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Planning Statement

Residential development - Land at Hayfield Road, New Mills

for Wainhomes (North West) Ltd

17-155

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Project	: 17-155
Site address	: Land at Hayfield Road, New Mills
Client	: Wainhomes (North West) Ltd
Date	: September 2017
Author	: Caroline Payne
Approved by	: Stephen Harris

Contents:

1. Introduction

1.1 This Planning Statement is submitted in support of a full planning application by Wainhomes (North West) Limited for the construction of 97 dwellings at land off Hayfield Road, New Mills.

1.2 The site is allocated in the adopted local plan by Policy DS8 (Land off Derby Road, New Mills) for approximately 107 dwellings.

1.3 The planning statement should be read alongside the supporting documents listed in the covering letter.

2. The application

2.1 The application seeks full planning permission for the erection of 97 houses at land at Hayfeld Road, New Mills. The site is identified for housing development in the adopted Local Plan.

Amount / size

2.2 The site is 5 ha in area. The proposed development is for 97 no. dwellings. This is within the parameters of the housing allocation.

2.3 A mix of housing is proposed to suit local market needs and demand. The majority of the dwellings (97) would be a mix of 2, 3, 4 and 5 bedroomed terraced, semi-detached and detached houses. There would also be 12 no. 2-bed apartments. This is set out in the following table:

Table 2.1 – Proposed housing mix

Name	Type	Height	Quantity
Affordable units			
Oakmere	2-bed apartment	2 storey	12
Claydon	3-bed semi-detached house	2 storey	3
Churchill	2-bed semi-detached house	2 storey	14
Subtotal			**29**
Open market units			
Brancaster	3 bed detached house	2 storey	2
Jenner	3-bed semi-detached house	2.5 storey	16
Dalton	3-bed semi-detached house	2 storey	10
Wren	4-bed detached house	2 storey	4
Wren DA	4-bed detached house	2 storey	1
Newton	4-bed detached house	2 storey	4
Wordsworth	4-bed detached house	2.5 storey	10
Haversham	4-bed detached house	2 storey	6
Oxford	4-bed detached house	2 storey	3
Whitemoor	4-bed detached house	2 storey	5
Priestley	4-bed detached house	2 storey	2
Montgomery	5-bed detached house	2 storey	2
Cavendish	5-bed detached house	2 storey	2
Claydon	3-bed detached house	2 storey	1
Subtotal			**68**
Total			**97**

Use

2.4 In accordance with the allocation, the proposed use would be residential (C3).

Layout

2.5 The proposed layout is shown on drawing no NH/HRNM/SL/02. The layout has been amended in response to the comments received at the pre-application stage.

Scale

2.6 In terms of the scale, the majority of the proposed houses would be 2-storeys in height.

Landscaping

2.7 There is a substantial area of open space included within the site (approximately 2.2 hectares) which incorporates a series of paths linking throughout the site. This includes a connection to Derby Road on the adjacent housing area and also a link through to High Hill Road.

2.8 The application is accompanied by a landscape and visual impact assessment and accompanying landscape plan prepared by Tyler Grange.

Appearance

2.9 Details in relation to the external appearance of the dwellings are shown on the proposed elevations. In summary, the dwellings would be high quality, family houses. As the Council is aware, the applicant, Wainhomes is an active housebuilder in High Peak and the wider area. The Council will therefore be familiar with the quality and appearance of the proposed house types. Indeed, Wainhomes is currently developing a site in Chinley known as Forge Manor.

2.10 The proposed dwellings for the current application would have gardens to the front and rear, and off road parking in the form of drives and garages. The materials proposed would be sympathetic to the character and appearance of the immediate surroundings.

Access

2.11 Vehicular access would be taken off Hayfield Road. There is a change in levels between Hayfield Road and the application site. Cut and fill is required to ensure an appropriate access to the site.

Parking

2.12 Off street parking in accordance with the Council's standards would be provided. Again, further details are provided in the Design and Access Statement

3. Context

Site location and description

3.1 The site extends to 5 hectares and forms part of a housing allocation (Policy DS8) which extends to 5.8 hectares. It is currently a relatively flat, greenfield site used for open grazing with pylons crossing the western part of the site. The site fronts onto has frontage to High Hill Road to the north and Hayfield Road to the south although there is no vehicular access from either road at present. There is a change in levels of approximately 10-12 metres from Hayfield Road to the site.

3.2 The site adjoins existing housing to the west. Playing fields are also situated to the west bounded by Hayfield Road and the residential development off Beech Avenue. These playing fields are safeguarded for a replacement primary school for Thornsett (Policy S6).

Relevant planning history

3.3 There is no relevant planning history with the exception of the housing allocation under Policy DS8.

Consultation and background

3.4 A formal pre-application submission was made for the application (reference: PAD/2017/0019) and a pre-application meeting was held on 5th July 2017. The layout of the proposed scheme has been significantly revised as a result of the meeting as a direct response to the officer comments.

4. Policy context

4.1 Section 38 of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions.

National planning policy and guidance

National Planning Policy Framework (NPPF) (2012)

4.2 The relevant sections of the NPPF are discussed in the planning considerations section of this statement below. However, the NPPF states that there is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision taking.

4.3 For decision taking, this means approving development proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted.

Planning Practice Guidance (PPG)

4.4 The PPG was originally published on 6th March 2014.

Development plan context

4.5 The development plan comprises the High Peak Local Plan (HPLP, adopted April 2016) The relevant policies of the HPLP are as follows:

- Policy S 1 – Sustainable Development Principles.
- Policy S1a – Presumption in Favour of Sustainable Development.
- Policy S 2 – Settlement Hierarchy.
- Policy S 3 – Strategic Housing Development.

- Policy S 6 – Central Sub-area Strategy.
- Policy EQ 1 – Climate Change.
- Policy EQ 2 – Landscape Character.
- Policy EQ 5 – Biodiversity.
- Policy EQ 6 – Design and Place Making.
- Policy EQ 8 – Green Infrastructure.
- Policy EQ 9 – Trees, Woodland and Hedgerows.
- Policy EQ 11 – Flood Risk Management.
- Policy H 1 – Location of New Housing;.
- Policy H 2 – Housing Allocations.
- Policy H 3 – New Housing Development.
- Policy H 4 – Affordable Housing.
- Policy CF 3 – Local Infrastructure Provision;.
- Policy CF 4 – Open Space, Sports and Recreation Facilities.
- Policy CF 6 – Accessibility and Transport.
- Policy DS 8 – Land off Derby Road, New Mills.

5. Planning considerations

5.1 As set out above, Section 38 of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

The principle of development

5.2 Policy H 1 of the HPLP: "Location of Housing Development" states that the Council will ensure provision is made for housing taking into account all other policies in the Local Plan by (amongst other things) supporting the development of specific sites through new allocations in the Local Plan. This site is allocated for residential development of approximately 107 dwellings (Policy H2 and DS8). The principle of residential development at the site therefore accords with the development plan and therefore the presumption in favour of sustainable development applies. This is discussed below.

Presumption in favour of sustainable development

5.3 Paragraph 14 of the NPPF states that at the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking, this means:

> *"approving development proposals that accord with the development plan without delay; and*
>
> *where the development plan is absent, silent or relevant policies are out-of-date, granting permission, unless:*
>
> > *- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework; or*
> >
> > *- specific policies in this Framework indicate development should be restricted."*

5.4 Paragraph 7 of the NPPF states that there are three dimensions to sustainable development; economic, social and environmental. These are addressed below in the context of the current application.

Economic sustainability

5.5 Paragraph 7 of the NPPF explains that the economic role means:

> *"contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and co-ordinating development requirements, including the provision of infrastructure"*

5.6 During the build programme, construction related jobs and indirect jobs would be created. This would benefit local contractors and suppliers. The applicant estimates that there would be £5.8 million investment in construction including construction jobs created as a result of the development.

5.7 The proposed development would help contribute to ensuring the Borough has a stable workforce in terms of ability and age.

5.8 Once occupied, the residents of the scheme would spend money in New Mills and other towns in the High Peak. The proposed development would therefore generate spending in the Borough, which would help create full time jobs in the local retail and leisure sectors.

5.9 In addition to the above, the proposed development would deliver a New Homes Bonus and Council Tax income for the Council.

Social sustainability

5.10 Paragraph 7 of the NPPF states that the planning system should perform a number of roles. The social role means:

> *"supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well being."*

5.11 The proposals set out in the current applications would meet this role as is discussed below.

New housing

5.12 There is an urgent need to deliver new housing in the Borough.

5.13 Policy S 3 of the HPLP: "Strategic Housing Development" states that provision will be made for at least 7,000 dwellings over the period 2011-31. This equates to an annual average of 350 dwellings p.a. Over the last 5.5 years, 1,925 dwellings should have been completed. However, only 809 dwellings have been completed. This is an average of just 147 dwellings as shown in the following table:

Table 5.1: Council's calculation of accumulated backlog since 2011

Year	Requirement (net dwellings p.a.)	Completions (net)	Over / under provision
2011/12	350	102	-248
2012/13	350	207	-143
2013/14	350	36	-314
2014/15	350	100	-250
2015/16	350	160	-190
01/04/16 to 30/09/16	175	203	28
Total	**1925**	**809**	**-1,117**
Average	**350**	**147**	

5.14 The underperformance has led to a substantial accumulated backlog, which equates to over three years of unmet housing need (i.e. 1,117 / 350 = 3.19 years).

5.15 Of those 809 dwellings, just 29 (4%) were in New Mills as shown in the following table:

Table 5.2: Housing completions in New Mills since 2011

Address	Reference	Completions	Year
Land adj Cairnthwaite Station	2009/0668	3	2011-2012
Blake Hall, Briargrove	2007/0759	1	2011-2012
141 Waterloo House, Albion Road	2009/0703	1	2011-2012
14 Hayfield Road	2010/0295	1	2011-2012
3 Sett Close	2011/0026	**1**	2011-2012
Market Street	1107/883	1	2011-2012
26-30 Union Road	2009/681	2	2011-2012
39-41 church Road	2011/0528	2	2014-2015
39-41 Church Road	2011/0528	0	2015-16 (double counted)
140-146 Albion Road	2009/0210	1	April-Sept 2016
Land at Greensett, Laneside Road	2013/0346	1	April-Sept 2016
20 High Street	2010/0347	3	April-Sept 2016
25 Marsh Lane	2011/0533	1	April-Sept 2016
Moorland Road, Birch Vale	2012/0458	1	April-Sept 2016
Brookbottom Church	2012/0481	1	April-Sept 2016
56 Hyde Bank Road	2012/0690	1	April-Sept 2016
41 Whittle Road	2013/0068	1	April-Sept 2016
34 Market Street	2013/0496	3	April-Sept 2016
26/30 Union Road	2013/0441	1	April-Sept 2016
82/86 Leighton Road	2014/0041	1	April-Sept 2016
Land at Whitle Road	2013/0669	2	April-Sept 2016
TOTAL		**29**	

Five year housing land supply

5.16 Paragraph 47 of the NPPF requires local planning authorities to boost significantly the supply of housing and 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 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.

5.17 The Council claims to have a deliverable five year supply of 3,625 dwellings as of 1 September 2017. As the Council is aware, Emery Planning has contested the Council's five year housing land supply in recent planning appeals. We do not consider that the Council can demonstrate a deliverable five year supply of housing land by a considerable margin.

5.18 In this case, the application site forms part of the Council's supply, albeit not part of the 5 year supply. The Council's latest housing land supply trajectory considers that the site will start delivering dwellings from 2021, deliver at a rate of 30 dwellings per annum and be complete by the end of 2025. The site therefore makes a significant contribution to the Council's supply.

New housing in New Mills

5.19 Policy S 6 of the HPLP: "Central Sub-area Strategy" states that the Council will seek to promote the sustainable growth of the Central Area such that it (amongst other things) meets the housing needs of the local community. This will be achieved by:

> *"Providing for the housing needs of the community by planning for sustainable housing and mixed use developments by allocating a range of suitable, deliverable housing sites sufficient to meet the requirements of the Central sub-area, including the delivery of appropriate levels of affordable housing"*

5.20 Policy S 2 of the HPLP: "Settlement Hierarchy" states that development will be directed towards the most sustainable locations in accordance with the settlement hierarchy set out in the policy. New Mills is defined as one of five 'Market Towns' i.e. the highest tier in the hierarchy. The market towns will be the main focus for housing, employment and service growth, consistent with maintaining and where possible, enhancing their role, distinctive character vitality and appearance.

Affordable housing

5.21 There is a chronic need for new affordable housing in the High Peak. Paragraph 5.149 of the HPLP states:

> *"Affordable Housing is a key issue in the Local Plan area due in part to the high cost of houses, and the relative low incomes of resident based employment. Both the Housing Needs Survey and the Housing Market Assessment suggest that there is a significant need to increase the overall level of affordable housing provision**. The Housing Needs Survey indicated a need of between 443 and 591 per annum for new affordable housing to meet backlog and emerging needs. The 2014 SHMA indicates that there is a net need of 526 per annum for affordable housing across the Borough**"* (our emphasis).

5.22 Policy H 4 of the HPLP: "Affordable Housing" states:

"in order to address the need for affordable housing, residential developments should seek to achieve the following proportions of residential units as affordable housing:

- 30% affordable housing on sites of 25 units or more; and
- 20% affordable housing on sites of 5-24 units (0.16 ha or larger)."

5.23 Paragraph 4.105 of the HPLP states that housing affordability is a major issue in the Central Area. Many residents in the sub area cannot afford to buy market housing which is a particular issue for those in problem housing that need to move. (Housing Needs Survey 2007).

5.24 30% of the new dwellings will be affordable. This is a significant benefit proposed by the scheme.

Choice and quality of homes

5.25 Section 6 of the NPPF sets out the Government's policy in terms of delivering a wide choice of high quality homes. In particular, paragraph 50 of the NPPF states that local planning authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.

5.26 Paragraph 5.139 of the HPLP states that the Local Plan seeks to deliver a wide choice of high quality housing to meet the needs of all residents in the Borough, to support the local economy and address the housing needs of the Borough.

5.27 Paragraph 5.144 of the HPLP states that meeting the assessed housing needs of local people is an important consideration in the plan. This is not only new homes, but the type, location and the mix of house types to create vibrant and inclusive communities. Paragraph 5.145 of the HPLP states that policy H 3 will ensure that an appropriate range and mix of new homes are provided, including affordable housing for the needs of the current and future population. This can include flats, apartments, first time buyer and family homes and will be informed by the Housing Needs Survey.

5.28 Policy H 3 of the HPLP: " New Housing Development" states that the Council will require all new residential development to address the housing needs of local people by:

a) Meeting the requirements for affordable housing within the overall provision of new residential development as set out in policy H4;

b) Providing a range of market and affordable housing types and sizes that can reasonably meet the requirements and future needs of a wide range of household types including for the elderly and people with specialist housing needs, based on evidence from the Strategic Housing Market Assessment or successor documents

c) Providing a mix of housing that contributes positively to the promotion of a sustainable and inclusive community taking into account the characteristics of the existing housing stock in the surrounding locality

d) Ensuring new residential development includes a proportion of housing suitable for newly forming local households

e) Supporting dwellings designed to provide flexible accommodation which is capable of future adaption by seeking to achieve adequate internal space for the intended number of occupants in accordance with the Nationally Described Space Standard and delivered to meet accessibility standards set out in the Optional Requirement M4(2) of Part M of the Building Regulations.

5.29 The proposed development would be in accordance with this policy. Firstly as set out above, the proposal would deliver 29 no. affordable homes (30%) in line with policy H 4 of the HPLP.

5.30 Secondly, the proposed development would provide a range of market and affordable housing types and sizes that could reasonably meet the requirements and future needs of a wide range of household types. It would provide a mix of housing to suit local market needs. The mix of dwellings would comprise:

- 27%, 2 bedroom dwellings (26 units);
- 33%, 3 bedroom dwellings (32 units);
- 40% no. 4 and 5 bedroom dwellings (39 units).

5.31 Whilst it was notably not incorporated in policy H 3 or the supporting text to the policy table 11.6 of the Strategic Housing Market Assessment (SHMA, NLP, April 2014) suggests the following housing mix for future development in High Peak:

	1-bed flats	2-bed	3-bed	4-bed	Total
Percentage	10%	45%	35%	10%	100

5.32 The SHMA therefore expects over half of all new dwellings (55%) to be 1 and 2 bedroomed properties. Section 11 of the 2014 SHMA sets out how this mix has been arrived at. The assessment follows two stages.

5.33 Firstly, it assesses need by applying the PopGroup household size data against assumptions stated in the Government's Survey of English Housing (2008) and Housing Vision. The assumptions applied are set out in table 11.1 of the SHMA, which for ease of reference is shown below:

Table 11.1 Estimated Housing Size required by Household Type, by Age of Head of Household

Age Range 2013	One Person	Married Couple / With 1/2 Children	Married Couple / With 3+ Children	Cohabiting Couple / With 1/2 Children	Cohabiting Couple / With 3+ Children	Lone Parent / With 1/2 Children	Lone Parent / With 3+ Children	Other Multi-Person
0-14	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
15-24	1 bed flat/house	2 bed flat/house	3 bed house	2 bed flat/house	3 bed flat/house	2 bed flat/house	3 bed house	1 bed flat
25-34	1 bed flat/house	3 bed house	3 bed house	3 bed house	3 bed house	3 bed house	3 bed house	1 bed flat
35-44	2 bed flat/house	3 bed house	4 bed house	3 bed house	4 bed house	3 bed house	4 bed house	2 bed flat
45-59	2 bed flat/house	3 bed house	4 bed house	3 bed house	4 bed house	3 bed house	4 bed house	2 bed flat
60-84	2 bed flat/bungalow	2 bed flat/bungalow	3 bed bungalow	2 bed flat/bungalow	3 bed bungalow	2 bed flat/bungalow	3 bed bungalow	2 bed flat
85+	Housing with care	Housing with care	Housing with care	Housing with care	Housing with care	Housing with care	Housing with care	Housing with care

Source: NLP after Survey of English Housing and Housing Vision/Northern Peninsula Strategic Housing Market Assessment 2008

5.34 As can be seen from the above table, the assessment assumes that all married / cohabiting couples and lone parents with 1 or 2 children require either 2 or 3 bedroom housing. Such assumptions are clearly out-of-step with demand, with many modern families with 1 or 2 children aspiring to or requiring 4 bedroom housing. The data does not in any way reflect demand, as required by paragraph 50 of the Framework. Paragraph 11.18 of the SHMA recognises that the above assessment of need is not robust in the context of the Framework:

> *"However, the figures are indicative and do not take into account a range of critical qualitative considerations. In particular, the modelling does not fully address people's aspirations and the viability of particular dwelling types. As a result, the modelling is a relatively weak match with the current 'stock' of house sizes in the Borough, as illustrated in Figure 11.1. For example, whilst the modelled need for 2-bed properties is very high in High Peak Borough in 2011 (49%, redistributing housing with care), the actual stock of 2-bed homes recorded in the 2011 Census was 29%. It is therefore important to recognise that in practice, providing a range of dwelling sizes specifically to match the quantitative need would not address people's aspirations and could discourage more affluent households from moving to/remaining in the Borough."*

5.35 The SHMA continues to consider quantitative factors. However it relies upon the Derbyshire Dales & High Peak Joint Housing Needs Survey (HNS) 2006. The survey data is therefore more than 10 years old. Furthermore, the HNS was seeking views from those hoping to move within the 5 years following the survey (i.e. 2006-2011). It does not therefore provide a robust assessment of current demand.

5.36 Nationally, there has been a significant shift in market dwellings by bedroom number built since the time of that survey. This is demonstrated in the table below:

Bedrooms	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**	**10/11**	**11/12**	**12/13**	**13/14**	**14/15**	**15/16**
1	9	9	10	12	11	7	8	8	7	6	6
2	41	40	41	41	35	33	32	30	28	25	24
3	28	28	27	26	29	34	33	34	34	36	35
4+	22	22	22	21	25	27	27	28	31	33	35
All	100	100	100	100	100	100	100	100	100	100	100

Source: DCLG Live Tables on Housebuilding – Table 254

5.37 The table above demonstrates that since 2005/06, the construction of dwellings with 4 or more bedrooms has increased from just 22% of overall completions to 35%. The proportion of 3 bedroom dwellings has increased from 28% to 35%. The proportion of 1 and 2 bedroom dwellings being constructed has significantly decreased. This is a clear indication that demand has changed significantly since the 2006 HNS.

5.38 There are a number of reasons why demand may have changed since the 2006 HNS. ONS data indicates that increasing numbers of people are working from home. In many houses this necessitates using a bedroom as an office. Furthermore increasingly older persons wish, and are being assisted, to stay in their own home rather than downsize. Finally, the evidence indicates that people's aspirations are changing.

5.39 There are a number of other problems in relying upon the 2006 HNS data. It does not assess the size, type, tenure and range of housing that is required in particular locations, as required by the Framework. There is no assessment of demand specifically in New Mills, or even the Central sub-area. Wainhomes's experience in this sub-area is that the market demand is predominately for 3 and 4 bedroom dwellings. Additional information is provided in the report prepared by Property Perspective to support this.

5.40 Furthermore, the 2006 HNS only surveyed existing households residing within the borough. A significant component of future moves will arise from in-migration, with the SHMA reporting in excess of 3,000 people migrating to High Peak in 2011 alone. The 2006 HNS does not consider what these people's aspirations are; however it can be assumed that the attractiveness of the dwelling stock will be an important factor in continuing to attract in-migration, which is an important factor in boosting the working age population and achieving the borough's economic aspirations.

5.41 The SHMA was also based upon a different housing requirement to that established in the Local Plan. Specifically the SHMA was based on a housing requirement of 470 net additional dwellings per annum over the plan period (see paragraph 11.19 and table 11.7 of the SHMA).

5.42 In view of the above factors, we consider that the mix of dwellings proposed in the SHMA must be applied **flexibly**.

5.43 Indeed, we note that the Council has not enforced the mix of dwellings proposed in the SHMA. Since the SHMA was produced (in April 2014), the Council has approved a number of applications where the percentage of 3 and 4 bed dwellings is greater than that set out in the policy advice in the SHMA. Examples are set out below.

Example 1: North Road, Glossop (capacity = 150 dwellings)

5.44 The reserved matters application made by Taylor Wimpey at North Road, Glossop was approved on 31st July 2015 (LPA ref: HPK/2015/0120). The following mix of dwellings was approved by the Council:

	1-bed	2-bed	3-bed	4-bed	5-bed	Total
No. of dwellings	8	23	71	39	9	150
Percentage	5	15	47	26	6	

5.45 In this case, 20% are 1 and 2 bed and 80% are 3, 4 and 5 bed.

Example 2: South of Long Lane, Chapel-en-le-Frith (capacity = 105 dwellings)

5.46 The reserved matters application made by Seddon Homes at their second site south of Long Lane in Chapel-en-le-Frith was approved on 23rd December 2015 (LPA ref: HPK/2015/0497). The following mix of dwellings was approved by the Council:

	1-bed	2-bed	3-bed	4-bed	Total
No. of dwellings	8	30	38	29	105
Percentage	8	29	36	28	

5.47 In this case, 37% are 1 and 2 bed and 63% are 3 and 4 bed.

Example 3: South of Manchester Road, Chapel-en-le-Frith (capacity = 47 dwellings)

5.48 The reserved matters application made by Lovell Homes at their site south of Manchester Road in Chapel-en-le-Frith was approved on 7th October 2016 (LPA ref: HPK/2016/0217) after the adoption of the Local Plan. The following mix of dwellings was approved by the Council:

	1-bed	2-bed	3-bed	4-bed	5-bed	Total
No. of dwellings	2	8	10	22	5	47
Percentage	4	17	21	47	11	

5.49 In this case, 21% are 1 and 2 bed and 79% are 3, 4 and 5 bed.

5.50 The following examples have also been approved after the HPLP was adopted in April 2016:

Example 4: Land rear of Hallsteads, Dove Holes (capacity = 104 dwellings)

5.51 The reserved matters for phase 1 (21 dwellings) made by Hopwood Homes was approved on 20th April 2016 (LPA ref: HPK/2015/0563). The reserved matters for phase 2 (83 dwellings) also made by Hopwood Homes is pending determination but has been approved at planning committee in early 2017. The following mix for the whole site is proposed:

	1-bed	2-bed	3-bed	4-bed	Total
No. of dwellings	4	22	60	18	104
Percentage	4	21	58	17	

5.52 In this case, 25% are 1 and 2 bed and 75% are to be 3 and 4 bed.

Example 5: Woods Mill, Glossop (capacity = 57 dwellings)

5.53 The full planning application for a mixed use scheme including 57 dwellings at Woods Mill in Glossop was approved on 1st July 2016 (LPA ref: HPK/2015/0571) again after the adoption of the Local Plan. The following mix is currently under construction:

	1-bed	2-bed	3-bed	4-bed	Total
No. of dwellings	0	9	48	0	57
Percentage	0	16	84	0	

5.54 In this case, 16% are 2 bed and 84 % are 3 bed.

Example 6: Charlestown Works, Glossop (capacity = 97 dwellings)

5.55 The reserved matters application made by Sherwood Homes at Charlestown Works was approved at the Development Control Committee on 13th March 2017 (LPA ref: HPK/2016/0520), again after the adoption of the Local Plan. The proposed mix of dwellings is set out in the table below:

	1-bed	2-bed	3-bed	4-bed	Total
No. of dwellings	1	32	53	11	97
Percentage	1	33	55	11	

5.56 In this case, 34% of the proposed dwellings are 1 and 2 bed and 66% are 3 and 4 bed.

5.57 Three of the above examples came after the adoption of the Local Plan and at a time when the council considered that it could demonstrate a 5 year supply.

5.58 In addition to the above examples, appended at **EP1** is a decision notice in relation to an appeal made by Gleeson Developments against the failure of Harrogate Borough Council to

determine its application for 78 no. dwellings within the prescribed timescales. The appeal was allowed and planning permission was granted.

5.59 In that case, the Inspector had identified that one of the main issues was "whether the proposed development provides an appropriate housing mix to meet the future needs of the local community with particular regard to the Strategic Housing Market Assessment (SHMA), the development plan and national planning policy" (paragraph 6).

5.60 Harrogate's SHMA identified a need for smaller family housing than was proposed by the appellant. The dispute was whether the SHMA should be used to control housing mix so that development on individual sites was more closely aligned to its findings (paragraph 7). As appears to have been the case in High Peak by reference to the examples above, Harrogate accepted that the recommended SHMA mix should be applied flexibly (paragraph 9). Whilst that authority required the market housing to be more closely aligned to it, the Council was unable to advise on what parameters they would find acceptable (paragraph 9).

5.61 In allowing the appeal, the Inspector concluded that there was a need for the size of homes proposed and further that there was no development plan policy providing guidance on housing mix (paragraphs 18 and 58). This is the case with the current proposal, which as explained above provides a mix of housing to meet local needs. Whilst policy H 3 refers to the SHMA, the policy advice within it has not been carried directly into the policy. This therefore re-emphasises the need to apply the mix set out in the SHMA flexibly.

5.62 Furthermore, it is also relevant that whilst the High Peak SHMA recommended the mix of dwellings as set out above, there is a recognition that there is a need to rebalance the stock away from traditional 2-up, 2-down terraced properties.

5.63 The reliance on terraced stock is highlighted by the 2011 Census: Summary Profile for New Mills . This shows that 41% of properties in New Mills are terraced (in comparison with 34% in High Peak and 21% in Derbyshire as a whole). In contrast detached properties comprise just 20% of the housing stock in New Mills (in comparison with 24% in High Peak and 32% in Derbyshire).

5.64 Consequently, the SHMA recommends that around 25% of new stock should comprise more "aspirational property types, specifically detached dwellings".

5.65 We have reviewed all of the large sites (i.e. above 20 dwellings) in High Peak, which have detailed consent and note that at present, less than 25% are detached. This is shown in the following table:

Site	Settlement	Developer	Apartments	Terraced	Semi-detached	Detached	Total
Chapel Street	Glossop	McCarthy & Stone	36	0	0	0	36
"Shepley Gardens", Shepley Street	Glossop	Wiggett	0	44	0	0	44
Octavia Gardens	Chapel-en-le-Frith	Barratt	10	42	22	31	105
"Forge Manor", Forge Works Phase 1	Chinley	Wainhomes	6	20	20	45	91
Becketts Brow	Chapel-en-le-Frith	Barratt	0	88	44	38	170
"Laurel View" North Road	Glossop	Taylor Wimpey	8	23	71	48	150
Church Lane	New Mills	Treville	0	3	18	0	21
Rear of Hallsteads	Dove Holes	Hopwood Homes	0	9	80	15	104
Land off Hallsteads	Dove Holes	Hallsteads Homes	8	31	42	2	83
South of Long Lane	Chapel-en-le-Frith	Seddon	8	3	50	44	105
Charlestown Works	Glossop	Sherwood Homes	14	25	35	23	97
Manchester Road	Chapel-en-le-Frith	Lovell	0	0	14	33	47
Woods Mill	Glossop	Lofthouse	9	29	16	3	57
Brown Edge Road	Buxton	Housing 21 (Extra Care)	53	0	0	0	53
Surrey Street	Glossop	Westleigh	13	28	10	0	51
Marsh Lane	New Mills	Guinness	0	3	34	0	37
Forge Works - Phase 2	Chinley	Innovation Forge	0	21	70	0	91
Total			**165**	**369**	**526**	**282**	**1342**
Percentage of Total			**12**	**27**	**39**	**21**	

5.66 As can be seen from the above table, of the 1,342 dwellings approved on the large sites in the Borough, only 282 are detached. This equates to 21%, which is less than the 25% recommendation set out in the SHMA. Therefore, additional detached dwellings are required on large sites in the Borough.

5.67 The proposals at the application site are for 41 (42%) detached dwellings (and 44 (45%) semi-detached dwellings and 12 (14%) apartments). This would therefore assist the Council in achieving 25% of all new homes as detached.

5.68 Whilst we note that the SHMA recommends 25% of new homes as detached is to meet aspirations, the proposals are also in accordance with policy S 1 of the HPLP: "Sustainable Development Principles", which states that the Council will expect all new development makes a positive contribution towards the sustainability of communities and to protecting, and where possible enhancing, the environment. This will be achieved by (amongst other things):

- Meeting most development needs within or adjacent to existing communities;
- Making efficient use of land by ensuring the density of proposals is appropriate (and informed by the surrounding built environment;
- **Providing for a mix of types and tenures of quality homes to meet the needs and aspirations of existing and future residents in sustainable locations**. (our emphasis)

5.69 In determining the mix of development consideration must be given to the specific characteristics of the site, and its ability to accommodate smaller units, and consequently higher density development. The application site is located on the edge of the settlement of New Mills. The application site is more suited to lower density development comprising of larger units, reflecting its edge of settlement location. Furthermore, the density of development is broadly consistent with the numbers of dwellings referred to for this allocation bearing in mind the reduced site size.

5.70 Finally, if the Council finds that the proposal is not consistent with Policy H 3 (b) and specifically the mix of housing recommended in the SHMA, we would refer the Council to the case of *Regina v Rochdale Metropolitan Borough Council [2000] EWHC 650 (Admin)*, which is appended at **EP2**. This case establishes that an application must be assessed against the development plan when read as a whole. Paragraph 47 of the judgment provides:

> *"The local planning authority should have regard to the provisions of the development plan as a whole, that is to say, to all of the provisions which are relevant to the application under consideration for the purpose of deciding whether a permission or refusal would be "in accordance with the plan"."*

5.71 Paragraph 48 provides:

> *"It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach."*

5.72 Paragraph 49 provides:

> *"In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive land escapes et cetera, it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan."*

5.73 These principles have been reinforced through recent cases such as SSCLG vs BDW [2016] EWCA Civ 493 and Tiviot Way Investments vs SSCLG [2015] EWHC 2489 (Admin)

5.74 Even if the Council reaches the conclusion that the proposal is not consistent with Policy H 3 (b), the proposal is consistent with the other parts of the policy. Furthermore there is no conflict with any other part of the development plan; in fact the site is allocated within the plan for residential development, and the proposal is in full accordance with the key policy objectives of meeting the overall housing requirement, and meeting the identified needs for affordable housing. No conflicts with any other policies have been identified.

5.75 Therefore having regard to the relevant case law, when the proposal is assessed against the development as a whole, the proposal accords with the development plan.

Design considerations

5.76 The fourth bullet point of paragraph 17 of the NPPF states that one of 12 core land-use planning principles is that planning should: "always seek to secure high quality and a good standard of amenity for all existing and future occupants of land and buildings".

5.77 Paragraph 56 of the NPPF states that "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people".

5.78 Paragraph 58 of the NPPF states that planning policies and decision should aim to ensure that developments "respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation".

5.79 Paragraph 60 of the NPPF states that "Planning policies and decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is however, proper to seek to promote or reinforce local distinctiveness".

5.80 Policy EQ 6 of the HPLP: "Design and Place Making" states that all development should be well designed and of a high quality that responds positively to both its environment and the challenge of climate change, whilst also contributing to local distinctiveness and sense of place.

5.81 These policies have been considered in the approach to the design of the proposed development, which has been described in full in the Design and Access Statement.

Location of the site

5.82 Paragraph 34 of the NPPF states that plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.

5.83 In accessibility terms, the site is in a sustainable location and can be accessed by a range of transport modes (i.e. public transport, walking and cycling).

Environmental sustainability

5.84 Paragraph 7 of the NPPF states that the environmental role means:

> *"contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimize waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy"*

5.85 We address this role as follows.

Landscape and trees

5.86 The landscaping proposals are shown on the Landscape Plan prepared by Tyler Grange. Further details are provided in the Landscape and Visual Impact Assessment also prepared by Tyler Grange.

5.87 A tree survey and tree protection report prepared by TBA is enclosed with the application.

Ecology

5.88 Section 11 of the NPPF: "Conserving and enhancing the natural environment" and in particular paragraph 109 states that the planning system should contribute and enhance the natural and local environment by (amongst other things) minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

5.89 An ecology survey and assessment prepared by ERAP supports the application. This concludes that a residential development at the site in New Mills is feasible and acceptable in accordance with ecological considerations and the NPPF.

5.90 Development at the site will provide an opportunity to secure ecological enhancement for fauna typically associated with residential areas. Measures to achieve a net gain for biodiversity are set out in the ecology report.

Archaeology

5.91 A Historic Environment Desk Based Assessment has been prepared by Nexus Heritage and is enclosed with the application.

5.92 The report concludes that there are no registered World Heritage Sites, Areas of Archaeological Potential, Conservation Areas, Scheduled Ancient Monuments, Listed Buildings, Registered Parks and Gardens or Registered Battlefields wholly or partly within the site. The site does not contain any designated heritage assets for which there would be a presumption in favour of preservation in situ and against development arising from considerations of sustainability.

5.93 There are no township or parish boundaries within the site or along its boundaries. There are no locally listed buildings within the site. There are four non-designated heritage assets within the site – a parcel of historic landscape character, vestigial remains of a historic field boundary, ridge and furrow earthworks and stone walls, all likely to be post-medieval in date. Under commonly applied criteria for establishing the importance of heritage assets, all these assets are of low (local) importance.

5.94 The potential for as yet unknown archaeological remains to be present at the site has been estimated as low for all periods.

Noise

5.95 The application is accompanied by a noise impact assessment prepared by Royal HaskoningDHV. The assessment concludes that the site is suitable for residential dwellings subject to the provision of appropriate mitigation measures. Recommended sound insulation performances are set out in the report.

Ground conditions

5.96 A Phase I Geo-Environmental Desk Study Report has been prepared by REFA. This recommends that an intrusive ground investigation should be carried out. This should be used to confirm the geological succession and engineering properties of the sub-surface materials.

5.97 A coal mining risk assessment has also been carried out. This indicates that the site may be potentially underlain by very shallow coal mine workings and possible fireclay workings as identified by the Coal Authority which may result in instability at the surface.

5.98 The report recommends that the site should be subject to a program of intrusive investigations to identify the presence of any shallow coal mining activities.

Flood Risk

5.99 A Flood Risk Assessment and Drainage Management Strategy prepared by Betts Associates is included as part of the application. The drainage strategy takes into account comments made at the pre-application stage by Derbyshire County Council.

Highways

5.100 SCP has prepared a Transport Assessment which provides an assessment of the traffic and transport implications associated with the development proposals to inform Derbyshire County Council (DCC), as Highway Authority – regarding the nature and magnitude of their impact. They have also prepared a Travel Plan.

5.101 With regard to location the TA confirms that the site is well located in terms of its accessibility by bus with four services per hour operating into New Mills town centre and New Mills bus station where onward connections can be made. Connections are also available at both New Mills Central and New Mills Newtown railway stations for train services. A number of nearby towns are also accessible by regular services including Glossop, Buxton, Marple and Stockport.

5.102 With regard to traffic movements it states:

> *"The site is predicted to generate 72 two-way trips in the AM peak hour, and a further 74 two-way trips in the PM peak hour. This equates to approximately one additional vehicle movement every minute during the peak hours on average. As such it is concluded that such an increase in traffic levels will be imperceptible on the local highway network.*
>
> *Junction assessments have been undertaken for both the priority junction for the proposed access / Hayfield Road, and for the signalised junction of Union Road / Albion Road / Church Road in New Mills. The assessment results for both junctions indicate that in a future assessment year of 2022, with the proposed development in place, both junctions will operate satisfactory during the weekday peak hour periods.*

5.103 The overall conclusion is that there are no highways or transport reasons to withhold planning permission.

Summary

5.104 This Planning Statement is submitted in support of a full planning application by Wainhomes (North West) Limited for the construction of 97 dwellings at land off Hayfield Road, New Mills.

5.105 The site is allocated in the adopted local plan by Policy DS8 (Land off Derby Road, New Mills) for approximately 107 dwellings. The principle of residential development is therefore acceptable.

5.106 The proposed development would provide a range of market and affordable housing types and sizes that could reasonably meet the requirements and future needs of a wide range of household types. It would provide a mix of housing to suit local market needs. In terms of the requirement set out in Policy H3 to provide a range of housing types and sizes based on evidence from the Strategic Housing Market Assessment, our conclusions are as follows:

- The SHMA is based on out-of-date evidence and must be applied flexibly. In any event, Policy H3 states that the housing mix should be based on evidence from the SHMA. It does not require a rigid application of Table 11.6 of the SHMA.
- The proposal would be meeting the need in New Mills where there is a high proportion of terraced properties.
- The local planning authority has granted various permissions with different mixes post publication of the SHMA and the adoption of the Local Plan. This is consistent with our interpretation of the application of Policy H3.
- Relevant case law confirms that the development plan must be read as a whole and non-compliance with a part of H3 cannot justify refusal overall.

5.107 The application accords with the development plan, and therefore the presumption in favour of sustainable development applies. The application should be approved without delay.

6. Appendices

EP1. Gleeson appeal decision
EP2. Regina v Rochdale MBC [2000]

EP1

The Planning Inspectorate

Appeal Decision

Inquiry held on 28, 29 and 30 March 2017

Site visit made on 30 March 2017

by Helen Hockenhull BA(Hons) B.Pl MRTPI

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

Decision date: 28 April 2017

Appeal Ref: APP/E2734/W/16/3155389
Land south of Bar Lane, Knaresborough, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Gleeson Developments against Harrogate Borough Council.
- The application Ref 15/01691/FULMAJ is dated 17 April 2015.
- The development proposed is the demolition/removal of existing buildings, followed by the development of 78 No. dwellings and access and landscaping works.

Decision

1. The appeal is allowed and planning permission is granted for the demolition/removal of existing buildings, followed by the development of 78 No. dwellings and access and landscaping works on land south of Bar Lane, Knaresborough, North Yorkshire in accordance with the terms of the application, Ref 15/01691/FULMAJ, dated 17 April 2015, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Gleeson Developments against Harrogate Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal was made because of the Council's failure to determine the planning application within the prescribed period. The Council have advised that if they had determined the application they would have refused it on the grounds that the proposed development does not provide for a mix of open market housing based on current and future demographic trends, market trends and the current and future needs of different groups in the community. Therefore the application has not paid sufficient regard to community needs and is contrary to the requirements of Harrogate District Core Strategy Policy C1 and inconsistent with paragraphs 7 and 50 of the National Planning Policy Framework (the Framework). Such deficiency in the social role of sustainable development significantly and demonstrably outweighs the economic benefits of providing new housing in this otherwise acceptable location.

4. The agreed Statement of Common Ground outlines that the original planning application was for the development of 81 dwellings. However during the course of the application the scheme was revised to 78 dwellings. Drawing No. BB.214514.101 Rev F is the final revision of the scheme formally submitted to the Council. As part of the appeal an updated Landscape Masterplan was submitted to reflect the revised proposal. Whilst this has not been the subject of consultation it contains minor revisions only to reflect the revised layout. I consider the acceptance of this plan would not prejudice any of the parties. I have therefore considered the appeal on this basis and the description of development I have used in the banner heading reflects the revised scheme.

5. A completed legal agreement under Section 106 of the Town and Country Planning Act 1990 (s106) between the appellants, North Yorkshire County Council, Harrogate Borough Council and the landowner was submitted at the Inquiry. The s106 agreement contains obligations relating to education, public open space and ecological mitigation works, off site open space, air quality management, affordable housing, travel plan monitoring and highways.

Main Issues

6. Whilst the Council have indicated that they would have refused the appeal proposal for one reason relating to housing mix a number of other issues have been raised by interested parties. Therefore following all that I have seen, heard and read I consider the main issues are as follows:

- whether the proposed development provides an appropriate housing mix to meet the future needs of the local community with particular regard to the Strategic Housing Market Assessment (SHMA), the development plan and national planning policy;
- the effect of the development on the local highway network and highway safety;
- whether the site is a suitable location for development in terms of its accessibility to local services and facilities;
- the effect of the development on ecological matters in particular the impact on the nearby Hay-a-Park SSSI, goosander and great crested newt populations;
- the effect of the development on air quality with particular regard to the nearby Bond End Air Quality Management Area (AQMA) and proposed York Place AQMA.

Reasons

Housing Mix

i) SHMA

7. The Council have prepared a Strategic Housing Market Assessment (SHMA) as part of the evidence base for the emerging local plan looking at the housing needs of the Borough up to 2035. The overall findings of the document, that the provision of market housing should be more explicitly focused on delivering smaller family housing, namely 2 and 3 bed properties, is not in dispute. The disagreement between the parties however relates to whether the SHMA

should be used to control market housing mix so that development on individual sites is more closely aligned with its findings.

8. It is clear from paragraph 8.31of the SHMA document itself that although figures for housing mix have been quantified that they should not be included in the plan making process and if they are they should be used as a monitoring tool to ensure that future delivery is not unbalanced. It was accepted by the Council that the SHMA does not suggest it should be used as a freestanding tool to indicate the housing mix in a particular development.[1] Whilst the SHMA forms the only available evidence of housing mix at the district level, I am also mindful that it has not been consulted on or tested through the Examination process. It is therefore likely that there may be objections to it, particularly from the development industry. Accordingly I consider that a degree of caution has to be afforded to its application to a particular housing mix on an individual site. Whilst it remains a material consideration, I consider it can only attract limited weight.

9. It was agreed by the parties that the SHMA forms a 'starting point' in the consideration of housing mix. Whilst the Council accepted at the inquiry that the recommended SHMA mix should be applied flexibly they require the market housing mix to be more closely aligned to it. However they were unable to advise what parameters they would find acceptable.

10. The SHMA's conclusion in Table 58 is that the need across Harrogate is for an overall housing mix of 20% one bed, 40% two bed, 35% three bed and 5% four/five bed properties. The document considers the mix for affordable and market housing separately and includes different recommendations for each. The affordable housing mix proposed is not a matter of dispute, even though it does not align with the recommendation in the SHMA, providing fewer one bed properties, significantly more two bed properties and about the same proportion of three bed properties. The lack of dispute with regard to affordable housing suggests that a flexible approach has been taken with regard to this tenure type. It therefore appears to me that a degree of flexibility should equally be applied to the market housing mix.

11. The appeal scheme would provide more than 68% four and five bed market properties. I accept that this forms a significant variation to the SHMA recommendation. The Council recognises that there is likely to be a need for four and five bed homes in the short term over the next five years. This is to allow older homeowners to downsize and these larger homes to be added to the housing stock. However all parties accept that this is difficult to quantify. Furthermore the Knaresborough Housing Mix Report prepared by the Council suggests that around 40% of sales of larger family homes were to incomers. Therefore there is a local need for larger homes, particularly in the short term and also a continued demand from in migration.

12. The SHMA in paragraph 8.17 states the expectation that the existing stock will contribute to this demand. Knaresborough has a significant stock of larger housing with a higher percentage of four and five bed dwellings than the district, regional or national average. This does not mean however that some new build larger homes will not be needed. The appeal development would contribute to meeting this demand.

[1] Mr McColgan in Cross Examination

13. There is clearly also a need for 2 and 3 bed properties in the area. The appeal scheme would provide 3 no. 2 bed market homes and 12 no. 3 bed market homes. This provision would be below that suggested in the SHMA. Both parties agree that local people on average or lower earnings would have difficulty in buying a new build 2 or 3 bed property, even with initiatives such as Help to Buy. However some people earning above average income would be able to purchase such properties, though I have no evidence of how many people would be in this position. I also recognise that lower earners may have savings or could be helped by family to put together a deposit to buy a property. A further potential source of demand for two or three bed properties would be from older people looking to sell larger homes and downsize, however as I have stated above I have no evidence of the quantum of this demand.

14. The Knaresborough Housing Mix Report[2] suggested that on the basis of interviews undertaken with local agents that housing supply in Knaresborough was unbalanced as there were relatively few small homes, particularly two and three bedrooms. I tend to agree with the appellant that as this evidence was obtained through telephone interviews in a conversational style with a limited number of agents, it can only be viewed as anecdotal.

15. I have been provided with no other evidence that there is a shortfall of 2/3 bed dwellings in Knaresborough or that the deficiency is resulting in local people moving outside the area. Land registry sales data for the period Sept-Dec 2016[3] demonstrates a significant number of 2/3 bed sales and does not suggest a shortage of such properties in the area. In addition the Council's evidence[4] demonstrates a good supply of terraced homes on the market which would be suitable for first time buyers and those on low incomes. Consequently I consider that there is no evidence before me to suggest that the appeal scheme should provide more 2/3 bed homes and fewer 4/5 bed properties to meet local need.

16. Overall the appeal scheme would provide around 35% one and two bed properties and 23% three bed properties. These are the size of homes which the SHMA suggests are in the greatest need in the Borough. Comparison of housing mix in schemes approved since June 2015 [5] demonstrates a number of sites where a greater proportion of smaller homes were approved. This assessment also shows a significant variation in housing mix on individual sites with no scheme achieving the SHMA mix. On a Borough wide level this variation could result in the overall delivery being balanced in line with the SHMA recommendations. This is a matter for the Council to monitor.

17. The Council has put forward the argument that there is no land use reason why the appeal site could not deliver a greater number of smaller homes. It was accepted by both parties that such a scheme could be designed and still be in keeping with the character of the area. The appellant has submitted that reducing the size of dwellings on the site could be regarded as an inefficient use of land. However depending on the scheme then put forward, the overall number of dwellings may well be the same or indeed be increased. I do not therefore consider that there would then be a need to release further greenfield

[2] Paragraphs 4.7 and 4.8
[3] Mr Roebuck's Proof pages 9-11
[4] Figure 18 page 34 Mr McColgan's Proof
[5] Appendix 7 Mr Eagland's Proof

and to meet the housing supply requirement. I note that no viability argument has been put forward by the appellant.

18. In summary the SHMA does not indicate that it should be used to guide housing mix on individual sites in a development management context. Furthermore having regard to its untested status, I conclude that limited weight should be given to the document, though it clearly remains a material consideration. The appeal scheme provides a significantly higher percentage of properties with 4 bedrooms or more than recommended in the SHMA. However it is clear that there is a local need and wider demand for family homes particularly in the short term over the next five years. I have been presented with no evidence of a shortfall of 2/3 bed market homes or any unmet demand. I have taken account of the fact that overall the scheme would provide 35% one/two bed homes and 23% three bed homes. These are the size of properties that the SHMA identifies as being in greatest need. Furthermore I note the flexible approach the Council has taken with regard to the mix of affordable housing on the site and the variety of housing mix on recently approved developments. Accordingly having regard to the evidence before me, I find no reason to conclude that the appeal scheme would not provide an appropriate mix of market housing to meet local need and wider demand. I therefore consider the proposed scheme would be acceptable in this regard.

ii) Development plan and national planning policy

19. The appellant has argued that it is not possible to control market housing mix unless an appropriate development plan policy is in place. In their suggested reason for refusal the Council relies on Policy C1 of the Harrogate Core Strategy 2009 (CS) and paragraphs 7 and 50 of the Framework.

20. Having regard firstly to national policy, paragraph 50 of the Framework looks to provide a wide choice of quality homes. In order to achieve this the document advises that local planning authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. To my mind this suggests that this would be achieved through the plan making process. My attention has been brought to the decision of the Inspector in the Hindhead appeal [6] who considered whether a development plan policy relating to housing mix was out of date when compared to national planning policy guidance namely paragraph 50. I agree with the appellant that the Inspector in her reasoning confirmed paragraph 50 to be a plan making policy.

21. Turning to paragraphs 7, 9 and 17 of the Framework, these paragraphs relate to the broader objective of widening the choice of high quality homes and addressing housing needs. There is nothing to suggest in these paragraphs that they cannot be applied to the consideration of individual planning applications. I therefore conclude that whilst paragraph 50 of the Framework relates to plan making and is not applicable in this case, paragraphs 7, 9 and 17 are relevant to the consideration of housing mix.

22. CS Policy C1 is a strategic policy aimed at promoting inclusive communities. It falls outside the Housing Chapter of the Core Strategy. The Policy states that the development of land will be assessed having regard to community needs

[6] APP/R3650/W/15/3070006

within the District with particular importance placed on the specific needs of elderly people, young people, the rural population and disabled persons.

23. In terms of housing the only reference within the policy is in relation to the housing needs of the above groups, namely affordable housing for young people and the rural population and open market housing for elderly people. Paragraph 8.7 of the supporting text to this policy states that the Council will seek to provide for these needs through relevant Core Strategy policies, in other development plan documents and supplementary planning documents.

24. CS Policy C1 does not provide guidance on market housing mix. It is a general policy, a fact which the Council acknowledges. This does not mean it is not relevant and clearly it forms a material consideration. However the policy does not specify a particular mix or refer to any other document such as the SHMA that would advise on this matter. It appears to me that the Council recognises that Policy C1 is not on its own sufficient to control market housing mix as in July 2015 it prepared an Interim Policy on this matter. This was subsequently challenged in the High Court and quashed. The Council is now proposing a specific policy in the emerging local plan.

25. Two appeal decisions have been brought to my attention by the Council in order to support their position that CS Policy C1 is specific enough to control housing mix on individual sites. Firstly in the Pateley Bridge[7] appeal the Inspector found that the Council would be able to control housing mix through a condition on an outline approval. However he recognised that it had yet to be established whether the open market housing mix recommended by the SHMA would be translated into policy which might otherwise indicate how it would be applied on individual development sites. In these circumstances he considered that its recommendations should be applied in a flexible manner. To my mind this mirrors the situation in this appeal. I consider that at the current moment in time, in the absence of a specific development plan policy with regard to housing mix, that the SHMA should be applied flexibly.

26. Secondly the Council makes reference to an appeal at Church Lane, Worcester[8]. The Inspector refused permission amongst other things, on the basis of Policy SWDP14, which required a housing mix to be informed by the SHMA and other documents. However I do not consider this decision to be comparable to the appeal as in this case a development plan policy was in place to control market housing mix.

27. In light of the above, I conclude that CS Policy C1, whilst it is material consideration in terms of meeting general community needs it does not provide guidance on market housing mix. It therefore does not form a policy against which the housing mix in individual planning applications can be determined and I attribute limited weight to it in the determination of this appeal.

Overall conclusion on housing mix

28. I have found that the SHMA having regard to its stated purpose and current untested status, should be given limited weight. It does however form a material consideration which I consider should be applied flexibly to individual development proposals. I accept that the appeal scheme provides a high proportion of 4/5 bed market homes, significantly above the recommendation

[7] APP/E2734/W/16/3157795
[8] APP/J1860/W/3159764

of the SHMA. However I have no evidence that smaller 2/3 bed homes are in short supply or that there is unmet demand. I have no reason to conclude that the appeal proposal should provide fewer 4/5 bed homes and more 2/3 bed homes. The overall mix would provide a range of house sizes which would contribute to meeting the local community need and the wider demand in the current housing market. Therefore in the absence of a development plan policy controlling market housing mix, I find no reason to conclude that the appeal scheme would not be acceptable or that it would fail to comply with paragraphs 7, 9 and 17 of the Framework.

Impact on the local highway network and highway safety

29. Whilst this issue is not in dispute between the two main parties local residents and Councillors have raised concern that the appeal proposal together with other recently approved developments in the Knaresborough area, would result in unacceptable impacts on the local road network. In particular concern is raised about the A59 corridor and the Bond End junction which has been designated as an AQMA.

30. The submitted Transport Assessment concludes that the appeal proposal would generate 59 two way movements in the am peak and 57 movements in the pm peak, approximately one vehicle per minute. Traffic distribution analysis indicates that all junctions, taking account of both committed schemes and the appeal proposal, would function within capacity. At the Bond End junction it is estimated that there would be around 39 vehicle trips in the morning and evening peak hour periods. I am advised by the appellant that analysis of this junction, taking account of the proposed improvement scheme to accommodate the Manse Farm development, has demonstrated that it would be sufficient to also mitigate the additional trips from the appeal scheme.

31. At the inquiry I heard from a representative of the promoter of the Manse Farm development. This development is required to undertake highway improvements at the Bond End junction. The representative argued that it would be necessary for these works to also be required by a condition on the appeal scheme should it be allowed. This would ensure that should the appeal scheme commence before the Manse Farm development, that the necessary highway improvement works at Bond End are undertaken before the first occupation of houses on the appeal site. I shall discuss this matter further in the section regarding conditions.

32. Notwithstanding this request I am aware that the Highway Authority has requested a financial contribution towards the cost of an improvement scheme at this junction. I understand that 7 options are being considered and further consultation and assessment is required before a scheme is finalised. I am advised that further contributions have and will be sought from other nearby developments.

33. I am satisfied that with the proposed improvements, the traffic impacts of the proposed development would be satisfactorily mitigated. There is no objection to the proposal from the Highway Authority subject to appropriate conditions and the financial contribution to mitigation works at Bond End. The scheme would comply with Policy TRA3 of the Harrogate Core Strategy which aims amongst other things to manage travel and reduce congestion and paragraph 32 of the Framework, which seeks the provision of a safe and suitable access

as well as improvements within the transport network that cost effectively limit the significant impacts of the development.

Accessibility to local services and facilities.

34. The main parties agree that the site is in a sustainable location. However local residents including the Scrivens East Residents Group (SERG) have argued that a high percentage of existing residents use the car due to necessity and the site is not in an accessible location.

35. The submitted Transport Assessment shows that a primary school, doctor's surgery, dentist and a supermarket are located within a reasonable walking distance from the appeal site, meeting the accessibility criteria of Appendix 8 of the Harrogate Core Strategy. The appeal scheme would provide a footway on the southern side of Bar Lane to connect the site to existing footpaths on Boroughbridge Road. A secondary pedestrian /cycle access is also proposed through the open space area linking to Hazelheads Lane. I understand that if the Persimmon development[9] located on the western boundary of the site is allowed on appeal, then the footpath link would connect to that site. Either way I consider that appropriate pedestrian facilities are provided in the scheme.

36. The site is well served by public transport with a bus stop on Halfpenny Lane approximately 390m from the site and on Hyde Park Road around 540 metres away. Services to Knaresborough and Harrogate are provided every 15 minutes Mon–Sat and half hourly on a Sunday (Service 1C). I am advised that within the David Wilson Homes development opposite the junction of Bar Lane and Boroughbridge Road, it is proposed to provide a further bus stop which would be within 400 metres of the appeal site. This would also be served by bus route 1C but on a half hourly basis. This bus service also serves both Knaresborough and Harrogate railway stations.

37. The Framework in paragraph 29 seeks to promote sustainable transport modes and give people a real choice about how they travel. Whilst I accept that some future residents will use the car, I consider that there would be a choice of non-car travel options available, including walking, cycling and public transport. I also note the proposed Travel Plan which would aim to encourage non car modes of travel. I conclude that the appeal site would be in a sustainable location and would be accessible to local services and facilities in Knaresborough and further afield. The development would therefore comply with the aims of national and local plan policy to promote sustainable transport.

Ecology matters

38. Concern has been expressed by interested parties in particular the Harrogate Trust for Wildlife Protection (HTWP) with regard to the impact of the proposed development on the Hay-a-Park SSSI located approximately 375 metres south west of the appeal site. The SSSI is designated for its breeding birds and wintering wildfowl. The concerns relate to the impact of increased footfall and changes to water quality on the goosander population.

39. Public access to the SSSI is limited to two small sections at the edges of the site which I am advised become muddy in wet weather. Whilst some walkers

[9] APP/E2734/W/16/3150954

may veer from the designated path into dense vegetation disturbing the goosander such numbers are likely to be low. The appellant also advises that goosanders are not typically sensitive to the form of disturbance likely to be created by increased footfall. The appeal proposal includes an area of open space and should the development of the neighbouring Persimmon site off Orchard Close be approved, the areas of open space are proposed to be connected. I consider that this would provide a good alternative to Hay-a-Park SSSI for dog walkers and other residents. The appellant also proposes further mitigation in the form of public information boards promoting alternative walks and areas of open space.

40. With regard to the impact on water quality, it is proposed that surface water from the appeal site would discharge to drains on Hazelheads Lane and then flow via drains on Water Lane to the lakes within the SSSI. Yorkshire Water have raised no objection to the development and have not required an interceptor as they consider that pollutants from the site would be diluted to a negligible level by the time they enter the water bodies within the SSSI. I have no reason to disagree with this view and therefore conclude that surface water from the appeal site would have no adverse impact on water quality.

41. Ecology surveys confirm the presence of great crested newts (GCN) in the local area. There are however no suitable breeding habitats within the appeal site. Local residents and the HTWP have raised concerns that the development of the appeal site for housing would have an adverse impact on the local GCN population. The appellant advises that there is high quality terrestrial habitat between the local breeding sites and the appeal site. As the appeal site provides poor quality habitat it is not likely that GCN will favour it, though clearly their presence cannot be discounted.

42. The HTWP have raised concern with regard to the potential for GCN to become trapped in surface water drains serving the proposed new housing and also roadside drains. As explained above it is not considered likely that GCN would be attracted to the appeal site due to the lack of quality habitat nonetheless mitigation measures in the form of dropped and wildlife kerbs are proposed to be installed throughout the development to reduce the risk of GCN's becoming trapped.

43. The appeal scheme also includes a number of mitigation measures to safeguard the GCN population during the construction phase including exclusion fencing, trapping and translocation. In addition it is proposed to provide a new pond and wildflower grassland and native trees and shrubs to attract insects over the appeal site. I consider these measures to be necessary and appropriate to safeguard GCN's in the vicinity of the appeal site.

44. Overall, with regard to ecological matters, I consider that with appropriate mitigation works, the proposed development would cause no significant harm to the goosander population, the Hay-a-Park SSSI or GCN in the local area. I therefore find no conflict with Policy ED2 of the Harrogate Core Strategy which aims to safeguard the District's natural environment or with Section 11 of the Framework which seeks to minimise impacts and provide net gains in biodiversity.

Air Quality

45. The Knaresborough Bond End AQMA was declared in 2010 as a result of

exceedance of the UK's targeted annual mean nitrogen dioxide levels. The Council is considering the declaration of an additional AQMA at York Place. Local residents, Councillors and SERG have expressed concern that traffic generated from the appeal proposal would impact further on the air quality at these junctions.

46. The appellant has assessed the air quality impacts of the proposal during construction and when the development is occupied. During construction the potential for dust pollution has been identified and mitigation measures are proposed in terms of a dust management plan which can be secured through a condition should the appeal be allowed. I consider these measures to be necessary and appropriate.

47. In terms of air quality impacts once the development is occupied, the appellant has modelled the cumulative impact of committed developments in the area as well as the appeal scheme in 2018 and 2021. This concluded that the impact on Bond End would be slight adverse and on York Place negligible. Proposed improvements to Bond End junction and other measures including the reduction in emissions from the Council's fleet and improvements achieved through the Clean Bus Technology Fund Project were not considered in the modelling. The above assessment therefore forms a worst case scenario. Once implemented it is likely that these measures would further improve air quality.

48. Many local residents have commented that the Bond End AQMA which has been in place for nearly 8 years has continually failed to meet the limit value of nitrogen dioxide and data shows no improvement. They are of the view that the mitigation measures in the Council's Action Plan are not effective and further built development will make this situation worse. It is not for me as part of this appeal to comment on the failure of this document.

49. The Council's Environmental Health team have raised no objection to the proposal subject to mitigation measures for dust and a financial contribution to carryout measures to improve air quality as detailed in the Council's Action Plan.

50. Based on the appellant's technical evidence together with the proposed mitigation measures, I consider that the proposed development would not result in unacceptable impacts on air quality at the Bond End AQMA or the proposed York Place AQMA. The proposal complies with paragraph 124 of the Framework which seeks to ensure that planning decisions in AQMA's are consistent with the local air quality action plan.

Other matters

51. Many local residents have expressed concern with regard to surface water flooding. I note from the appellant's evidence that infiltration drainage is not suitable on this site due to the presence of clay and that it is proposed to install an underground attenuation tank in the open space area. The tank would discharge into the surface water sewer on Hazelheads Lane at a discharge rate prescribed by Yorkshire Water, no greater than the existing greenfield run off rate. I am satisfied that these measures would prevent surface water flooding. The proposal would therefore comply with paragraph 103 of the Framework which seeks to ensure flood risk is not increased elsewhere.

Planning Balance

52. The Framework confirms that planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal site lies outside the settlement of Knaresborough in open countryside. The appeal proposal is therefore contrary to Policies SG1 (Housing Distribution) and SG2 (Hierarchy and Limits) of the adopted Core Strategy. However the Council recognises that these policies are based on a housing need of 390 dwellings per annum, rather than the 557 dwellings per annum in line with the evidence in the Council's SHMA. The Council accepts that in order to deliver this housing requirement, greenfield sites outside the existing development limits will be required. Accordingly Policies SG1 and SG2 are out of date.

53. The parties are in agreement that the Council cannot demonstrate a 5 year supply of deliverable housing land, though the position is only marginally below at 4.95 years. Therefore in line with paragraph 49 of the Framework relevant policies for the supply of housing should not be considered up to date.

54. In relation to CS Policy C1, I have agreed with the appellant that this policy does not provide guidance on market housing mix. Effectively therefore the development plan is silent on this matter. The Council clearly takes a different view and under cross examination conceded that this policy can be considered to be relevant to the supply of housing. This is because housing mix can impact on the density of development, the number of dwellings constructed and therefore the supply. In that case, bearing in mind the five year housing land position, this policy is out of date. In any event, where the development plan is absent, silent or relevant policies are out of date, paragraph 14 of the Framework advises that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

55. As stated in the Framework there are three dimensions to sustainable development: social, economic and environmental. These roles should not be undertaken in isolation because they are mutually dependent.

56. In terms of the social role, the development would provide 78 new homes. Having regard to the under delivery of housing in the Borough since 2008/09[10], the development would help boost the supply and I attribute significant weight to this benefit. The scheme would also provide 31 affordable homes. The Council's 2016 Annual Monitoring Report indicates a shortfall in the provision of affordable housing in the Borough each monitoring year since 2008/2009. I consider that the schemes contribution to this provision also attracts significant weight.

57. I accept that the appeal proposal would not provide the market housing mix that the Council seeks, closely aligned to the recommendations of the SHMA. However as has been agreed by the parties it is not intended that the SHMA should be used in a development management context, and having regard to the untested nature of its recommendations, I have attached limited weight to this document. Nevertheless it clearly remains a material consideration.

[10] Table 3 page 27 Mr Eaglands Proof

58. Looking at the overall mix proposed, over 60% of the dwellings would be 3 bed or less. These are the type of properties that the SHMA suggests are in the greatest need in the Borough. Whilst there would be a high number of 4/5 bed market dwellings on the site, it has been established that there is a continuing need for larger family homes in the area particularly in the short term. Bearing in mind my conclusion that currently there is no development plan policy providing guidance on market housing mix, I consider that the development would provide an appropriate mix of dwellings which would contribute to local need and meet the demand from incomers to the area. This weighs in favour of the scheme and contributes positively to the social dimension of sustainable development.

59. With regard to the economic role, future residents would make use of local shops and facilities and the construction of the dwellings would create employment and demand for materials from local suppliers. The development would also generate New Homes Bonus and increased Council Tax revenue. This would provide economic benefits. As an alternative scheme on the site with a different mix of dwellings would equally provide these positive impacts, I attach moderate weight to this matter.

60. Turning to environmental aspects, the development would provide public open space within the site. However as this would not be required if the development did not proceed, I consider this to form a neutral factor in the planning balance.

61. In relation to the other main issues raised by the development, namely the impact on the local highway network, the accessibility of the site to local services and facilities, ecology and air quality, I have found that the development would be acceptable with appropriate mitigation measures and conditions in place. These matters weigh neither for nor against the proposal and therefore are neutral in terms of my overall consideration.

62. In conclusion I have identified no adverse impacts that would significantly or demonstrably outweigh the benefits I have identified when considered against the policies in the Framework taken as a whole. The proposal therefore forms sustainable development. Although policies SG1 and SG2 of the Core Strategy are out of date, the proposal would nevertheless conflict with the development plan as a whole. However I consider that the material considerations in this case which weigh in favour of the scheme, including the provisions of the Framework and paragraph 14 in particular, warrant a decision other than in accordance with the development plan. Therefore the appeal should succeed.

Planning Obligation

63. The appellant has submitted a planning obligation dated 23 March 2017 under Section 106 of the Town and Country Planning Act 1990. The obligation is intended to provide for a number of matters. Firstly it makes provision for a financial contribution to enhance and improve educational facilities at Meadowside Community Primary School. This contribution complies with Core Strategy Policy C1 and the Council's Developer Contributions to Education Facilities document 2016. It addresses the impact of increased population and the need for additional primary school places as a result of the development.

64. The planning obligation also makes provision for contributions towards public open space and ecological mitigation measures. These are necessary to offset

any adverse impacts on the nearby Hay-a-Park SSSI and to comply with Policies C1 and EQ2 of the Core Strategy and Saved Policy HD20 of the Harrogate Local Plan. A further contribution is required by the obligation for off-site public open space in order to maintain and enhance certain sites in the local area. This complies with the Council's Supplementary Planning Document 'Provision for Open Space in Connection With New Housing Development'.

65. The obligation also provides for a contribution to air quality management. As discussed earlier in this decision, this is required to implement measures contained within the Bond End AQMA Action Plan and complies with CS Policy C1. In addition the obligation provides for 40% of the total number of dwellings to form affordable homes in compliance with saved Local Plan Policy H5. I am satisfied that there is a clear basis for this requirement.

66. In relation to highway matters the obligation provides for a travel plan monitoring fee. I consider this to be necessary in order to promote sustainable travel means in line with CS Policies TRA1, EQ2 and C1. A highway contribution is also required to secure improvements to the Bond End junction. This is necessary to reduce traffic congestion and improve the flow of traffic through this junction. This complies with Core Strategy Policies TRA3 and C1.

67. In respect of the above obligations I am advised by the Council that they have collected no more than 5 contributions in respect of each of the above matters and therefore the pooling restrictions of Regulations 123 of the CIL Regulations are not breached. I am also satisfied that the obligations are necessary to make the development acceptable in planning terms, that they are directly related to and are fairly and reasonably related in scale and kind to the development. I therefore consider that the submitted obligation meets the tests set out in paragraph 201 of the Framework and the CIL Regulations 2010 and should be given significant weight.

Conditions

68. The Council has suggested a number of conditions that it considers would be appropriate should I be minded to allow the appeal. These were discussed at the inquiry and revisions made. I have considered the conditions in light of the Framework and Planning Practice Guidance. For ease of reference I refer to the numbers in the attached schedule.

69. In respect of Condition 1, which limits the lifetime of the permission, there is dispute between the parties. The Council has suggested the standard 3 year timeframe however the appellant has suggested a period of one year. This is in order to show commitment to starting on site as soon as possible. I consider it is not necessary to shorten the lifetime of the permission from the usual 3 year period. The appellant can start on site at any time within the 3 years so that the development can contribute to housing supply without delay.

70. Condition 2 requires the development to be carried out in accordance with the approved plans and is necessary in the interests of clarity.

71. In order to protect the character and appearance of the area, conditions regarding the materials to be used in the construction of the dwellings (3), hard and soft landscaping (4) and landscape maintenance (5) are required. In addition in the interests of ecology and sustainability, I consider that conditions protecting existing trees (6), ecological mitigation and enhancement (19), the

management and maintenance of mitigation measures (20), the protection of birds during the nesting season (21), a travel plan (18), and electric vehicle charging points (26) are necessary.

72. A condition regarding a construction management plan is required to protect the living conditions of nearby residents. I also consider that in view of the need to control surface water run-off and to prevent flooding and preserve water quality in nearby watercourses, conditions regarding the provision of separate foul and surface water drainage (22), the submission of the details of foul and surface water drainage systems (23) and no piped discharge of surface water before the completion of the approved surface water drainage works (24) are required.

73. The Council has suggested a number of conditions with regard to highway matters in order to provide a safe and suitable access to the site for all vehicles pedestrians and cyclists. I consider that conditions 7, 8, 9,10,11,12 and 13 are necessary to achieve this. In order to ensure that parking facilities are provided for each dwelling before occupation Condition 14 is required. Condition 15 requires garages to be retained for the housing of a motor vehicle. This is necessary in order to ensure that garages are not converted to domestic accommodation resulting in a shortfall of off road car parking to serve a dwelling. Furthermore a survey of the existing highway at the junction of Bar Lane and Boroughbridge Road is necessary in order to ensure that any damage to the highway caused by construction vehicles is remediated (16).

74. A condition (25) regarding the on-site investigation of contamination is necessary in light of the recommendations of the submitted Geotechnical and Geo-Environmental Site Investigation Reports. In order to record any archaeological finds on the site condition 27 is required. Finally in the interest of minimising the opportunities for crime in line with Core Strategy Policy C1, I consider that condition 28 is necessary to be imposed.

75. The Council suggested a condition regarding the opening of doors and windows over the public highway. However no plots within the submitted scheme have been designed in this way. I therefore do not consider that such a condition is necessary.

76. At the inquiry a representative of the promoter of the Manse Farm development argued that it was necessary to impose a condition requiring improvements to be undertaken at the Bond End junction before the first occupation of the appeal development. In light of the technical evidence before me and the requirement of the Highway Authority for a financial contribution towards an improvement scheme at Bond End, I do not consider this to be necessary.

77. I have made minor amendments to the wording of conditions suggested by the Council in the interest of clarity and precision.

Conclusion

For the reasons given above and having regard to all other matters raised, the appeal is allowed.

Helen Hockenhull INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

John Hunter (of Counsel)	Instructed by: Jennifer Norton Head of Legal and Governance for the District Council

He called

Paul McColgan	G L Hearn
Richard Wood BA (Hons) B.Pl MRTPI	Richard Wood Associates
Andrew Siddall[11]	Principal Planning Officer
Steve Pilling [12]	Legal Officer

FOR THE APPELLANT:

David Manley QC	Instructed by: Mark Eagland of Peacock and Smith

He called

Philip Roebuck FRICS	Cushman and Wakefield
Mark Eagland BA (Hons) MTP, MRTPI	Peacock and Smith
Oliver Moore BSc Hons GCIEEM	Smeeden Foreman
Dr Bethan Tuckett- Jones PhD, CEnv, MIAQM	WSP/Parsons Brinckerhoff
David Roberts[13] I.Eng, FCIHT, FIHT	SCP Transport

INTERESTED PERSONS:

Ivor Fox	District Councillor
Ann Jones	District and County Councillor

[11] Took part in round table discussion regarding planning obligation and conditions
[12] Presented Council's Closing Submission
[13] No oral evidence given

Dr Lorraine Ferris	Scriven East Residents Group (SERG)
Laura McGrogan	Scriven East Residents Group (SERG)
Malcolm Woodward	Local Resident
Shan Oaks	Green Party
John Barker	Harrogate Trust for Wildlife Protection
Kate McGill	Lichfield's on behalf of Commercial Estates Group (CEG)
Mr A. Clark	Local Resident

Documents submitted at the Inquiry

1. Planning Obligation under Section 106 of the Town Country Planning Act 1990 dated 23 March 2017.
2. Appeal Decision Ref APP/J1860/W/3159764 Land between Church Lane and Broadwas Primary School, Broadwas, Worcestershire WR6 5NE.
3. Appellant's Opening Statement.
4. Council's Opening Statement.
5. Statement from Cllr Ivor Fox.
6. Statement from Cllr Ann Jones.
7. Statement from Shan Oakes.
8. Appeal Decision APP/R3650/W/15/3070006 Montana, Churt Road, Hindhead, Surrey GU26 6PR.
9. South Worcestershire Development Plan 2016, copy of Policy SWDP 14 Market Housing Mix.
10. CIL Compliance Statement.
11. Suffolk Coastal District Council v Hopkins Homes Limited v Secretary of State for Communities and Local Government 17 March 2016.
12. Stringer v Minister for Housing and Local Government and Another 3 July 1970.
13. Gransden & Co Ltd and Another v Secretary of State for the Environment and Another 16 July 1985.
14. Letter dated 29 March 2017 from Lichfields on behalf of Commercial Estates Group (CEG).
15. Statement from Michael Woodward.
16. Plans of 7 options for highway improvements at Bond End Junction, Knaresborough.
17. Letter from Malcolm Woodward dated 29 March 2017.
18. Statement from Laura McGrogan SERG.
19. Statement from Dr Lorraine Ferris SERG.
20. Statement from Mr Barker Harrogate Trust for Wildlife Protection.
21. Appellant's Closing Submissions.
22. Council's Closing Submissions.
23. Further Response of the Council to the appellant's application for costs.
24. Revised schedule of planning conditions agreed between the parties.

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) Unless modified by other conditions of this consent, development shall be carried out in accordance with the following approved plans:
BB.214514.101 Revision F Planning Layout
BB.214514.102 Revision C Elevation Styles
BB.214514.103 Revision B Landscaping Masterplan
BB.214514.110 Revision B Fenwick+ Semi Planning Elevations
BB.214514.111 Revision A Fenwick+ Semi Planning Plans
BB.214514.112 Revision B Fenwick+ 3 Block Planning Elevations
BB.214514.113 Revision A Fenwick+ 3Block Planning Plans
BB.214514.114 Revision B Cranford++ Semi Planning Elevations
BB.214514.115 Revision B Cranford++ Semi Planning Elevations
BB.214514.116 Revision A Cranford++ Semi Planning Plans
BB.214514.117 Revision B Cranford++ 3 Block Planning Elevations
BB.214514.118 Revision B Cranford++ 3 Block Planning Elevations
BB.214514.119 Revision A Cranford ++ 3 Block Planning Plans
BB.214514.120 Revision B Kempton Planning Elevations
BB.214514.122 Revision A Kempton Planning Plans
BB.214514.124 Revision C Coleford Planning Elevations
BB.214514.125 Revision B Coleford Planning Plans
BB.214514.126 Revision B Kilmington Semi Planning Elevations
BB.214514.128 Revision B Kilmington Semi Planning Elevations
BB.214514.129 Revision A Kilmington Semi Planning Plans
BB.214514.130 Revision A Glastonbury Planning Elevations
BB.214514.131 Revision A Glastonbury Planning Plans
BB.214514.137 Revision B Ashbury Planning Elevations
BB.214514.138 Revision A Ashbury Planning Elevations
BB.214514.139 Revision A Ashbury Planning Plans
BB.214514.140 Revision B Rosebury Planning Elevations
BB.214514.141 Revision B Rosebury Planning Elevations
BB.214514.142 Revision A Rosebury Planning Plans
BB.214514.143 Revision B Kirkham Planning Elevations
BB.214514.144 Revision B Kirkham Planning Elevations
BB.214514.145 Revision A Kirkham Planning Plans
BB.214514.146 Garage – Planning Plans and Elevations

3) No development above ground floor slab level shall take place until sample panels of all external walling materials and samples of all external roof coverings have been made available on site for the approval in writing of the local planning authority. The sample panels shall measure no less than 1 square metre in area and demonstrate the type, size, colour, pointing, dressing and coursing of the material to be used. Thereafter development shall be carried out as approved.

4) No development above ground floor slab level shall take place until the local planning authority has approved in writing a detailed scheme for landscaping. The scheme shall demonstrate the following:

i) Proposed hard and soft surfacing materials;
ii) Species, tree and plant sizes, numbers and planting densities;
iii) Sustainable tree planting measures incorporating underground systems (Rootcell, Stratacell, Silva Cell or similar products) and a sufficient area of growth medium for long term tree growth;

iv) Any required earthworks; and
v) The timing of implementation of the landscaping scheme.

Thereafter development shall be carried out as approved.

5) If within a period of five years from the date of the planting, any specimen approved as part of a landscaping scheme approved under condition 4, or any specimen planted in replacement, is removed, uprooted, destroyed or dies or becomes in the opinion of the local planning authority seriously damaged or defective, another specimen of the same species and size as that originally planted shall be planted at the same place unless the local planning authority gives its written consent to any variation.

6) No plant or materials shall be brought onto site until:

i) A tree protection plan and specification has been submitted to and approved in writing by the local planning authority demonstrating the provision of root protection fencing in line with the requirements of British Standard 5837:2012 'Trees in Relation to Construction - Recommendations' or any subsequent amendment to that document around all trees, hedges, shrubs or other planting to be retained.

ii) The root protection area fencing has been installed in accordance with the approved plan and specification.

Thereafter the fencing shall be retained until development subject to this consent is complete and there shall be no excavation or other alteration of ground levels, storage of materials or plant, parking of vehicles, deposition of soil or rubble, lighting of fires or disposal of liquids within any area fenced off as part of the tree protection plan and specification.

7) There shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the local planning authority in consultation with the highway authority:

i) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
   a) the proposed highway layout including the highway boundary and access to the site from the existing public highway
   b) dimensions of any carriageway, cycleway, footway, and verges
   c) visibility splays
   d) the proposed buildings and site layout, including levels
   e) accesses and driveways
   f) drainage and sewerage system
   g) lining and signing
   h) traffic calming measures
   i) all types of surfacing (including tactiles), kerbing and edging

ii) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:15 vertical along the centre line of each proposed road showing:
   a) the existing ground level

b) the proposed road channel and centre line levels
c) full details of surface water drainage proposals.

iii) Full highway construction details including
a) typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
b) when requested cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
c) kerb and edging construction details
d) typical drainage construction details
e) details of the method and means of surface water disposal
f) details of all proposed street lighting
g) drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions of existing features
h) full working drawings for any structures which affect or form part of the highway network
i) a programme for completing the works.

The development shall be carried out in full compliance with the approved drawings, details and programme before the first dwelling of the development is occupied.

8) No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

9) No dwelling subject to this permission shall be occupied until the details of a cycleway and footpath link to the boundary of the land to the south subject to planning application 14/03849/OUTMAJ (or any subsequent application or permission), and a programme for completion of the proposed works has been submitted to and approved in writing by the local planning authority in consultation with the highway authority. There shall be no requirement to construct the cycleway and footpath link if, at the time agreed in the programme for commencement of construction of the cycleway and footpath link, the local planning authority confirms in writing that no development of the land subject to planning application 14/03849/OUTMAJ (or any subsequent application or permission) is expected to take place.

10) There shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the details of the construction access extending at least 20 metres into the site have been approved in writing by the local planning authority in consultation with the highway authority. Thereafter the access shall be constructed in accordance with the approved details, maintained in a safe manner (to include the repair of any damage to the existing adopted highway occurring during construction) and once created no construction vehicles shall access the site except via the approved construction access until the local planning authority agrees in writing to its closure.

11) No dwelling shall be occupied until the existing access on to Bar Lane shall be permanently closed and the highway restored in accordance with details that shall first have been approved in writing by the local planning authority in consultation with the highway authority.

12) There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 40 metres measured along both channel lines of the major road (Bar Lane) from a point measured 2.4 metres down the centre line of the access road. The eye height shall be 1.05 metres and the object height shall be 0.6 metres. Once created these visibility splays shall be maintained clear of any obstruction and retained for their intended purpose at all times.

13) PART A

There shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the details of the required highway improvement works listed below have been submitted to and approved in writing by the local planning authority in consultation with the highway authority; an independent stage 2 safety audit has been carried out in accordance with HD 19/03 – 'Road Safety Audit' or any superseding regulations; and a programme for completion of the proposed works has been submitted. The required highway improvements comprise:

i) Provision of a roundabout at the junction of Bar Lane/Boroughbridge Road (as permission 13/02074/OUTMAJ)

ii) Widening of Bar Lane to 5.5 metres and provision of a 2 metre wide footway along its southern side including where appropriate, kerbing, drainage, lighting and reconstruction.

PART B

There shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following highway works have been constructed in accordance with the details approved by the local planning authority under part A:

i) Widening of Bar Lane to 5.5 metres and provision of a 2 metre wide footway along its southern side including where appropriate, kerbing, drainage, lighting and reconstruction.

PART C

No dwelling shall be occupied until the following highway works have been constructed in accordance with the details approved by the local planning authority under part A:

i) Provision of a roundabout at the junction of Bar Lane/Boroughbridge Road.

14) No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawings. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

15) The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.

16) There shall be no construction vehicles brought onto the site until a survey recording the condition of the existing highway at the junction of Bar Lane and Boroughbridge Road has been carried out in accordance with a scheme and methodology that has first been approved in writing by the local planning authority in consultation with the highway authority. The scheme shall include , but be not limited to
    i) A methodology for determining damage to the public highway attributable to construction traffic
    ii) A mechanism for determining responsibility for remedial works to the public highway
    iii) An agreed timescale for review of the highway condition and implementation of remedial works.

17) Prior to commencement of development a Construction Management Plan shall be submitted to and approved in writing by the local planning authority in consultation with the highway authority. The Plan shall make provision for the following matters:
    i) details of the routes to be used by construction traffic to avoid the Bond End Air Quality Management Area
    ii) traffic Management Plan
    iii) on site contractor parking and material storage areas
    iv) dust mitigation measures
    v) no preparatory or construction activity shall take place outside the hours of 08:00 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and no activity shall take place at all on Sundays and statutory holidays.

    Thereafter development shall be carried out in accordance with the approved plan.

18) Prior to the development being brought into use, a Travel Plan shall have been submitted to and approved in writing by the local planning authority in consultation with the highway authority. The Travel Plan shall be implemented in accordance with an agreed programme and the development shall thereafter be carried out and operated in accordance with the Travel Plan.

19) No dwelling shall be occupied until an ecological mitigation and enhancement scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for great crested newts (to include provision of a breeding pond along with terrestrial habitat and wildlife kerbs), bats, breeding birds, badgers (unless, following additional surveying the local planning authority agrees that mitigation is not necessary) and any other species as directed by the local planning authority/Natural England. The scheme shall also make provision for the on-going management and maintenance of the mitigation and enhancement measures. Thereafter development shall be carried out and operated in accordance with the approved scheme.

20) No dwelling shall be occupied until a scheme for the provision, implementation and on-going management and maintenance of the on-site Hay-a-Park SSSI mitigation measures has been submitted to and approved in writing by the local planning authority. These measures shall include, but not necessarily be limited to, a dedicated dog exercise area,

prevention of pedestrian access to Hazelheads Lane and provision of on-site information boards. Thereafter development shall be carried out and operated in accordance with the approved scheme. There shall be no prevention of pedestrian access to Hazelheads Lane if, at the agreed time for implementation of the scheme, the local planning authority confirms in writing that no development of the land subject to planning application 14/03849/OUTMAJ (or any subsequent application or permission) is expected to take place.

21) No vegetation removal shall take place within the main bird nesting season (March to September inclusive) unless a pre-commencement check carried out by a qualified ecologist no earlier than 48 hours before works take place and the qualified ecologist confirms in writing to the local planning authority prior to the removal of any vegetation that no actively nesting birds will be affected by the works.

22) The site shall be developed with separate systems of foul and surface water drainage.

23) No development shall take place until details of the proposed means of disposal of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The details shall include:

i) on site storage and long term storage

ii) an interceptor to filter pollutants from the surface water drainage system prior to discharge into the off-site network

iii) rates of discharge

iv) outfall location

v) the requirement for any balancing and/or off-site works

vi) measures for the subsequent management and maintenance of on-site drainage assets if not to be adopted by the statutory undertaker

vii) measures to prevent surface water from non-highway areas discharging onto the existing or proposed public highway

viii) measures to manage surface water runoff during the construction phase.

Thereafter development shall be carried out as approved.

24) Unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no dwellings shall be occupied prior to completion of the approved foul drainage works.

25) Development, other than that required to be carried out as part of an approved scheme of remediation, must not commence until sections A and B of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until section C has been complied with.

A. SUBMISSION OF REMEDIATION SCHEME

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, which is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

B. IMPLEMENTATION OF APPROVED REMEDIATION SCHEME

The approved remediation 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 approved in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, which is subject to the approval in writing of the local planning authority.

C. REPORTING OF UNEXPECTED CONTAMINATION

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirement of section 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section 2, which is subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.

26) Prior to commencement of development an electric vehicle infrastructure strategy and implementation plan, to include details of the number, location and maintenance of electric vehicle charging points shall be submitted for the written approval of the local planning authority. Thereafter the development shall be carried out as approved with charging points associated with dwellings installed prior to occupation of that dwelling.

27) No demolition /development shall commence until an Archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:

i) the programme and methodology of site investigation and recording

ii) community involvement and/or outreach proposals

iii) the programme for post investigation assessment

iv) provision to be made for analysis of the site investigation and recording

v) provision to be made for publication and dissemination of the analysis and records of the site investigation

vi) provision to be made for archive deposition of the analysis and records of the site investigation

vii) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Thereafter no demolition/development shall take place other than in accordance with the approved Archaeological Written Scheme of Investigation.

No dwelling to which this permission relates shall be occupied until site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Archaeological Written Scheme of Investigation and provision has been made for the analysis, publication and dissemination of results and archive deposition has been secured with a timescale for completion.

28) Prior to commencement of development, details of how Secured by Design principles have been incorporated into the development hereby approved shall be submitted for the written approval of the local planning authority. Thereafter development shall be carried out as approved.

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EP2

Case No. CO/292/2000

BAILII Citation Number: [2000] EWHC 650 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

CROWN OFFICE LIST

Royal Courts of Justice

Strand,

London,

WC2.

Date: Monday, 31st July 2000

Before:

MR JUSTICE SULLIVAN

- - - - - - - - - - - - - -

R E G I N A

- v -

ROCHDALE METROPOLITAN BOROUGH COUNCIL

EX PARTE MILNE

- - - - - - - - - - - - - -

MR J. HOWELL QC & MS K. MARKUS appeared on behalf of the Applicant.

MR T. STRAKER QC & MR P KOLVIN appeared on behalf of the First Respondent.

MR B. ASH QC MR P. GREATOREX appeared on behalf of the Second Respondent.

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J U D G M E N T

Monday, 31st July 2000

MR JUSTICE SULLIVAN:

Introduction.

1. This is round 2 of the battle for Kingsway Park. Round 1 concluded with my judgment on 7th May 1999 reported as **R v Rochdale Metropolitan Borough Council ex parte Tew and Others** [1999] 3 PLR 74. ("Tew") The Applicant in the present proceedings was among the "others" in that title.

2. The background to the matter is set out in some detail in Tew and repetition in this judgment is unnecessary. For convenience, I will use the same definitions or abbreviations as were adopted in Tew. If no other source is cited, page references in parenthesis are to Tew.

3. In summary, two applications for planning permission were made by Wilson Bowden Properties Limited (Wilson Bowden) and English Partnerships on 23rd February 1998. These were a bare outline application for a business park and a full application for a spine road to serve the park. The Council considered that the proposal required an environmental assessment under the assessment regulations. A detailed environmental statement was prepared by ERM. Having considered that environmental statement and a lengthy report by Mr Beckwith, the Council's Director of the Environment, the Council granted the two planning permissions on 6th August 1998.

4. The Applicant and others challenged the validity of the planning permissions on five grounds set out on pages 79 E to 80 A. I upheld the challenge of grounds 2 and 3 and quashed both planning permissions. The Council did not appeal against this decision.

5. The applicants for planning permission made extensive revisions of the form to the business park application, minor amendments to the form of the spine road application and added a new, full application for planning permission to construct the estate roads leading off the spine road together with surface water attenuation areas. A new environmental statement dealing with the project as described in all three applications was prepared by ERM. The three applications (two amended and one new) were submitted for approval accompanied by a new environmental statement on 23rd July 1999. Mr Beckwith prepared a lengthy report recommending the grant of planning permission subject to numerous conditions. The Council accepted his recommendation and granted the three planning

permissions on 17th December 1999. The Applicant returns to the fray and challenges the validity of these planning permissions.

6. Before turning to the submissions advanced by Mr Howell QC on behalf of the Applicant, a brief explanation of the basis of the decision in Tew will be helpful.

The Tew decision.

7. I have mentioned that the business park application as submitted an in 1998 was a "bare" outline, reserving all detailed matters for subsequent approval. It was accompanied by an illustrative masterplan and an indicative schedule of land uses. ERM's environmental assessment and the resulting environmental statement were based on the illustrative masterplan and indicative schedule.

8. Although condition 1.3 in the business park planning permission required the development to be carried out in accordance with the mitigation measures set out in the environmental statement, unless otherwise provided for by any other condition in the planning permission, the Council did not approve the illustrative masterplan. It was, effectively, rejected by condition 1.11 and the applicants for planning permission were required by condition 1.7 to submit a new "Framework Document ... showing the overall design and layout of the proposed business park."

9. The indicative schedule of uses was not incorporated into the planning permission and the hectarage of B8 uses was substantially altered by condition 1.10 which would in turn have had a knock on effect for the amount of other uses in the schedule: see pages 98 G to 99 C.

10. Against that background, Mr Howell had submitted under ground 2 of his challenge that the application for planning permission did not contain "a description of the development proposed, comprising information about the site and design and size or scale of the development", as required by paragraph 2(a) of Schedule 3 to the assessment regulations.

11. In response to that submission I concluded:

> "In summary, while the council took into consideration 'environmental information' about the effects of carrying out a business park development in accordance with an illustrative masterplan and an indicative schedule of

land uses, that was not the development that was proposed to be carried out in the application for planning permission, nor was it the development for which planning permission was granted; nor was the information sufficient in any event to comply with the requirements of Schedule 3: see, for example, para 2(d), as to mitigation measures. It follows that the council did not have power to grant planning permission for the business park: see regulation 4(2) of the assessment regulations." See page 99 C to E.

12. During the course of his submissions under ground 2 Mr Howell had argued:

> "That an application for outline planning permission may not be made if the development falls within Schedule 2 or 3 to the assessment regulations", see page 90 F.

13. At page 96 C to D I said this:

> "I would not wish to go as far as Mr Howell and say that it is not possible to make any application for outline planning permission for a development that falls within Schedule 1 or Schedule 2. An outline application with only one or two matters reserved for later approval might enable the environmental statement to provide a sufficient description of the development proposed to be carried out. I would not dissent from the approach suggested in para 42 of Circular 15/88, subject to the proviso that the description in the outline application of the development proposed to be carried out must be such as to enable the environmental statement to comply with the requirements of para 2(a) of Schedule 3."

14. Paragraph 42 of Circular 15/88 is to be found on page 93 F.

15. I then turned to the description of the development in the 1998 business park application and reached the conclusions set out above. At page 96 H I acknowledged that the outline application procedure is particularly valuable for projects such as a business park which are demand led and which may be expected to evolve over many years (if the 1999 permissions are upheld the new environmental statement explains that construction will commence in 2001 and all the buildings are not expected to be occupied until 2013).

16. In response to the practical difficulties posed by such developments I said this at page 98 F to G:

> "Recognising, as I do, the utility of the outline application procedure for projects such as this, I would not wish to rule out the adoption of a masterplan approach, provided the masterplan was tied, for example, by the imposition of conditions, to the description of the development permitted. If illustrative floorspace or hectarage figures are given, it may be appropriate for an environmental assessment to assess the impact of a range of possible figures before describing the likely significant effects. Conditions may then

be imposed to ensure that any permitted development keeps within those ranges."

17. Turning from the assessment regulations to the UDP, policy EC/6 allocates the application site for business park use but says that:

> "The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park): ...
>
> (d) the creation of new, and extension of existing, public open space and informal recreation areas, including the extension and improvement of Stanney Brook Park."

18. The Council had proceeded on the basis that the business park application complied with this criterion and was therefore in accordance with the provisions of the UDP. At pages 100 H to 101 D I concluded that the 1998 business park application did not comply with criterion (d): specifically it did not include any proposals for open space and the Council could not, under the terms of the outline planning permission granted, insist on the provision of 32 hectares of land for open space for informal recreation purposes. However, I added this at page 101 D to F:

> "There is very often an element of planning judgment as to whether or not a proposed development complies with a development plan policy. It could not reasonably be concluded that this application complied with criterion (d). However, that is but one of a long list of criteria in the policy. The council clearly considered that the remaining criteria within policy EC/6 were fulfilled. The primary purpose of the policy is, after all, to allocate the land as a business park, not the creation of additional open space. It would be for the council to decide whether the failure of this application to meet one of the criteria in policy EC/6 meant that the application was contrary to either the district plan or the emerging UDP. To the extent that the Council erred in concluding that criterion (d) in policy EC/6 was met, ground 3 is made out."

The amended/new applications.

19. As amended in 1999 the business park application, whilst still an application for outline planning permission, is no longer a "bare outline" application. It comprises the application form which cross refers to and incorporates into the application:

> (i) an Attachment which describes the development.
>
> (ii) a Schedule of Development.

(iii) a Development Framework.

(iv) a Masterplan.

20. The attachment describes the proposed development as:

> "Outline application together with certain Reserved Matters for a proposed Business Park including buildings on Plots C to X inclusive as identified on the masterplan for:
>
> General and light industrial uses in classes B1 and B2.
>
> Offices in use Class B1.
>
> Distribution and storage use in Class B8.
>
> Research and development facilities in use Class B1.
>
> Uses ancillary to the Business Park uses including:
>
> Retail in use Classes A1, A2 and A3.
>
> Leisure in use Classes D2 and sui generis.
>
> Housing in use Class C1.
>
> Hotels in use Class C3.
>
> Other commercial and local service uses."

21. Details of landscaping, design and external appearance of all the buildings were reserved. The application sought approval for siting and means of access to 7 out of the 20 plots (there is no plot V). Thus, on 13 of the 20 plots all matters were reserved. It has been explained that access requirements dictated the need to fix the siting of and means of access to the buildings on the 7 plots where approval was sought for those matters. Reference is made to the schedule of development, and Note 1 says this:

> "This Outline Planning Application also includes a masterplan and a framework document showing the overall design and layout of the whole site."

22. Other notes refer to the environmental statement, to traffic impact assessments and to the full applications for the spine road and estate roads and other infrastructure.

23. The Schedule of Development lists each of the plots, dividing them into those plots where approval is sought for siting and means of access and those plots where those

matters are reserved for detailed approval. A summary of the total hectarage and floorspace is given, which is then broken down by reference to use class.

24. Using plot T (which is proposed to contain the largest building in the business park) as an example: the schedule sets out the hectarage, 19.46; the use, B8; the floorspace, 80,412 square metres; the unit size, in the case of plot T 80,412 since there is proposed to be only one very large building on this plot; the height of the building, 25 metres; and the car parking numbers, 804. Assessments are also provided of traffic flows and employment generation.

25. More than one plan is described as a "Masterplan" in the application, but the plans build up to "The Masterplan", which is identified in and annexed to the development framework. It shows, within the framework provided by the spine and estate roads, the buildings proposed on each plot together with their associated car parking and servicing areas, levels, the areas set aside for landscaping within and structural landscaping around, each plot, and areas to be left undeveloped along the Stanney Brook corridor, and the surface water attenuation measures proposed in that corridor.

26. Having described the site, the development framework (63 pages) sets out the "Development Concept" under a number of subheadings, such as, "Land uses", "Urban design framework", "Open space network", et cetera. ERM's assessment of the environmental effects of the proposed business park was based on the development described in these documents. The 1998 environmental statement was reviewed where necessary and new information was provided. Subject only to the criticisms advanced in the Applicant's grounds of challenge, which I consider below, the new environmental statement would appear to be a model of its kind, meeting in full measure the aim set out in directive 97/11: to provide the Council with relevant information to enable it to take a decision on the business park project "in full knowledge of the project's likely significant impact on the environment", (see page 89 G for the full text of the directive).

27. Similarly, apart from the matters raised in the Applicant's grounds, Mr Beckwith's report to the Council is not, and in my judgment could not fairly be, criticised. In a comprehensive report running to 116 pages he deals with all relevant aspects of the three applications and recommends a series of conditions which are intended inter alia to tie the outline planning permission for the business park to the documents which comprise the

application and which I have set out above. These recommendations were accepted, so in addition to incorporating the masterplan and the application and documents submitted therewith into the description of the development permitted, the following conditions inter alia were imposed:

28. 1.7:

> "The development on this site shall be carried out in substantial accordance with the layout included within the Development Framework document submitted as part of the application and shown on (a) drawing entitled 'Master Plan with Building Layouts'."

29. The reason given for the imposition of this condition was:

> "The layout of the proposed Business Park is the subject of an Environmental Impact Assessment and any material alteration to the layout may have an impact which has not been assessed by that process."

30. Condition 1.8:

> "No building within any plot shall exceed the height specified for buildings within that plot as set out in the 'Schedule of Development ... submitted with and forming part of the application."

31. Conditions 1.9 and 1.10 modified this by reducing the maximum eaves height of certain buildings in the interests of the amenity of residents in adjacent dwellings.

> 1.11:
>
> "The development shall be carried out in accordance with the mitigation measures set out in the Environmental Statement submitted with the application unless provided for in any other condition attached to this permission.
>
> 1.12:
>
> "The development shall be carried out in accordance with the principles and proposals contained in the Development Framework document submitted as part of the application unless provided for in any other condition attached to this permission."
>
> 1.13:
>
> "The phasing of works within the site shall be carried out in accordance with the details set out in the Section entitled 'Phasing' in the Development Framework document, subject to the detailed requirements of other

conditions in this permission."

32. In respect of the Stanney Brook Corridor, condition 1.15 said:

> "The area of the Stanney Brook Corridor (as defined on (a) drawing and described in the Development Framework Document) shall remain undeveloped apart from the construction of surface water attenuation areas and footpaths/cycleways."

33. The reason given was:

> "To ensure that an area of undeveloped open space is retained in the interests of amenity."

34. Conditions 1.16 to 1.18 effectively divided the corridor into three parts and required the different parts of the corridor to be enhanced and landscaped in accordance with the principles shown on three application drawings and in accordance with detailed treatment to be approved in writing by the local planning authority, concurrently with the construction of buildings on certain of the plots. The reasons given were:

> "In order to ensure the maintenance of areas of nature conservation interest and to create areas of wildlife habitat in a phased order prior to the loss of existing habitat within the application site."

35. Under the subheading "Policy Setting" Mr Beckwith set out the terms of policy EC/6 in the UDP in full. He added that other policies in the UDP were also relevant in assessing the applications. Having concluded that the distribution of uses within the application accorded with the uses set out in policy EC/6 he examined each of the 16 criteria in the policy in turn and advised that, "The proposals accord with the relevant policies of the UDP and are not departures from the development plan."

36. His report responded to representations made by third parties. In response to a letter from the Applicant's solicitor, which alleged that the proposal was a departure from the UDP. He said this:

> "In my view, it is only that part of criterion (d) relating to the creation of formal rights of access by the public which is not being achieved at this stage. I consider that this is not material to make the application contrary to the UDP. Recommended condition 1.15 requires that land within the Stanney Brook Corridor shall remain undeveloped, apart from the construction of water attenuation areas and footpaths and cycleways. Following on from that, recommended conditions 1.16, 1.17 and 1.18 require phased enhancement and landscaping of the corridor in accordance

> with the general principles in the submitted drawings. Therefore, the retention of the open nature of the land within the corridor, together with its enhancement and landscaping, would be secured by the recommended conditions. The securing of the formal rights of public access to the land cannot be achieved at this stage. This has been raised with applicants and North West Development Agency, which now encompasses English Partnerships, have commented as follows."

37. He then set out the text of the NWDA's letter. In summary, NWDA were supportive of the proposal to provide public open space and said this, in conclusion:

> "We will undertake that once we have control of the land we will then offer to transfer the ownership of the Stanney Brook Corridor to the Council, at no cost and in its improved state, so that the Council can secure public access, as appropriate, to the open space and thereby satisfy the requirements of this sub-section of UDP policy and allow the Council to decide on the management regime for the open space."

The legislative and policy framework.

38. For practical purposes the legislative framework remains unchanged from that described in Tew. As from 14th March 1999 the assessment regulations referred to in Tew were replaced by the Town and Country Planning, (Environmental Impact Assessment) (England Wales) Regulations 1999, (the 1999 assessment regulations), which apply to any application received after that date. It is common ground that the estate roads application falls under the 1999 assessment regulations. The parties are not agreed as to whether the amended business park and spine roads applications fall under the assessment regulations or the 1999 assessment regulations. It is not necessary to resolve that dispute since the parties are agreed that nothing turns on the minor differences of phraseology between the two sets of regulations. For convenience I will continue to refer to the assessment regulations which are set out in Tew.

39. Policy guidance on the implementation of the 1999 assessment regulations is contained in Circular 2/1999 entitled "Environmental Impact Assessment", which replaces Circular 15/88. For present purposes, the guidance remains substantially unchanged, paragraphs 48 and 82 of Circular 2/99 are as follows:

> "48. Where EIA is required for a planning application made in outline, the requirement of the Regulations must be fully met at the outline stage since reserved matters cannot be subject to EIA. When any planning application is made in outline, the local planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects

> of the proposal to enable them to determine whether or not planning permission should be granted in principle. In cases where the Regulations require more information on the environmental effects for the Environmental Statement than has been provided in an outline application, for instance, on visual effects of a development in a National Park, authorities should request further information under regulation 19. This may also constitute a request under article 3(2) of the GDPO."
>
> "82. Whilst every E.S. should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'main' or 'significant' environmental effects to which a development is likely to give rise. In many cases, only a few of the effects will be significant and will need to be discussed in the E.S. in any great depth. Other impacts may be of little or no significance for the particular development in question and will need only very brief treatment to indicate that their possible relevance has been considered. While each E.S. must comply with the requirements of the Regulations, it is important that they should be prepared on a realistic basis and without unnecessary elaboration."

The grounds of challenge

40. These fall under two heads: failure to comply with the requirements of the assessment regulations and failure to comply with UDP policy EC/6d.

41. Under the former, it is submitted that, notwithstanding the amendments to the form of the business park application, it still does not provide 'a description of the development proposed', which is sufficient for the purposes of paragraph 2(a) of Schedule 3 to the assessment regulations, because although information is provided in respect of the size or scale of the development, design is a reserved matter. The submission that an application for outline planning permission may not be made for development which requires environmental assessment is renewed and it is further contended that if this submission is not accepted, the description of the development provided in the 1999 outline application was insufficiently detailed to comply with the requirements of Schedule 3.

42. Under the second ground of challenge it is argued that criterion (d) was not satisfied, because the business park planning permission did not require the creation of new public open space and informal recreation areas or the extension and improvement of Stanney Brook Park. Since the UDP required the criteria in policy EC/6 to be "strictly applied", failure to meet criterion (d) meant that the development was not in accord with the development plan, even though it did not infringe other policies. Even if the failure to meet criterion (d) did not have that consequence, Mr Beckwith's report should have referred to the fact that

the UDP inspector had specifically rejected a request made during the course of the UDP inquiry that (inter alia) what is now criterion (d) should be omitted, saying that the open spaces proposed in the policy "are an essential element of the scheme and of the plan's proposals for South Rochdale." Moreover, the Council failed to consider imposing a negative condition preventing the erection of some or all of the proposed buildings until such time as the relevant land had been made available for use as an open space by the public, and instead relied on the NWDA's offer which, since it was unenforceable, was an immaterial consideration.

43. I find it convenient to deal with this ground at the outset.

Ground 2.

44. Section 54A of the 1990 Act is in the following terms:

> "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

45. Section 70 deals with the determination of applications for planning permission. Subsection (2) provides:

> "In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

46. Since development plans contain numerous policies, the local planning authority must have regard to those policies (or "provisions") which are relevant to the application under consideration. The initial judgement as to which policies are relevant is for the local planning authority to make. Inevitably some policies will be more relevant than others, but section 70 envisages that the Council will have regard to all, and not merely to some of the relevant provisions of the development plan.

47. In my judgment, a similar approach should be applied under section 54A. The local planning authority should have regard to the provisions of the development plan as a whole, that is to say, to all of the provisions which are relevant to the application under consideration for the purpose of deciding whether a permission or refusal would be "in accordance with the plan".

48. It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In City of Edinburgh Council v. the Secretary of State for Scotland [1997] 1 WLR page 1447, Lord Clyde (with whom the remainder of their Lordships agreed) said this as to the approach to be adopted under section 18A of the Town and Country Planning (Scotland) Act 1972 (to which section 54A is the English equivalent):

> "In the practical application of section 18A, it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it."

49. In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive land escapes et cetera, it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies.

50. For the purposes of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.

51. Mr Howell points to the fact that policy EC/6 requires criterion (d) to be "strictly applied". He accepts that some policies may be expressed in somewhat less forthright terms. They may, for example, merely "encourage" certain kinds of development. Other policies may say that certain forms of development will "normally" be refused. In the green belt planning permission will not be given for most kinds of development save in "very special circumstances". I accept that the terms of the policy -- how firmly it favours or sets its face against -- the proposed development is a relevant factor, so too are the relative importance of the policy to the overall objectives of the development plan and the extent of the breach. These are essentially matters for the judgement of the local planning authority. A legalistic approach to the interpretation of development plan policies is to be avoided: see R v. Secretary of State for the Environment ex parte Webster [1999] JPL 1113 at 1118.

52. In the present case, policy EC/6 was the most, but not the only relevant policy in the UDP. The application was assessed against 23 separate policies in the UDP, one of which was EC/6. The introduction to EC/6 is as follows:

> "Land is allocated between the A664 Kingsway, M62 motorway, B6194 Broad Lane and the Rochdale-Oldham Railway line for high quality general and light industry, offices, distribution and storage, research and development, and associated and complementary uses.
>
> "The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park)."

53. The criteria are then set out, including criterion (d):

> "The creation of new, and extension of existing, public open space and informal recreation areas, including the extension and improvement of Stanney Brook Park."

54. No complaint is made about the Council's judgement that the proposal was in accordance with the remaining policies and with all of the criteria in EC/6 save for criterion (d). Mr Beckwith correctly advised the Council that the business park planning permission, subject to conditions 1.16 to 1.18 (above), would achieve all that was required by criterion (d) save for the creation of formal rights of public access. An extensive area of land along Stanney Brook Corridor, where Stanney Brook Park is located, would not merely be left open, it would be appropriately landscaped.

55. Pausing there, it could not sensibly be concluded that failure to achieve part of what was required by criterion (d) meant that the proposal was not "in accordance" with the UDP

or was a departure from that plan. Indeed, such a conclusion by the Council would have been vulnerable to a challenge on the grounds of Wednesbury unreasonableness. Mr Beckwith was not required to draw the Council's attention to the views of the UDP inspector, since that inspector's recommendations had been incorporated into the text of the policy EC/6 as adopted, which was set out in full in Mr Beckwith's report.

56. Dedication of the open land along Stanney Brook Corridor as a public open space could not have been achieved by the imposition of a condition. It is true that the Council could have considered whether dedication should be secured by the imposition of a negative condition, but it was not required to do so, because it was fully entitled to place reliance upon the assurance given by the NWDA, which is a non-departmental public body with a statutory responsibility to promote sustainable economic development and social and physical regeneration in the north-west of England under the Regional Development Agencies Act 1998. Planning conditions should not be imposed on a "belt and braces" basis, but only if they are required. There is no suggestion that the NWDA will fail to honour its undertaking. Mr Howell makes the point that a planning permission runs with the land. That is true, but the background to the NWDA's undertaking was that the application site is in a number of ownerships and, as was foreshadowed in 1998, the Council has authorised the making of a compulsory purchase order to facilitate the carrying out of the business park development, see page 102 G.

57. Of course, those compulsory purchase order proceedings might fail, in which case the business park would not be able to proceed, but if the development does proceed the Council will be in a position to dispose of the necessary land to the NWDA, which will then be in a position to honour its undertaking. For all of these reasons I reject ground 2.

Ground 1

58. Turning to ground 1, Mr Howell submits, correctly, that the conclusion at page 96 C to D of **Tew** (which is set out above) was **obiter**, because in that decision I was dealing with a bare outline application where all matters had been reserved.

59. He referred to the directive. In addition to the provisions set out between pages 88 D to 89 H, he referred to a number of the recitals, laying particular stress upon the 10th:

> "Whereas, for projects which are subject to assessment, a certain minimum

amount of information must be supplied concerning the project and its effects."

60. As mentioned on page 89 C, article 5.2 of the directive requires the developer of a project subject to assessment to provide "at least": "a description of the project comprising information on the site, design and size of a project."

61. It is this minimal amount of information which must, in all cases, subject to environmental assessment, be provided by the developer, according to Mr. Howell's skeleton argument which, "the information specified in paragraph 2 of Schedule 3 to the assessment regulations is intended to specify."

62. Mr Howell referred to regulations 2 and 3 of the applications regulations (page 80 D to G)) emphasising that whereas a "full" application for planning permission must include the information "necessary to describe the development", an outline application did not have to describe the development in respect of any matter reserved for subsequent approval. It cannot be said that reserved matters, that is to say siting, design, external appearance, means of access and landscaping, can have no significant effect on the environment.

63. The purpose of the directive is "to ensure that planning decisions which may affect the environment are made on the basis of full information": see per Lord Hoffmann at page 404 of R v. North Yorkshire County Council ex parte Brown [2000] 1 AC 397, as amplified on page 430 of Berkeley v. Secretary of State for the Environment [2000] 3 WLR page 420.

64. Lord Hoffmann's speech in the latter case stressed the importance, both of the public being able to participate in the environmental assessment process, and of the need for "a single and accessible compilation, produced by the applicant at the very start of the application process", see pages 430 H to 431 E, and 432 F.

65. A partial description of the development proposed, omitting a description of a reserved matter, does not enable that objective to be achieved. A description of the development proposed is also required to ensure that the project which is executed is the project which has been comprehensively assessed: see Tew at page 99 D.

66. Mr Howell argued that one should not be influenced by the "commercial imperative" for there to be a measure of flexibility in applications for industrial estate

developments, or urban development projects, even though he recognised that such projects might well be developed over a period of many years. He submitted, in effect, that all details of a project had to be described at the outset. If, subsequently, it was desired to change those details, then a fresh application for planning permission, accompanied by a fresh environmental statement, should be submitted. In this context he said that assistance could be derived from the decision of the European Court in World Wildlife Fund v. Bozen [2000] 1 CMLR 149. The respondents in that case had contended that the project for the restructuring of Bolzano Airport (transforming it from a military to a commercial civil airport) had been authorised by "a specific act of national legislation" falling within article 1(5) of the directive and did not therefore require environmental assessment. The extent to which modifications to projects could be excluded from environmental assessment was also in issue. Citing the Dutch Dykes case [1999] 3 CMLR 1, the European Court said this:

> "[40] Thus observing that the scope of the Directive was wide and its purpose very broad, the Court held that the Directive covered 'modifications to development projects' even in relation to projects falling within Annex II, on the ground that its purpose would be undermined if 'modifications to development projects' were so construed as to enable certain works to escape the requirement of an impact assessment when, by reason of their nature, size or location, they were likely to have significant effects on the environment."
>
> "[49] In view of the foregoing considerations, the answer to the first and second questions must be that articles 4(2) and 2(1) of the Directive are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2,100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment."
>
> "[62] It follows that the details of a project cannot be considered to be adopted by a Law, for the purposes of Article 1(5) of the Directive, if the Law does not include the elements necessary to assess the environmental impact of the project but, on the contrary, requires a study to be carried out for that

> purpose, which must be drawn up subsequently, and if the adoption of other measures are needed in order for the developer to be entitled to proceed with the project."

67. Mr Howell derives two propositions from **Bozen**:

> (1) Any development consent for the purposes of the Directive must be defined in detail, so as not to omit any element which could be capable of having a significant effect on the environment.
>
> (2) Any later modification to a project must be subject to a further environmental assessment unless it is not likely to have a significant effect on the environment.

68. It follows, he says, that to comply with the requirements of paragraph 2(a) of Schedule 3 the development proposed must be described in such detail that nothing is omitted which may be capable of having a significant effect on the environment if comprehensively assessed.

69. Since it is impossible to say that the ultimate treatment of any of the reserved matters in an outline application is incapable of having a significant effect on the environment, the outline application procedure is inconsistent with the requirements of environmental assessment. Put shortly, the Directive's aim is that decisions should be taken "in full knowledge of the project's likely significant effects on the environment" (see the first recital of the to Directive 97/11 which is set out in full on page 89 G of Tew). It is not aimed at permitting decisions to be taken "in principle" on relevant projects, but only after a comprehensive assessment of them.

70. Assessment on a "worst case" basis is no answer, because the assessment regulations require the "likely significant effects" to be assessed. The objective of environmental assessment is not to see whether the "worst case" is tolerable but to optimise effects on the environment: see the 11th recital of the Directive which refers to the contribution "of a better environment to the quality of life" and Article 174 of the Treaty which states that "community policy on the environment shall contribute to the pursuit of the following objectives ... preserving, protecting and improving the quality of the environment."

71. If the submission that an outline application is in principle incompatible with the requirements of paragraph 2(a) of Schedule 3 to the assessment regulations is not accepted,

it is argued that this particular outline application did not provide a sufficient description of the development proposed, because notwithstanding the information supplied about size and scale, information on "the design ... of the development" was not provided. Mr Howell accepts that "design" in paragraph 2(a) of Schedule 3 may extend to more than the design of individual buildings within an industrial estate project. It may, for example, encompass such matters as the layout shown on the masterplan, but he submits that it includes their detailed design. In the case of all the plots details of design, external appearance and landscaping were reserved and in the case of the majority of plots, siting and means of access will also be reserved. Mr Howell examined the implications of this under a number of headings: Design, Landscaping, effect on listed buildings, the larger building on plot T and the mitigation measures proposed.

72. Under "Urban Design Framework" the Development Framework mentions the need for "Landmark buildings" to be located at the locations which form "gateways" to the park. Important views are identified. For example, it is important to ensure that the development "becomes a landmark along the motorway". Under "Building Design" it is said that "A high quality of design of buildings will be required". Among the design and layout principles is a desire to encourage "innovative roof forms and profiles" where appropriate. One finds the following under "Materials":

> "External materials should be of a high quality, commensurate with the use of each building. Consideration should be given to the use of masonry at low level and on principal elevations in combination with cladding and glazing.
>
> "The use of colours that blend with the surrounding landscape will be necessary and therefore dense dark or bright colours will be discouraged. Primary colours should be restricted to window and door frames and will not be allowed for major elevational treatment. A preferred colour range will be made available to ensure continuity within the overall development.
>
> "Particular attention should be paid to the design of the elevational treatment of larger scale buildings, which are require to be of high quality and design. The articulation of the facade through the use of contrasting tone, colour and texture is required to provide an attractive appearance."

73. In describing the developments proposed on the defined plots table 2.3 in the environmental statement relies on high quality design. Thus, for plot T we find:

> "A single building for B8 use. The building is located on the flattest and least intrusive part of the development site and the layout incorporates large setbacks from the plot boundaries and the Stanney Brook Corridor. The

> elevational treatment of the building will be of high quality and design with articulation of the facade by use of a contrasting tone, colour and texture to provide an attractive appearance."

74. Under "Mitigation of impacts" the environmental statement acknowledged that "The phasing and external landscaping will be critical to reducing potential landscape and visual impacts and this is shown in figure 6.9. The principal mitigation measures which will be adopted are also listed in table 6.3." It is said that table 6.3 is far too general, thus under "Mitigation Description" we find such entries as:

> "Create integrated structural, infrastructure and plot landscape throughout the site in accordance with the Development Framework."

75. Under "Building design and materials" we find in paragraph 6.59:

> "The visual impact, particularly of high sided warehouse buildings can be substantially reduced by appropriate detailed design choices. Each elevation needs to be considered in the context of both short, middle and long distance views. Dark coloured finishes should generally be used for those buildings (or parts of buildings) which will be seen against a landscape or urban backdrop, with light colours where the building will be seen against the sky. Potential nuisance from reflective materials must be avoided. White (as against pale) finishes are also generally unsatisfactory."

76. Both the impact on the setting of three listed buildings within the development site and the mitigation measures proposed are also dealt with in very general terms. That, says Mr Howell, is because design and landscaping on adjoining plots are reserved matters. Without detailed information about those reserved matters the public cannot make any meaningful representations about the effects of the project on the listed buildings. The B8 building proposed on plot T, at over 80,000 square metres, will be a very large building indeed and the environmental statement acknowledges that it will have "a significant impact" on certain views from within the development site, although the impact on views from outside the site is assessed as moderate. It is submitted that without details of the design and elevational treatment of this building one cannot sensibly assess its impact on the environment.

77. Finally, in respect of mitigation measures, Mr Howell points to the Outline Ecology Management Plan which formed part of the environmental statement. It contains a table which summarises, "Key management proposals" under three headings: "Objective", "Outline management prescription" and "Timetable". By way of example, the first objective

is:

> "Ensure that all affected areas have been appropriately surveyed for protected species."

78. The prescription is:

> "Undertake further bat survey work in all buildings to be demolished and inspect all appropriate trees which are to be removed. The findings will be discussed with English Nature to determine the need for any specific mitigation measures.
>
> "Re-survey the site for great crested newts. The findings to be discussed with English Nature to determine the need for mitigation measures."

79. Timescales are given for both surveys.

80. It is submitted that paragraph 2(d) of Schedule 3 to the assessment regulations requires a description of mitigation measures. The environmental statement does not describe measures. It is said it merely sets out objectives.

81. I have set out the submissions made on behalf of the Applicant in some detail. I find it unnecessary to rehearse the submissions made by Mr Straker QC on behalf of the Council, the first respondent, and Mr Ash QC on behalf of Wilson Bowden and the NWDA, the second respondents. No discourtesy is intended. It is unnecessary to rehearse their submissions, because, in substance, I accept them and their principal points are reflected in my own conclusions which I now set out.

My conclusions

82. Although Mr Howell laid great stress on the Directive, the proper starting point is the assessment regulations themselves, since it is not suggested that they do not fully and accurately transpose the directive into our domestic law: see the decisions of the Court of Appeal in R v. London Borough of Hammersmith and Fulham ex parte the Trustees of the London branch of the CPRE 12th June 2000 paragraphs 24 and 39 to 41 (unreported) and Jackson J in R v. London Borough of Bromley ex parte Baker 3rd April 2000 paragraph 105 (unreported).

83. I accept that the assessment regulations should be construed, so far as possible, to accord with the objectives of the directive. If one looks to see what the relevant objectives

are, it was plainly not the objective of the Council in including "industrial estate development projects" or "urban development projects" in annex II to the directive, to frustrate the carrying out of such important projects. The intention was that the likely significant environmental effects of such projects should be comprehensively assessed before development consent was granted. The technique of environmental assessment is an important procedural tool whose underlying purpose is to help secure the Community's environmental policies. As article 174 of the Treaty makes clear, in preparing its policy for the environment, which includes the objective of "preserving, protecting and improving the quality of the environment", the Community:

> "Shall take account of ... the economic and social development of the Community as a whole and the balanced development of its regions", see Article 174.3.

84. The directive does not require environmental assessment of every industrial estate, or urban development project, only those "where Member States consider that their characteristics ... require" assessment. In general terms, it is likely that assessment will be required for substantial projects of this kind. The test adopted in the assessment regulations is whether such a project "would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location", see the definition of Schedule 2 application in regulation 2(1).

85. Save in an old style Soviet command economy, such as would not have been in the contemplation in the framers of the directive, a substantial industrial estate development project is bound to be demand-led to a greater or a lesser degree. The second respondent's evidence explains in some detail why this is so in the case of Kingsway Business Park. Mr Ward, a Director of Wilson Bowden explains:

> "For a scheme such as the Kingsway Development to succeed commercially, it is necessary to have an outline planning permission which establishes the principle of development on the whole site. Indeed, this is necessary to give the developer, the occupiers, the grant agencies and the investment institutions the certainty which they require to proceed. For some smaller sites it may be possible, in particular where end users have been identified, to submit a detailed planning application for the whole development. However with a scheme of the size of the Development this would not be possible as it is anticipated that the whole Development will not be completed for approximately 15-20 years. Within that forecast period, it is inevitable that a variety of end users will seek plots to suit their own business requirements and it is therefore necessary for the scheme to

> remain sufficiently flexible to cater for such users if it is to meet its planning objectives. If one were required to submit a detailed permission for the whole site it would simply be a paper exercise, for at this stage, it is quite impossible to anticipate what the matter can bring forward in future years."

86. I have already mentioned the fact that it is not expected that the business park will be completely occupied until 2013. There is no challenge to this evidence and no reason has been advanced as to why the points made by the respondents should not hold good for other substantial projects of this kind.

87. At pages 96 G to 97 H of Tew I mentioned the contrast between projects such as this and most of the other descriptions of development that are listed in annex II to the directive and repeated in Schedule 2 to the assessment regulations. The other projects are either industrial projects for particular processes, or "one off" infrastructure projects, such as the construction of roads, tramways, dams or pipelines, which will, by their very nature, have to be defined in considerable engineering detail at the outset.

88. Article 2(2) of the directive allows Member States to integrate environmental impact assessment into their existing procedures for giving development consent, or to devise new procedures. Article 3 (which is set out on page 88H) states that the environmental impact assessment will identify, describe and assess the environmental effects of projects "in an appropriate manner, in the light of each individual case."

89. Since the "description of the project" required by article 5(2) is a means to that end, in that it provides the starting point for the assessment process, there is no reason to believe that the directive was seeking to be unduly prescriptive as to what would amount to an appropriate description of a particular project. The requirement in article 5(2) (see page 89 C to E) to provide "information on the site, design and size of the project" is, and is intended to be, sufficiently flexible to accommodate the particular characteristics of the different types of project listed in annexes I and II (schedules 1 and 2 to the assessment regulations). It may be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed.

90. If a particular kind of project, such as an industrial estate development project (or perhaps an urban development project) is, by its very nature, not fixed at the outset, but is expected to evolve over a number of years depending on market demand, there is no reason why "a description of the project" for the purposes of the directive should not recognise that

reality. What is important is that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of for flexibility. The assessment process may well be easier in the case of projects which are "fixed" in every detail from the outset, but the difficulty of assessing projects which do require a degree of flexibility is not a reason for frustrating their implementation. It is for the authority responsible for granting the development consent (in England the local planning authority or the Secretary of State) to decide whether the difficulties and uncertainties are such that the proposed degree of flexibility is not acceptable in terms of its potential effect on the environment.

91. In Tew I said at page 97 C that projects such as industrial estate developments and urban development projects have been placed "in a legal straitjacket" by the assessment regulations, in transposing the requirements of the directive into domestic law. The Directive did not envisage that the "straitjacket" would be drawn so tightly as to suffocate such projects.

92. It has to be recognised that even if it was practical (despite the commercial realities described by Mr Ward) to prepare detailed drawings showing siting, design, external appearance, means of access and landscaping for every building within the proposed business park, the resulting environmental statement would be an immensely detailed work of fiction, since it would not be assessing the effect on the environment of any project that was ever likely to be carried out. All concerned with the process would have to recognise that in reality such details could not be known until individual occupiers came forward for particular plots.

93. In my judgment, integrating environmental assessment into the domestic procedure for seeking outline planning permission, which acknowledges this need for flexibility for some kinds of building projects, is not contrary to the objectives of the Directive. There is no analogy between the procedure for obtaining outline planning permission, with certain matters reserved for detailed approval, and the procedure which was in issue in Bozen. In that case, not only was there no environmental assessment, the legislative act which authorised the project was generalised in the extreme, amounting to little more than a proposed programme, which was subject to preliminary feasibility assessments, see paragraphs 5, 71 and 79 of the Advocate General's opinion in that case. The European Court was also concerned with proposed "modifications to development projects". If such

modifications have not been subjected to environmental assessment, the court's conclusion that they should be "when by reason of their nature, size or location they were likely to have significant effects on the environment" (see paragraphs 40 and 49) is readily understandable. Provided the outline application has acknowledged the need for details of a project to evolve over a number of years, within clearly defined parameters, provided the environmental assessment has taken account of the need for evolution, within those parameters, and reflected the likely significant effects of such a flexible project in the environmental statement, and provided the local planning authority in granting outline planning permission imposes conditions to ensure that the process of evolution keeps within the parameters applied for and assessed, it is not accurate to equate the approval of reserved matters with "modifications" to the project. The project, as it evolves with the benefit of approvals of reserved matters, remains the same as the project which was assessed.

94. Much stress has been laid on the words: "In full knowledge of the project's likely significant impact on the environment..." in directive 97/11, see page 89 H. These words should not be regarded as imposing some abstract state or threshold of knowledge which must be attained in respect of all projects, but should be applied to the particular project in question. For some projects it will be possible to obtain a much fuller knowledge than for others. The directive seeks to ensure that as much knowledge as can reasonably be obtained, given the nature of the project, about its likely significant effect on the environment is available to the decision taker. It is not intended to prevent the development of some projects because, by their very nature, "full knowledge" (in the sense of an abstract threshold level of detail) is not available at the outset.

95. This does not give developers an excuse to provide inadequate descriptions of their projects. It will be for the authority responsible for issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has "full knowledge" of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent.

96. Having stated that the proper starting point was the assessment regulations, I am conscious of the fact that I have spent some time discussing the directive. I have done so to

demonstrate that there is no basis for the submission that the application by a Member State of a procedure such as the United Kingdom's procedure for obtaining outline planning permission for projects which require environmental assessment is in some way inimical to the objectives of the directive.

97. With that introduction, I turn to the assessment regulations.

98. The full text of the relevant paragraphs in Schedule 3 is set out on pages 87 E to 88 C. The flexibility inherent in the Directive's approach to "a description of the development proposed" is faithfully transposed into paragraph 2(a): the description must comprise "information about the site and design and size or scale of the development".

99. On any sensible interpretation of those words, one may provide "information about" those matters without providing every available piece of information about them.

100. That the description of the proposed development which must be provided under paragraph 2(a) need not to be exhaustive in terms of the information supplied is reinforced by paragraph 3(a) which enables, but does not require, the developer to include by way of explanation or amplification of (inter alia) the description of the development further information in the environmental statement about "the physical characteristics of the proposed development and the land use requirements during the construction and operational phases."

101. The role of the public in contributing to the "environmental information" which must be considered by the local planning authority (see regulation 2(1)) was emphasised in Berkeley above. Members of the public with local knowledge may well be able to add significantly to the information about the site, thus supplementing the "description of the development" provided by the developer in the environmental statement.

102. If the local planning authority or the Secretary of State is dissatisfied with the amount of information provided in the environmental statement about the site, design, size or scale of the project, they may under regulation 21 require such:

> "Further information (as) is reasonably required to give proper consideration to the likely environmental effects of the proposed development."

103. The fact that the developer then has to supply such further information does not

mean that he will have failed to provide "a description of the development proposed" and thus failed to provide an environmental statement.

104. If one asks the question "how much information about the site, design, size or scale of the development is required to fall within "a description of the development proposed" for the purposes of paragraph 2(a)?, the answer must be: sufficient information to enable "the main", or the "likely significant" effects on the environment to be assessed under paragraphs 2(b) and (c), and the mitigation measures to be described under paragraph 2(d).

105. In addition, the development which is described and assessed in the environmental statement must be the development which is proposed to be carried out and therefore the development which is the subject of the development consent and not some other development. An assessment of an illustrative masterplan, accompanying a "bare outline" application, which is not tied by condition to the resulting outline planning permission could not meet these requirements: see page 99 C to E (cited above).

106. Whether the information provided about the site, design, size or scale of the development proposed is sufficient for these purposes is for the local planning authority, or on appeal or call in, the Secretary of State, to decide. I reject Mr Howell's submission that the issue is one for the court to decide, as a question of primary fact. That would be contrary, not merely to the structure of the regulations, but to the statutory Town and Country Planning framework of which they are but a part. Under the regulations it is for the local planning authority, or the Secretary of State, to decide whether a proposed development falls within the descriptions of the development set out in schedules 1 and 2, and in the case of the latter whether it would be likely to have significant effects on the environment: see the speech of Lord Hoffmann at page 429 H to 43O A in Berkeley. The local planning authority's or the Secretary of State's decision is subject to review on Wednesbury grounds. Regulation 4(2) requires the local planning authority or the Secretary of State to take the environmental information (which includes the environmental statement) into consideration before granting planning permission. Against this background the regulations plainly envisage that the local planning authority or the Secretary of State will also consider the adequacy of the environmental information, including any document or documents which purport to be an environmental statement.

107. The assessment regulations are part of a statutory planning framework which

requires the local planning authority in dealing with an application to have regard to all material considerations: see section 70(2) of the 1990 act above.

108. It is for the local planning authority to decide whether it has sufficient information in respect of the material considerations. Its decision is subject to review by the courts, but the courts will defer to the local planning authority's judgement in that matter in all but the most extreme cases. Regulation 4(2) reinforces this general obligation to have regard to all material considerations in the case of a particularly material consideration; "environmental information" which has been provided pursuant to the assessment regulations.

109. There is no reason why the adequacy of this information, which includes the sufficiency of information about the site, design, size and scale of development should not be determined by the local planning authority: see paragraph 48 of circular 2/99 above.

110. The question whether such information does provide a sufficient "description of the development proposed" for the purposes of the assessment regulations is, in any event, not a question of primary fact, which the court would be well equipped to answer. It is pre-eminently a question of planning judgment, highly dependent on a detailed knowledge of the locality, of local planning policies and the essential characteristics of the various kinds of development project that have to be assessed.

111. I do not accept the Applicant's argument based on regulations 2 and 3 of the applications regulations, see page 80 D to G. Reserved matters as defined in those regulations are not "information necessary to describe the development" which may, as a matter of concession, be omitted from an outline application. Such details may be omitted precisely because they may not be necessary to describe some developments for the local planning authority's purposes. The local planning authority will need to be satisfied that the description of the proposed development in the outline planning permission is adequate, given that it will be able to impose conditions in respect of reserved matters so that matters of detail can be dealt with at a later stage.

112. It will be noted that an outline planning permission is defined as a planning permission for the erection of a building which contains "one or more reserved matters". Thus, a planning permission which simply reserves one matter, for example details of means of access or landscaping is still an outline planning permission. It is difficult to see why an application for outline planning permission that includes details of siting, design and

external appearance, should not be able to provide the basis for an environmental statement containing "a description of the development proposed, comprising information about the site and design, size or scale of the development."

113. Mr Howell submits that reserved matters, details of the means of access or landscaping, are capable of having an effect on the environment, that is why they are reserved for subsequent approval. That ignores the fact that the environmental statement does not have to describe every environmental effect, however minor, but only the "main effects" or "likely significant effects". It is not difficult to see why this should be so. An environmental statement that attempted to describe every environmental effect of the kind of major projects where assessment is required would be so voluminous that there would be a real danger of the public during consultation, and the local planning authority in determining the application, "losing the wood for the trees. What is "significant" has to be considered in the context of the kinds of development that are included in schedules 1 and 2. Details of landscaping in an application for outline planning permission may be "significant" from the point of view of neighbouring householders, and thus subject to reserved matters approval, but they are not likely to have "a significant effect on the environment" in the context of the assessment regulations

114. The local planning authority are entitled to say, "We have sufficient information about the design of this project to enable us to assess its likely significant effects on the environment. We do not require details of the reserved matters because we are satisfied that such details, provided they are sufficiently controlled by condition, are not likely to have any significant effect."

115. That is the conclusion which was reached by the local planning authority in the present case. Mr Beckwith says this in his witness statement:

> "My judgment and that of the Council was that the information given enabled assessment of all the significant effects of the Kingsway Business Park development, and that it amounted to a description of the development comprising information on its site, design and size."
>
> "The design information given was adequate for the significant environmental effects to be considered. The information included size and mass of the buildings, and the location of the structural planning. In the case of a substantial business park, I consider that such information is key to an understanding of the significant visual impacts of the development. While the number and position of apertures and choice of construction materials

> are all liable to affect visual impact to some slight degree, they will not alter the appraisal of the significant impacts of development. The simple point is that one can clearly envisage the design and size of the development."

116. ERM's expertise in conducting environmental assessment is not challenged. Mr Gilder, its Technical Director and Head of Planning, has provided a detailed witness statement to explain why, in his professional opinion, the environmental statement:

> "Considers a development proposal which was sufficiently well defined to enable a robust assessment of the potential significant impacts."

117. He said this:

> "The environmental statement considers an almost fully defined development. Given the overall scale of the development, any significant visual impacts will arise from the overall massing of the buildings not from the details of their elevational treatments. With the nature of the development clearly defined in the applications, I could make sensible assumptions about the minor details of the elevations, the colour of the surface finishes and the likely growth of the landscaping and hence the residual visual impacts that might affect nearby residents ..."
>
> "Across the whole proposed development, the level of detail defined was more than sufficient to identify the 'likely significant effects', both in relation to design and the worst case that could arise in relation to other environmental effects, for example, archaeology, ecology, traffic, noise, water and air pollution. In my view, only minor matters have been reserved for subsequent approval. The Council, when it considered the applications, was fully informed about the worst environmental impact that could arise and was able to make a decision in the knowledge that only minor matters of design and implementation were to be left as reserved matters."

118. The approach of Mr Beckwith and Mr Gilder accords with the advice in paragraph 82 of circular 2/99 above. Whilst it is important that a "full factual description" of the development is provided, it is equally important that an environmental statement should be prepared "on a realistic basis and without unnecessary elaboration."

119. It has to be remembered that the project which required assessment was an "industrial estate development", in this case a business park. Plainly, there is a great deal of information about the design of the business park in the documents forming part of the application, see above. Whether information should also be provided about the detailed design of the individual buildings that are to comprise the park is a separate question. In some circumstances such details might be required because they could reasonably be expected to have a significant effect on the environment. The local planning authority

concluded that this was not so in the present case. That is not a surprising conclusion. The extent of the information supplied about the site, size and scale of the project is not criticised. The local planning authority had as much information about "the design" of an industrial estate development project of this kind as could reasonably have been expected.

120. Acknowledging the uncertainties that are inherent in a project of this nature and scale Mr Gilder explained that the environmental statement had considered "the worst environmental impacts which would arise from the development, the so-called worst case."

121. He explained that although the definition of the worst case might differ according to which environmental effect was being assessed:

> "Where details were to be reserved for subsequent approval by the local planning authority, the worst case was defined as the minimum standards which a reasonable local planning authority might require, taking account of all other matters already fully defined in the applications."
>
> "In the case of construction impacts, such as noise and dust, the worst case was taken to be the minimum standards which would be required by the regulatory authorities under, for example, the Control of Pollution Act 1974 and/or the relevant British Standards."

122. Mr Howell criticised this approach, even though, as Mr Gilder explained, it is regarded as a "proper professional approach", which is regularly used by those engaged in the process of environmental assessment. Both the directive and the regulations recognise the uncertainties in assessing the likely significant effects, particularly of the major projects, which may take many years to come to fruition. The assessment may conclude that a particular effect may fall within a fairly wide range. In assessing the "likely" effects, it is entirely consistent with the objectives of the directive to adopt a cautious "worst case" approach. Such an approach will then feed through into the mitigation measures envisaged under paragraph 2(c). It is important that they should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment.

123. Mr Howell pointed to the passage at page 98 A of Tew:

> "If consideration of some of the environmental impacts and mitigation measures is effectively postponed until the reserved matters stage, the decision to grant planning permission would have been taken with only a partial rather than a "full" knowledge of the likely significant effects of the project."

124. He submitted that the environmental impact of the project could be significantly affected by detailed design at the reserved matters stage, for example, by the materials used -- reflective glass, by the colours adopted, by a particularly "innovative" form of roof design, or a particularly striking "landmark" building.

125. The passage in Tew continues:

> "That is not to suggest that full knowledge requires an environmental statement to contain every conceivable scrap of environmental information about a particular project. The directive and the assessment regulations require the likely significant effects to be assessed. It will be for the local planning authority to decide whether a particular effect is significant, but a decision to defer a description of a likely significant adverse effect and any measures to avoid, reduce or remedy it to a later stage would not be in accordance with the terms of Schedule 3, would conflict with the public's right to make an impact into the environmental information and would therefore conflict with the underlying purpose of the directive."

126. Whilst the Council has deferred a decision on some matters of detail, which, as Mr Beckwith acknowledges, may have some environmental effect, it has not deferred a decision on any matter which is likely to have a significant effect, or on any mitigation measures in respect of such an effect.

127. It is true that at the reserved matters stage the council might theoretically approve a building in a particularly shocking colour, or with a particularly visually intrusive roof design, but that is not the test, since it can be satisfied that it is not likely to do so, hence the effect, for example, of a rainbow coloured building T, or a bizarre "landmark" building is not a "likely effect", let alone a "likely significant effect" on the environment.

128. Any major development project will be subject to a number of detailed controls, not all of them included within the planning permission. Emissions to air, discharges into water, disposal of the waste produced by the project, will all be subject to controls under legislation dealing with environmental protection. In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority: see, for example, the assumptions made in respect of construction impacts, above. The same approach should be adopted to the local planning authority's power to approve reserved matters. Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the "likely significant

effects", not every conceivable effect, however minor or unlikely, of a major project.

129. For all these reasons, I am satisfied that Mr Howell's primary submission that an application for outline planning permission does not satisfy the requirement in paragraph 2(a) of Schedule 3 to the assessment regulations because it does not provide "a description of the development proposed" is not well-founded.

130. I can deal very shortly with the remaining argument that the 1999 application for outline planning permission did not contain sufficient information about the design of the development. As is explained above, a great deal of information was provided in the application documents about the design of the business park, even though details of the design and external appearance of individual buildings were not given. Taking building T as a convenient example, since it is the largest proposed building in the business park, its proposed use (B8), its siting, its size and scale are all known. In particular its principal dimensions, including its height to eaves from a defined plateau level are known. The plot size is known, together with the number of car parking spaces that are to be accommodated with the building on that plot. The position of the spine and estate roads, from which it will obtain access, are fixed. The area that is left for landscaping within the plot once access, servicing and car parking requirements have been met, can be seen on the masterplan and other plans contained in the Development Framework. Those plans also identify areas for structural landscaping around the boundaries of the plot. The Development Framework describes in some detail how these areas are to be treated. It also describes the kinds of materials, colours and elevational treatments that are likely to be adopted, see above.

131. The Council has power to ensure that the details which come forward at the reserved matters stage are in "substantial accordance" with the Development Framework: see condition 1.7 above. It will be noted that the effect of condition 1.7 is that even where siting and means of access are reserved they will have to be substantially in accord with the Masterplan. Armed with all of this information about the proposed building on plot T, ERM were able to carry out a comprehensive assessment of its likely significant effects on the environment including, for example, its likely effect on the setting of listed buildings, and the public were able to make informed comments about the reliability of that assessment and to suggest further mitigation measures if they wished.

132. Mr Howell's criticisms of the proposed mitigation measures illustrates the unreality

of the Applicant's approach. It is said, that there is no "description of the measures proposed", merely a statement of objectives. This criticism stems from an overliteral interpretation of the words in paragraph 2(d). In the case of the bats and the greater crested newts that may be on this site (see above), I do not see why the "measures envisaged to avoid, reduce or remedy" possible harm to them should not comprise the undertaking of further surveys, discussion of the findings of those surveys with English Nature and devising detailed mitigation in the light of those discussions. Where there are well established mitigation techniques for dealing with disturbance to the habitat of certain creatures, such a description will be perfectly adequate. Indeed, it is difficult to see what more could be done. As Mr Beckwith says:

> "The areas where further survey work is required are areas in which survey work had already been carried out and the results published, for example for the presence of badgers, bats or voles. But nature is dynamic and the presence or population of such species could (and does) vary over time. Bats do not permit themselves to the spot where they happen to be seen at a particular point in time. It is entirely appropriate, responsible and reasonable to ensure that surveys are carried out prior to the commencement of work on each development plot. The involvement of expert bodies such as English Nature is a reasonable approach and one that I would have thought most reasonable members of the public would expect."

133. It is to be noted that neither English Nature nor the Greater Manchester Ecology Unit objected to the application. They expressed certain detailed concerns. The Outline Ecology Management Plan was then prepared as a response to those concerns. Mr Beckwith's report explains that those bodies were satisfied with the response, together with the conditions that were imposed on the outline planning permission.

134. In short, there was "full knowledge", in the sense of there being available as much information as could reasonably be expected at this stage, about this kind of mitigation measure.

135. I repeat the view expressed in Tew that "full knowledge" does not mean "every conceivable scrap of information" about a project. Such an approach would not assist local planning authorities in identifying the likely significant environmental effects of major projects, and would merely serve to obstruct the development of such projects to no good purpose.

136. I therefore declare the respondents the victors in round 2 and dismiss this

application for judicial review.

137. In conclusion I would like to pay tribute to the very able submissions of all leading counsel.

138. MISS COLQUHOUN: Yes, my Lord. As perhaps the court will have been told, Mr Straker I am afraid had to disappear and does apologise for not being able to be here throughout your judgment.

139. MR JUSTICE SULLIVAN: Yes, Miss Colquhoun.

140. MISS COLQUHOUN: He would also like me to thank you for giving this judgment before the end of term. He is extremely grateful for that.

141. MR JUSTICE SULLIVAN: That is very kind of him.

142. MISS COLQUHOUN: My Lord, of course we would like to apply for costs in this matter, but I understand that the Applicant is legally aided.

143. MR JUSTICE SULLIVAN: Yes.

144. MISS COLQUHOUN: And therefore would ask that the costs be awarded on the appropriate basis. I understand there is certain wording that the associate would have. Forgive me for not knowing it, my Lord.

145. MR JUSTICE SULLIVAN: I do not know it either.

146. MISS COLQUHOUN: I am very grateful.

147. MR JUSTICE SULLIVAN: You are asking for the appropriate order I think?

148. MISS COLQUHOUN: Yes, I am my Lord.

149. MR JUSTICE SULLIVAN: I will not ask you what that is, do not worry. What do you want to say about that for starters, Miss Markus?

150. MISS MARKUS: I cannot resist the general thrust of that application. I think it might be helpful to say the wording is something like the Applicant pays the costs of the respondent but it is postponed until an application is made, or something along those lines.

151. MR JUSTICE SULLIVAN: We will possibly leave it to the Associate, who will in due course make the appropriate legal aid order, so the Applicant is to pay the first respondents costs, subject to the usual legal aid order, yes.

152. MR JUSTICE SULLIVAN: Second respondents, are you making a pitch?

153. MR GREATOREX: Yes, my Lord, I am, to ask for costs in this case. I make the submission on the ground it is an appropriate case for the exercise of your discretion. In my submission, all three of the criteria set down by the House of Lords in the **Bolton** case are met here in that there was a difficult question of principle. Secondly -- and this is perhaps the most obvious of the three points -- the scale of the development and the importance of the outcome is exceptional in this case. Your Lordship is well aware of the size of the matter and the approach to development.

154. The third point follows on from that in that it is an unusual case again, for the reasons that I have just mentioned: the size of the project and the fact that urban developers are obviously a private public the NWDA is a public body in discharging its public duties in this case.

155. MR JUSTICE SULLIVAN: I think those would be absolutely marvellous arguments if the Applicant was not on legal aid, but since the Applicant is on legal aid effectively it is pretty much an empty gesture, is it not? that is the problem I think.

156. MR GREATOREX: If you think it is an appropriate case to exercise your discretion and award costs then it would be the same order as you have just suggested: the first respondent's legal aid costs and it goes to that.

157. MR JUSTICE SULLIVAN: Thank you very much. I have to say were this not a legal aid case then the second respondent may well have quite a good case for asking for costs in the unusual circumstances, but since it is they do not -- no disrespect to the able submissions put forward.

158. Any more for any more?

159. MISS MARKUS: My Lord, I wish to make an application for permission to appeal.

160. MR JUSTICE SULLIVAN: Yes.

161. MISS MARKUS: My Lord, obviously I do not want to rehearse the arguments that were so ably put by Mr Howell last week and summarised in detail by your Lordship today, but just to summarise the main points of appeal which, in my submission, are points of general importance, your Lordship will be aware, and I do not have new order 52 in front of me, but the grounds for grant of permission are these: that the court considers that the grounds have a likely prospect of success, or effectively they are very general points of importance.

162. MR JUSTICE SULLIVAN: Are the words "a reasonable possible prospect of success".

163. MR GREATOREX: A real prospect.

164. MR JUSTICE SULLIVAN: Real prospect or other compelling reasons.

165. MISS MARKUS: Other compelling reason. My Lord, I would submit other compelling reason includes cases which raise grounds of appeal which raise points of general importance.

166. MR JUSTICE SULLIVAN: Yes.

167. MISS MARKUS: My Lord, there are essentially I think five, possibly six points -- I will recount them when I get to the end of my submission -- that raise points of general importance as a result of which there is a compelling reason to grant permission to appeal. The first point is in relation to ground 1 of the application. The question of whether it is possible to grant outline planning permission to a project to which the environmental impact assessment regulations apply.

168. My Lord, I do not want to rehearse the arguments in support of that, but your Lordship has been through the main issues, but could I just outline two particular features of this, of this ground: first of all, an outline planning permission application, and permission itself clearly does not describe any or all of siting, design, external appearance, means of access or landscaping, and the submission is basically that failing to describe any of those matters would breach the requirements of the regulations --

169. MR JUSTICE SULLIVAN: Yes, I have those.

170. MISS MARKUS: You have that point?

171. MR JUSTICE SULLIVAN: Yes.

172. MISS MARKUS: And secondly, that any reserved matters are matters that could have a significant effect on the environment, and there is a real question here as to how one interprets the word "significant" effect on the environment, and that was a point that was raised by your Lordship in your own judgment. At one point, for instance, your Lordship talks about the fact that what is significant in respect of a neighbour, who is concerned about the effects of landscaping, may not be significant in the context of the regulations of the whole of the development, and my Lord there is a point of importance, significant point of importance there.

173. That really links to the second ground of appeal that I would propose in this case, which is the proper test to be applied as to what can be left undefined in an outline application consistently with the Directive and in the 1998 or 1999 regulations.

174. My Lord, Mr Howell, paraphrasing what he said -- of course I was not here -- I think what he was saying is that you cannot leave out anything which might be capable of having a significant effect on the environment, and that is a test that is consistent with your Lordship's judgment in **Tew**, the first case.

175. My Lord, my submission is that that raises a point of general importance, the proper test to be applied.

176. The third question is who is to judge whether a future development is likely to have a significant effect on the environment. As your Lordship found, there is the authority proposed submitted on behalf of the Applicant that it was for the court. Again, that is a point of general importance.

177. The fourth set of grounds relate to what was I think described certainly in the skeleton argument on behalf of the NWDA as coming under the grounds of Wednesbury unreasonableness but raises significant points in that context. The question is whether the conclusion of the authorities that the design of the buildings will not have a significant effect on the environment, or could not have a significant effect on the environment, is a reasonable one, and that raises points of principle, general points, because the Applicant says that where you have a development of this scale it will always be necessary to know about the design and the visual appearance.

178. My Lord, this question also raises another point of principle which is really what does design mean in the context of the environmental assessment regulations? What does it cover about which information needs to be provided? Plot T that your Lordship referred to is a good example, and the Applicant's submission on this was that it cannot reasonably be said that a building of this size could not have a significant effect upon the environment, and that the design is not a critical consideration in that respect.

179. My Lord, design is included in the environmental assessment regulations because it is clearly capable of having a significant effect on the environment. In addition, under this ground it is raised the question whether adopting the worst case scenario in respect of any of these matters constitutes a proper approach, and your Lordship has obviously referred to the submissions that were put by Mr Howell in that respect.

180. My Lord, again, in all of these submissions, is the question of what is the implicit judgment; what is the judgment as to what counts as significant? That is a point of importance as to effectively the threshold at which the regulations bite.

181. My Lord, the fifth and penultimate ground of appeal that I request permission in respect of relates to the question of mitigation measures, and the point in this is what constitutes a description for the purpose of the regulations of mitigation measures, and Mr Howell said last week that the proposed mitigation measures really were questions of aspiration rather than actual measures. The Applicant's position is really that the bottom line is that the authority must know that the aspirations and objectives are achievable, and while that does not mean that every tiny detail, no matter how important, has to be dealt with, sufficient has to be provided to know that.

182. The final point relates to ground 2, which your Lordship dealt with first. The point in this, again, without rehearsing the submissions of the Applicant, is whether it is possible for an authority to consent to a project that does not comply with any of the UDP criteria, or at least noting what your Lordship said about the number of UDP criteria and number of conflicting interests that are involved in considering any matters such as this. At least, is it possible lawfully to consent to a project which does not comply with a criterion or criteria which are so critical within the plan, treated critically by the inspector and said in the plan to be strictly applied?

183. My Lord, those are the six points on which my submission lies.

184. MR JUSTICE SULLIVAN: There are six. I do not need to trouble you, thank you very much.

185. Acknowledging, as I do, the possibility of error, I think that since this is the second time that I have had an opportunity to look at this matter and I have had the opportunity to prepare a reasonably comprehensive judgment, I do not think that there is a real prospect of success for an appeal, even though I accept the case does give rise to a number of interesting questions of principle. So on that basis I refuse permission to appeal.