 016 (Part 2).

²⁷ No firm timetable for adoption was proffered by the Council.

²⁸ Inquiry Doc 5.

²⁹ General Statement of Common Ground (SofCG) section 3.1 – Inquiry Doc 1.

- **LP Policy BE18** identifies that where development could give rise to unacceptable levels of pollution, adequate mitigation measures to ensure that any discharge or emissions will not cause harm to users of land, including the effects on health are provided.
 - **LP Policy BE20** requires that development will not be permitted which adversely affect the safety near notifiable installations.
 - **LP Policy NE1** safeguards the countryside. Development should maintain or enhance the value of the countryside for its own sake: its beauty, its character and distinctiveness, the diversity of its natural resources, and its ecological, agricultural, cultural and outdoor recreational values.
 - **LP Policy NE2** deals with development in the countryside around Witney where it aims to prevent harm to the rural character of the area avoiding undesirable urban sprawl.
 - **LP Policy NE3** identifies that proposals will be resisted where they would harm the local landscape character of the District. The Windrush in Witney Project Report would be taken into account in this regard.
 - **LP Policy NE13** deals with biodiversity conservation seeking to maintain, safeguard and enhance priority habitats and species. Proposals should include measures to mitigate any effects upon features of nature conservation value.
 - **LP Policy H2** seeks to improve and upgrade the environment being focused on the quality of new residential development.
 - **LP Policy H7** identifies Witney as a main centre³⁰, where new dwellings will be permitted within the existing built-up areas of the settlement that would be a logical complement to the existing pattern of development and would not extend that settlement into open countryside.
 - **LP Policy H11** seeks to secure an element of affordable housing as part of residential development schemes.
 - **LP Policy WIT3** development on land within or where it would be visible from the Windrush in Witney Policy Area should protect and enhance the intrinsic landscape, character, ecology and cultural value of the valley³¹.
29. Accordingly the Council rely upon the relevant saved policies of the LP and national guidance in their opposition of this proposal.
30. The parties agree that housing supply policies pre-date the Framework and were drawn up at a time when it was anticipated that future housing requirements could be met exclusively on allocated sites and brownfield land with no release of greenfield sites on the edge of settlements being necessary. As such, the Council accept that to meet future housing requirements, some development on sustainable urban fringe greenfield land will be necessary³².

³⁰ LP Policy H7 – Group C: Service Centres.

³¹ The appeal site lies adjacent to the Windrush in Witney Policy Area.

³² Source SofCG (Inquiry Doc 1 – paragraph 3.1.4) and proofs of evidence.

Agreed position on Full Objectively Assessed Need

31. Within the jointly proposed Position Statement on FOAN³³ the following points were agreed between the main parties. The curved brackets () indicate the relevant paragraph numbers within the Position Statement.
- The EiP Inspector's Preliminary Findings – Part 1 on the West Oxfordshire Local Plan Examination³⁴ represents the most recently examined position in respect of the FOAN and the housing requirement. It does not explicitly identify or conclude on a figure for either the housing requirement or the FOAN.
 - The Oxfordshire Strategic Housing Market Assessment (SHMA)³⁵ provides the most up-to-date, comprehensive, objective assessment of housing need, including affordable housing needs available for the Oxfordshire Housing Market Area (HMA)³⁶ (1.4).
 - Following the conclusion of the EiP Inspector the housing requirement of 525 dwellings per annum³⁷ is not justified. This does not represent the FOAN for the purposes of assessing the Council's five year housing land supply in this appeal.
 - The demographic starting point is around 490 dwellings per annum (dpa) (1.6)³⁸.
 - The affordable housing needs of the District are agreed at 274 affordable dpa (1.10)³⁹.
 - At the Inquiry a Committed Economic Growth scenario should form the basis for considering the alignment of jobs and homes (1.14)⁴⁰.
 - The FOAN for West Oxfordshire will need to reflect any apportionment of needs from Oxford City that arises through the Oxfordshire Growth Board (OGB) and that this would be in addition to West Oxfordshire's own identified needs (1.16-1.17).
 - The EiP Inspector does not explicitly identify an FOAN figure (1.19)⁴¹. However, the SHMA provides a recommended housing figure for West Oxfordshire of 660 dpa⁴².
 - The appellant company's position is that the FOAN is currently evidenced to be 660 dpa⁴³ (3.0).
 - The Council considers the FOAN to be likely to be in the order of 598 dpa (3.0).

³³ Inquiry Doc 18 – agreed document proposed by Martin Taylor (appellant company) and Chris Wood (Council).

³⁴ Lomas rebuttal appendix 8 – IN 015 (Part 1).

³⁵ CD7.5.

³⁶ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 2.2.

³⁷ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 10.1

³⁸ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 4.9.

³⁹ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 5.1.

⁴⁰ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 6.13.

⁴¹ Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 10.5.

⁴² Lomas rebuttal appendix 8 – IN 015 (Part 1) – para 10.5.

⁴³ Taylor proof and rebuttal proof.

Agreed position on Housing Land Supply

32. Within the Statement of Common Ground (Housing Land Supply) (SofCGHLS)⁴⁴ the following points were agreed between the main parties. The curved brackets () indicate the relevant paragraph numbers within the SofCGHLS.

- Base date is 1 April 2015 for the purposes of calculating the 5YHLS (1.9).
- Using the SHMA figure of 660 dpa the shortfall would be 1,419 dwellings which equates to 2.15 years supply of housing land (1.7).
- Using the Council's promoted FOAN the overall shortfall in supply since the start of the plan period would be 1,171 dwellings. Against the 598 dpa figure, this shortfall equates to 1.96 years supply of housing land (1.6).
- The windfall allowance is justified and should be included in the claimed supply⁴⁵.
- In relation to persistent under delivery over a long time period the Council consider the normal 5% buffer should be applied (1.13). The appellant company disagree and promote the application of the 20% buffer figure (1.13). However, the EiP Inspector, who only recently considered this aspect of the calculation of the 5YHLS concluded at paragraph 2.14 of The Inspector's Preliminary Findings – Part 2 on the West Oxfordshire Local Plan Examination⁴⁶ that only the 5% buffer is currently required.
- In the method for dealing with the calculated shortfall the parties cannot agree on whether to apply the Sedgfield or Liverpool approach.
- The summary position of the main parties using the SHMA requirement of 660 dpa is⁴⁷:

Sedgfield method with 5% buffer

- Council – 4.10 YHLS
- Appellant Company – 3.29 YHLS

Sedgfield method with 20% buffer

- Council – 3.59 YHLS
- Appellant Company – 2.88 YHLS

Liverpool method with 5% buffer

- Council – 5.17 YHLS
- Appellant Company – 4.15 YHLS

⁴⁴ Inquiry Doc 17 – agreed document proposed by Martin Taylor (appellant company) and Chris Wood (Council).

⁴⁵ Inquiry Doc 38 – Appellant company's Closing, para 82.

⁴⁶ Lomas rebuttal appendix 8 - IN 016 (Part 2)

⁴⁷ The calculation of these relative positions was agreed – Tables pages 3-6 inclusive of SofCGHLS.

Liverpool method with 20% buffer

- Council – 4.53 YHLS
- Appellant Company – 3.63 YHLS
- The summary position of the main parties using the Council's FOAN of 598 dpa is⁴⁸:

Sedgefield method with 5% buffer

- Council – 4.65 YHLS
- Appellant Company – 3.73 YHLS

Sedgefield method with 20% buffer

- Council – 4.07 YHLS
- Appellant Company – 3.27 YHLS

Liverpool method with 5% buffer

- Council – 5.77 YHLS
- Appellant Company – 4.63 YHLS

Liverpool method with 20% buffer

- Council – 5.05 YHLS
- Appellant Company – 4.05 YHLS
- It is agreed that on the basis of the Sedgefield method⁴⁹ the Council cannot demonstrate a 5YHLS as required under paragraph 47 of the Framework based on a FOAN figure of either 598 dpa or 660 dpa (1.21)⁵⁰.
- Accordingly in these circumstances⁵¹ the Council's relevant policies for the supply of housing should not be considered up-to-date in the context of paragraph 49 of the Framework (1.22).

Agreed position on Highways & Transport⁵², including Air Quality

33. The following points are the essence of the SofCGH&T, including a later addendum, relating to Highways and Transportation issues between the appellant company and Oxfordshire County Council (ASofCGH&T), as Highway Authority (HA) (the curved brackets () indicate the relevant paragraph numbers within the SofCGH&T and ASofCGH&T):

⁴⁸ The calculation of these relative positions was agreed - Tables pages 3-6 inclusive of SofCGHLS.

⁴⁹ Using either 5% or 20% buffer.

⁵⁰ The matters of whether the Sedgefield or Liverpool method or 5% or 20% buffer will be considered later in the report.

⁵¹ Sedgefield method calculation.

⁵² Source Statement of Common Ground: Highways & Transportation (SofCGH&T) – Rowland proof appendix GR1 & Addendum to Highways and Transport SofCG – Inquiry Doc 40.

- The submitted Transport Assessment (CD2.5) and additional work underpinning the SofCGH&T & ASofCGH&T has appraised the traffic impact of the development appropriately (SofCG⁵³ 2.11.2);
- No pattern of accidents has been identified by the HA so as to give rise for concern regarding the impact of the appeal development or the need for any accident remediation (SofCGH&T 2.4);
- Within the areas of the junctions of Burford Road/High Street/Bridge Street and Bridge Street/West End/Woodgreen/Newland, congestion is such that it has led to an Air Quality Management Area (AQMA) being declared at Bridge Street. The congestion is mainly due to there being only one bridge crossing of the River Windrush, which acts as a bottleneck for traffic travelling between east and west Witney (SofCGH&T 2.6.3)⁵⁴;
- It is agreed that the proposed scheme would add 35 vehicles in the AM peak hour and 37 vehicles in the PM peak hour at these junctions. It would lead to a worsening of the operating conditions and that the level of increased traffic warrants mitigation (SofCGH&T 5.3.4);
- A financial contribution towards the SGSR scheme is agreed as providing the necessary mitigation from a transport and air quality perspective in relation to the identified issues within Bridge Street and its environs (SofCGH&T 7.1, ASofCGH&T 7.1);
- The SGSR scheme would be delivered in two parts. Phase 1 would be the eastbound off-slip with Phase 2 being the westbound on-slip (ASofCGH&T 8.1);
- The promoters of the East Witney Strategic Development Area (EWSDA) control all of the land required to deliver the eastbound off-slip. It is agreed that the SGSR eastbound off-slip could be operational before the implementation of the SGSR westbound on-slip (ASofCGH&T 8.2);
- In the situation that the eastbound off-slip is implemented prior to the on-slip it is agreed that this would reduce traffic along Bridge Street in the northbound direction – 23% (AM peak hour) and 30% (PM peak Hour). These represent a significant reduction in traffic (ASofCGH&T 9.3);
- The EWSDA site promoters and the HA are in discussions in relation to the possibility that the westbound slip could be reconfigured (Inquiry Plan A) so that no additional land from any other party would be required, thereby improving the prospects of timely deliverability of the on-slip facility;
- The appeal site has an acceptable level of public transport accessibility; (SofCGH&T 2.7.4);
- The proposed access from Burford Road has been the subject of a Road Safety Audit which has not identified any issues which cannot be satisfactorily addressed at the reserved matters stage (SofCGH&T 3.2.3);
- The nearest primary school is some 800 metres from the appeal site. A Toucan Crossing and a cycle lane both on Burford Road in the vicinity of the appeal site

⁵³ SofCG – Inquiry Doc 1.

⁵⁴ In respect of the AQMA its extent only takes in the street and the front facades of the buildings onto Bridge Street. The buildings are not otherwise within the AQMA.

would offer positive encouragement for future residents to walk and cycle to school (SofCGH&T 4.3.1, 4.3.2)⁵⁵;

- The submitted Travel Plan is acceptable in principle and the terms of the UU would secure its implementation (SofCGH&T 4.6.1, 4.6.2);
- The off-site highway works on Burford Road, Tower Hill and Windrush Valley Road provide the necessary mitigation for the 260 scheme (SofCGH&T 5.3.3 & ASofCGH&T 3.1);
- The contribution towards public transport enhancements is proposed to be spent solely for this purpose – improvement of the Carterton-Witney-Oxford and/or Burford-Witney-Woodstock bus services, including frequency and extended hours of operation (SofCGH&T 4.5.1 & ASofCGH&T 4.1); and
- On the basis of all of the above factors the HA has no objection to the scheme for 260 dwellings on highways or air quality grounds⁵⁶ (SofCGH&T 7.7, ASofCGH&T 10.1 & SofCG 2.11.2) subject to the agreed UU contributions and highway works.

General matters not in dispute⁵⁷

34. In relation to the planning considerations, the Council and the appellant company are in agreement that (the curved brackets () indicate the relevant paragraph numbers within the SofCG):

- 40% of development would be affordable housing. This level of provision is acceptable and can be secured by an appropriately worded condition (2.3.1, 2.6.3);
- The agreed matters are equally applicable to the 270 or 260 dwelling scheme (2.3.2);
- Witney is a sustainable settlement, offering a wide range of amenities, shops, services, employment and schools. The appeal site lies within reasonable walking distance of many of these facilities (2.5.1);
- Witney is identified as a main service centre in the LP (2006) and is therefore intended to be a key focus for housing and economic growth (2.6.1);
- The principle of further housing development in Witney is acceptable in its broader sense (2.6.1);
- The delivery of market and affordable housing is a material consideration attributed significant weight in the balance of this decision (2.6.2);
- The Council has no objection in principle to the proposed density of the dwellings within the site⁵⁸ (2.7.1);

⁵⁵ These would be secured through a S278 agreement.

⁵⁶ These are matters which the report will return to as, whilst the Council no longer maintained their concerns in this regard, third parties still maintained opposition to the development on these grounds.

⁵⁷ Source SofCG (Inquiry Doc 1) and proofs of evidence – matters of agreement between the main parties.

⁵⁸ Design and Access Statement (CD 2.3).

- The effect of the proposal on the character and appearance of the area is a matter for the judgement of the decision-maker;
- The proposed development would not result in substantial harm to any designated or non-designated heritage asset (2.8.1);
- The revised Ecological Appraisal – February 2015 – CD2.6 demonstrates that the sensitive habitats and species of the River Windrush Conservation Trust Area would not be harmed by the development. Therefore, the terms of LP Policies WIT3, NE13 and the Framework would not be compromised (2.12.1);
- The appeal site does not lie within a flood risk area being located within Environment Agency Flood Zone 1. The proposed attenuation pond and Sustainable Drainage Systems would deliver a betterment scheme for surface water and is considered a benefit of the scheme (2.13.1, 2.13.2);
- No probable archaeological heritage assets are present and no material harm would arise from the development subject to appropriate safeguarding conditions (2.14.1); and
- The parties agree that the HSE does not object to the proposal for 260 dwellings, with the consultation response confirming their advice to be ‘Do not advise against’ the grant of planning permission (2.15.1).

The case for the appellant company

Character and appearance

35. The appeal site is not designated in national, regional or local terms that would indicate it has some particular landscape quality that ought to be subject of some special protection. The valley floor, which does not comprise part of the site, is subject to LP Policy WIT3, ‘the Windrush in Witney’. The policy map⁵⁹ does not include the appeal site in this policy area. The Council’s view⁶⁰ is that the terms of the policy extend protection to the open valley side, which includes the appeal site, it not being able to be separated from the policy protected valley floor. However, upon closer examination⁶¹, specifically the Landscape Types Plan⁶² from the West Oxfordshire Landscape Character Assessment, Mr Sacha conceded that the valley floor and valley side were indeed separate landscape types and that as such they could not logically be considered integral to one another.
36. The appeal site is irregular in shape and currently in agricultural use. Although the site is located within a rural character area, it lies directly to the north of existing residential development along Burford Road and to the west of housing at Springfield Oval.
37. The Witney Landscape Study (2007)⁶³ states that new housing at the top of Tower Hill faces out over countryside with minimal planting and is dominant in views from Area A and elsewhere to the north. It continues ‘The north western edge of Witney, high up the valley side, is visible from the higher part of Area A,

⁵⁹ Fig 4, Appendix 4 Holliday Proof.

⁶⁰ The evidence of Mr Sacha.

⁶¹ Sacha in cross-examination.

⁶² Holliday proof, Appendix 5.

⁶³ CD7.3.

presenting a hard edge to the countryside'. Mr Sacha agreed with this description⁶⁴. The built up area of Witney features repeatedly in the assessment of the appeal site⁶⁵. The Council accept that built development is visible from the valley floor to the south and the east; that the valley has experienced development down the valley side in the past and that the modern development, including a four storey tower element, along Burford Road is visually prominent to a degree⁶⁶.

38. Mr Sacha confirmed that his evidence principally responded to the appellant company's Landscape and Visual Impact Appraisal (LVIA) dated February 2015⁶⁷. He had not undertaken his own independent standalone assessment "...mine was not a truly independent study. I looked at the evidence from the LVIA and agree and disagree with elements. What I did not do was undertake my own LVIA assessment"⁶⁸. The appellant company had revisited the original assessment and updated the conclusions contained therein⁶⁹. The Council maintained the general view that the assessment under-stated the magnitude and effects of harm⁷⁰, although Mr Sacha conceded that he had not reconsidered the revised conclusions of Mr Holliday individually⁷¹.
39. The site is visible from a number of surrounding public rights of way. However, due to the orientation of these paths the appeal site is not the principal focus of the viewer. By way of example, the principal focus is the open countryside beyond Witney if walking north-west from Burford Road as the site lies behind the walker⁷². Even when returning to Burford Road the principal focus is the existing built form of Witney as the majority of the appeal site lies to the periphery of the view.
40. Whilst not forming part of the Council's reasons for refusal, nor appearing in the submitted written evidence, the Council for the first time, at the inquiry, contended that the appeal site comprises a valued landscape for the purposes of paragraph 109 of the Framework. Whilst maintaining that the wider landscape, of which the appeal site is part, is valued, in the Council's evidence there was no reference to the site falling within paragraph 109, no consideration of whether it does fall within paragraph 109 or structured assessment to that end and no assessment of features of value or quality in paragraph 109 terms⁷³.
41. Mr Sacha asserted that his general assessment of the site had been undertaken mindful of the GLVIA3 methodology⁷⁴. However, in relation to valued landscape

⁶⁴ Sacha proof para 6.2.

⁶⁵ see Holliday proof 3.2, 3.14, 3.24, 3.25, 3.28, 6.6, 6.7, 8.5, 9.18, 10.2, 10.12.

⁶⁶ Sacha in cross examination.

⁶⁷ CD2.4, Landscape and Visual Impact Appraisal, February 2015. Mr Sacha agreed that the LVIA followed the appropriate methodology, specifically the Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3), though noted that such an assessment relies upon professional and qualitative judgements.

⁶⁸ Sacha in cross-examination.

⁶⁹ Holliday proof, Appendix 7 - Updated Landscape and Visual Impact Tables.

⁷⁰ Sacha in cross-examination.

⁷¹ Sacha in cross-examination and Inspector's questions.

⁷² Accepted by Sacha in cross-examination.

⁷³ Sacha in cross-examination.

⁷⁴ Sacha proof para 2.5.

when referred to Box 5.1 of the GLVIA3⁷⁵ the witness was unable to identify any specific reference to the identified parts of such an assessment⁷⁶, nor to any other evidence in this regard. The Council accepted that simple popularity was insufficient to satisfy paragraph 109 and further confirmed that the site has no demonstrable physical attributes⁷⁷. The weight of evidence is that the appeal site is not a valued landscape in paragraph 109 of the Framework terms.

42. The appellant company accept that if development took place there would be change. That would be the same with any existing greenfield site on the edge of the settlement. However, change is not the same as harm. In this case there is nothing either in the landscape character or the potential visual impact of the proposed development of this site adjacent to the existing urban edge of Witney to justify the withholding of consent.

Impact on Heritage Assets

43. There is no dispute that there is no adverse impact upon the physical fabric of any of the heritage assets⁷⁸. It is the impact on their settings which is in question⁷⁹.
44. The Council accepted that all of the local planning policies identified as being relevant to the consideration and protection of heritage assets⁸⁰ related to landscape and countryside matters only and not any framework for protecting and considering heritage assets. In cross-examination Mr Martin accepted that there were no other relevant local plan policies and that in heritage terms, the proposal was agreed to be in accordance with the development plan.
45. On behalf of the Council, Mr Martin also confirmed that in his opinion no statutory provisions were engaged nor any part of the Framework offended by the proposal. However, whilst considering the terms of paragraphs 129 and 135 of the Framework no consideration had been given to Framework paragraph 134. This would have the consequence that even where harm to the setting of a

⁷⁵ Inquiry Doc 12.

⁷⁶ Sacha cross-examination.

⁷⁷ *Stroud DC v SSCLG* [2015] EWHC 488 Admin CD 15.14

⁷⁸ Crawley Mill, Witney Mill (both grade II listed buildings) and New Mill – non-designated heritage asset. A detailed assessment of the heritage assets and their significance – Smith Proof Appendix C.

⁷⁹ Mr Martin, the Council's heritage witness, accepted that some of his evidence strayed into the landscape assessment (see proof paras 2.7-2.10, 3.7-3.10, 3.13, 3.17, 5.1 and 5.2 amongst others) as well as constraints (proof para 3.12). He accepted in cross-examination that the evidence of Mr Sacha was to be preferred in this regard. Within his proof he also gave evidence in relation to design, ecology, townscape character, scale, layout, building for life (see proof paras 3.10 – 3.16 and 3.18). It was agreed by Mr Martin that either such matters remained within the control of the LPA on the basis that the application was outline only or were beyond the remit of his brief in relation to heritage assets. In addition, he was able to confirm that no criticism of the proposal in terms of design, scale or layout were contained within the reasons for refusal (in cross-examination).

⁸⁰ LP Policies NE1, NE2, NE3, WIT3 and H7 and WIT4 and EH1 of the emerging Local Plan- see Martin proof para 5.6 – point conceded in cross-examination.

- designated heritage asset is contended it follows that there has been no balancing of that harm against the public benefits of the proposal.
46. The Council provided no documented evidence of how the setting of the heritage assets was determined. Mr Martin referred to it in oral evidence but was unable to relate his assessment to the Historic England guidelines⁸¹. He also confirmed that he had not followed the required approach nor had he moved on to the second stage assessing the significance of the setting and effect upon it of the proposal.
47. The Council accepted that in respect of Crawley Mill⁸² there would be only minor harm to the setting of the building, mainly comprising restriction of some views of the mill chimney in views from the appeal site and environs, due to the new buildings (see Martin Proof para 4.2). Even if some harm were found it is at the lowest end of the spectrum of less than substantial harm within the context of Framework paragraph 134.
48. In respect of Witney Mill there is no inter-visibility with the appeal site, a point accepted by the Council. For the Council their point related to the appeal site being part of the journey travelled along the river valley beyond the Mill to reach a point where the appeal site would be visible or vice versa. There is considerable intervening development between the Mill and the appeal site, as well as raised topography and mature trees. The journey the Council refer to is not a heritage asset. The appeal site is not in the setting of Witney Mill and the proposal has no impact on the Mill's significance⁸³.
49. New Mill, being in office use with associated car parking and external lighting, is clearly no longer in the active production of blankets. There is only limited inter-visibility between the appeal site and New Mill⁸⁴. The appellant company's considered position is that the appeal site makes only a minor contribution to the significance of the Mill, is only a small element of the rural context, and is not a primary contributor to the asset's significance, which is mainly derived from the architectural, historic and aesthetic interest of the Mill building itself (see Smith Proof para 5.6). In respect of this undesignated heritage asset the harm could not be characterised as anything more than minor⁸⁵.
50. The contention of material harm to heritage assets on the part of the Council has not been substantiated. There is at most minor harm to the significance of Crawley Mill, minor harm to the setting of New Mill and no harm to the significance of Witney Mill. The public benefits of the scheme outweigh any levels of harm to the identified Mills' heritage significance caused by the proposed development, even taking into account the statutory duty, and the affording of great weight to harm to setting⁸⁶. In consequence, permission should not be withheld on heritage grounds⁸⁷.

⁸¹ CD10.1.

⁸² Some 1.5 kilometres distant from the appeal site.

⁸³ Smith proof para 7.2.

⁸⁴ Point accepted by Mr Martin in cross-examination.

⁸⁵ Smith proof para 8.8.

⁸⁶ CD15.1 - Barnwell Manor.

⁸⁷ Wood in cross-examination agreed the impact upon the setting of heritage assets could not be, of itself, a reason for refusal.

The safety of future occupants of the proposed development

51. The appeal site lies adjacent to the 'Flogas' LPG bottling plant. The HSE was consulted by the Council on the 270 dwelling scheme, but was not formally consulted on the second 260 dwelling scheme. At the time of the consultation the tool used was PADHI+. In the intervening period this has been replaced with the HSE Planning Advice Web App. Both are based upon the HSE Land Use Planning Methodology⁸⁸ (LUPM). In relation to the first application the HSE advice was 'Advise Against' the granting of planning permission. In relation to the 260 dwelling scheme the HSE were not formally consulted, nonetheless, the PADHI+ consultation was run by the Council again resulting in 'Advise Against'. The HSE confirmed that in an un-amended form the second, 260 dwelling application, would also result in an 'Advise Against'⁸⁹ response.
52. The HSE were unaware that the present appeal was proceeding until September 2015, being notified only when the HSE Press Office was contacted. Once aware, the HSE in turn contacted the Council to ascertain the position as regards its consultation advice. The HSE was also contacted at this point by the appellant company in order to determine whether it was possible to amend the scheme to the satisfaction of the HSE. By revisiting the scheme and removing all dwellings from the 'Inner Zone' and limiting the number of dwellings in the 'Middle Zone', the proposal was made acceptable in principle to the HSE.
53. In consequence, provided that the amendments are satisfactorily conditioned, the HSE advice on the amended scheme (that is to say the original scheme with the Inner Zone sterilised and the Middle Zone having only limited development) is 'Do not advise against'.
54. It is the Council's case that, notwithstanding these amendments and the changed advice of the HSE, the amended proposal ought to be refused planning permission on the grounds of public safety. As was explored in the evidence of Professor Nathaniel, various points were raised to justify this position but it is the case of the appellant company that such a position is untenable.
55. To avoid repetition in the reporting of this case, the technical evidence of the HSE and its interpretation and application by that statutory body, in essence, mirrors the case for the appellant company⁹⁰. Therefore, in this regard paragraphs 175-197 inclusive of this report equally apply under the heading 'Case for the appellant company'.
56. The Council suggested that Framework paragraphs 56, 61 and 64, which all relate to design matters, would be compromised, as to permit development near a hazardous installation would constitute poor design. These policies cannot be read in such a contorted manner to bear upon health and safety matters⁹¹.
57. Framework paragraph 172 provides that planning policies should be based upon up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents. The location of the installation is obviously well known and the HSE advice, which can be incorporated into the scheme

⁸⁸ Birch Proof Appendix 14.

⁸⁹ Birch evidence-in-chief.

⁹⁰ As presented by Sejal Dixon.

⁹¹ Tesco –v- Dundee [2012] UKSC 13.

design via condition, provides mitigation of the consequences of an incident by providing appropriate separation distances between the installation and the proposed development.

58. LP Policy H2 sets residential housing standards, and the Council considered that the proposal conflicts with LP Policy H2(d) in that the development would create unacceptable living conditions for existing and new residents. Again this policy is not intended to consider health and safety matters. The supporting text provides that high quality design and layout, provision of reasonable standards of privacy and space, satisfactory provision for the parking of vehicles are even more important; the policy reveals no reference, explicit or implied, to public safety matters. On that basis its continued use as a reason for refusal on health and safety grounds is simply unsustainable.
59. LP Policy BE20 provides that the siting of such installations will be subject to planning controls aimed at keeping these separated from housing and other land uses with which such installations might be incompatible from the safety viewpoint. Further, to this end the Council will seek the advice of the Health and Safety Executive. The Council has sought the advice of the HSE and the HSE, in turn, have advised as to the appropriate separation distances between the installation and the proposed development. Those distances have been adopted by the appellant company and can be secured by condition; in consequence there is no conflict with LP Policy BE20.
60. Given the 'Do not advise against' advice of the HSE in the context of the terms of an agreed condition and having explored the evidence in full, it is submitted that the Council's position in relation to the reason for refusal on public safety grounds is simply untenable and should be rejected.

Housing - Full Objectively Assessed Need (FOAN)

61. The Council accept that the WOLP housing requirement figure of 10,500 has not been justified in accordance with the view of the EiP Inspector⁹². The 525 dpa FOAN figure from the WOLP was abandoned for the purposes of the Inquiry, the Council acknowledging that in the circumstances of the findings of the EiP Inspector they did not have a FOAN figure. Mr Wood, taking a broad brush approach then applied the 2012 household projections to the SHMA⁹³ demographic baseline⁹⁴. This produced a percentage reduction of 9.5% which he simply applied to the SHMA mid-point figure of 660 dpa⁹⁵ to produce a FOAN figure of 598 dpa which the Council adopted as their FOAN figure for the purposes of this appeal.
62. This is a simplistic approach to take and fails to take account of the multitude of variables that fall to be considered when assessing FOAN. In addition, the EiP Inspector cautioned that a demographic starting point of around 490 dpa may be

⁹² Lomas rebuttal appendix 8 – IN 015 (Part 1), page 15, para 10.1.

⁹³ CD7.6 - The Oxfordshire SHMA provides the most up-to-date, comprehensive, objective assessment of housing need, including affordable housing needs available for the Oxfordshire HMA – Lomas rebuttal appendix 8 – IN 015 (Part 1), page 2, para 2.8.

⁹⁴ This calculation applies the latest 2012 household projections to the SHMA demographic baseline giving a starting point of 490 dpa as against the original 541 dpa.

⁹⁵ Appellant company's favoured FOAN figure.

embedding some suppression of household formation⁹⁶, a point that Mr Wood accepted his 598 figure did not take account of⁹⁷.

63. In justification of the Council's lower figure they relied upon supposed historic over-delivery as against the targets of the South East (SE) Plan. This was not accepted by the EiP Inspector. He did not consider that any such subtraction would be justified⁹⁸. That over-delivery was against a plan figure which did not represent objective need, as evidenced by the fact that the SE Plan target fell below the demographic starting point and was the product of a different planning regime.

Affordable Housing

64. The Council Inquiry figure of 598 dpa FOAN did not include any affordable housing provision⁹⁹. Mr Wood was of the mind that affordable housing was not a constituent part of the FOAN¹⁰⁰. Framework paragraph 159 provides that the SHMA should address the needs for all types of housing, including affordable housing. The Council's initial position was that 'address' did not mean 'meet'¹⁰¹. The decisions of *Satnam*¹⁰² and *Kings Lynn*¹⁰³ identify that local plans should meet the FOAN for affordable housing needs¹⁰⁴. This need figure should be addressed in determining the FOAN¹⁰⁵. However, neither the Framework nor the Planning Practice Guidance (PPG) suggest that they have to be met in full when determining the FOAN.
65. It is clear from these cases that, as a minimum, some of the affordable housing need should be included within the FOAN figure. Mr Wood conceded¹⁰⁶ that the approach advocated in the Planning Advisory Service PPG, Section 9¹⁰⁷, that informed his support for not including FOAN, could not be considered correct.
66. In these circumstances it is inevitable that once account is taken of the affordable housing need then the Council's FOAN figure must rise. This in turn is supplemented by the EiP Inspector's finding that he had seen no evidence of any careful, balanced consideration by the Council of the extent to which the gap in affordable housing provision should be narrowed by an uplift in market housing¹⁰⁸. It is agreed between the parties that the 40% affordable home provision for the present site is a substantial social benefit¹⁰⁹ and would assist the Council in seeking to address its affordable housing shortfall.

⁹⁶ Lomas rebuttal appendix 8 - IN 015, para 4.11.

⁹⁷ Wood in cross-examination.

⁹⁸ Lomas rebuttal appendix 8 – IN 015 (Part 1), para 4.2.

⁹⁹ Confirmed by Mr Wood in oral evidence.

¹⁰⁰ It is common ground that the requirement for affordable housing is 274 dpa and further that there is a significant and increasing shortfall.

¹⁰¹ Wood in cross-examination.

¹⁰² CD15.8 *Satnam Millenium Ltd v Warrington Borough Council* [2015] EWHC 370 (Admin)

¹⁰³ CD15.5 *Borough Council of Kings Lynn and West Norfolk v SoSCLG* [2015] EWHC 2464 (Admin).

¹⁰⁴ CD15.8 *Satnam* - Paragraph 43(iv)(b).

¹⁰⁵ CD 15.5 *Kings Lynn* - paragraph 35.

¹⁰⁶ In cross-examination.

¹⁰⁷ Inquiry Doc 19.

¹⁰⁸ Lomas rebuttal appendix 8 - IN 015, para 5.11.

¹⁰⁹ Wood also accepted that it was compliant with local plan policy.

67. The failure of the Council to consider affordable housing within its FOAN assessment has clear implications for its own assessment of FOAN in that the correct figure must be higher than the 598 dpa relied upon.

Oxford City unmet need

68. A further consideration is the unmet need of Oxford City assessed roughly as 15,000 dwellings over the plan period. It is anticipated that this unmet need will need to be met by the surrounding districts, including West Oxfordshire. The Council's FOAN figure does not take account of this, although the proposed distribution of the unmet need is at a relatively early stage of determining apportionment. However, it was clear to the EiP Inspector that the Council should engage proactively with the City Council and others and plan accordingly. It is also clear that any apportionment of unmet need to West Oxfordshire would ultimately increase the FOAN figure.
69. The SHMA provides a recommended housing figure for West Oxfordshire based on assumptions that would largely overcome the above shortcomings¹¹⁰. It is the appellant company's case that, for the purposes of this inquiry, the only appropriate figure for the FOAN is that determined by the SHMA of 660 dpa.

5 Year Housing Land Supply

70. The Council draw support from the EiP Inspector's interim findings which advocate a period of 10 years in which to consider the question of delivery¹¹¹, concluding that it would not be reasonable to conclude at present that there had been persistent under delivery¹¹². It is however apparent that the latest completion figures for 2015/16 were not before the EiP Inspector who noted that if delivery continues to be below that which is required, future decision makers may take a different view¹¹³. He suggested that the Council would be in a more robust position going forward if the plan creates a 5 year supply with a buffer greater than 5%, thus allowing for any unexpected delays¹¹⁴. The EiP Inspector was concerned that the question of 'persistence' in the Council's under delivery was reaching a tipping point. The completion figure for the first six months of 2015/16 is 140. A simple extrapolation of this figure would result in a year end figure of 300, well below target and only further adding to the shortfall. This figure provides little cause for optimism that the Council will achieve their target this year.
71. There was an over performance for the period 2003-2010, albeit against a constrained SE Plan target, but there is no definition in the Framework of what constitutes persistent under delivery. Taking into account the projected figures for 2015/16 the Council has failed to meet its target for each of the last 5 years (being 5 of the last 10 years)¹¹⁵.

¹¹⁰ Lomas rebuttal appendix 8 - IN 015, para 10.5.

¹¹¹ Lomas rebuttal appendix 8 - para 2.14 IN 016.

¹¹² Lomas rebuttal appendix 8 - para 2.14 IN 016.

¹¹³ Lomas rebuttal appendix 8 - para 2.14 IN 016.

¹¹⁴ Lomas rebuttal appendix 8 - para 2.14 IN 016.

¹¹⁵ Three Pots (CD14.15) appeal decision such a consideration was a 'mathematic rather than moral judgement' (CD14.15 para 13). 'The Council has failed to meet the target 50% of the time. This seems quite persistent to me' (CD14.15 para13).

72. Not only do the Council fail to demonstrate an acceptable record of delivery on their preferred timescale of 10 years, they have quite clearly failed by a considerable margin to achieve their target for the last five¹¹⁶.
73. In light of the above it is clear that the Council has persistently failed to meet its housing target and further that present performance is exacerbating this issue and increasing the shortfall. Therefore, the appropriate buffer to be applied to the shortfall is 20%.

'Sedgefield' v 'Liverpool'

74. It is common ground¹¹⁷ that taking the Sedgefield approach to the shortfall the Council cannot demonstrate a five year housing land supply on either its own or the appellant company's target figures.
75. However, the Council has a strong preference for the Liverpool method not least as the Council has always used it. The PPG¹¹⁸ provides that local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible¹¹⁹. Mr Wood accepted that there was no indication that the remainder of the plan period could be used, nor had the Council considered the undersupply and assessed that the shortfall could not be addressed within a five year period. The EiP Inspector concluded similarly in his interim findings that National Guidance seeks any such shortfall to be made up in the next 5 years. On the Council's own assessment of land supply this is achievable and so the Council accepts that an alternative approach could not currently be justified¹²⁰.
76. The Council had sought to rely upon the Bloor Homes decision¹²¹ which expressed no specific preference for either the Liverpool or Sedgefield method. It was accepted¹²², however, that as that decision pre-dates the publication of the PPG, which in turn clearly advocates the Sedgefield approach, it can no longer be considered relevant in relation to this matter. It would only be in the face of strong evidence that the Council would act against the recommendations of the EiP Inspector who clearly identified Sedgefield as the appropriate method¹²³.
77. The PPG requires the Sedgefield approach to be used, even where an authority cannot remedy its shortfall within the five year period the suggested solution is not a reversion to Liverpool but a need to work with neighbouring authorities¹²⁴. For these reasons the Sedgefield method should be applied.

¹¹⁶ Tetbury decision (CD14.25) S of S position 'On the basis that the Framework requires the assessment of future housing delivery to look forward five years, looking back five years to assess the record of past delivery seems to me a reasonable approach' (CD14.25 para 14.20 & 14.23).

¹¹⁷ Inquiry Doc 17, SoCGHLS, para 1.21.

¹¹⁸ CD6.2.

¹¹⁹ CD6.2 ID 3-035.

¹²⁰ Lomas rebuttal appendix 8 - IR 016, para 2.15.

¹²¹ CD15.2.

¹²² Wood in cross-examination.

¹²³ It does not presently have that strong evidence.

¹²⁴ CD6.2 ID 3-035.

The 5 year supply assessment / Strategic Development Areas (SDAs)

78. The Council relies upon a number of large SDAs for its 5YHLS. The EiP Inspector concluded that the Council is relying on some delivery from all of these sites to contribute to the current 5 year supply assessment, so the likelihood of an early start on these sites is an important consideration¹²⁵. A number of these sites have complex issues to resolve which in turn suggest that such an early start is unlikely.

79. The difference between the parties is 804 dwellings in relation to four sites¹²⁶.

West Witney (North Curbridge) SDA

80. The Council assumes a delivery rate of 50 dpa per developer (unconfirmed) giving a total supply of 600 houses over the five year period. The agent for the site anticipated a delivery rate of 40 dpa.

81. Notwithstanding the above, this lower figure is further predicated on a number of significant issues being overcome, issues which to date have continued to delay progress. The site has outline consent. Completions were originally anticipated from September 2014, but the s106, has yet to be signed and no reserved matters application has been submitted. For the purposes of the EiP it was submitted that the s106 would be signed in October 2015, the reserved matters application would be submitted late 2015 giving a site start in early 2016. The Council accepted that the delivery of the scheme is clearly behind schedule, but continued to maintain that 50 units could be delivered in 2016/17.

82. Further, there remain significant concerns as to its viability. Such concerns were first raised at the planning application stage, the Committee report noting that the developers have submitted a viability appraisal which concludes that the overall viability of the scheme is less than generally accepted by the development industry¹²⁷. A further independent study commissioned by the Council concluded that on the basis of current costs and values there is a viability gap¹²⁸ and suggested that the Council should revisit viability at key stages in the development¹²⁹. The Council has not revisited the viability of the scheme, nor has any reserved matters application been submitted. The planning consent itself is conditioned such that the new junction on to the A40 must be completed before any more than 200 houses are constructed. No progress, nor planning application, has been made in this regard. The 480 figure promoted by Mr Lomas is robust as a maximum figure that this site could deliver in the five year period, even generous given the variety of factors which could potentially delay delivery coupled with the evident lack of progress to date.

¹²⁵ Lomas Rebuttal, Appendix 8 - IN 016 para 2.1.

¹²⁶ Inquiry Doc 17 - SoCGHLS, page 7 – Schedule of Disagreement.

¹²⁷ Lomas Rebuttal, Appendix 3, 5.60.

¹²⁸ Lomas Rebuttal, Appendix 3, 5.61.

¹²⁹ Lomas Rebuttal, Appendix 3, 5.61.

East of Chipping Norton SDA

83. The difference between the parties on this site is 384 dwellings¹³⁰. The site itself is in split control with one-third optioned by Cala Homes and the remaining two-thirds owned by the County Council. This site has yet to be examined as part of the EiP process and the site promoters have objected to the allocation as they are seeking a higher allocation of housing. Furthermore the site will be required to make significant contributions, including highways improvements (as yet not identified in detail), a new primary school (costed at £5.3m to be paid for in full by the developer) and significant sewerage infrastructure works to be taken through the centre of Chipping Norton¹³¹.
84. As this site has not yet been considered in the EiP it remains contrary to the development plan. The Wainhomes¹³² decision is relevant in relation to the inclusion of sites without planning permission and subject to outstanding objections, in particular paragraph 34(iv) '...where there is a body of sites which are known to be subject to objections, significant site specific evidence is required in order to justify a conclusion that 100% of those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years'¹³³. The delivery trajectory for this site in the SoCG for the EiP¹³⁴ did not envisage a suspension of the EiP process. In addition, there is currently only one developer involved, the proposed trajectory envisages three. A significant lead-in would be required given the need to inform the design and reserved matters process.
85. This site will not deliver any homes within the next five years and clearly fails to satisfy the provisions of footnote 11 of the Framework.

North Witney SDA

86. The Council contends delivery of 200 houses, the appellant company's position is 0. Part of the site is subject to an as yet undetermined planning application for 200 houses which was submitted by Taylor Wimpey in November 2014. Highway objections were raised in December 2014 and remain unsolved. The wider scheme is required to deliver the West End Link Road scheme at an estimated cost of £18m. The agent confirmed that the scheme was in abeyance until the EiP of the local plan was complete¹³⁵, a matter which has been significantly delayed.
87. The first phase, for 200 houses, relies upon the provision of the SGSR scheme to mitigate highways impact and was originally submitted when the Council acknowledged that it did not have a 5YHLS. The SoCG for the purposes of the EiP, WOLP15, provides that in order to secure a comprehensive and viable scheme, the Council has suggested to the land consortium that it prepares a comprehensive masterplan for the whole SDA to include an implementation

¹³⁰ Council assessing 384 as deliverable and appellant company as 0.

¹³¹ Lomas Rebuttal Proof paras 4.16-4.18.

¹³² CD 15.10, paras 34(iv) and 35(v).

¹³³ CD15.10, *Wainhomes (South West) Holdings Limited v SoSCLG* [2013] EWHC 597 (Admin).

¹³⁴ Wood proof Appendix 7b, WOLP19.

¹³⁵ Lomas proof para 4.48.

strategy¹³⁶. The SoCG envisages a resolution to grant consent in Autumn 2016. Given that there is no evidence of the master planning exercise being undertaken, such a timescale is at best ambitious. The approach of the Council in consideration of this SDA was that it would be allocated in the local plan and granted planning consent. Such an approach, when considering footnote 11 of the Framework and Wainhomes, was not indicative of the site being deliverable for the purposes of the 5YHLS.

88. Given the unanswered highways objections to the smaller, Woodstock Road, scheme and apparent lack of the required master planning exercise for the wider site being undertaken, this site cannot be included in the housing land supply for the purposes of the present inquiry.

East Witney SDA

89. The Council contends delivery of 100 houses within the 5 year period, the appellant company's position is 0. The delivery of the wider East Witney site is contingent upon the completion of the SGSR infrastructure improvements. The EiP Inspector had particular concerns as to the delivery of this site, considering that there is currently a high risk of delay to progressing this site because the main parties have some conflicting aims¹³⁷ and further that the Council needs to be more aware of the risk of delivery slipping considerably.
90. It is not however clear where or how these houses will be delivered, how the figure has been arrived at, or whether a developer would be prepared to invest time and resources in the first phase without some certainty as to the timeframe for the SGSR. The site is not controlled nor promoted by a house builder but by a family consortium, a fact which only serves to lengthen the timeframe to delivery.
91. The SGSR is an important project, not only to deliver housing via this site but also to deliver air quality improvements in Witney and alleviate traffic congestion through the town. Presently the scheme is required to be funded in its entirety by the East Witney SDA site which in turn casts doubt over the viability of the scheme. The present appeal would, if approved, assist in bringing forward the delivery of the SGSR scheme by way of approximately £1.16 million contribution agreed with Oxfordshire County Council.
92. The timing, trajectory and viability of this site is highly uncertain and contingent upon progress toward the delivery of the SGSR project. In consequence the site does not meet the footnote 11 requirement for deliverability and as such should be discounted in full.
93. The Council accepts that on the Sedgefield approach, and regardless of which buffer is applied, even on its own figures for FOAN it cannot demonstrate a 5 year supply¹³⁸. The Council's supply figure is not deliverable such that even if the Liverpool method were to be applied to the Council's FOAN figure then the Council still cannot demonstrate a 5 year supply¹³⁹.

¹³⁶ Wood proof, Appendix 7b, WOLP15.

¹³⁷ Lomas rebuttal appendix 8 - IN016 para 2.3.

¹³⁸ Inquiry Doc 17 - SoCGHLS, page 4.

¹³⁹ Inquiry Doc 17 - SoCGHLS, page 6.

Highways/Air Quality

94. The matters set out in the agreed position on Highways and Transportation¹⁴⁰ and in paragraph 33 of this report, make up the essence of the case for the appellant company in this regard. This evidence was not contested by the Council.

The Development Plan

95. The adopted development plan is in a number of material respects out-of-date, having been drawn up in a different planning policy context and with an end date which expired in 2011.
96. It is common ground that the appeal site does not lie within the policy area relevant in LP Policy WIT3, but it is visible from part of it (Windrush in Witney Policy Area). It does not seek a blanket restriction on development¹⁴¹, but there is no distinction within the policy as to how proposals within or outside the policy area should be treated¹⁴². The policy is more onerous than paragraph 109 of the Framework.
97. The Council consider that the appellant company, whilst identifying the relevant national policies, has not accorded sufficient weight to existing and proposed local planning policies in the assessment of landscape impact¹⁴³. The thrust of the bulk of those policies from the LP seek to restrict development in the countryside. However, the restrictive policies, whether broadly framed or designed for some more specific purpose¹⁴⁴, may have the effect of constraining the supply of housing land. Therefore, both policies that identify sites for housing development and policies restrictive of such development should be regarded as not up to date under paragraph 49 of the Framework and out of date under paragraph 14¹⁴⁵.
98. LP Policy H7¹⁴⁶ and NE1¹⁴⁷ are policies which clearly seek to restrict the supply of housing and so should be afforded only limited weight¹⁴⁸.

¹⁴⁰ SofCGH&T Rowland proof appendix GR1 & ASofCGH&T – Inquiry Doc 40.

¹⁴¹ Part of the East Witney SDA lies within WIT3 policy area.

¹⁴² Still proof 10.3.46, 10.3.39-50.

¹⁴³ Sacha in examination-in-chief - Para 4.2 of Sacha's Proof, specifically policies BE2, BE4, NE1, NE2, NE3 and WIT3. Para 4.5 of Sacha's Proof, specifically WOLP policies WIT4 & EH1.

¹⁴⁴ Such as the preventing development in the countryside or outside defined settlement boundaries or with a more specific purpose such as protecting the character of the landscape or maintaining the separation between settlements.

¹⁴⁵ In the absence of a 5YHLS – Para 35 of Suffolk Coastal DC V Hopkins Homes Ltd and Richborough Estates v Cheshire East BC and SSCLG [2016] EWCA Civ 168 – Inquiry Doc 40.

¹⁴⁶ LP Policy H7 would be restrictive given that 'rounding off' would have to be on a site within the existing built-up areas of settlement and would not extend that settlement into open countryside. Given that the Council are looking beyond defined settlement boundaries to meet housing needs on Greenfield sites such a policy can be given at best limited weight.

¹⁴⁷ LP Policy NE1 derived from a different planning era – not Framework compliant – no cost/benefit approach to assessment of proposals.

¹⁴⁸ CD 14.4 - Sharba Homes.

99. Each policy relied upon by the Council has been carefully examined and, has been found to be either out-of-date and/or not fully consistent with the Framework (and so should be accorded only limited weight) or, upon closer examination, the proposal is not actually in conflict with them. Accordingly there is no sustainable policy ground for withholding planning consent for the appeal scheme.

Planning benefits in summary

100. Economic

- Construction jobs associated with new house building assessed at 90 FTE jobs per annum throughout the six-year construction period with an estimated construction spend of £29 million;
- The proposed development has the potential to generate an additional 400 economically active residents of whom 135 would be anticipated to be in professional and managerial roles;
- Resident expenditure of £1.92 million per annum in the local economy supporting 20 local jobs;
- The Council and community would benefit from the New Homes Bonus of £1.3 million;
- The £1.16 million contribution toward the SGSR infrastructure project will have the potential to secure early delivery of this key infrastructure project, supporting the local economy of Witney, and assist in unlocking strategic residential development sites.

101. Social

- In the context of the Council's persistent and on-going shortfall, the proposal would deliver much needed market housing (the Council acknowledge that by March 2016 they will have failed to meet their housing need for six consecutive years on their own target of 598 dpa);
- Affordable Housing - The proposed development would provide 40% affordable housing against a significant, and deteriorating, backlog. This is much needed in the district. Aside from the five-year land supply issue the Council has a shortfall in the delivery of affordable housing¹⁴⁹ in Witney. The Council's preferred FOAN figure of 598, against which they are demonstrably failing to deliver, does not include any provision for affordable housing. Oxfordshire has a ratio of average house prices to average earnings of 9.9, the provision of affordable housing is a weighty material benefit of the proposal;
- The proposed development would also contribute £260,000 toward the local bus network providing additional services, £10,000 toward new bus stops and improve the cycle and pedestrian linkage from west to east along Burford Road.

¹⁴⁹ CD 16.9 - the WODC Head of Housing confirmed that as at May 2015 658 households would qualify for affordable housing and it is common ground that the on-going newly arising annual need is 274 dwellings.

102. Environmental

- The proposed partitioning and tree planting of the 'inner zone' would be of benefit. In general the proposal will deliver green infrastructure and habitat benefits in the short and longer terms providing a net increase in biodiversity, including the planting of native tree species, improvements to existing hedgerows and provision of scrape land to the site boundary.

103. Taking all of the above factors into account the appeal proposal represents sustainable development adjacent to a settlement which is a sustainable location for development. There is nothing about the scale of the proposed development which materially alters that judgement¹⁵⁰.

Conclusion for the appellant company

104. The Council cannot demonstrate a five-year supply of deliverable housing sites and the shortfall in both market and affordable housing is longstanding, acute and continuing. Further, the magnitude of the shortfall is neither marginal nor insignificant. As a result, the relevant policies for the supply of housing should not be considered up-to-date¹⁵¹.

105. It is acknowledged that there are landscape and visual impacts of the scheme, but these are limited and localised and will be substantially ameliorated by an appropriate landscaping scheme. The site is located adjacent to the built form of Witney and would represent development within the natural form of the settlement.

106. The substantial benefits of the scheme are not outweighed by any of the alleged detrimental impacts and are consistent with the presumption in favour of sustainable development¹⁵².

107. Therefore, weighing all of the above factors into the planning balance, strong support, pursuant to paragraph 14 of the Framework¹⁵³, is provided that planning permission should be granted.

The case for the Council

108. The Council does not maintain an objection to the reduction of the developable area of the appeal site and the reduction in housing numbers from 270 to 260. The evidence of the Council was predicated on this basis.

Character and appearance

109. The appeal site occupies an important part of the north facing side of the Windrush valley. The valley sides and the valley bottom are integral parts of equal importance to the distinctive rural character of the valley¹⁵⁴. The appeal proposal would result in significant and demonstrable harm in terms of impact on

¹⁵⁰ All agreed points with the Council.

¹⁵¹ Framework paragraph 49 – relevant policies LP Policies H7, NE1, NE2, NE3, NE13, WIT3, BE2, BE18, BE20 and H2 – these are all restrictive policies in the wider sense, relevant to the supply of housing - Inquiry Doc 40.

¹⁵² Framework paragraph 14.

¹⁵³ Wood accepted, in cross-examination that paragraph 14 of the Framework was engaged and applied in this case.

¹⁵⁴ Sacha proof para 4.3.

the landscape character and the visual amenity of the valley and its immediate context on the edge of Witney.

110. The appellant company argues that the prominence of the existing built edge of Witney is somehow a justification for allowing more development. The Council consider that more development would seriously erode the rural, tranquil character of the valley which is already under threat¹⁵⁵. The sides of the valley and the flat floodplain of the valley bottom are equally important parts of the natural topography of the valley that make it a distinctive landscape feature, so that the appeal development would cause significant harm to landscape character and to visual amenity.
111. The Witney Landscape Assessment 2007 describes both the valley bottom and the valley sides in identical terms¹⁵⁶, 'The open valley sides are/valley floor is part of a coherent generally unspoilt valley landscape between Witney and Burford: The open valley sides are visually exposed and vulnerable to change'¹⁵⁷.
112. The appellant company's contention is that there would be 'no visibility' of the appeal site from the majority of the Windrush in Witney Project policy area¹⁵⁸. This is a matter of judgement and that of the Council is that the effects of the development on the landscape character of the valley would be high and detrimental¹⁵⁹ compared with the appellant company's assessment of moderate (views from houses on Burford Road and the Windrush pub) and moderate adverse (from public rights of way to the north and north east of the site)¹⁶⁰.
113. In respect of whether the appeal site constituted a valued landscape for the purposes of paragraph 109 of the Framework, it is regarded as an important feature of the Windrush Valley. However, in broad terms no landscape features of interest would be lost on the appeal site¹⁶¹, but it is part of the wider landscape features of the area, ie the Windrush Valley¹⁶². Nonetheless, the proposal would involve a failure to protect and enhance a valued landscape, contrary to paragraph 109 of the Framework. The Council accept that this was not a matter referred to in the Council's reasons for refusal or in the written evidence of Mr Sacha.
114. That notwithstanding, according to the tests in the Fairford decision¹⁶³ the site is not the subject of any specific landscape quality designation. However, the landscape, of which it forms part, has been identified in relevant landscape assessments as being of value. It may not in itself have any particular features

¹⁵⁵Sacha proof para 5.2 & Windrush in Witney Project: Recommendations 2005, CD 7.1.

¹⁵⁶ CD 7.3 - paras 3.20-3.21 and 4.18-4.19.

¹⁵⁷ Further, there is no distinction drawn between the treatment of the valley bottom and valley sides in West Oxfordshire Landscape Assessment 1998, CD 11.3 or in the Windrush in Witney Project: Recommendations 2007, CD 7.1.

¹⁵⁸ Sacha proof para 6.10.

¹⁵⁹ Sacha proof para 10.2.

¹⁶⁰ Holliday proof 7.5, 7.8 and 7.9.

¹⁶¹ Mr Sacha broadly agreed with Mr Holliday, the appellant's landscape witness on this point.

¹⁶² Sacha in cross-examination.

¹⁶³ CD 14.5 Para 52 – these are more specific than those emerging from the Stroud DC V Secretary of State decision CD 15.14.

of landscape interest, but the view of the Council is that the appeal site is part of a 'valued landscape' for the purposes of paragraph 109 of the Framework.

115. The quality of the landscape of the valley speaks for itself. It has been assessed and recognised in a succession of landscape character studies. The West Oxfordshire Landscape Assessment¹⁶⁴, refers to the valley's key characteristics as a landscape comprising distinctive sloping, and typically convex, valley-side landform; predominantly large-scale fields under arable cultivation, but with occasional pasture; weak landscape structure and few hedged trees; open, visually exposed landscape, prominent in views from within and across the valley; and high inter-visibility along valley sides.
116. Overall, the Upper Windrush Valley Character Area is described as having a highly attractive and remarkably unspoilt, rural character, but the report recognises that there are some localised variations in quality and condition which require different strategies for management and enhancement¹⁶⁵.
117. The development sensitivities of the valley landscapes include the following, unspoilt valley floor farmland and the minor valleys are of particularly high quality and sensitive to development; open valley-sides are visually sensitive and development would be highly prominent and exposed; enclosed valley-sides are also highly visible but may offer limited opportunities to absorb small-scale development within a strong structure of trees and woodland or with other buildings; all valley landscape types would be particularly sensitive to the introduction of tall or large-scale structures¹⁶⁶.
118. The appeal site represents the valley character and despite the appellant company's assertions to the contrary, the West Oxfordshire Landscape Assessment and the other assessments of the landscape attest to its quality and sensitivities.
119. The Witney Landscape Assessment¹⁶⁷ was prepared to update and expand upon the key settlement work of the West Oxfordshire Landscape Character Assessment in order to establish an evidence base for the West Oxfordshire Local Development Framework¹⁶⁸.
120. Taking into account the key sensitivities of the appeal site and its context set out above, the appeal proposals would conflict, in particular, with LP Policies NE1, NE3 and WIT3. As set out in the Council's reason for refusal, the development would result in an illogical urban extension of the town to the detriment of the rural character and appearance of the area and the setting of the river valley, the local footpath network and heritage assets.

The effect of the appeal proposals on local highway users and on air quality

121. The effects of the appeal proposals on local highway users are set out in the Highways and Transport Statement of Common Ground and its addendum¹⁶⁹. It

¹⁶⁴ CD 11.3, page 52.

¹⁶⁵ CD 11.3, page 55.

¹⁶⁶ CD 11.3 page 55.

¹⁶⁷ CD 7.3.

¹⁶⁸ Holliday proof para 3.22.

¹⁶⁹ SofCGH&T Rowland appendix GR1 & ASofCGH&T-Inquiry Doc 16 – Para 33 of this report.

is accepted by the Council that there will be impacts but these are proposed to be mitigated by the payment of a contribution of £1.16m to the Shore Green Slip Road project. This will only be payable on occupation of the 75th dwelling but with no limit on the amount of development which may be built even if the SGSR does not proceed. So, if the implementation of the SGSR scheme should be delayed or not come forward at all, then the adverse effects of this element of the development will be felt either until such time as it does, or, indefinitely if it does not.

122. There is a halfway-house position indicated in the ASofCGH&T¹⁷⁰ whereby the off-slip may be provided in advance of the full SGSR scheme, but the reduced level of impact attributable to the partial mitigation resulting from the implementation of that part of scheme would endure as set out above.

123. The issues of delay in relation to the realisation of the mitigation measures (SGSR) are equally relevant to the improvement in air quality within the AQMA.

The effect of the appeal proposals on the significance of heritage assets

124. There is a measure of agreement between the parties on this issue. The Council accept that the appeal proposals do not engage any policies or statutory duties concerning the setting of heritage assets and the only policies for consideration in reaching a decision on the issue is the advice contained in paragraphs 129 and 135 of the Framework¹⁷¹. In particular, the latter requires the making of a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.

125. The Council's reason for refusal (1) which raises this issue refers only to unlisted heritage assets, but it is common ground that both Crawley Mill and Witney Mill fall for consideration in the appeal, both being grade II listed. The Council suggested that the absence of reference to their listed status may have been a typographical error or a matter of oversight. In either case there is no dispute that they must be taken into account in the decision making process¹⁷².

126. There is a close historical functional connection between the Witney blanket mills and the Windrush Valley. This valley landscape as a rural environment has been lived in, worked in and enjoyed by generations of blanket mill workers. The Witney Blanket Trail provides for the opportunity for residents and visitors to walk in the footsteps of those workers¹⁷³. Even though the Mills have been converted¹⁷⁴, the valley still retains the same essential historic quality. Mr Smith, the appellant company's heritage witness, confirmed the group value of the historic mills. He accepted that New Mill's significance had not been eroded completely and that it still has a connection with the valley landscape, remaining legible as an historic mill¹⁷⁵. Mr Smith accepted that inter-visibility was not critical to an assessment of an asset's setting. It was all part of the journey and how one experiences it.

¹⁷⁰ Inquiry Doc 16.

¹⁷¹ Mr Martin in cross-examination.

¹⁷² Mr Smith in cross-examination.

¹⁷³ Evidence of Mrs Smallman – Witney Blanket Trail leaflet.

¹⁷⁴ To both residential and commercial uses.

¹⁷⁵ In cross-examination.

127. The Council agrees that Crawley Mill (grade II listed) is not materially affected by the appeal proposal.
128. Where New Mill is concerned (an undesignated heritage asset), the appeal proposal would have a major impact both on the setting and significance of New Mill, which has sat for more than 200 years in a rural and largely undeveloped landscape¹⁷⁶. This position is in contrast to the minor degree of harm promoted by the appellant company¹⁷⁷
129. The appellant company suggest there would be no harm to Witney Mill (grade II listed)¹⁷⁸. However, the Council consider the proposal would dramatically change the relationship between the Mill and the appeal site, affecting the journey through the landscape and history experienced by walkers in the valley¹⁷⁹.

The effect of the appeal proposals on the biodiversity of the locality

130. The Council does not maintain an ecological or biodiversity objection to the appeal proposals¹⁸⁰.

Safety of future residents/neighbouring hazardous substances installation

131. This issue was a matter of such significant concern to the SofS that it influenced his decision to recover jurisdiction over the appeal. In his letter of 15 June 2015 to Mr Andrew Tucker, Strategic Director of the Council, Minister of State Mr Brandon Lewis MP said that the abutting of the Flogas site with the appeal site boundary and the fact that the HSE had advised against the development raised 'novel issues of development control' such that the SofS should recover jurisdiction.
132. The significance of the advisory role and the weight to be accorded to the HSE's advice is acknowledged by the Council¹⁸¹. This is in accordance with the Council's adopted LP Policy BE20, the supporting text to which refers to the Council taking the HSE's advice into account in deciding whether or not to grant planning permission for development on land with HSE consultation distances¹⁸². This is also consistent with the advice in the PPG¹⁸³, para. 39-071:

'Health and Safety Executive's role is an advisory one. It has no power to direct refusal of planning permission or of hazardous substances consent. Where Health and Safety Executive advises that there are health and safety grounds for

¹⁷⁶ Martin proof para 4.4.

¹⁷⁷ Smith proof para 8.8.

¹⁷⁸ Smith proof para 8.15.

¹⁷⁹ Martin proof para 4.3.

¹⁸⁰ Council's rule 6 statement para 4.12 & Wood proof para 5.15.

¹⁸¹ HSE v. Wolverhampton City Council [2009] EWHC 2688 (Admin) – the HSE relied on this case to demonstrate their expertise and authority as a statutory consultee, see para. 24. But this is not in doubt. Nor is their advisory role which is also referred to in the same paragraph of the judgment. However, the place to look for guidance as to their role is the PPG, the LUP methodology and, indeed, the evidence given by Mr Birch that it was quite legitimate for a local planning authority to take a different view on the merits of refusing planning permission, so long as the HSE's advice was taken into account – attached to Inquiry Doc 36.

¹⁸² LP Page 38, para 3.105.

¹⁸³ Planning Practice Guidance – Hazardous Substances.

refusing, or imposing conditions on an application, it will, on request, explain to the local planning authority the reasons for its advice.

The decision on whether to grant permission rests with the local planning authority. In view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from Health and Safety Executive that planning permission should be refused for development for, at or near to a hazardous installation or pipeline should not be overridden without the most careful consideration'.

133. This is repeated in the HSE's land use planning methodology¹⁸⁴, a point confirmed by Mr Birch, HM Specialist Inspector.

'Like other statutory consultees, HSE's role in the land use planning system is advisory. It has no power to refuse consent or a planning application. It is the responsibility of the HSA or planning authorities (PA) to make the decision, weighing local needs and benefits and other planning considerations alongside HSE advice, in which case they should give HSE advance notice of that intention. PAs may be minded to grant permission against HSE's advice. In such cases HSE will not pursue the matter further as long as the PA understands and has considered the reasons for our advice. However HSE has the option, if it believes for example that the risks are sufficiently high, to request the decision is 'called in' for consideration by the SofS, in England and Wales (a very rare situation)...'¹⁸⁵

134. Mr Birch also agreed that the HSE will leave matters to the local authority so long as their advice has been considered and understood, so that the authority may nevertheless refuse planning permission if it sees fit in accordance with the circumstances of the case. He also accepted that it was open to the authority in such a situation to take a different view on the acceptability of such factors as property damage, distress caused to people (and not just injury or death), risks from projectiles if an explosion occurred and whether or not that affected people in the middle or even outer consultation zones¹⁸⁶. His views were placed in the context that the HSE's remit is related only to risks to people not property¹⁸⁷.

135. The scheme for 270 dwellings could not go ahead as applied for in accordance with the advice of the HSE. The issues around the Flogas site have resulted in the subsequent promotion of the 260 dwelling application.

136. The HSE's ultimate advice involved a departure from the usual application of the terms of the LUP methodology, in that given that from its engagement in the pre-application process it was apparent that the then applicant intended to design their scheme in accordance with HSE's LUP advice methodology, more than 11% of the development area would lie in the middle zone¹⁸⁸, which, following HSE's codified methodology, would lead to an Advise Against decision.

¹⁸⁴ CD 17.1, Annex 3 para 6.

¹⁸⁵ CD17.1.

¹⁸⁶ Evidence in cross-examination.

¹⁸⁷ CD 17.1, Annex 3, para 5.

¹⁸⁸ Birch proof para 10.6.

137. It was only by the process of fine-tuning that very exceptionally, in this marginal¹⁸⁹ case, the HSE came to the view of a Do Not Advise Against decision.
138. The guidance on aggregation indicates that the whole development of 260 dwellings should have been assessed which would also, logically, have resulted in an Advise Against decision. Paragraph 42 of the HSE's LUP Methodology¹⁹⁰ sets out that all facilities of the same development type which are completely and/or partly inside the consultations distances (CD) are aggregated in determining the sensitivity level. Any facilities that are entirely outside the CD are discounted when determining the sensitivity level (SL). For example all housing areas within the CD are aggregated to determine the overall sensitivity level of a housing development, but any housing area which lies completely outside the CD is not included. The only exception to the aggregation is SL4 developments involving outdoor use by the public or institutional accommodation and education.
139. Logically, and in accordance with the terms of the guidance, all housing areas within the CD should have been aggregated to determine the overall sensitivity level. This was not done. The development was split or disaggregated into two parts, ie 26 dwellings in SL2 and 236 dwellings in SL3. Mr Birch indicated that the HSE had applied the straddling rule in paragraph 45 of the LUP, but that is apparently inconsistent with the aggregation guidance in paragraph 42 which precedes it.
140. For the avoidance of doubt, Professor Nathanail was engaged by the Council to advise on aspects of the 260 dwelling scheme, including potential implications for property damage¹⁹¹.
141. Professor Nathanail treated the development as coming within SL4 rather than SL3 by a process of logical extension¹⁹². This was a fine-tuning of this output much as the HSE had felt it appropriate exceptionally to adjust the conventional output of their own methodology.
142. Ultimately Professor Nathanail took the view that it did not matter whether the development fell to be treated as SL3 or SL4. Do not advise against is not the same as saying planning permission must be granted. Overall the HSE methodology is designed to identify sites where the HSE feels obliged to advise against planning permission. However, their only other advice category of do not advise against is not equivalent to supporting the application being granted¹⁹³.
143. As already established it is quite legitimate for a local planning authority to take a different view on the merits of granting planning permission, so long as the HSE's advice has been taken into account.
144. The Council regards the risks to prospective residents within the appeal development as being unacceptable on grounds of potential dangers to future residents and property, contrary to LP Policies H2 and BE20.

¹⁸⁹ Dixon appendix B – letter dated 13 November 2015.

¹⁹⁰ CD17.1.

¹⁹¹ Council's rule 6 statement-letter dated 26 May 2015 attached.

¹⁹² Nathanail proof para 41.

¹⁹³ Nathanail proof para 42.

145. Any comparison of risk at the Flogas site with that at Buncefield was of particular concern to the HSE¹⁹⁴. Professor Nathaniel sets out that the scale of the Buncefield incident was much larger than the worst credible incident at the Flogas site. However, the HSE advice on Buncefield was reported to be based on a flawed under-prediction of the worst credible incident. The Buncefield incident brings into question the assessment policy for many oil/fuel depot sites, and the zone setting method which it informs (Initial report of the Buncefield Major Incident Investigation Board, Para. 83). The Buncefield incident resulted in a rising of safety standards, but has not prevented similar events from reoccurring, one being a similar incident in October 2009 at the Cataño oil refinery outside San Juan in Puerto Rico.
146. It should be noted that the LUP in its introductory paragraphs makes reference to Buncefield in the context of the devastating effects of major accidents involving hazardous substances¹⁹⁵. It may be that the HSE was sensitive to the suggestion that it had not remedied the situation of the flawed under-prediction. Nonetheless, the Council maintains that Professor Nathanail's observation in respect of Buncefield did not amount to much more than saying accidents will happen.

Whether the appeal proposal constitutes sustainable development

147. The appeal proposal does not constitute sustainable development. The extent to which the LP policies relied on by the Council are regarded as being out of date or inconsistent with the Framework are important factors in this assessment¹⁹⁶.
148. However, the Council maintains that, even though it is LP Policy H7 for the supply of housing which is out of date, the principles in that policy of guarding against development which would not be a logical complement to the existing pattern of development remains relevant.
149. LP Policy NE1 refers to maintaining and enhancing the local character and distinctiveness of the countryside. This is consistent with the 5th bullet point in paragraph 17 of the Framework recognising the intrinsic character and beauty of the countryside.
150. LP Policy NE3 was referred to as being broadly consistent with the Framework, despite not containing any cost-benefit assessment¹⁹⁷.
151. WIT3 is similarly supported by paragraph 17 of the Framework and is confined to a specific area around Witney. Breaches of the policy have been approved and promoted by the Council, but in appropriate circumstances, which do not exist in this case¹⁹⁸.

¹⁹⁴ Birch proof para 10.7.

¹⁹⁵ CD 17.1 para 2.

¹⁹⁶ Still proof section 10.3.

¹⁹⁷ CD14.4 para 11 (Sharba Homes decision) & CD 14.10, IR para 8.15 (Droitwich decision).

¹⁹⁸ These policies may be relevant policies for the supply of housing (although the Council consider that the other policies referred to either gain additional weight through the importance of the matters that they address in general planning terms or do not act to restrict development in parts of the plan area). Irrespective of whether particular policies are considered out of date, this does not affect the non-strategic harm that would arise from the development which is regarded as significant – Inquiry Doc 41 - Response from

152. On the health and safety (HS) issue, LP Policy H2 provides against creating unacceptable living conditions for new residents and BE20 refers to refusing permission on safety grounds near notifiable installations, including Flogas (having taken account of HSE advice¹⁹⁹). Both policies clearly remain relevant and applicable.
153. In respect of the Framework, paragraph 109 (valued landscapes) is engaged²⁰⁰.
154. On the HS issue, the Council referred to paragraph 64 of the Framework²⁰¹. However, in respect of the planning balance it was put to Mr Wood that his interpretation of this paragraph would not bear testing against the principles in *Tesco v. Dundee City Council* [2012] UKSC 13²⁰². The Council does not seek to defend Mr Wood's position. However, if there are no policies in the Framework to support the view of Mr Wood in respect of the relevance of poor design in this instance, it is consistent with good planning to avoid injury and to avoid building houses where they could be destroyed in the absence of any justification to do so like a shortage of housing.

Housing

155. To be balanced against the above is the decision-maker's conclusion on the five year supply of housing land. The Statement of Common Ground on Housing Supply shows that the Council cannot demonstrate a five year supply of housing land, even on its own assessment of FOAN, unless the Liverpool method of assessment of five year supply is used.
156. The Council's and the appellant company's respective positions on FOAN are 598 dwellings (Mr Wood, see SOCG on FOAN para. 1.21) and 660 (Mr Taylor, see SOCG on FOAN para. 1.21). Mr Wood applied a reduction from 660, having regard to a reduction of the demographic figure from 541 to 490, ie a factor of 9.4%. Mr Taylor took the 660 figure, based on the SHMA²⁰³. The EiP Inspector set out that the ultimate requirement for the District (after any reassessment) was likely to be between the recommended figure in the SHMA (660 dpa) and that in the plan (525 dpa)²⁰⁴. This supports the figure of the Council.
157. The Council also take the view that the FOAN for affordable housing and the needs of Oxford City are understood within the EiP Inspector's conclusions on the likely ultimate range of the FOAN²⁰⁵. In any event, paragraph 37 of the King's Lynn case (CD 15.5) shows that the matter of affordable housing provision needs

appellant company on *Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates v Cheshire East BC and SSCLG* [2016] EWCA Civ 168 and *Cheshire East BC v SSCLG and Renew Land Ltd* [2016] EWHC 571 (Admin).

¹⁹⁹ LP explanatory text paragraph 3.105.

²⁰⁰ See discussion above.

²⁰¹ Counselling refusal of permission for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

²⁰² Attached to Inquiry Doc 38.

²⁰³ Taylor rebuttal proof para 2.7.

²⁰⁴ Lomas rebuttal appendix 8 – IN 015, para 10.5.

²⁰⁵ Lomas rebuttal appendix 8 – IN 015, para 10.5.

merely to be addressed or considered²⁰⁶ in the process of reaching an overall FOAN, not met in full.

158. Further, the issue of provision for Oxford City was covered by the EiP Inspector's overall conclusions, without any conclusion that the range would need to be increased²⁰⁷. It was the view of Mr Wood that Witney's connectivity with Oxford was such that it was unlikely that West Oxfordshire District would have to accommodate much housing for Oxford City²⁰⁸.
159. So the Council contends that the EiP Inspector identified a range and so the final figure must be likely to be within that range, and not at the top end as promoted by the appellant company.
160. On the housing land supply the tables on pages 4 and 6 of the SofCGHLS²⁰⁹ respectively show the Council to be in shortfall in 5 out of 8 scenarios on the figures, save where the Liverpool methodology is applied (although using the appellant's FOAN of 660 and applying their estimate of supply, the Council would be in shortfall on that scenario as well)²¹⁰.
161. The appellant company's position was that a 20% buffer should be applied, taking the view that the Council's record was one of persistent under-delivery. This was contrary to the conclusion of the EiP Inspector who, in recent weeks had decided that taking a ten year period as a whole it would not be reasonable to conclude at present that there had been persistent under delivery²¹¹.
162. Mr Lomas, for the appellant company, offered the counter position, that the EiP Inspector has only looked at provision up to April 2015, and that the Council's achievement of only 140 completions since then put the Council within the terms of the EiP Inspector's proviso in IN 016 para. 2.14 that, if delivery continues to be below that which is required, future decision makers may take a different view.
163. The appellant company determined that the Council had a record of persistent under delivery on the basis of the figures set out in Mr Wood's Appendix 9. Looking at completions against Mr Wood's estimated requirement of 598, the figures would look like this:

2011/12: 359 minus 598 = a shortfall of 239 (ie minus 239)

2012/13: 278 minus 598 = a shortfall of 320 (ie minus 320)

2013/14: 186 minus 598 = a shortfall of 412 (ie minus 412)

2014/15: 398 minus 598 = a shortfall of 200 (ie minus 200)

²⁰⁶ Framework para 159 & Planning Policy Guidance – Housing and economic development needs assessments para 2a-29 refers.

²⁰⁷ Lomas rebuttal appendix 8 – IN 015, paras 10.6 & 10.7.

²⁰⁸ EiP OAN Topic session.

²⁰⁹ Inquiry Doc 17.

²¹⁰ The SofCGHLS requires a notional amendment to paras. 1.8 and 1.21 of the Housing Land Supply SoCG which refers only to the position on the Sedgefield basis since the Liverpool calculations were added after the text of the statement was agreed.

2015: only 140 dwellings so far, so assume shortfall.

164. It was only the 140 figure which the EiP Inspector lacked when making his evaluation. It seems unlikely that he would have reached a different conclusion that a shortfall in this current year would have caused him to revise his view. The reference to 'future decision makers' must refer to future decision makers rather further into the future than in the month after the EiP Inspector reached his own judgement on the issue²¹².
165. The Council has traditionally used the Liverpool method of amortising shortfall or surplus. It is a suitable and appropriate method as it brings forward housing faster than the Sedgfield method, being a less volatile approach that smoothes changes in short term targets. In addition, the Council's record in terms of completions compared to its various past targets demonstrates it is not a persistently underperforming authority²¹³. The *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin)²¹⁴ acknowledges that both methods are well-established as a means of assessing the supply of housing land. It is acknowledged that this was issued before the publication of the PPG. The PPG does say in para. 3-035 that LPAs should aim to deal with any undersupply within the first five years of the plan period where possible, and that they will need to work with neighbouring authorities under the duty to cooperate. Where it is not possible this is not an express over-ruling of the Liverpool method. That notwithstanding, the use of the Liverpool method has not been expressly over-ruled. The Council, therefore, continues to rely on it as a method of assessment, as it did before the EiP Inspector. He did not disapprove it himself, saying that the Council needs to have particular regard to National Guidance on this matter, as the Liverpool method is not mentioned²¹⁵.
166. The Council contends that the Liverpool method should be applied. If it is applied then the Council would not be in shortfall on any of the scenarios on page 6 of the SoCGHLS²¹⁶, save for that applying a 20% buffer, a percentage not supported by the EiP Inspector.
167. In respect of future supply, notwithstanding the various assertions set out in the SoCGHLS and Mr Wood's appendix 7B on the timescales for their delivery, the appellant company conceded no dwellings at all on the SDAs. This is in the face of the comments of the EiP Inspector in relation to the SDAs:
- 'The landowners/promoters of the greenfield sites allocated in the plan at East Witney, North Witney and East of Chipping Norton are all seeking to increase the residential capacity of the allocations and to make various other changes to the

²¹¹ Lomas rebuttal appendix 8 – IN 016 para 2.14

²¹² Mr Lomas also referred to the Tetbury (CD 14.25) and Three Pots decisions (CD 14.15), see para. 6.28 and 6.29 of his main proof of evidence, which look at the situation in cases in Gloucestershire and Leicestershire respectively in different sets of circumstances and looking at the position on the basis of the previous five years or twelve years/50% failure rate. It is submitted that neither of those provide a reason for seeking to displace the EiP Inspector's findings, which were based on a ten year period.

²¹³ Framework para 49 – 5% buffer should apply.

²¹⁴ Wood appendix 12 & CD 15.2 para. 107.

²¹⁵ Lomas rebuttal appendix 8 IN016 para 2.15.

²¹⁶ Inquiry Doc 17.

policy for their allocation. Accordingly, there is the possibility that they will delay the submission of planning applications until well after the completion of the Examination. But at the hearing they all indicated that they wanted to make progress on their sites rather than wait. I accept that if they use the period of any suspension to progress master plans in discussion with the Council, then those may help resolve some of the current disputes and minimise delays. The Council will need to be alert to slippage in likely start dates on these major sites'²¹⁷.

168. He refers to the potential for slippage and goes on to make detailed comments about East Witney and land acquisition issues relating to the provision of the SGSR but there is nothing to support the contention that no dwellings at all would be yielded by those sites.
169. Mr Lomas also relied on a point based on the *Wainhomes v. Secretary of State* case²¹⁸ that you should not count SDA sites if they were subject to outstanding objections. The case does acknowledge that the question of deliverability is always fact specific²¹⁹, and the major fault in the specifics of that case was that the Inspector had treated the sites uncritically as if they had planning permission²²⁰.
170. Finally, various matters relied on by Mr Lomas as pointing towards delivery issues with the disputed sites arose from documents produced some time in advance of the Local Plan Examination²²¹.
171. Accordingly, the Council commends its assessment of prospective housing land supply as preferable to the appellant's assessment²²² and maintains that, at least on the Liverpool basis, it can demonstrate the requisite five year supply of housing land.
172. The Council's reasons for refusal contest the sustainability of the appeal development. Mr Wood (on behalf of the Council) acknowledged that, if not for the issues relating to HS, landscape harm and heritage assets, development of the appeal site would not be unacceptable in principle. He accepted the location of the appeal site was sustainable. He also confirmed that the approach to the issue of principle should be the same as that adopted in the Eynsham decision referred to by Mr Still at paragraphs 10.3.16 and 10.3.17 of his proof of evidence, where it was accepted that paragraph 14 of the Framework was engaged, albeit in a context where only LP Policy H7 was apparently in issue and was accepted to be out date²²³.
173. Nonetheless, the Council maintains the objections to development of the site on HS and landscape grounds and these factors will have to be weighed in the

²¹⁷ Lomas rebuttal appendix 8 IN016 para 2.2.

²¹⁸ CD 15.10.

²¹⁹ CD 15.10 para 35.

²²⁰ CD 15.10 paras 53 & 54 - Also, the principal ground in the case was that the Inspector had failed to take into account recent, relevant appeal decisions in the district which took a different approach, see para. 16-19, 26 and 27 and 34 iv).

²²¹ Lomas rebuttal appendix 3 and 5 dated 18 March 2013 (North Curbridge) and 17 December 2014 (North Witney SDA) respectively.

²²² SofCGHLS page 7.

²²³ CD 5.1 – para 5.5.

balance. Against this, Mr Wood did acknowledge the development would generate very large scale benefits as set out in Mr Still's Appendix 6.

174. The provision of housing would be a benefit²²⁴. However, the Council maintains that this could be forthcoming, as would related economic benefits from other developments which were not regarded as bringing with them the same disadvantages. The appeal site is anticipated to deliver only 50 dwellings in the current five year period²²⁵. The appellant company also refer to the phenomenon of competition between nearby housing sites affecting delivery rates²²⁶. These would lessen the benefits having regard to the delays built in.

The case for the HSE – Health and Safety issues only²²⁷

175. The HSE²²⁸ advises against the unconditional grant of planning permission (for either the application in its original 270 dwelling form, or in a modified 260 dwelling form); but it does not advise against the grant of planning permission subject to appropriate conditions that would prevent development taking place in the Inner zone²²⁹, and which would strictly limit the scope of development permitted in the Middle zone to a maximum of 26 dwelling units at a density of no more than 40 dwelling units per hectare.
176. As paragraph 071 of the PPG²³⁰ states, the HSE's role in the planning process is advisory and has no power to direct the outcome of a planning application. In that sense the HSE is a neutral party: it does not take sides; its function is to provide an Advise Against or a Do not Advise Against consultation. So the HSE will usually regard this duty as discharged if the decision-maker has understood and taken account of its advice²³¹.
177. In terms of the account that must be taken of the HSE's advice, the High Court has held that, *'on technical issues such as this... [the decision-maker] should give great weight to the advice of expert bodies having particular statutory responsibility for such matters': R v Tandridge District Council, ex parte Mohammed* (Times Law Reports, 28 January 1999)²³². Importantly, and despite some possible intimations to the contrary on behalf of the Council, it is the HSE's evaluation of the acceptability of risk – as opposed to some other expert's view – which is to be given the most careful consideration. This was confirmed by Collins J in *R (Health and Safety Executive) v Wolverhampton City Council* [2009] EWHC 2688 (Admin),

²²⁴ Wood proof para 18.1.

²²⁵ Lomas rebuttal proof para 3.4.

²²⁶ Lomas proof para 7.5.

²²⁷ Source the proof of Mr Birch, his oral evidence and Inquiry Doc 36.

²²⁸ The HSE is an executive non-departmental body advising on and regulating health and safety in the UK. It is an independent statutory consultee which must be consulted before planning permission is granted for prescribed developments in the vicinity of hazardous substances. Its advice on residual risk must then be taken into account when determining the application.

²²⁹ As shown in *HSE Drawing Reference H0527 Rev1*: Birch appendix 12.

²³⁰ Planning Practice Guidance (PPG) – Hazardous Substances.

²³¹ *LUP Methodology*, Annex 3, para. 6: Birch appendix 14.

²³² Birch Appendix 4 page 6.

It is, of course, correct that the ultimate decision is a planning decision. But that decision must be taken having full regard to the HSE's evaluation of the acceptability of the risk and the HSE must be able to investigate an individual case in order to form a proper view... It is the body which has the expertise and is tasked with the duty to consider, following a full investigation of all material factors, whether it is right to maintain its advice against permission²³³.

178. The HSE is surprised that the Council has appeared to base its planning decision (for the 260 dwelling scheme) and its appeal case primarily on the advice of Professor Nathanail, rather than on a formal consultation with the HSE; particularly as the HSE pointed-out various matters in Professor Nathanail's evidence with which it did not agree; and particularly as the Professor himself acknowledged in cross-examination that his predominant experience has been in environmental risk assessment, geology and contaminated land, with relatively less of his professional experience having been in the field of assessing residual risk with which the HSE is concerned. In addition, he admitted he had not visited the Flogas site. If, and to the extent that, the Council has given primacy to the Professor's views over the statutory advice of the HSE, the Secretary of State is invited not to follow the Council's approach in this respect and to apply the principles firmly enshrined in the *Tandridge* and *Wolverhampton* cases. As a matter of law, the position remains that great weight must be placed on the HSE's advice and to its own evaluation of the acceptability of risk in relation to the proposals.

Principles of the HSE Land Use Planning Methodology

179. The following key principles underpin the LUP Methodology:

- The HSE takes a risk-based semi-quantitative approach to the assessment of hazards and their potential consequences at a hazardous installation. This is a structured approach that involves technical modelling and calculations²³⁴.
- The starting-point is a site-specific analysis of the type, properties and quantities of the hazardous substance, including how the substance is stored and processed²³⁵.
- To that end, the HSE takes account of the maximum quantity of the hazardous substance permitted by the relevant Hazardous Substances Consent and any conditions attached to it.
- Cautious Best Estimate (CBE) assumptions concerning the hazardous substance, its location, and the operating conditions are used. CBE is necessary due to the uncertainties involved in predicting risk at residual levels (i.e. very low likelihood events with serious consequences). CBE means that

²³³ The High Court decision was overturned in part by the Court of Appeal [2010] EWCA Civ 892 (which appeal decision was subsequently affirmed by the Supreme Court [2012] 1 WLR 2264), but not on this particular point.

²³⁴ Accepted by Professor Nathanail in cross-examination.

²³⁵ In cross-examination, Professor Nathanail accepted that this was an important step, as these factors all have an impact on the type and scale of the risk at issue.

every attempt is made to make realistic, clearly-defined best-estimate assumptions, but some over-estimate is preferred where there is difficulty in justifying an assumption²³⁶.

- Where appropriate LUP takes explicit account of the risk of a major accident occurring; however, where the full quantification of risk is difficult, uncertain or potentially misleading, the advice is based on the residual risk as represented by the consequences of a representative foreseeable accident. All foreseeable major accidents are considered before settling on a more likely representative set of events. The representative accident is chosen to determine an appropriate separation distance between the hazardous installation and the new development. This approach is known as the Protection Concept.
- The concept of a Dangerous Dose is used to analyse the likely consequences of the representative hazardous set of events on the surrounding population. A Dangerous Dose is one that produces all of the following effects:
 - (i) Severe distress to almost everyone;
 - (ii) A substantial proportion requires medical attention;
 - (iii) Some people are seriously injured, requiring prolonged treatment;
 - (iv) Any highly susceptible people could be killed²³⁷.

The assessment takes account of the protection afforded to individuals sheltered within buildings, as well as a person's exposure outside.

- Calculations are then undertaken to generate contours of the frequency (or likelihood) that a typical house resident would be exposed to a Dangerous Dose, or worse, expressed as chances per million per annum. These contours are used to set a Consultation Distance (CD) sub-divided into Zones around each notifiable hazardous installation.

180. In brief, the advice is administered in the following manner²³⁸:

- HSE notifies the local planning authority of a CD for each hazardous installation that is the subject of a Hazardous Substances Consent. Inner, Middle and Outer zones are identified within the CD, with each zone representing decreasing levels of residual risk from the highest (in the Inner zone) to the lowest (in the Outer zone). The HSE must be consulted on any planning application relating to land lying within the CD.
- The local planning authority consults HSE via an online platform. Before August 2015, the PADHI+ online system (Planning Advice for Developments near Hazardous Installations) was in use and was based on the *PADHI Land*

²³⁶ The CBE approach was held justified by the Secretary of State in the Brit Oval appeal decision (see Birch Proof/para. 3.17; Inspector's Report, Birch appendix 7a/para. 13.19; Secretary of State's decision, Birch appendix 7, para. 23).

²³⁷ Birch Proof/para. 3.19; *Risk Criteria*, para. 52, Birch appendix 5.

²³⁸ Birch Proof/paras 4.1–4.15.

*Use Planning Methodology*²³⁹; as such, this was the system by which the Council consulted HSE on the 270 dwelling scheme. In August 2015 this was replaced by HSE's Planning Advice Web App based on the LUP Methodology, which is the system in current use and would have been the primary means by which the Council should have consulted the HSE. There are no substantive differences of any relevance between the two systems.

- The online consultation is based on the application details. In many cases little detail is provided with the application (particularly with outline applications). While HSE's policies are based on the numbers of people at risk, this information is not always available at the time of consultation, so the LUP Methodology has developed rules that are used in conjunction with the areas of the development lying within each of the consultation zones. This is a surrogate for considering the numbers of people at risk.
- The LUP Methodology groups development types broadly according to size, nature (indoor/outdoor), inherent vulnerability of the exposed population, proportion of time people are likely to be present, and ease of evacuation or other emergency measures²⁴⁰. Each type is assigned a sensitivity level (SL) from one of four levels:
 - (i) *SL1 – based on the normal working population* (offices, factories and other workplaces, and parking areas);
 - (ii) *SL2 – based on the general public, at home and involved in normal activities* (housing, excluding larger housing developments; transport links; restaurants; retail and other indoor uses by the public; outdoor uses where fewer than 100 people will gather at any one time);
 - (iii) *SL3 – based on vulnerable members of the public* (larger housing developments; smaller hospitals and schools; prisons);
 - (iv) *SL4 – large examples of SL3 and very large outdoor developments* (large institutional and special accommodation for vulnerable people, e.g. hospitals, nursing homes; large nurseries, crèches, schools; very large outdoor use by the public, in which greater than 1000 people could be present at any one time).
- The SL of the development is combined with the HSE's assessment of residual risk (as represented by the Inner, Middle and Outer zones) using a decision matrix. The advice is generated by extrapolating an Advise Against or Do not Advise Against²⁴¹ outcome from the two inputs to the matrix. HSE then provides its formal advice in a letter addressed to the local planning

²³⁹ Birch appendix 13.

²⁴⁰ *LUP Methodology*, paras 38 – 41 and Tables 1 – 4: Birch appendix 14.

²⁴¹ Don't Advise Against is a recognition that no development (as with any activity in day-to-day life) can be 100% safe. The LUP advice is directed towards assessing whether development in the vicinity of a hazardous installation represents an acceptably low risk to people.

authority²⁴². That formal consultation was given in relation to the 270 dwelling proposal, but was not sought in relation to the 260 dwelling scheme.

- Where a development straddles more than one of the consultation zones, the 'straddling rule' is used to decide which zone to input into the decision matrix. The innermost zone will usually be used, unless less than 10% of the area marked on the application for that development lies within that area (or only car parking, landscaping, gardens, or open spaces etc. is in the inner part of the zone)²⁴³.
- The 10% approach to straddling is a specific example of an area of development being used as a surrogate for the numbers of people at risk, which is a necessary rule where an application is sparse on detail²⁴⁴. However, paragraph 10 of the LUP Methodology enables the HSE to take account of more information where that is available in order to complement the usual criteria. This rule is not, as the Council tried to suggest an opportunity to be 'flexible' about the LUP Methodology: on the contrary, paragraph 10 is a rule that enables the HSE properly to consider further information and better data where that is made available, in order to give more specific advice on a particular proposal.
- With effect from July 2015, HSE improved the accessibility of its advice by launching a pre-application service and a consultancy service to enable prospective planning applicants and others to make enquiries about health and safety issues arising from a proposed development of land near a hazardous installation²⁴⁵. Exactly the same online platform and principles are used for this service as are used with consultations by local planning authorities. The service does not replace but complements the duty to consult the HSE when a planning application is made.

181. The approach to residential development is based on controlling the numbers of people at risk in the light of the specific sensitivity of residential development, which takes account of the protection afforded by occupiers being inside their homes most of the time that they are on site. The HSE will always issue a Do not Advise Against response to housing proposed for the Outer zone, but the HSE's policy is to Advise Against significant housing in the Inner zone and the Middle zone. Of particular relevance is that significant housing is codified as 30 or more houses in the Middle zone, or less than 30 dwelling units in the Middle zone, but with a density of more than 40 dwelling units²⁴⁶. The number of dwellings and the density in the Middle zone is a measure of the population that enables the numbers of people to be controlled within a tolerable range. For the Middle zone these numbers and density mark the threshold between an Advise Against and Do not Advise Against outcome.

²⁴² See the 'Advise Against' letter dated 21st August 2015 for the 270 dwelling scheme in this case, at Birch appendix 24.

²⁴³ *LUP Methodology*, para. 45: Birch appendix 14.

²⁴⁴ Birch Proof/para. 4.5.

²⁴⁵ Birch Proof/paras 5.1 – 5.5.

²⁴⁶ Birch Proof/para. 4.13; *LUP Methodology*, Annex 3, Table 2: Birch appendix 14.

182. It is important to note that housing development for the general population, no matter how large, can never be SL4. The highest sensitivity level is reserved for highly vulnerable or sensitive types of development, such as large care homes and schools. This is clear from properly reading Table 2 and Table 4, the latter of which is created only by exception from SL2 and SL3. The silence with respect to housing in Table 4 is not an opportunity for 'negotiating around' the sensitivity levels. The lack of an exception in relation to housing is a deliberate omission, which is the product of HSE's evaluation of the sensitivity of residential development. As the LUP Methodology itself underlines, *Sensitivity Levels are based on a clear rationale in order to allow progressively more severe restrictions to be imposed as the sensitivity of the proposed development increases*²⁴⁷. Thus the sensitivity levels are not open to interpretation in the way the Council sought to do; but, even if they were, that interpretation is contrary to the well-established principle that policies must be interpreted objectively and in accordance with the language used, read in its proper context²⁴⁸, and is simply wrong.
183. There is no justification for any reliance on SL4 as in the Council's case. Were the SofS to place any reliance on SL4 this would amount to a misunderstanding of HSE's Methodology and therefore of its advice, meaning that the *Tandridge* duty and paragraph 071 of the PPG would not be satisfied.
184. In modelling and assessing the residual risk arising from an LPG facility the HSE consider all possible hazardous events. However, they chose not the worst event but the most likely accident in the form of a Boiling Liquid, Expanding Vapour Explosion (BLEVE)²⁴⁹ which is an omnidirectional hazard that subsumes all other lesser hazardous events at the site.
185. The Council suggested that missiles should have been considered as these travel further²⁵⁰. The HSE confirmed that they had been considered but as they are lesser, directional hazards, only affecting a limited number of people, the BLEVE was considered a more appropriate event in the circumstances of this particular case.
186. The consequence of a BLEVE is thermal radiation (heat)²⁵¹, which is quantified in terms of thermal dose units (tdu) which measure the level of exposure over time. The assessment resulted in the following thresholds:

²⁴⁷ *LUP Methodology*, para. 38: Birch appendix 14.

²⁴⁸ See *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, at [13] – [20], and the authorities cited therein: this is a Scottish case, but it summarised all of the principles relevant to the interpretation of policy in the planning context in English law. While the LUP Methodology is not a planning policy, the same general principles apply to its interpretation by analogy, as the Supreme Court's reliance at [19] on the non-planning case of *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836 demonstrates. Attached to appellant company's closing Inquiry Doc 38.

²⁴⁹ That being in this case the hot failure of a less than full vessel (20 tonne road tanker), typically due to an impact by jet-fires, which then ignites and burns as a fireball – Birch proof paras 6.1-6.7.

²⁵⁰ The Council did not provide any alternative modelling and assessment on the basis of this as an alternative event.

²⁵¹ Birch Proof/paras 3.19 – 3.26.

- 1800 tdu is the threshold for 50% fatalities in all population groups, and comprises the boundary to the Inner Zone;
- 1000 tdu is a Dangerous Dose of thermal radiation, which would cause a low percentage of fatalities in a typical population and would mostly affect only the most sensitive members. This is the threshold for the Middle Zone;
- 500 tdu is a Dangerous Dose only for vulnerable groups, causing distress to all but a low percentage of deaths. This is the threshold for the Outer Zone.

187. The appeal site lies adjacent to the Flogas LPG bottling plant. The site is licensed for the storage of up to 600 tonnes of LPG and the bottling of gas cylinders. The plant itself currently operates two underground tanks with a nominal capacity of 85 tonnes each, a total of 170 tonnes, which are generally filled to a maximum of 150 tonnes. Whilst licensed for gas cylinder bottling this operation is presently moth-balled²⁵² and the third underground tank on the site has been decommissioned. LPG is delivered in road tankers transporting up to 23 tonnes. Smaller tankers each with a capacity of 4.5 to 15 tonnes are filled from the storage vessels. Within the overall licence the re-commissioning of the third tank would take the site over the threshold of 200 tonnes re-classifying it as an Upper Tier COMAH (Control of Major Accident Hazard) site which would require a Safety Case to be assessed by the HSE²⁵³.

188. The risk of a BLEVE occurring at all at the Flogas site is in the order of 10 chances per million per year. In evidence in chief Mr Birch clarified that, when taken together with the protection afforded to people by being inside their houses most of the time, this was a residual risk equivalent to that faced by people in their day-to-day lives.

189. The HSE has therefore set the LUP Consultation Zones²⁵⁴ using the Protection Concept, by calculating the thermal dose distances for a BLEVE arising from the road tanker and the storage vessels on site in turn²⁵⁵.

190. These yield an Inner zone at 98 metres. The consequences of a fireball in the Inner zone are so serious that the low probability of the event occurring is not considered, consequently this area is not considered suitable for development of the kind proposed.

191. The Middle zone would be at 135 metres. The risk of fatalities drops off from 50% at the boundary with the Inner zone to 1-5% at the outer boundary with the Outer zone. As the consequences have considerably reduced the HSE considers and balances these with the very low likelihood of the event occurring. Only people outdoors will suffer severe distress²⁵⁶, because beyond the spontaneous

²⁵² Birch evidence.

²⁵³ Mr Birch explained in evidence in chief that if Flogas wanted to increase its inventory to the maximum allowable quantities, the risks and therefore the Consultation Zones would not change because the operator would be required to bury additional storage vessels for safety reasons.

²⁵⁴ Birch Proof appendix. 12.

²⁵⁵ Birch Proof/paras 7.5 – 7.11.

²⁵⁶ HSE assumes occupiers are outside 10% of the time during the day and 1% during the night – Birch evidence in chief.

ignition zone²⁵⁷ people inside houses are afforded significant protection from the thermal radiation. As such the vast majority of occupiers of dwellings in the Middle zone are provided with worthwhile protection in the unlikely event that a BLEVE were to occur, as well as a high degree of protection against smaller types of major accident.

192. Taking into account the straddling rule, even though the 260 unit scheme was calculated to include 11% of the development within the Middle zone, the HSE made a bespoke assessment that with appropriate minor modifications (a cap on the number of houses in the Middle zone to 26 at a density of no more than 40 dwellings per hectare), the overall scheme could be classed as lying within the Outer zone for assessment purposes.

193. The Outer zone would be at 355 metres where able-bodied persons would be expected to remain relatively unscathed. The chances of serious harm would be greatly reduced to 1 chance per million per year at the common boundary with the Middle zone, reducing to less than that at the outer edge of the Outer zone.

194. The balancing of risk with the control, but not elimination, of the chances of a BLEVE occurring at the Flogas site, is low and comparable to ordinary, everyday risks.

195. The evaluation of the HSE in respect of the scheme for 270 dwellings was Advise Against as it would have permitted dwellings within the Inner zone and substantial numbers of houses within the Middle zone²⁵⁸. However, with appropriate conditions applied to prevent development within the Inner zone and a limitation to the numbers of persons being introduced into the Middle zone (scheme for 260 units) the statutory advice changes to Do not Advise Against.

196. The Council did not challenge the HSE's LUP Methodology. Professor Nathanail's approach was to rely selectively on the HSE's advice and then provide his own evaluation of risk on a zero-tolerance basis. The matters identified by the HSE as being incorrect are:

- The Council's promoted exclusion zones²⁵⁹ are taken from the UKLPG Code of Practice²⁶⁰. This is industry guidance on hazard-related emergency planning. These zones are intended for use by the operator prior to the arrival of the fire service in the event of a major accident occurring²⁶¹. This guidance is hazard rather than risk related and is not therefore, appropriate for land use planning. Professor Nathanail did accept in cross-examination that emergency planning and LUP advice were different. Such guidance is not relevant to the evaluation of residual risk in this case.
- The Council also relied upon the US Marine stand-off distances for Improvised Explosive Devices²⁶², although no analysis of how representative this would be

²⁵⁷ At 93 metres extremity.

²⁵⁸ SL2 development.

²⁵⁹ 500 metres to evaluate risk for 140 metre fireball.

²⁶⁰ Birch appendix 23, page 31, Table A.1, final row of the table.

²⁶¹ Birch appendix 23, para 1.1.1.

²⁶² Inquiry Doc 22.

of an industrial accident at the Flogas site was given. The stand-off distances deal with weaponised storage of LPG. They also relate to emergency planning where the aim is to avoid all possible harm to the existing population rather than being suitable for the balancing exercise that is the concern of LUP.

- The Council use the Defra Risk Classification Matrix²⁶³ to suggest that the risk is Medium or Amber. This guidance is directed towards environmental risk assessment, not the residual risk that is relevant to LUP. In evidence, Professor Nathanail had not undertaken any modelling, calculation or calibration using the guidance to justify his selection of the Medium risk category in this instance. As such this would be too subjective to be capable of informing any LUP risk evaluation.
 - Professor Nathanail in his proof paragraphs 33-35 and 51.7 implied a comparison of the potential event at the Flogas site with the major accidents at large scale petrol storage sites such as Buncefield and San Juan. No such analogy can be drawn. The scale of Buncefield was much larger, the hazardous substance; the mode of storage; the failure mechanism, and the consequence are all completely different. Professor Nathanail in cross-examination suggested that the reference to the large scale petrol storage sites was to indicate that accidents do happen. Such a general statement is of no assistance to the decision-maker in weighing the balance in this case.
 - The Council's reference to HSE's consultation zones (paragraph 23 of Professor Nathanail's proof) – Development Proximity Zones is incorrect and is of no relevance or application to LPG hazardous installations, such as the Flogas site. It is an additional zone only relevant to large scale petrol storage sites²⁶⁴, which the Flogas site is not.
 - Even given that the Council did not challenge the HSE's Methodology, it wrongly categorised housing as being SL4 and further that the proposal was classified as DT4.2 –predominantly open air developments where there could be more than 1000 people present at any one time. This is wrong in principle²⁶⁵. Housing is not classified as open air development²⁶⁶.
197. In conclusion the HSE advises that, subject to the health and safety conditions, proposed development on the appeal site would be sufficiently low risk to mean that the HSE Does Not Advise Against the grant of planning permission.

²⁶³ Nathanail Proof – Figure 2.

²⁶⁴ Inquiry Doc 24 - HSE document, *Land use planning advice around large scale petrol storage sites* SPC/Tech/General/43, at paras 1 – 4.

²⁶⁵ In any event, Nathanail's population calculation (Nathanail Proof/para. 36) was based on an assumption of 4 people per dwelling, which was not supported by any objective evidence-base, such as Census data that HSE relies on in order to assume 2.5 people per dwelling unit.

²⁶⁶ Examples given in Table 4 of the LUP Methodology – Birch appendix 14.

Third parties who addressed the Inquiry

Jennie Allen²⁶⁷ speaking on behalf of the Windrush Valley Protection Group²⁶⁸

198. ²⁶⁹Some 600 objections were received to the appeal proposal. This area means so much to the people of Witney and visitors. The appeal site is at the start of the Windrush Valley and is a green lung providing instant access to swathes of green countryside. The footpaths close to the site have been used for recreational purposes by generations of Witney families enjoying the wonderful scenery and wildlife. The development is on the valley side which can not be screened. From Burford Road there are unspoilt views out towards the Cotswolds and the area can be described as serene. This development would cause significant harmful visual impact and intrusion on the wider valley landscape. It would be visible from as far away as Farm Lane, Crawley. At night the area is black, silent and peaceful. The proposal would cause light intrusion and noise pollution to the valley. Building on this site, which is a key part of the heritage of Witney, would be a travesty.
199. In respect of the AQMA in Bridge Street it is accepted that the increase in traffic/cars generated by the proposal would be detrimental to the air quality in this area. The mitigation being offered is financial²⁷⁰, towards the proposed SGSR scheme. However, the contribution won't come forward until the 75th house has been built which is expected to be within 5 years. There is no certainty that the SGSR scheme will be built in this timeframe. It is also dependant on the development of the Witney East SDA which is also unlikely to happen in the next 5 years. Air quality will not improve until this scheme is built. In the meantime, the appeal proposal is likely to result in increased pollution and worse traffic conditions with no solution guaranteed.
200. In these circumstances the proposed development should not take place until the SGSR has been commissioned or fully funded and shown to be an effective mitigation measure.
201. In respect of the effect of the LPG installation on the safety of future residents it is difficult to understand why the HSE advise against 270 dwellings because of the risk of an explosion but not against a 260 unit scheme. Although the risk of a BLEVE event is residual, the risk is not eradicated and the consequences are very significant. A small reduction of homes in the Middle zone would not significantly reduce the number of deaths and injuries and the number of houses damaged or destroyed in the event of a BLEVE.
202. The standards have been applied rigidly and accept a level of risk for those living in the Middle zone which Miss Allen considers unacceptable. The proposal has 16 homes with their gardens backing onto the Inner zone. Any residents using this outside space would be at a 50% risk of death²⁷¹.

²⁶⁷ Also local resident.

²⁶⁸ Formed when the planning application, now the subject of this appeal, was submitted. Comprises 8 members of the public who are opposed to the plans. The objective of the group is to inform other members of the public of the planned development.

²⁶⁹ Miss Allen's statement – Inquiry Doc 28 and Closing Inquiry Doc 35.

²⁷⁰ £1.2 million.

²⁷¹ In accordance with her understanding of the HSE zones – Page 15 of HSE proof.

203. In addition, were there to be a risk which required the entire development to be evacuated along with all the homes along Burford Road it is likely chaos would ensue. UK LPG industry guidance²⁷² in evacuation, indicates all dwellings within 400 metres of the LPG depot have to be cleared in the event of an ignited source being identified. It also sets out that for a 20 tonne tanker the size of the BLEVE would be 80 metres and the suggested exclusion zone is 300 metres. Missiles resulting from LPG vessel failure travel significantly greater distances.
204. Flogas have objected to the proposal. The view of the Group is that no housing should be allowed in the Middle zone and this development should not be permitted from a public safety perspective.
205. If this development was already built and a gas plant was proposed it would be expected that every family close by would object. Why bring sensitive receptors to a hazardous location and take the risk?
206. Turning to flooding, it is accepted that the proposed development is not on the flood plain but it does provide a large area of soakaway land for rainfall. Whilst the Environment Agency has stated there is unlikely to be a risk of increased flooding downstream as a result of this development being constructed, residents are concerned in the context of recent national flooding issues. The effectiveness of a sustainable urban drainage scheme will be assessed before work commences, but appropriate upstream land management is key to preventing flooding downstream.
207. The flood plain to the Windrush Valley is waterlogged, with standing water which typically persists for weeks. Residents' concerns centre on the effectiveness of the proposed holding pond which would release water onto the flood plain which may already be saturated.
208. The adequacy of the sewage system is also a concern. The upgrade requested by Thames Water needs to be done before the houses are built. This may delay the development further thereby reducing the likelihood the houses will contribute to a 5YHLS.
209. Traffic in this area is congested at peak hours and the proposed development would only add to this. Burford Road can be a fast, dangerous road where the speed limit is not adhered to. There are already 5 points of main access in the vicinity of the appeal site. The proposal will make 6. The addition of 260 homes and the subsequent additional cars entering and exiting Burford Road as a result of the development is very concerning.

*Pat Dingle – Local resident – Bridge Street*²⁷³

210. Bridge Street is the only river crossing point in the main town centre. With the expansion of the town the number of vehicles, including HGVs and buses, has increased significantly overtime. As a result, Bridge Street was declared an AQMA, one of only two in the District. Residents live with the fumes on a daily basis. It is possible to smell the fumes both outside in the street but also inside buildings. The fabric of the buildings (some of which are listed) is also affected

²⁷² UK LPG Code of Practice 3:2000 Recommendations for Prevention and Control of Fire involving LPG (October 2006) – Birch proof Appendix 23.

²⁷³ Inquiry Doc 29 – Statement of Pat Dingle.

by the acidic nature of the traffic fumes. The health of residents and those using Bridge Street, including school children, would likely be similarly affected.

211. The appellant company accepts that the extra cars generated by the proposal using Bridge Street would lead to a worsening of the operating conditions and that the level of increased traffic would warrant mitigation²⁷⁴.

212. That mitigation is the building of the SGSR scheme²⁷⁵. It is only when the SGSR scheme has been completed that the planning permission should be granted for the appeal development.

Written Representations from interested persons²⁷⁶

213. Representations were received at the time the planning application was considered by the Council. Further letters and consultation responses were then received in relation to this appeal. The representations received in respect of the second application have also been taken into account in accordance with the conclusion of paragraphs 14-21 inclusive above²⁷⁷. The following is a list of the essence of the concerns raised over and above those raised by the representors who addressed the Inquiry and the Council.

- The development would contribute to overburdened roads which are in a poor condition.
- Traffic links to Oxford are very congested.
- Will increase traffic on Bridge Street, Mill Street and West End which already have tail-backs.
- Increased traffic and proximity of site access would make it more difficult and dangerous for those pulling out of roads and properties intersecting with Burford Road, particularly at the Tower Hill junction.
- No encouragement of public transport such as bus stop provision.
- Local schools, doctors' surgeries and the local hospital are under stress.
- The development would not be effectively screened in the landscape unlike the Flogas site.
- The development would be visually intrusive and harmful to important views enjoyed by residents and visitors, including those using the Windrush Public House.
- The site is an historic area going back to the Witney Baths.
- The proposal would result in a loss of land that is home to a range of wildlife, including protected species.
- The proposal would result in a loss of outlook, privacy, security and tranquillity to nearby residents, including a B&B business.

²⁷⁴ Statement of Common Ground: Highways and Transportation – paras 2.6.2, 2.6.3 & 5.3.4.

²⁷⁵ Miss Dingle agrees with the points made by Ms Allen at para 199,200.

²⁷⁶ Both at the application and appeal stage of the appeal.

²⁷⁷ Source the Officer's Reports to Planning Committee 21d of the Appeal Questionnaire & CD 16.16.

Conditions and disputed obligations

214. A schedule of conditions was submitted by the parties at the Inquiry²⁷⁸ (Inquiry Doc 3). Following discussion at the Inquiry some conditions have been amended and amalgamated for clarity, precision, elimination of duplication, and taking into account guidance in this regard. The conditions are set out at Annex A to this report.
215. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions. These are imposed as they involve details to be approved for the arrangements of the work on site, groundworks and infrastructure approval, landscaping, drainage or matters that affect the layout and position of development, and some mitigation measures. These details are required to be submitted to and approved by the Council prior to commencement of development. A scheme for the landscaping of the land edged in blue adjoining the appeal site is also required in the interests of visual and recreational amenity.
216. Standard conditions are required on the approval of the reserved matters and on the commencement of development. The appellant company promoted a reduction in the period for submission of the reserved matters application from the standard three years to two years and the commencement of development only one year from the date of the approval of the last of the reserved matters. Taking into account that weight has been given to the contribution that the proposed development would make to the 5YHLS there is some urgency in moving this development forward. The reduced timescales in this regard would certainly secure a serious focus on the timely delivery of housing.
217. Further conditions are required to ensure that the submission of reserved matters and later details comply with the considerations/parameters taken into account in the approval of the outline permission. This is particularly so in relation to the weight placed on the measures to minimise the residual risk from the Flogas site to future residents of the proposal²⁷⁹. The condition identifying the approved plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning.
218. Taking into account the terms of paragraphs 14-18 inclusive of this report, for the avoidance of doubt a condition has been imposed limiting the maximum number of dwellings to be built on the site to 260.
219. The locality has been identified as having some possible archaeological interest. Therefore, a condition requiring a programme of investigation is justified.
220. The parties promoted the securing of mitigating measures for off-site highway improvements and bus stop improvements by means of conditions. The utilising of such a mechanism is appropriate and conditions should accordingly be imposed.

²⁷⁸ Most of which had been agreed between the parties.

²⁷⁹ Schedule 4 of UU Inquiry Doc 8 also covers this point.

221. A condition relating to the submission and implementation of a travel plan is necessary to provide sustainable transport objectives, giving people a real choice about how they travel. The terms of the condition requires agreement to a timetable for implementation and the retention of the terms of the plan whilst the development is occupied. The terms of the condition bind the relevant parties to implementing the travel plan. If this were not to be the case the Council has powers to seek a remedy from those responsible for implementation in respect of the occupancy of the development.
222. For the same reason the provision and retention of the new footpath/cycleway routes associated with the scheme is also necessary.
223. The parties promoted the securing of the affordable housing element of development by means of a condition. The utilising of such a mechanism as a condition is appropriate and should accordingly be imposed. However, at this stage it is not necessary to specify the percentage of market housing which can be occupied before the affordable housing is completed as this can be dealt with in the timing and phasing of the construction of the affordable dwellings.
224. Although evidence is limited regarding whether there is any contamination of this agricultural land, it is reasonable that investigations should be carried out in relation to possible contamination. Therefore, for this reason the condition should be imposed.
225. The management/protection and long-term well-being of the natural elements of the ecology of the development site is important to safeguard for the reasons of amenity and biodiversity.
226. The condition relating to the Construction Management/Method Plan and Statement is required in order to protect the amenities of nearby residents and general amenity.
227. Taking into account the topography of the development site it is necessary to include a condition to secure details of the existing and proposed ground/slab/ridge levels.
228. A condition relating to the provision and future management of surface water drainage is also necessary to ensure adequate arrangements are in place to respond to local concerns, particularly in relation to flooding and in the interests of environmental impact.
229. Details of the road, footways, access, parking and turning are required to ensure the standard of construction; their actual timetabled provision; and their retention for purpose.
230. Limitations on external lighting are necessary to minimise visual impacts and the character of the countryside.
231. The Council did suggest a condition relating to the submission of a drainage strategy for on and off-site works. A condition relating to surface water drainage has already been proffered for imposition. The matter at issues here is foul water drainage. This would be dealt with directly with Thames Water under other legislation outside of the planning remit. It does not seem necessary or

reasonable to require the appellant company to seek approval for a scheme of foul water connection essentially from the same regulatory body twice.

*Disputed Planning obligations*²⁸⁰

Adult day care contribution

232. *Case for Oxfordshire County Council* - The County Council provides publically accessible day centres across the County. These centres provide a range of facilities for older people to enable them to live independently in their own homes and communities for as long as possible. The provision of day care facilities contributes toward the provision of sustainability in terms of promotion and achievement of strong, healthy communities and accessible local services that reflect the community's needs and support its health social and cultural well-being as defined in paragraph 7 of the Framework.

233. The nearest health and well-being centre to the proposed development is Witney Resource Centre. There are currently no vacancies for day care services at this facility. The required contribution will go towards the expansion of the capacity at the Witney Centre to satisfactorily accommodate additional future clients from the proposed development.

234. *Case for the appellant company* – The Witney Resource Centre²⁸¹ is a facility run by a private company²⁸². Those attending, use their assessed personal budget to pay for access to these adult social care facilities. The requested contribution would go to enhance and extend a private care facility.

235. *Inspector's conclusion* – The relationship between local authority provision and private provision is rather blurred. In addition, the vagaries of how, where and to what extent the personal care budget of individuals is spent is also unpredictable. However, ultimately it is the County Council who are the responsible body for providing appropriate care services whether that is via a private service end provider or not. It is unclear that a private interest would benefit from the promised contribution. Even if that were to be the case, the improved provision would also be in the public interest. In these circumstances, provision of whatever kind, close to the appeal site is at capacity and so, in my view, the contribution is justified in this instance.

Library contribution

236. *Case for Oxfordshire County Council* - The requested contribution to mitigate the impact of the proposal is sought towards library infrastructure and supplementary book stock provision in Witney. The provision of a quality library service is vital to a sense of place, valuing culture and leisure as being vital to maintaining good quality of life, to helping break the cycle of deprivation. Libraries form part of the cultural and community fabric that can also provide for lifelong learning and skills development and support economic growth.

237. *Case for the appellant company* – There is no scheme to expand Witney Library nor any indication when any expansion would be required.

²⁸⁰ Inquiry Doc 11 + attachments.

²⁸¹ Elms Health and Well Being Centre.

²⁸² Part of the Leonard Cheshire Disability Group.

238. *Inspector's conclusion* – The County Council has indicated the contribution to the Witney Library would be for its expansion or improvement, including book stock. Whilst there are no firm plans to expand the Witney Library, the Council has identified the need for the expansion and has calculated the contribution on the basis of an appropriate formula in this regard. I have no doubt that the expanding and replenishing of book stock is a vital part of the function of the Library. It seems reasonable and necessary to require a mitigating contribution for this service which will benefit the quality of life of future residents of the development.

Administration and Monitoring fee

239. *Case for Oxfordshire County Council* – In order to secure the delivery of the various infrastructure improvements, the County Council needs to monitor Section 106 planning obligations to ensure that these are complied with. The above fee goes towards funding a team of officers who carry out this work. The monitoring of the obligation is as necessary as the obligation itself. The Secretary of State in recovered appeal Highworth Road, Faringdon, Oxfordshire²⁸³ endorsed the Inspector's conclusion at para 163 of the report that the monitoring of Section 106 planning obligations must place an extra burden on the authority with its associated costs. Once it is accepted that an obligation is necessary as a matter of planning judgement, then the proper costs of administering that obligation cannot be rationally found to be unnecessary in planning terms simply because the administration is a function of the local authority.

240. *Case for the appellant company* – It is the function of the County Council to administer, monitor and enforce planning obligations. The contribution is not necessary to make the development acceptable in planning terms. The costs of administering and monitoring would be included in the Council's resources and budget for the discharge of its functions under Section 106.

241. *Inspector's conclusion* – It is the function of the County Council to administer, monitor and enforce planning obligations. In this case the proposed development is of a significant scale in terms of the number of dwellings and the consequential extent of the contributions required. It would be necessary to administer and monitor, including enforcement if necessary, the terms of the agreement, particularly as some contributions do not fall to be payable until after commencement, at a particular stage in the development. Therefore, I consider the required fee to be necessary, in order to make the development acceptable²⁸⁴.

Inspector's Conclusions

242. The following conclusions are based on the submitted evidence, that given at the Inquiry, the written representations made and my inspection of the site and its surroundings. The numbers in square brackets [] denote earlier paragraphs in this report from which these conclusions are drawn.

²⁸³ APP/V3120/A/13/2210891 – Attached to Inquiry Doc 11.

²⁸⁴ The terms of Oxfordshire County Council v Secretary of State for Communities and Local Government & others CO/4757/2014 have been taken into account - Attached to Inquiry Doc 11 - but consider the scale and circumstances of the two cases to be different sufficient to draw an alternate conclusion in this appeal from that dealt with in the judgement.

Planning Policy/5YHLS

243. The Framework acknowledges that it is highly desirable that local planning authorities should have an up-to-date plan in place.
244. Following the first week of hearings in November 2015 on the emerging WOLP EiP, the Inspector published preliminary findings in two parts focusing on the crucial matters of housing requirement, the needs of neighbouring Oxford City, the duty to co-operate and, amongst other things, housing supply and delivery. The WOLP has been placed in suspension to enable the Council to re-consider and carry out further work on these [22, 23]. The findings of the EiP Inspector were issued on the 15 December 2015, only some 3 weeks before the opening of this appeal Inquiry. Taking into account the very recent scrutiny of the evidence base in respect of housing need/supply and the consequential identification by the EiP Inspector of areas of concern regarding the Council's approach and content of the WOLP, the comments of the EiP Inspector should be afforded significant weight in the consideration of the relevant aspects of this proposal²⁸⁵.
245. A reliable date for the adoption of the WOLP was not tabled [23], although the Council do acknowledge that the expectation of Government is that local plans will be produced by early 2017. In these circumstances of uncertainty, with a lack of confirmation of compliance with the terms of the Framework, the weight that can be attributed to the emerging WOLP policies could only be limited²⁸⁶. Therefore, the Council are relying on the saved policies of the LP which pre-dates the Framework [26, 27].
246. The appeal site lies outside the settlement envelope for Witney²⁸⁷. The specified settlement boundary would have been fixed in the LP having regard to the need to accommodate development planned up to 2011 [26].
247. Both LP Policies NE1 and H7 [28] recognise the countryside as being a highly valued resource which should be protected for its own sake, safeguarding it from the increasing pressures of development. On the face of it the appeal proposal would be contrary to these policy terms, which are broadly framed, with development being restricted to within the settlement boundaries, not extending development into the countryside [28, 98]. The fixed settlement envelopes would have the effect of constraining housing development within settlements, including Witney.
248. Whilst this overall policy approach does reflect the spirit of one of the core planning principles of the Framework, namely that of recognising the intrinsic character and beauty of the countryside²⁸⁸, it is inextricably linked with the constraining effect of the settlement boundaries on the housing requirement. I am also conscious that the Council has accepted that to meet future housing

²⁸⁵ Lomas rebuttal appendix 8 – IN 015 & IN 016.

²⁸⁶ This was an agreed point between the parties.

²⁸⁷ Will be treated as open countryside.

²⁸⁸ Paragraph 17, bullet point 5 of the Framework – LP Policy NE3 may also be considered to be restrictive of the supply of housing land, although it is designed for a more specific purpose of protecting landscape types - Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates v Cheshire East BC and SSCLG [2016] EWCA Civ 168 – Inquiry Docs 40 and 41.

requirements, some development on sustainable urban fringe greenfield land will be necessary [30].

249. Therefore, I consider LP Policies NE1 and H7 are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework and I shall appraise the weight to be afforded to them accordingly.

Housing requirement

250. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. It identifies that Councils should ensure that their local plans meet the FOANs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of either 5% or 20% (moved onward from later in the plan period), to ensure choice and competition in the market for land.

251. It was common ground at the Inquiry that the Council was unable to demonstrate the provision of five years worth of deliverable housing land, measured against their housing requirements using the Sedgefield method of addressing past under-delivery and using a 5% or 20% buffer [32]. However, the Council advocated the use of the Liverpool method (spreading the shortfall over the whole plan period) and a 5% buffer which did result in achieving a 5YHLS²⁸⁹ [161, 165]

252. In these circumstances and, taking into account all of the agreed matters between the parties in this regard²⁹⁰ [31, 32], it is necessary to focus on the following disputed elements. Firstly, the FOAN, and secondly, which method of addressing past under-delivery is appropriate and finally which percentage buffer should be applied.

FOAN

253. The EiP Inspector identified that the WOLP housing requirement of 10,500 had not been justified²⁹¹. However, he was not able to identify what the housing requirement should be. He did indicate it was likely to be between the recommended figure in the SHMA (660dpa (appellant company's promoted figure) and that in the WOLP (525dpa))²⁹².

254. The resultant uncertainty over the WOLP FOAN prompted the Council, over the duration of the Inquiry, to re-calculate their housing requirement, revising the promoted FOAN figure (525 dpa) to 598 dpa [156]. The Council accept this figure is untested and does not take into account the maximising of delivery of affordable housing²⁹³ and the needs of Oxford City²⁹⁴. It would not be productive to planning for sustainable development for potential additional sites to meet West Oxfordshire's needs arising from an increased housing requirement to be considered in isolation from sites required for Oxford City's needs. Ultimately

²⁸⁹ Using their promoted FOAN of 598 dpa – Tables on page 6 of Inquiry Doc 17.

²⁹⁰ Inquiry Docs 1, 17 & 18 as well as paras 31 and 32 of this report.

²⁹¹ Lomas rebuttal appendix 8 – IN015 para 10.1.

²⁹² Lomas rebuttal appendix 8 – IN015 para 10.5.

²⁹³ Lomas rebuttal appendix 8 – IN015 paras 5.1-5.12.

²⁹⁴ Lomas rebuttal appendix 8 – IN015 paras 7.1-7.8.

after additional work and engagement with Oxford City and the other neighbouring authorities the outcome might be that West Oxfordshire does not need to accommodate the City's need [158]. However, to assume this to be the case at this early stage in the Council's re-appraisal of the WOLP would, as the EiP Inspector sets out, be a 'high risk strategy',²⁹⁵.

255. Therefore, whilst some adjustments may be required to the FOAN²⁹⁶, as a result of the matters raised by the EiP Inspector, and in the formulation of the new local plan, this is a matter which requires further work, consideration, consultation and examination. It is not the role of a decision-maker in a Section 78 appeal to set an FOAN for the District. To the extent that it has been considered at the Inquiry, the SHMA represents a robust source of base data to establish the housing requirement²⁹⁷. As a result the Council's FOAN, in all probability would not be less than 10,500 dwellings over the plan period and, taking into account the potential to accommodate the needs of Oxford and affordable housing delivery, the Council's case in respect of an FOAN of 598 dpa is not justified on the strength of the evidence before the Inquiry.

Sedgefield v Liverpool

256. The Council readily admit that it has traditionally always used the Liverpool method of amortising shortfall or surplus across the remaining term of the plan period [165]. This in itself is not a good enough reason to continue its use, particularly as the PPG advises that Council's should aim to deal with any undersupply within the first five years of the plan period where possible. The Council suggested that in times of surplus the Liverpool method brings housing forward faster²⁹⁸ [165]. That is not a persuasive argument in their current position of uncertainty and does not justify a departure from the PPG guidance in the case of West Oxfordshire's approach to this appeal²⁹⁹. The EiP Inspector highlighted that the Council should have particular regard to National Guidance on this matter as the Liverpool method is not mentioned³⁰⁰. In heeding his advice there was no credible justification presented at the Inquiry to go against the PPG in this instance. Therefore, for these reasons the use of the Sedgefield method promoted by the appellant company is favoured in this appeal.

Buffer

257. The preliminary findings of the EiP Inspector were that it was appropriate to consider whether there was persistent under delivery over a period of 10 years or more, to incorporate the full economic cycle. He referred to the substantial over-delivery that had taken place between 2006 and 2011³⁰¹. In more recent years delivery has been below the requirements of the WOLP [163]. Nonetheless, in taking a more long-term view a case of persistent under-delivery has not been

²⁹⁵ Lomas rebuttal appendix 8 – IN015 paras 7.7 & 7.8.

²⁹⁶ The Council conceded adjustments to their OAN figure over the course of the Inquiry.

²⁹⁷ 660 dpa.

²⁹⁸ They also sought to rely upon the Bloor Homes decision (CD15.2) but this pre-dates the PPG – accepted point by Mr Wood [76].

²⁹⁹ As part of the current suspension of the WOLP examination the Council is undertaking further work to re-appraise their approach, but my consideration is based on the evidence to the Inquiry.

³⁰⁰ Lomas rebuttal appendix 8 – IN 016 para 2.15.

³⁰¹ Compared with the requirements of the South-East Plan (Regional Strategy now revoked).

established. The EiP Inspector commented that if delivery continues to be below that which is required, future decision makers may take a different view. Whilst completions for the first 6 months of 2015/16 were only 140³⁰² this Inquiry took place less than a month from the issuing of the EiP Inspector's preliminary findings. The 140 figure is only an interim figure and one which, in these circumstances, cannot be confidently relied upon. Therefore, the 5% buffer is appropriate in this instance.

Council's alternative approach

258. As already stated, the Council favour the use of the Liverpool method of dealing with undersupply, along with the application of the 5% buffer [32]. Were this to be considered a credible approach the Council could move into a positive position on their 5YHLS³⁰³. Therefore, it is necessary to look more closely at the sites included within the 5YHLS trajectory.
259. The joint position statement³⁰⁴ sets out the four disputed sites. The difference between the parties in terms of anticipated contributory supply is some 804 dwellings. Such a discounted figure from the Council's identified supply would tip their positive 5YHLS using the Liverpool method of calculation and a 5% buffer into a negative position, whether using the Council's promoted FOAN (598 dpa) or that of the SHMA (660dpa)³⁰⁵.
260. *West Witney SDA* has a resolution to grant outline planning permission in March 2013. The S106 agreement remained unsigned at the time of the Inquiry. The terms of a transport agreement remained unresolved and the S106 agreement could not therefore be finalised. The Council was unable to confirm when the S106 would be completed. Initially the first dwellings were anticipated to be completed during 2016. Slippage on this timescale for delivery would seem significant with no outline planning permission yet issued and reserved matters still to subsequently proceed³⁰⁶. The anticipated residential start of mid-2016 seems very unlikely. It was also anticipated there would be four house builders working on site. There is no evidence of such a number of house builders signed up to this site. On this evidence it is unlikely that the 600 dwellings the Council consider would contribute to the 5YHLS would come forward and even the 480 which the appellant company promote may be optimistic³⁰⁷ [80, 81,82]³⁰⁸.
261. *East of Chipping Norton SDA* is a site which is promoted through the WOLP and has yet to be examined. There were 10 comments made as part of the WOLP consultation which have yet to be aired at the EiP. These representations were mainly objections and related predominantly to the proposed strategic development area focusing on landscape and amenity impacts, surface water run-off, the balance of housing and jobs, traffic impacts, ecology and impact on infrastructure. There is only one house builder currently involved with the site

³⁰² This figure is likely not have been before the EiP Inspector [70].

³⁰³ Inquiry Doc 17 – page 6.

³⁰⁴ Inquiry Doc 17 – page 7.

³⁰⁵ Inquiry Doc 17 – page 6.

³⁰⁶ It was anticipated that reserved matters permission would have been secured by March 2016.

³⁰⁷ Inquiry Doc 17 – page 7.

³⁰⁸ Source Wood Appendix 7b SofCG for large housing sites – produced for the EiP of the WOLP and Inquiry Doc 5.

split into two ownerships. It was anticipated with a site of this size, three house builders would be required to deliver the allocation. Further, an outline planning application was anticipated to be submitted in mid- 2016 with a start on site towards the end of 2017. However, this was before the suspension of the EiP [83, 84, 85]³⁰⁹.

262. *North Witney SDA* similarly does not yet have planning permission. The approach of the Council was that it would be allocated in the WOLP and then granted planning permission. A planning application submitted in November 2014 for a small part of the site (Woodstock Road) remains undetermined. The site is in multiple control. The Council want a comprehensive scheme for the whole SDA promoting the preparation of a masterplan. First completions were expected in autumn 2017³¹⁰. However, there remains an unsolved highways objection to the smaller Woodstock Road scheme and there is no evidence of any significant progress in respect of production of the masterplan. In addition, there are still 29 representations to be dealt with by the EiP, which are mainly objections related predominantly to the proposed strategic development area, along with flood risk, ecology, landscape and traffic impact and the viability/deliverability of the SDA. Therefore, in these circumstances of uncertainty the 200 dwellings anticipated by the Council seem unlikely to come forward within the 5YHLS [86, 87, 88]³¹¹.

263. *East Witney SDA* is owned by a family consortium. It is dependant on the delivery of the SGSR project onto the A40. All the land required to deliver the SGSR west facing off-slip is available. The on-slip land is not yet secured and an alternative layout is being considered³¹² along with compulsory purchase powers to secure the necessary land. It is anticipated the construction of the junction would be in 2018/19. The submission of a detailed planning application was anticipated by Winter 2016 with first completions being Winter 2018.

264. The EiP Inspector identified that there was a high risk of delay to progressing this site with considerable risk of delivery slippage³¹³. 9 representations were made to the EiP Inspector. Whilst in general the principle of this development was not questioned, more detailed aspects were focused upon, being traffic impact, school capacity, viability and surface water run-off.

265. The delivery of this site is dependant on the SGSR project, although the Council did indicate some development may be able to proceed with only the off-slip aspect of the project secured. With the EiP in suspension the 100 dwellings anticipated to contribute to the 5 YHLS seems unlikely [89, 90, 91, 92]³¹⁴.

266. All of the SDA sites above have yet to be considered through the EiP. The initial timetables for the delivery of these sites were produced before the suspension of the EiP. At present it is not clear when the Examination will resume and it is anyway unlikely to be before the beginning of 2017 [23]. Only West

³⁰⁹ Source Wood Appendix 7b SofCG for large housing sites – produced for the EiP of the WOLP and Inquiry Doc 5.

³¹⁰ This was before the suspension of the EiP.

³¹¹ Source Wood Appendix 7b SofCG for large housing sites – produced for the EiP of the WOLP and Inquiry Doc 5.

³¹² Inquiry Plan A.

³¹³ Lomas rebuttal appendix 8 – IN016 para 2.3.

³¹⁴ Source Wood Appendix 7b SofCG for large housing sites – produced for the EiP of the WOLP and Inquiry Doc 5.

Witney SDA has a resolution to grant planning permission, although the timing for the issuing of the outline planning permission is not certain.

267. Footnote 11 at paragraph 47 of the Framework sets out that for sites to be considered deliverable in the context of the provision of five years worth of housing they should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable.
268. In the circumstances of uncertainty in relation to the suspension of the EiP; a lack of progress in the planning of the SDAs; the resultant slippage in the timetable for the first delivery of housing; concerns in relation to the viability of some development; as well as the availability of the land, whether the delivery of homes on the SDAs to the extent that the Council anticipate in their trajectory for 5YHLS is questionable. As a result the Council supply of 4,067 seems optimistic with the appellant company's figure of 3,263 being more credible.
269. As a result, even using the Liverpool method and a 5% buffer, in these circumstances of uncertainty regarding the supply of specific deliverable sites sufficient to provide five years worth of housing, in all probability the Council would not be in a positive position in relation to the provision of the required 5YHLS.

Conclusion on 5YHLS

270. As already stated at paragraph 32 above, the Council accept that in establishing the 5YHLS using the Sedgfield method, with the 5% buffer, against their own calculation of housing land supply, they were unable to demonstrate the required provision of five years worth of deliverable housing land, measured against their housing requirements [155, 160]³¹⁵. As a result, the relevant policies for the supply of housing should not be considered up-to-date in so far as they relate to this specific matter. Whilst a lack of a five year land supply of deliverable housing land does not provide an automatic 'green light' to planning permission, a balance must be struck. The deficiency in land supply would carry substantial weight in that balancing exercise.
271. For the above reasons, the weight given to the harm caused by a breach of LP policies NE1 and H7 is reduced by the relevant policies being out-of-date and by virtue of the lack of the five year housing land supply.
272. Framework paragraph 14 confirms that, where the relevant policies of the development plan are out-of-date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole or specific policies in the Framework indicate development should be restricted. It is necessary then to consider whether the impacts arising from granting planning permission are adverse and whether they would significantly and demonstrably outweigh the benefits of that permission in addressing the housing shortfall.

³¹⁵ Inquiry Doc 17 - page 4, Tables.

*Effect on character and appearance of the landscape*³¹⁶

273. As already established [9-13] the appeal site, in itself, is an undistinguished agricultural field adjoining the hard urban edge of Witney. Both the field and the adjacent modern residential development of the settlement, which lies on rising ground from the River Witney, are prominent in views from across the valley (Crawley Road and Witney Road). This is particularly so of Burford Road where clear views of the predominantly two and three storey housing delineate the ridge of the valley.
274. LP Policy WIT3 [28] sets out that development on land within or where it would be visible from the Windrush in Witney policy area should protect and enhance the intrinsic landscape and character of the valley³¹⁷. The Windrush valley links the surrounding countryside with the hustle and bustle of the town centre. Part of the character of the valley as it penetrates the built up area of Witney is the spread of dwellings down the valley sides immediately addressing the outer boundaries of the Windrush in Witney project area³¹⁸ and the distinct edge of the flat river valley bottom. This is a characterising feature in the vicinity of Crawley Road and the comparatively recent Meadow Lane development, which runs into the residential conversion of Witney Mill and beyond to River Gardens. The juxtaposition of residential development sloping down to the River is an integral part of the character of the river valley within Witney.
275. On the northern side of the river, development along Crawley Road becomes sporadic and sparse and the open sloping fields beyond the town create a distinct visual linkage between the river valley and the countryside beyond. In contrast to the south of the river the development of Burford Road, Pope's Piece and to a lesser degree Springfield Oval maintains the contiguity of visually prominent residential development, including that on the valley slope, with the flat spread of the valley bottom. From the network of footpaths, concentrated along the valley floor, existing residential development is obvious and those enjoying the open space could not fail to be aware of the close-by urban settlement. This includes the comings and goings of the daily lives of residents and a distinct awareness of traffic along the Burford Road which serve to accentuate the urban element which contributes to the character of the locality.
276. Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by (amongst other matters) protecting and enhancing valued landscapes, although the term 'valued landscapes' is not defined. Whilst the landscape here is clearly valued by local people, it does not include specific attributes or landscape features [113] or designation [114] which would take it out of the ordinary sufficient for it to amount to a valued landscape in terms of the Framework³¹⁹ [40,41].

³¹⁶ The Council's case in this regard is squarely centred on the impact on landscape character.

³¹⁷ Amongst other things.

³¹⁸ CD 7.1.

³¹⁹ The Council's case in respect of paragraph 109 of the Framework evolved in cross-examination. Other than its juxtaposition with the River Windrush and the evaluation of the wider landscape as being of value in the various landscape assessments [35,37] no clear analysis was undertaken by the Council to substantiate the claim of value in Framework terms. The appellant company's evidence using Box 5.1 of the Guidelines for Landscape and Visual Impact assessment – (Inquiry Doc 12) justified a conclusion of no conflict with paragraph 109 (reasoning on heritage assets and biodiversity also applies).

277. That said, landscape is about the relationship between people and place. It provides the setting for our day-to-day lives. This is a landscape in which people spend their leisure time. They experience it both up-close and at a distance.
278. The appeal site does form part of the wider river valley setting of the River Windrush. The Windrush Valley through Witney is a fundamental component of the town's attractive character. The sense of being away from the town in a more rural environment increases with distance from the built-up area. In the close vicinity of the river, walking across the river or walking off to the north, Witney seems distant and one is absorbed by the river, its valley landscape and the sights, sounds and smells of the countryside.
279. However, the character of the immediate vicinity of the appeal site, including the river valley floor, is strongly influenced by the urban characteristics of the adjacent land uses. The Windrush in Witney Project does not preclude development within or adjacent to the project area. The promoted East Witney SDA lies within the project area for example.
280. The appeal proposes 260 dwellings hugging the existing urban edge of the town. The Development Framework³²⁰, whilst illustrative does give an indication of how such a development might be accommodated. It shows development sweeping down the slope of the site towards the river, halted by an area of open space, including tree planting, a neighbourhood equipped area for play and a new footpath linking into the existing network. This green buffer would further isolate the new development from the valley floor and the Windrush in Witney Project area. Built development would not, in the main, extend out beyond the existing development of Springfield Oval.
281. That said, even given the proposed open space there is no doubt that any development of the appeal site would lead to a change in character and appearance of what is an agricultural field [42]. Whilst I appreciate that the sensitivity to change of this landscape might be moderate, with the river valley bottom itself remaining unaltered, a development of the number of dwellings proposed would not fail to be immediately apparent in public views from Burford Road and Witney Road. From the footpaths immediately adjacent to the appeal site the new houses would be seen. However, the visual impact of the new built form would be on a par with the other existing residential developments which blanket the valley sides on the approaches into the town. I appreciate views from properties on Burford Road across towards the Cotswolds would be diminished by the new buildings, but any intrusion would be localised [213]. Open views of the countryside open out along Burford Road, Dry Lane and Witney Road.
282. The appeal proposal would result in change. That change would cause some harm to the rural setting of the river valley by reason of the introduction of built development within the field which would not enhance or protect the wider character of the Upper Windrush Valley³²¹. However, taking into account the extent of development along the valley sides and the edge of settlement location of the appeal site the proposal would not unacceptably diminish the special character of the green corridor through the town which is the Windrush in Witney Policy Area³²².

³²⁰ Dwg no 5857-L-102 Rev M.

³²¹ Landscape Character Area LP Policy NE3.

³²² LP Policy WIT3.

283. Therefore, the proposal would result in a conflict with the terms of LP Policies NE1 and NE3 [28], in so far as they relate to taking account of impacts on the character and quality of landscape³²³. This would weigh against the appeal proposal in the balance of the decision in respect of how the proposal might perform when considered in the context of the environmental dimension to sustainable development³²⁴.

Impact on heritage assets

284. There are two listed Mills within sight of the appeal site³²⁵. Crawley Mill (Grade II) nestles into the curve of the river on the valley floor, at a distance to the appeal site. Witney Mill (Grade II) stands within the built up area of the town isolated from the appeal site by intervening modern residential development. In both cases only glimpses of the buildings are achievable from the appeal site³²⁶ and vice versa. New Mill (unlisted) lies just to the north-east on the valley bottom.

285. None of the Mills are still engaged in production of blankets, but their presence along the river, where the still evident mill streams flow, provides a linkage to a bygone age of an important departed industry from the town which contributes to the significance of these heritage assets [213, 126].

286. The significance of a heritage asset derives not only from its physical presence and historic fabric, but also from its setting. Considering setting is a matter of informed judgement. In essence, setting can be defined as the surroundings in which the asset is experienced³²⁷.

287. The proposed future development would not impact on the special architectural interest of the Mills themselves³²⁸ [126, 127]. In addition, the immediate individual setting of the Mills and their significance as past industrial buildings would be maintained. Their wider setting in respect of significance as an expression of their past association with the blanket industry of Witney is evident to those who wish to experience the meandering Windrush River, its valley, its linkage through to the historic core of the town and the remaining evidence of its industrial past.

288. The Council does not consider the appeal proposal engages any development plan policies or statutory duties concerning the impact on the setting of heritage assets [124]³²⁹. However, Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 place a statutory duty upon the decision-maker to safeguard the significance of heritage assets for future generations.

289. Statute allows for change in the setting of heritage assets, where change does not harm the significance of the listed building. Whilst, in the main, the

³²³ Consistent with the core principles of the Framework.

³²⁴ The extent of that weighting is a matter to be addressed in the testing of the proposal as sustainable development.

³²⁵ Some more distant than others.

³²⁶ Mainly confined to the very top of the Mill chimney.

³²⁷ The Framework, Annex 2: Glossary.

³²⁸ Agreed point between the parties.

³²⁹ Clearly stated by Mr Martin in answer to Inspector's question. The Council acknowledged that reason for refusal 1 incorrectly identified the Mills as being non-listed heritage assets.

immediate setting of heritage assets would be safeguarded for future generations the wider setting and ultimately the significance of the assets would be harmed due to the proposed spread of urban development into the open aspect of the river valley setting of the Mills. For this reason the proposed development would not preserve the wider setting of the heritage assets, although the identified harm is tempered by the inclusion of existing urban development within the river valley, particularly around Witney Mill.

290. In finding harm in respect of the significance of the heritage assets, the terms of paragraph 134 of the Framework sets out that where a view is taken that the harm to the designated heritage asset would be less than substantial, this harm should be weighed against the public benefits of the proposal. In this instance the degree of harm is less than substantial in the context of paragraph 134³³⁰. Such a conclusion of the degree of harm to the setting of the listed buildings does not equate to a less than substantial objection to the grant of planning permission. There is nothing contradictory in such a stance³³¹. Nonetheless, a balance must be struck and this will be returned to in the report³³².

Impact on the safety of future residents – HS issues and air quality

291. *HS issues* – In life risk of some kind or other cannot be eliminated completely. Residual risk essentially is the risk that remains after all reasonable practicable preventative measures have been taken³³³. It is a combination of hazard and consequence set against the probability of the event occurrence factored into the risk assessment. The risk is expressed as the order of magnitude of chances per million per year.
292. The HSE accept that its role in the planning process is advisory with no power to direct the outcome of a planning application [176]. However, the HSE are the expert body with particular statutory responsibility for the evaluation of risk [177]. Further, in *R (Health and Safety Executive) v Wolverhampton City Council* [2009] EWHC 2688 (Admin), the judgement recognised that the HSE was the body which has the expertise and is tasked with the duty to consider and evaluate the acceptability of the risk [177].
293. Planning Practice Guidance - Hazardous Substances sets out at paragraph ID 39 – 071 that the decision to grant planning permission rests with the Council. However, this is qualified with an acknowledgement of the HSE's expertise in assessing the off-site risks presented by the use of hazardous substances and that their advice should not be overridden without the most careful consideration [132].
294. The supporting text to LP Policy BE20 sets out that the Council will seek the advice of the HSE on the suitability of development in relation to the risks that the notified installation³³⁴ might pose to the surrounding population [132]. The Council certainly sought advice from the HSE on the original proposal for 270

³³⁰ A matter agreed between the parties [34].

³³¹ *Barnwell Manor Wind Energy Ltd v E Northants DC, English Heritage, National Trust & SSCLG* {2014} EWCA Civ 137 –CD8/6.

³³² Mr Wood accepted in cross-examination that even if harm were found to heritage assets permission should not be withheld on this ground alone.

³³³ CD17.1 para 7.

³³⁴ Flogas site.

dwellings which was Advise Against [180]. It is less clear if they did formally seek and receive advice from the HSE on the 260 dwelling scheme. Nonetheless, in the knowledge of the HSE's advice of Do not Advise Against the Council has continued its opposition to the amended scheme at this appeal [131-146 inclusive].

295. The advice of the HSE is based on an assessment of the residual risk to future residents of the proposed development. It does not weigh into a balance that identified risk against local needs and benefits, along with other planning considerations. It is clear that the balancing of factors is the responsibility of the decision-maker. However, the HSE has to be satisfied that if a contrary view is to be taken to their advice that the local planning authority has understood that advice and considered the reasons for it [133, 176].
296. The HSE has set out the essence of their LUP Methodology in their evidence [179-182] and I do not intend to go over that other than to focus on the areas of dispute. In this case the HSE was concerned that the Council had not fully understood the reasons for the HSE advice and further the Council questioned the interpretation by the HSE of its own LUP Methodology [178]³³⁵. The Council's case against the proposal in the face of HSE advice was presented by Professor Nathaniel who accepted his main area of expertise and experience was in environmental risk assessment, geology and contaminated land [178].
297. The assessments of the Council and the HSE differ in their evaluation of the residual risk of the LPG site to the proposed development. The HSE approach is based on the risk to future residents using their LUP Methodology as the tool for the calculation of that risk [134]. The Council, on the other hand, has similarly considered the LUP Methodology in relation to risk to humans³³⁶. However, a reckoned risk to property has also been weighed in³³⁷[144], as well as the potential for other events, other than a BLEVE occurring³³⁸[134, 185]. The Council's reckoning goes beyond a methodological approach and whilst they are entitled to consider other factors in their assessment of risk it should be evident how that evaluation beyond the LUP Methodology has been reached.
298. It is clear that the amended scheme [14-21 inclusive] for 260 dwellings with no development or public access within the HSE Inner consultation zone and a maximum of 26 dwellings at a density of no more than 40 dwellings per hectare within the HSE Middle consultation zone [175]³³⁹, has been designed in accordance with HSE advice and the outcome of the LUP Methodology generating a Do not Advise Against the grant of planning permission accordingly.
299. Professor Nathaniel, in the main, questioned the HSE's assessment using the LUP methodology of Do not Advise Against in relation to the proposal on a number of aspects [136, 138, 139, 141, 142].

³³⁵ Concerned enough to attend as a rule 6 party and offer evidence at the Inquiry, including the examination of the Council's evidence at the Inquiry in respect of risk.

³³⁶ Although it does not agree with the HSE's interpretation of their methodology – dealt with in following paragraphs.

³³⁷ This is not part of the LUP Methodology.

³³⁸ Explosion causing directional hazards – missiles.

³³⁹ Secured by the terms of condition 1.

300. The HSE assigned the proposed residential development an overall SL3³⁴⁰ [182]. This covers larger housing developments of more than 30 dwellings³⁴¹. There was a suggestion that the SLs had been disaggregated across the development³⁴² [138], but the HSE confirmed that whilst the Middle zone could be identified as being SL2³⁴³, the overall general SL was at SL3. The Council considered that SL4 would be more appropriate of a development of 260 dwellings³⁴⁴ [138-142 inclusive], which could accommodate in the order of 1000 people³⁴⁵. The definition of SL4 makes no mention of the inclusion of housing development within the level [182]. The reference to 1000 people is in relation to open-air developments likely to attract the general public in numbers greater than 1000 people at any one time such as theme parks, funfairs, large sports stadia and events. The Council figure of 1040 people occupying the appeal site was based on the number of bedrooms proposed³⁴⁶. The practice of the HSE is to use the Census figure of 2.5 persons per dwelling as a national standard³⁴⁷. This is a consistent approach based on national data which produces a figure of 650 future residents and is a more credible estimation of the number of future residents than an arbitrary count of bedrooms. In this case the assessment of the HSE of an overall SL3 for the appeal development has been justified within the terms of the LUP methodology.

301. Where development straddles more than one consultation zone the HSE applies the straddling rule [180]³⁴⁸. However, the LUP Methodology³⁴⁹ [180] does allow for further refinement of this figure where more detailed site specific information is available. In this instance the appellant company had direct discussions with the HSE and, on the basis of the bespoke advice received, amended the scheme as now proposed. The HSE took a pragmatic approach to the advice given as the relevant development area only marginally exceeded 10%. The limitation of the number of dwellings within the Middle zone and the density³⁵⁰, allowed for the overall scheme to be considered as if it were lying within the Outer zone for assessment purposes [192]. This then generated the Do not Advise Against granting planning permission HSE advice. This was not a departure from the usual application of the terms of the LUP Methodology. The site specific

³⁴⁰ Although as the Middle zone would accommodate only 26 dwellings, a maximum SL2 could be applied if the SL were disaggregated across the development.

³⁴¹ CD 17.1, page 16.

³⁴² Inner zone – 0, Middle zone - maximum of 26 dwellings at a density of no more than 40 dwellings per hectare – this equates to more than 11% of the development area within the Middle zone. The Methodology normally allows for up to 10%.

³⁴³ Less than 30 dwellings and at a density of no more than 40 per hectare – CD17.1 page 14 Table 2.

³⁴⁴ The SL of the development is combined with the HSE's assessment of residual risk (as represented by the Inner, Middle and Outer zones) using a decision matrix – LUP Methodology (CD17.1). The two inputs to the assessment matrix then generate an Advise Against or Do not Advise Against outcome.

³⁴⁵ Nathanail range was 600-1040 people.

³⁴⁶ Nathanail in cross-examination.

³⁴⁷ Birch in evidence-in-chief.

³⁴⁸ Development types that straddle zone boundaries will normally be considered as being in the innermost zone to the major hazard unless less than 10% of the area marked on the application for that particular development type is inside the boundary – Birch Appendix 14 para 45.

³⁴⁹ CD17.1 para 10.

³⁵⁰ Secured by condition.

information both in relation to the numbers of future residents involved and other factors complement the usual methodological criteria³⁵¹ [136].

302. The Council also questioned the determination of the location and extent of the three consultation zones³⁵². Professor Nathanail highlighted the exclusion zones set out in the UKLPG Recommendations for Prevention and Control of Fire Involving LPG³⁵³ [196]. However, these are primarily intended for use by the installation operator prior to the arrival of the fire service. They are hazard not risk based. The guidance states it is not appropriate for use for land use planning³⁵⁴.
303. Development Proximity Zones (DPZ) set out in the HSE's Land use planning advice around large scale petrol storage sites³⁵⁵ document were also considered by Professor Nathanail [196]. The DPZ is the zone closest to the hazardous installation within which development which is occupied would generate an Advise Against response from the HSE. The DPZ is a wider zone than that calculated for the Inner Zone in this appeal³⁵⁶. However, the comparison made by Professor Nathanail is like comparing apples with pears. The guidance, which includes the DPZ, relates to only development around large scale petrol storage sites³⁵⁷. The nature of the Flogas site itself, in terms of its scale and of the substances stored, that being LPG, not petrol, are quite different to the installations which the HSE advice document, relied upon by the Council, concern.
304. The mention of the Buncefield incident by the Council as bringing into question the assessment policy for fuel depots, and the zone setting method which it informs is not evidentially based. Buncefield was a major accident in 2005 at a large oil products storage terminal. The scale of the installation and nature of the products stored are not readily comparable with the Flogas site. However, it is certain that the learning from that accident has had an effect on HSE guidance and, in particular, the LUP Methodology³⁵⁸. The Council did qualify its reference to Buncefield and to San Juan at the Inquiry as merely highlighting that accidents do happen [145, 146].
305. The Council also questioned whether the BLEVE, which the HSE had assessed as the most appropriate event for consideration, was the only event which should be assessed. Professor Nathanail suggested that an explosion might result in missile type projectiles. He promoted Inquiry Doc 22 which was from the American 3d Marine Aircraft Wing Fusion Cell which sets out the Improvised Explosive Device Safe Stand-Off Distance Reference Chart [134, 185, 196]. These stand-off distances have a distinct application in respect of explosive threats in conflict situations as opposed to the HSE LUP Methodology which is based on available scientific knowledge using hazard/risk assessment models updated as new knowledge comes to light as well as the study of major accidents³⁵⁹.

³⁵¹ Birch in re-examination.

³⁵² Inner, Middle and Outer zones.

³⁵³ Birch Appendix 23.

³⁵⁴ Birch appendix 23 para 1.1.1.

³⁵⁵ Inquiry Doc 24.

³⁵⁶ DPZ – 150 metres – Inner Zone – 98 metres.

³⁵⁷ Inquiry Doc 24 para 4.

³⁵⁸ Issued post-Buncefield.

³⁵⁹ CD17.1 page 3.

306. That notwithstanding, the HSE confirmed that it did consider all possible hazardous events, but modelled the most likely accident, not necessarily the worst [184], in this instance the BLEVE. Missiles are lesser, directional hazards which would only affect a limited number of people [185].

Conclusion on HS issues

307. In considering the impact of the LPG site on future residents the highest level of risk must be to life that being the most valuable element in any assessment over and above property³⁶⁰. That is common sense. In any case, in respect of the effect to property, it is not clear from the Council's evidence as to how that risk has been calculated in an objective manner. The Council's baseline evidence of their calculation of risk was confused, lacked substance, and understanding, particularly of the HSE LUP Methodology, thereby undermining the credibility of their overall conclusions of weighing an unreliable assessment of risk³⁶¹ against local needs and benefits, along with other planning considerations.

308. The HSE as the national body with responsibility for health and safety, advising Government as well as other public bodies and industry/commerce, has carried out an informed assessment of the residual risk of the Flogas site on the appeal proposal based on robust, nationally formulated and applied methodology taking a site specific informed view.

309. The HSE calculated risk, at 10 chances per million per year, has been likened to the same chance as anyone getting struck by lightening or the everyday residual risk of accident that we carry with us as we go about our everyday lives³⁶² [188]. It has not been suggested that we should somehow curtail our normal day to day activities in case of a thunder storm and the potential risk of a lightning strike.

310. The use of the LUP Methodology takes into account that the availability of land for development is finite. The design of the appeal proposal has responded to the advice of the HSE and provided a separation distance between the proposed dwellings and the installation, to minimise any incompatibility between the uses, lead by the calculated residual risk of the Flogas site to future residents.

311. On the basis of the evidence to this Inquiry³⁶³ the proximity of the appeal proposal to the Flogas site would result in a residual risk to the safety of future residents³⁶⁴. However, the identified risk is limited and does not go beyond the general risk of everyday life. Nonetheless, the residual risk must be weighed against planning considerations, including the benefits of the scheme both nationally and locally, to establish the weight to be ascribed to this element in the balance of the decision.

³⁶⁰ Houses can be re-built or repaired.

³⁶¹ Having set aside the HSE Do not Advise Against consultation response.

³⁶² Birch evidence-in-chief.

³⁶³ Resulting in an HSE consultation response of Do not Advise Against, subject to the HSE identified condition.

³⁶⁴ LP Policy BE20 requires that development will not be permitted which would adversely affect safety near notifiable installations.

Air Quality/Highways

312. The impact of the appeal proposal on these two elements is inextricably linked. In both cases there would be an impact on levels of traffic passing through the Bridge Street junction and its environs. The impact would be two-fold. Firstly on traffic congestion and secondly on air quality caused by the emissions from the vehicles using Bridge Street.
313. On the basis of the agreement of the HA and the appellant company on mitigating measures to improve air quality in the AQMA by reason of a reduction in traffic at this junction, the Council did not pursue the highways or air quality aspects of their initial concerns further [4, 94, 121]. However, there is no doubt that the levels of Nitrogen Dioxide within Bridge Street are such as to have justified its designation as an AQMA. I experienced for myself the level of traffic in this locality as well as the atmosphere for pedestrians and residents alike. I also heard from Ms Dingle, as a longstanding resident of Bridge Street, the problems she already experiences both outside and within her home of fume penetration [210]. On-going monitoring is in place but it is common ground between all parties that an improvement is required. This improvement is firmly based on a reduction in the level of traffic using Bridge Street³⁶⁵.
314. The promoted future reduction by the Council, the HA and the appellant company is by means of the provision of the SGSR. The scheme, when in place, would result in a significant reduction in the amount of traffic using Bridge Street at peak times³⁶⁶. This would consequently improve air quality within the AQMA [33, 121].
315. The delivery of the SGSR is integral to the East Witney SDA. The Council is committed and confident of its delivery and confirmed it would use compulsory purchase powers to secure the necessary land to bring this junction forward³⁶⁷. It is anticipated the SGSR junction would be completed, at least in part, in 2018/19³⁶⁸ [263].
316. The junction was to be wholly funded by the East Witney SDA. However, the measure to mitigate the impacts of this appeal in respect of air quality and highways is the contribution of £1.16m towards the SGSR scheme. This is a significant contribution which may serve to hasten progress on the East Witney SDA, reducing the exposure of the SDA developer, as well as having an obvious positive impact on any calculation on the viability of the SDA development [91].
317. The SGSR contribution is not required to be paid across until the completion of the 75th dwelling. Building work at the appeal site could then continue even if the SGSR junction had yet to be delivered [33,121]. This is a matter of concern, as, before the completion of the SGSR, traffic generated by the proposed development would use Bridge Street, leading to a worsening of the air quality

³⁶⁵ Due to the fact that Bridge Street comprises buildings on either side set on the back of the footpath – this acts as an urban canyon trapping the fumes at ground level only dispersing as they rise. Air Quality is affected by weather conditions particularly fog or frost.

³⁶⁶ Bridge Street is the only bridging point of the River Windrush in this town centre location and heavily used by those travelling north and south across the town.

³⁶⁷ Wood proof appendix 7b.

³⁶⁸ The Council did indicate some development may be able to proceed within the East Witney SDA with only the off-slip aspect of the project secured.

conditions. However, the proposed scheme would only add 35 vehicles in the AM peak hour and 37 vehicles in the PM peak hour at this junction. The delivery of just the off-slip would reduce traffic along Bridge Street by some 23% (AM peak hour) and 30% (PM peak hour) [33].

318. The Council is clearly committed to the SGSR scheme and sees it as a primary solution to the problems of air quality and highways congestion within Witney. The proposed development would serve to positively contribute to bringing forward this road scheme in a more timely manner than may be currently possible. The possibility that the SGSR scheme would not go ahead is such that the HA does not give it credibility. The fact that the development can proceed to completion, with the required payment being scheduled by the 75th dwelling, illustrates this point. The Council, whilst mentioning the possibility as a concern [121] has not suggested that this is sufficient reason to withhold planning permission on this ground alone³⁶⁹.
319. The SGSR contribution is a negotiated solution which has the potential to significantly improve the air quality and highway conditions within the town centre. The scheme itself has the commitment of the responsible public bodies and a realistic chance of coming to fruition. Therefore, this measure should be given considerable weight in mitigating the impact of the appeal proposal on air quality and highways.
320. Third parties were concerned that other parts of the town would suffer from the potential increase in traffic generated by the appeal proposal, particularly at existing junctions along Burford Road [213]. However, the Transport Assessment (TA) (Feb 2015)³⁷⁰ sets out that, in the main, other than the town centre junction and the Tower Hill/Burford Road junction there is sufficient capacity in the network to accommodate the traffic generated by the appeal development without the need for further mitigation over and above that already promised³⁷¹.
321. Along Burford Road in the vicinity of the proposed access, many of the existing homes do not benefit from on-site turning facilities. Therefore, either vehicles have to back into or out of on-site parking spaces. Visibility is also limited by on-street parking. This is not an uncommon arrangement, particularly where dwellings are of some age and sited closely together. Whilst the appeal proposal would add to the flow of traffic along Burford Road, the existing access arrangements to houses on Burford Road would not change and the same degree of caution that residents have to adopt now when emerging out onto the highway would still be required [213].
322. On the basis of the TA and the agreed matters³⁷² in the SofCGH&T & ASofCGH&T the impact upon the environment would be minimised and the terms of LP Policies BE3 and BE18 would not be compromised [28].

³⁶⁹ Mr Wood in cross-examination.

³⁷⁰ CD 2.5.

³⁷¹ Agreed improvement works to the Tower Hill/Burford Road junction are set out at Helme Proof – dwg no 1468/01 B. This also shows the proposed Toucan crossing and shared footway/cycleway along part of Burford Road which would offer improved safe access to the nearby school and local facilities by both foot and cycle (consistent with paragraphs 29 & 35 of the Framework).

³⁷² Between the appellant company and the HA.

Flooding

323. The whole of the appeal site lies within Flood Zone 1. As a site at a low risk of flooding it is considered as a sequentially preferable site for location sensitive land uses such as residential development. The Flood Risk Assessment (May 2014)³⁷³ provides an outline surface water drainage strategy which seeks to control the surface water discharge from the development to mimic the pre-development greenfield run-off rates prior to discharge into the River Windrush. The proposed attenuation pond would retain the resultant volumes of run-off water. The Environment Agency raised no objection to the proposal subject to the agreement and implementation of a detailed surface water drainage scheme, along with a scheme for the disposal of foul water drainage³⁷⁴.

Living conditions of existing residents

324. The proposed site is sufficiently distant to neighbouring dwellings, with a step down in ground levels to the appeal site, so as to minimise any material harm to the outlook or privacy of existing residents. The indicative layout submitted shows how a new housing environment juxtaposed with that existing could be appropriately accommodated³⁷⁵. The enhancement of existing boundary hedgerows and trees would also serve to soften the impact of the new dwellings in this regard.

Contribution to the achievement of sustainable development

325. The purpose of the planning system is to contribute to the achievement of sustainable development³⁷⁶. Paragraph 49 of the Framework sets out that housing applications should be considered in the context of the presumption in favour of sustainable development. There is a positive weighting in favour of sustainable development in the sense that the proposal would be assessed as such unless planning harm clearly and significantly outweighs planning gain. There are three dimensions to sustainable development: economic, social and environmental³⁷⁷.

326. *Economic role* - The proposal would enhance/contribute to the economic role by the creation of jobs associated with the construction stage. New residents are also likely to support existing local services and businesses, with a possible increase in local jobs as a result.

327. In addition, the new dwellings would offer homes to residents who would contribute to the labour supply, some of whom would be likely to be local.

328. Having sufficient land available of the right type in the right places and at the right time to support growth and innovation is part of the economic role in achieving a sustainable development. There is a good prospect that some of the

³⁷³ CD 1.12.

³⁷⁴ Surface water drainage is the subject of condition 18. Foul water drainage is dealt with at para 231.

³⁷⁵ This would be the subject of a future reserved matters application should the appeal be allowed.

³⁷⁶ Para 6 of the Framework.

³⁷⁷ These are planning judgements made on all the evidence before paragraph 14 of the Framework is considered and applied.

- proposed housing could be delivered on the site within five years. In addition, future Council tax payments and New Homes Bonus would be spent in the area.
329. All of the above elements³⁷⁸ in combination provide a positive outcome for the economic role which should be ascribed considerable weight in the assessment of sustainability.
330. *Social role* - The proposed housing would fulfil a social role by contributing to the support, strengthening, health and vibrancy of the local community by providing towards a supply of housing to meet the needs of present and future generations. This would include much needed affordable housing [34, 223, 64-67]³⁷⁹.
331. The proposal would also be likely to provide a mix of housing which would meet the social needs of the population of the District and, in particular, that of Witney.
332. The development also includes the introduction of enhanced public access from Burford Road down to the River via new footpaths linking into the existing network. Open green space, woodland and the introduction of an equipped play area are also part of the parameters for the design and layout of the proposed development³⁸⁰. These would serve to maintain and enhance access for recreational purposes promoting the wellbeing of the local population.
333. Improvements to the footpath and cycleway along Burford Road would also encourage sustainable modes of transport, the safety of pedestrians, particularly en-route to the school and other local facilities, and encourage recreational activities.
334. These elements would enhance local facilities and support the well-being of the local community and warrant a positive weighting of substance.
335. *Environmental role* - Witney has been identified as a sustainable settlement for additional housing growth into the future³⁸¹, in part, due to the range of facilities and services in and around the town, along with ready access to public transport. Although the appeal site lies on the edge of the settlement, it is within walking distance of many of these facilities. Therefore, in respect of location and a movement to a low carbon economy, the sustainability of the appeal site is positive.
336. The proposal would provide some 1.51 hectares of public open space, including an equipped area of play, structural landscaping and habitat creation. The long term management of these areas would improve the biodiversity of the location as well as offering opportunities for recreation and improvements in individual's well-being³⁸². The Ecological Appraisal³⁸³ (Feb 2015) examines the ecological value of flora and fauna within and close to the appeal site. Through the

³⁷⁸ Still proof appendix 6.

³⁷⁹ Secured by an appropriately worded condition 12.

³⁸⁰ All of these elements can be secured by means of a condition 1 – with the terms of the UU relevant to certain aspects – Inquiry Doc 8.

³⁸¹ Promotion of the SDAs by the Council.

³⁸² These factors cross-over with the Social Role and have been accordingly weighed into both aspects as positive benefits.

³⁸³ CD 2.6.

environmental enhancements and mitigation proposed these factors would positively contribute to the overall sustainability of the appeal site, with some provision within the UU³⁸⁴ being made for its management.

337. The appeal proposal would contribute to achieving the anticipated improvements in air quality and traffic flows in the Bridge Street area of the town following the delivery of the SGSR project. Whilst the proposed contribution to the SGSR would be to mitigate the impact of the appeal scheme it would also be likely to hasten the actual provision of the SGSR by reducing the developer contribution in the East Witney SDA. This then has the potential to bring forward the expected benefits in air quality and traffic congestion for residents, particularly those who live within the AQMA.

338. The above positive factors in the balance of the environmental role do contribute to the overall sustainability of the appeal site. This is tempered with the identified harm to the character and appearance of the landscape, to the wider setting of heritage assets and the residual risk to the safety of future residents of the proposed development. These factors will be weighed into the balance of the overall sustainability of the development, taking into account its performance in respect of the other roles, as well as other planning considerations.

Planning balance

339. Sustainable development is about change for the better. Paragraph 14 of the Framework identifies that at its heart is a presumption in favour of sustainable development. The sustainability of the proposed development should be judged by a positively weighted balancing of the benefits and adverse impacts against the policies of both the Framework and development plan as a whole³⁸⁵.

340. The appeal proposal would assist in the provision of much needed housing³⁸⁶ in the local area; the District; as well as nationally. As the Council is unable to demonstrate a 5YHLS the relevant policies for the supply of housing should not be considered up-to-date in the context of paragraph 49 of the Framework [32]³⁸⁷. The policies within the emerging WOLP are the Council's response to identifying the appropriate housing need, requirement and strategy for addressing that provision. However, with the examination of the emerging WOLP being in suspension and no firm date for resumption, along with the concerns of the EiP Inspector regarding the shortcomings of the plan and, in particular, the promoted FOAN, the duty to co-operate and the housing land supply, the Council is still some way off achieving a credible, tested policy response. The confused, hasty and reactionary response to producing a FOAN/5YHLS for the purposes of

³⁸⁴ Inquiry Doc 8.

³⁸⁵ Dartford judgement – CD15.3, Bloor Homes judgement CD15.2 – Cheshire East BC v SSCLG and Renew Land Ltd [2016] EWHC 571 (Admin). Paragraph 14 of the Framework sets out how to decide whether the proposal, if approved, would constitute sustainable development. It is about process, not outcome. An integral part of the process is a positive weighting in favour of sustainable development in the sense that the proposal would be assessed as such unless the planning harm clearly and significantly outweighs the planning gain.

³⁸⁶ Including affordable housing.

³⁸⁷ An agreed position.

the Inquiry does not evoke confidence in the Council's case to the Inquiry in this regard.

341. On the other side of the balance of the decision, the contribution that the proposed development would make to addressing the acknowledged and likely prolonged deficiency in the District's 5YHLS, coupled with the importance of providing much needed homes, both market and affordable, carries substantial weight.
342. In respect of the effect of the Flogas site on the safety of the future residents of the proposed development, there is no doubt there would be a risk. However, that risk has been minimised by a limitation on the areas for building within the site, along with restriction on density. This has resulted in the risk being calculated as limited and residual. The HSE, having undertaken that calculation of risk, has then likened it to the everyday risk we carry with us in our day to day lives and Does not Advise Against the granting of planning permission on this basis [194, 195, 197]. This is not an area devoid of existing residential development [12]. Some dwellings along Burford Road would be closer to the Flogas site than elements of the proposed development within the appeal site. In circumstances where the appeal proposal would be contributing to meeting a significant unmet need for housing, both locally and nationally, the benefits of the scheme in this regard would be such that the identified residual risk would not weigh heavily against the appeal proposal, nor would be negatively applied to the judging of the proposal's environmental role of sustainable development³⁸⁸.
343. The proposal would also serve to hasten improvements to the air quality and highways conditions within the Bridge Street area [33,121]. This would be a dual effect of the contribution towards the SGSR, over and above mitigating impacts of the proposal. It is on this basis that I consider it reasonable to give this contributing element to the environmental role of sustainability some weight.
344. The impact of the proposal on the wider setting of the heritage assets has been assessed as being harmful to significance. Harm to significance is a finding to which considerable importance and weight should ordinarily be given³⁸⁹.
345. However, the appeal proposal would not interrupt or diminish the general quality of the wider journey along the river valley where the urban spread of the town, over the years, has become part of the character of the river valley as it penetrates through into Witney³⁹⁰. In these circumstances the harm to significance would be limited to a contained expansion of the already established urban context of the heritage assets' wider setting, into part of the open countryside, the immediate individual settings of the Mills remaining unchanged.
346. The identified harm to the significance of the heritage assets would be less than substantial in terms of paragraph 134 of the Framework [45]. The public benefit of providing housing is of considerable importance and when weighed

³⁸⁸ In this way any conflict with the terms of LP Policies BE20 and H2d) would not be so weighty as to negate the benefits of the scheme.

³⁸⁹ Paragraph 132 of the Framework places great weight on the conservation of designated heritage assets, including their settings + Barnwell Manor Wind Energy Ltd v E Northants DC, English Heritage, National Trust & SSCLG {2014} EWCA Civ 137

³⁹⁰ These are all integral elements of the setting of the heritage assets.

against the limited harm to significance of heritage assets, identified in this case, the need for homes now and for future generations weighs more heavily.

347. Consequently, the overall impact on the significance of heritage assets, in the circumstances of this case, would not weigh heavily on the negative side of the balance of the assessment of the environmental role of the proposal in sustainability terms.

348. However, notwithstanding the positively weighed elements of the environmental role, overall these would be less weighty due to the limited identified harms in this regard.

349. The three identified dimensions to sustainable development³⁹¹ should not be considered in isolation, because they are mutually dependant. The appeal proposal would have a social and economic role to play in achieving positive growth now and into the future. The harms relevant to the environmental role do weigh negatively in the balance of the decision. However, when considered as a whole, within the overall weighted assessment there would be few adverse impacts in allowing the appeal and granting planning permission. Such impacts are not sufficiently weighty to significantly and demonstrably outweigh the benefits of the scheme³⁹². In particular, where the relevant policies for the supply of housing have been found to be out of date, the contribution of the proposed development to the identified housing need in the District, in circumstances where a 5YHLS cannot be identified is a persuasive and weighty factor in the consideration of this appeal.

350. Non-compliance with the development plan has been identified, albeit limited. However, the terms of the Framework in relation to the Council's current housing land supply circumstances and the presumption in favour of sustainable development are material considerations which are of sufficient weight so as to justify a decision other than in strict accordance with the development plan.

351. Accordingly, even acknowledging the identified shortcomings, in combination with the other positive facets of the development, the proposal must therefore be regarded as sustainable development, to which the presumption in favour set by the Framework would apply.

Recommendation

352. Consequently it is recommended that planning permission be granted.

Frances Mahoney

Inspector

³⁹¹ Economic, social and environmental.

³⁹² Paragraph 14 of the Framework.

Annex A – Schedule of recommended conditions

1. Details of the layout, scale, appearance and landscaping (both hard and soft), including boundary treatments, laying out the new footpath link to the existing footpath network, the proposed wooded area in the north part of the site, and the provision, timing, laying out and equipping of the Neighbourhood Equipped Play Area (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The reserved matters shall follow the general parameters and broad design/layout concepts set out in the Design and Access Statement dated February 2015, Development Framework (dwg no 5857-L-102 rev M), the HSE Consultation Zones defined on Drawing Ref. H0527 Rev1 and dwg no 5857-L-110. The reserved matters shall also comply with the following limitations:
 - there shall be no development within the HSE Consultation Zone - Inner zone as defined on HSE Drawing Ref. H0527 Rev1 (mirrored in dwg no 5857-L-110) and a scheme to prevent public access to this zone shall be included in the reserved matters;
 - no more than 10% of the area proposed for residential development shall be located within the Middle zone of the HSE Consultation Zones, identified on the Development Framework (mirroring that on HSE Drawing Ref. H0527 Rev1); and
 - no more than 26 dwelling units at a density of less than 40 dwelling units per hectare within that part of the residential development that lies within the HSE Consultation Zone - Middle zone identified on the Development Framework (mirroring that on HSE Drawing Ref. H0527 Rev1).
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the details contained within the following plans:
Location Plan - Red Line Plan (Drawing no. 2013-065-100); and
Site Access Arrangements Plan (Drawing no. C13584 004).
5. Notwithstanding the description of development, the maximum number of dwellings constructed within the site shall be 260.
6. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation to include details of how any matters of archaeological interest that may be found are notified to the Local Planning Authority and how any such finds shall be recorded and/or preserved/protected which will be submitted by the applicant

to and approved in writing by the Local Planning Authority. The work shall be carried out strictly in accordance with the approved scheme.

7. Prior to the commencement of development, full details of the proposed site access junction and emergency access shall be submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details and no dwelling hereby permitted shall be occupied until these specified works have been implemented.
8. Prior to the commencement of development, a scheme for the provision of the off-site highway works, to include alterations to the junction of Tower Hill and Burford Road, toucan crossing on Burford Road, shared use footway/cycleway along the north side of Burford Road, and specified works to the bus stops, in accordance with drawing 1468/01/B, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for the delivery of the proposed scheme and the agreed improvements shall be carried out strictly in accordance with that timetable.
9. No development shall take place until details of all road construction, street lighting and drainage, including longitudinal sections and means of draining roads to an acceptable outfall have been submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable for the implementation of the approved details. The prescribed elements shall be constructed in accordance with the approved details and timetable.
10. No development shall take place until details of access, parking and turning areas to serve each dwelling have been submitted to and approved in writing by the Local Planning Authority. Prior to first occupation of the dwelling to which it relates, the approved access, parking and turning areas shall be provided in accordance with the approved details and shall thereafter be made available at all times for their designated purposes.
11. None of the dwellings hereby permitted shall be occupied until a detailed Travel Plan has been submitted to and approved in writing by the Local Planning Authority. Among other things, the Travel Plan shall include a timetable for implementation and provision for monitoring and review. The Travel Plan shall be implemented in accordance with the agreed timetable and details and shall remain operative as long as any part of the development is occupied.
12. The development hereby permitted shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to, and approved in writing by, the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing set out in the Glossary to the National Planning Policy Framework or any future guidance that replaces or amends it. The scheme shall include:
 - 1) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be pepper-potted throughout the development and which shall consist of not less than 40% of the dwellings;

- 2) 65% of which shall be Affordable Rented Housing and 35% of which shall be Intermediate Housing;
- 3) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- 4) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
- 5) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- 6) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

13.No development shall take place until a Phase II Contamination Site Investigation is carried out and the results submitted to, and approved in writing by the Local Planning Authority. If the investigations indicate that remediation is necessary, a remediation scheme, including details of the timescale for the work to be undertaken, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme must be carried out in accordance with its terms prior to the commencement of development (other than that required to carry out remediation) unless otherwise agreed in writing by the Local Planning Authority. Following completion of the measures identified in the remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out, must be submitted to, and approved in writing by the Local Planning Authority prior to first occupation of any dwelling on the site.

14.Prior to the commencement of development a scheme for the landscaping of the area shown as blue land on the approved Site Plan: Drawing No. 2013-065-100 shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a timetable for the undertaking of the agreed works and these shall be carried out strictly in accordance with the approved details.

15.Prior to the commencement of development, a habitat (ecological) and landscape management plan, including long term design objectives, future management responsibilities, protection during construction, timetable for implementation, compliance with the recommendations and mitigation measures contained within the FPCR 'Ecological Assessment' (Feb 2015) and maintenance schedules for not less than 15 years for all areas of the appeal site, including a scheme in relation to the blue land shown on the approved Site Location plan Drawing No. 2013-065-100 shall be submitted to, and approved in writing by, the local planning authority. The management plan shall be implemented in accordance with the approved details and its requirements adhered to thereafter.

16.No development shall take place until an Environmental Management/Construction Management/Method Plan and Statement with

respect to the construction phase of the development have been submitted to and approved in writing by the Local Planning Authority. Development works shall be undertaken in accordance with the approved Environmental Management/Construction Management/Method Statement/Plan. The details shall include, amongst other things, hours of work/deliveries; access arrangements for construction vehicles; contractors parking areas, compounds, including storage areas for plant and materials; specification of plant and equipment to be used; construction routes; details of wheel washing facilities; loading and unloading areas; minimisation of dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development; an undertaking that there shall be no burning of materials on site at any time during construction; details of any piling required, including method (to minimise noise and vibrations), duration and prior notification to affected neighbouring properties; overall monitoring methodology; and details of the responsible person (site manager/office) who can be contacted in the event of a complaint.

- 17.No external lighting, other than within a private residential curtilage or standard street lighting, shall be installed other than in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The details shall include the location, height, design and luminance of any lighting to minimise potential loss of amenity caused by light spillage. The lighting scheme shall thereafter be installed and operated in accordance with the approved details and retained thereafter.
- 18.No development shall take place on site until a detailed scheme for the provision and future management and maintenance of surface water drainage, including any necessary attenuation, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be implemented in accordance with the approved details and timetable and shall be retained and maintained in working order thereafter.
- 19.No development shall take place until details of the existing and proposed ground levels across the site and the levels of the proposed floor slabs and ridge heights shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Meyric Lewis Of Counsel	Instructed by Miss Bhavne Patel Joint Head Legal & Property Services West Oxfordshire and Cotswold District Councils
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He called

Jeremy Sacha Dip LA CMLI	Director of Sacha Barnes Ltd
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Bryan Martin BAHons DipArch RIBA AABC	Consultant architect (Design and Conservation)
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Professor Nathanail CGeol SILC	Professor of Engineering Geology University of Nottingham – Managing Director of Land Quality Management Ltd
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Christopher Wood BA DipTP	Senior Planning Appeals Officer
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FOR THE HEALTH AND SAFETY EXECUTIVE:

Katrina Yates Of Counsel	Instructed by Government Legal Department on behalf of the health and Safety Executive
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She called

John Birch BEng (Hons) CENG MIChemE	HM Specialist Inspector of Health and Safety
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APPEARING FOR OXFORDSHIRE COUNTY COUNCIL:

Richard Oliver	Infrastructure Funding Negotiator
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Jo White	Principal Transport Planning Officer
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FOR THE APPELLANT:

Peter Goatley Of Counsel	Instructed by Gladman Developments Ltd
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He called

Gary Holliday BA (Hons) MPhil	Director FPCR Environment and Design Ltd
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Martin Taylor BSc (Hons) MSC MRTPI MIED	Associate Director NLP Planning
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Richard Lomas BSc (Hons)	Hourigan Connolly
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DipTP MRTPI

Sejal Dixon BEng IChemE Associate Director WSP Group

Jonathan Smith BA (Hons) Director Ashley Helme Associates
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Simon Helme BEng (Hons) Director Ashley Helme Associates
MSc MIHT

Mark Dawson BSc MA Technical Director Wardell Armstrong
MIES MIOA MIAQM

Chris Still BSc (Hons) Gladman Developments Ltd
MRICS

INTERESTED PERSONS:

Jennie Allen	Windrush Valley Protection Group
Pat Dingle	Local Resident
Roger Hepworth	Local Resident
Alison Smallman	Local Resident
Lewis Owens	Local Resident

INQUIRY DOCUMENTS

Doc 1 Statement of Common Ground

Doc 2 Agreed list of relevant documents between scheme for 260 units and 270 units

Doc 3 Joint list of draft conditions

Doc 4 Representations for 15/00700/OUT (in two folders)

Doc 5 Clarification on - position on Neighbourhood Plan – Objections in the local plan examination process relating to the proposed Strategic Development Areas – position on the signing of the S106 agreement at North Curbridge

Doc 6 Updates to the proof/rebuttal of Richard Lomas in the face of the change in the Council's OAN to 598

Doc 7 Certified copy of signed Unilateral Undertaking (Oxfordshire County Council) dated 15 January 2016

Doc 8 Certified copy of signed Unilateral Undertaking (West Oxfordshire District Council) dated 15 January 2016

Doc 9 Section 106 Note – consideration of the 122 and 123 CIL compliance of the requested obligations – appellant company

Doc 10 Section 106 Note – consideration of the 122 and 123 CIL compliance of the requested obligations – Council

Doc 11 Section 106 Note – consideration of the 122 and 123 CIL compliance of the requested obligations – Oxfordshire County Council

Doc 12 Box 5.1 Guidelines for Landscape and Visual Impact Assessment

Doc 13 Ecology Technical Note – 12 January 2016

Doc 14 Supplementary Proof of Evidence on Air Quality

Doc 15 2015 Updating and Screening Assessment for West Oxfordshire District Council – Part IV of the Environmental Act 1995 Local Air Quality Management

Doc 16 Addendum to Highways and Transport Statement of Common Ground

Doc 17 Statement of Common Ground – Housing Land Supply

Doc 18 Statement on areas of agreement and disagreement between the parties in respect of Full Objectively Assessed Needs for West Oxfordshire

Doc 19 PAS Technical advice note – Objectively Assessed Need and Housing Targets – July 2015

Doc 20 Highways Authority position on securing highway works

Doc 21 Extract from The Buncefield Incident 11 December 2005: The final report of the Major Incident Investigation Board

Doc 22 3d Marine Aircraft Wing Fusion Cell – Improvised Explosive Device Safe Stand-off Distance Reference Chart

- Doc 23 Email request dated 23 October 2015 for land use planning advice from the H&SE – Includes Plan B – HSE Consultation Zones - dwg no 5857-L-110.
- Doc 24 H&SE Land use planning advice around large scale petrol storage sites
- Doc 25 Objection from Flogas Britain Ltd dated 11 November 2014
- Doc 26 Listing description of Witney Mill & Crawley Mill
- Doc 27 Letter from Brandon Lewis to Strategic Director of West Oxfordshire District Council – dated 15 Jun 2015
- Doc 28 Statement of Jennie Allen on behalf of the Windrush Valley Protection Group
- Doc 29 Statement of Pat Dingle
- Doc 30 Email dated 14 January 2016 from Mr & Mrs Colledge
- Doc 31 Letter dated 13 January 2016 from Michael French
- Doc 32 Opening submissions on behalf of West Oxfordshire District Council
- Doc 33 Opening submissions on behalf of the appellant company
- Doc 34 Submissions on behalf of the appellant company in respect of the proposed amendment of the appeal scheme to 260 dwellings
- Doc 35 Closing submission of Jennie Allen on behalf of the Windrush Valley Protection Group
- Doc 36 Closing submission on behalf of the Health and Safety Executive
- Doc 37 Closing submission on behalf of the West Oxfordshire District Council
- Doc 38 Closing submission on behalf of the appellant company
- Doc 39 Letter to main parties clarifying position in relation to amended plan and reduction in the number of units proposed – dated 17 February 2016 (issued after the close of the Inquiry)
- Doc 40 Response from appellant company on Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates v Cheshire East BC and SSCLG [2016] EWCA Civ 168 and Cheshire East BC v SSCLG and Renew Land Ltd [2016] EWHC 571 (Admin)
- Doc 41 Response from Council on Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates v Cheshire East BC and SSCLG [2016] EWCA Civ 168 and Cheshire East BC v SSCLG and Renew Land Ltd [2016] EWHC 571 (Admin)

INQUIRY PLANS

- A Shores Green Interchange Alternative Scheme in Options Report
- B HSE Consultation Zones - dwg no 5857-L-110 – Inquiry Doc 23
- C HSE Consultation Zones – dwg no H0527 Rev 1

CORE DOCUMENTS

- 1.1 Application Covering Letter
- 1.2 Application Form and Certificates
- 1.3 Location Plan (including Application Red Line) - Drawing Ref: 2013-065-100
- 1.4 Development Framework Plan - Drawing Ref: 5857-L-102 Rev G - (Superseded)
Site Access Plan C13584-004 – (Superseded)
- 1.5 Design and Access Statement – May 2014 - (Superseded)
- 1.6 Landscape and Visual Impact Assessment – May 2014 - (Superseded)
- 1.7 Transport Assessment - R/C13584/003 - April 2014 - (Superseded)
- 1.8 Travel Plan - R/C13584/004 - April 2014
- 1.9 Ecological Appraisal – September 2013 - (Superseded)
- 1.10 Arboricultural Assessment - April 2014
- 1.11 Phase 1 Site Investigation Report – R/13584/001 – May 2014
- 1.12 Flood Risk Assessment – R/13584/002 – May 2014
- 1.13 Foul Drainage Strategy – March 2014
- 1.14 Air Quality Assessment – March 2014
- 1.15 Noise Assessment – April 2014
- 1.16 Archaeological Assessment – December 2013 - (Superseded)
- 1.17 Statement of Community Involvement - May 2014
- 1.18 Planning Statement - May 2014
- 1.19 Housing Land Supply Assessment – March 2014
- 1.20 Affordable Housing Report - April 2014

- 2.1 Development Framework Plan - Drawing Ref: 5857-L-102 Rev M
- 2.2 Site Access Arrangement - C13584-004 Rev A
- 2.3 Design and Access Statement – February 2015
- 2.4 Landscape and Visual Impact Assessment – February 2015
- 2.5 Transport Assessment - R/C13584/001 – February 2015
- 2.6 Ecological Appraisal – February 2015
- 2.7 Cultural Heritage Desk Based Assessment – February 2015

- 3.1 23 Oct 15 - Email from West ODC to Gladman – Re: Consultation responses
- 3.2 04 Nov 15 - Email from West ODC to Gladman – Re: HSE Consultation response
- 3.3 10 Nov 14 - Email Correspondence, Hydrock - OCC Highways inc. Technical File Note
- 3.4 15 Nov 14 – Email from West ODC to Gladman – Re: Landscape Consultation response
- 3.5 15 Nov 14 – Email from West ODC to Gladman – Re: Ecology Consultation response

- 4.1 Health and Safety Executive (HSE) PADHI +
- 4.2 Consultation response from Oxfordshire County Council Archaeology 09 September 2014
- 4.3 Consultation response from Oxfordshire County Council Ecology 15 September 2014
- 4.4 Consultation response from Oxfordshire County Council Transport 23 September 2014

- 4.5 Consultation response from Oxfordshire County Council Local Members Views
22 September 2014
- 4.6 Consultation Response from The Wildlife Trust – 23 September 2014
- 4.7 Consultation Response from Witney Town Council – 25 October 2014
- 4.8 Consultation Response from The Environment Agency – 22 October 2014
- 4.9 Consultation Response from Sacha Barnes Ltd (Landscape) – November 2014
- 4.10 Consultation Response from ecus Env. Consultants (Ecology) – October 2014
- 4.11 Consultation Response from CPRE Oxfordshire – 03 September 2014
- 4.12 Consultation Response from Thames Water – 10 September 2014
- 4.13 Consultation Response from OCC Public Art – 26 August 2014
- 4.14 Consultation Response from OCC Noise and Air Quality – 26 August 2014
- 4.15 Consultation Response from OCC Education – 05 September 2014
- 4.16 Consultation Response from OCC Property – 11 September 2014

- 5.1 Committee Report
- 5.2 Committee Report – Additional Representations
- 5.3 Minutes of Committee Meeting
- 5.4 Decision Notice

- 6.1 Planning Practice Guidance - Section 2a Housing and Economic Development Needs Assessments
- 6.2 Planning Practice Guidance - Section 3 Housing and Economic Land Availability Assessment

- 7.1 West Oxfordshire District Council - Windrush in Witney Project Recommendations - April 2005
- 7.2 West Oxfordshire District Council - Affordable Housing SPD - April 2007
- 7.3 West Oxfordshire District Council - Witney Landscape Assessment - Nov 2007
- 7.4 West Oxfordshire District Council - Local Plan 2011 – Relevant Extracts
- 7.5 Oxfordshire Strategic Housing Marketing Assessment - April 2014
- 7.6 West Oxfordshire District Council - Strategic Housing Land Availability Assessment - June 2014
- 7.7 Analysis of West Oxfordshire Future Housing Requirement - June 2014
- 7.8 Cambridge - Validation of Objectively Assessed Housing Need - January 2015
- 7.9 West Oxfordshire District Council - Housing Land Supply Position Statement - Feb 2015
- 7.10 West Oxfordshire District Council - Local Plan 2011 – Saved Policies Application

- 8.1 West Oxfordshire Pre-Submission Draft Local Plan 2031
- 8.2 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Representations - May 2015
- 8.3 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Housing

- Position Statement - July 2015
- 8.4 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Inspectors Preliminary Comments - July 2015
- 8.5 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Proposed Minor Modifications - July 2015
- 8.6 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Response to Inspectors Preliminary Comments – August 2015
- 8.7 West Oxfordshire Pre-Submission Draft Local Plan 2031 - Inspectors Preliminary Findings Part 1 – December 2015

- 9.1 Cherwell Local Plan - Inspectors Report (Extract) - June 2015
- 9.2 Hinckley and Bosworth Borough Council - Relevant Policies
- 9.3 North Cornwall District Council - Relevant Policies
- 9.4 Wychavon District Council - Relevant Policies

- 10.1 Historic England - Setting of Heritage Assets
- 10.2 Historic England - Managing Significance in Decision Taking
- 10.3 English Heritage - Conservation Principles Policies and Guidance - April 2008
- 10.4 Planning Listed Buildings and Conservation Areas Act 1990 – Chapter 9

- 11.1 National Character Area Profile 108 - Upper Thames Clay Vales
- 11.2 Oxfordshire Wildlife and Landscape Study
- 11.3 West Oxfordshire Landscape Assessment

- 12.1 Transport Assessment - RC13584001 Issue 4
- 12.2 Travel Plan - RC13584001 Issue 3
- 12.3 Highways Signed Statement of Common Ground

- 13.1 Committee Report - Aston - 20 July 2015
- 13.2 Committee Report – Eynsham - 19 Jan 2015

- 14.1 NO DOCUMENT SUBMITTED
- 14.2 Appeal Decision - Bishop Cleeve, Gloucestershire (Extract) - 2148635
- 14.3 Appeal Decision - Catshead Woods, Brigstock Road, Sudborough - 2156757
- 14.4 Appeal Decision - Churchill Road, Chipping Norton - 2213853
- 14.5 Appeal Decision – Cirencester Road, Fairford - 2213318
- 14.6 Appeal Decision - Dudley Road, Honeybourne - 2171339
- 14.7 Appeal Decision - Finial House, Broadwell, Oxfordshire - 312611
- 14.8 Appeal Decision - Kents Green Lane, Haslington, Cheshire - 2225591
- 14.9 Appeal Decision - New Haine Road, Ramsgate (Extract) - 2213265
- 14.10 Appeal Decision - Newland, Droitwich Spa – 2199085
- 14.11 Appeal Decision – Park Road, North Leigh – 2224439
- 14.12 Appeal Decision - Ross Road, Newent - 2228822
- 14.13 Appeal Decision - The Old Nursery, Standlake Road, Oxfordshire - 3014933
- 14.14 Appeal Decision - Upper Chapel, Launceston - 2209757
- 14.15 Appeal Decision - Wolvey Road, Three Pots, Burbage, Leicestershire - 2202261
- 14.16 Appeal Decision - Spencers Wood, Berkshire 2209286
- 14.17 Appeal Decision - Laurels Road, Offenham, Worcestershire

- 14.18 Appeal Decision - Wellingborough Road, Sywell 2220599
- 14.19 Appeal Decision - Waterbeach, Cambridge 2207961
- 14.20 Appeal Decision - Banbury Road, Debbington 2201339
- 14.21 Appeal Decision - Long Buckby, Northamptonshire 2174386
- 14.22 Appeal Decision - Moira Road, Ashby-de-la-Zouch 2192131
- 14.23 Appeal Decision - Baldwin's Gate, Newcastle-under-Lyme 2218530
- 14.24 Appeal Decision - Wisaston, Crewe 2213505
- 14.25 Appeal Decision - Tetbury, Gloucestershire 2165778
- 14.26 Appeal Decision - Langford, Bedfordshire 2228154
- 14.27 Appeal Decision - Davenham, Cheshire 2226994
- 14.28 Appeal Decision - Northwich, Cheshire 3000528
- 14.29 Appeal Decision - Mickleton, Gloucestershire 2228762
- 14.30 Appeal Decision – Highfield Farm, Tetbury 2165778
- 14.31 Appeal Decision – Aston Road, Bampton 2217185

- 15.1 Judgement - Barn well v East Northamptonshire DC
- 15.2 Judgement – Bloor Homes v Hinckley and Bosworth Borough Council
- 15.3 Judgement - Dartford BC v Land hold Capital Ltd
- 15.4 Judgement - Gallagher v Solihull
- 15.5 Judgement - Kings Lynn v SoS CLG
- 15.6 Judgement - Mordue v South Northamptonshire
- 15.7 Judgement - RWE NPower Renewables v North Devon District Council
- 15.8 Judgement - Satnam Millennium v Warrington
- 15.9 Judgement - St Albans v Hunston
- 15.10 Judgement - Wainhomes v Wiltshire Council
- 15.11 Judgement - Winckworth Sherwood v Sevenoaks District Council
- 15.12 Judgement – Jones v Mordue
- 15.13 Judgement - Wheatcroft Ltd. v Secretary of State for the Environment
- 15.14 Judgement – Stroud v Gladman
- 15.15 Judgement - Stratford on Avon v Bloor
- 15.16 Judgement - Barwood v South Northamptonshire DC
- 15.17 Judgement - Crane v Harborough District Council
- 15.18 Judgement - Phides Estates v Shepway District Council

- 16.1 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-03-25 Southern Gas Networks
- 16.2 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-03-26 WODCARTS
- 16.3 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-01OCC Archaeology
- 16.4 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-01OCC Ecology
- 16.5 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-01OCC Education
- 16.6 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-01OCC Highways
- 16.7 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-01OCC Property
- 16.8 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-07 Witney Town Council
- 16.9 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-14 WODC Housing

- 16.10 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-17 BBOWT Ecology
- 16.11 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-04-28 Leisure
- 16.12 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-05-21 Thames Water
- 16.13 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-05-26 Risk Assessment
- 16.14 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-05-28 Ecology
- 16.15 Consultation Response, 2nd Attempt Application (15/00700/OUT)
15-06-26 HSE PADHI +
- 16.16 2nd Attempt Application (15/00700/OUT) – Planning Committee
Report
- 16.17 2nd Attempt Application (15/00700/OUT) – Decision Notice
- 17.1 HSE's Land Use Planning Methodology



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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