



Department for Levelling Up,  
Housing & Communities

Our ref: APP/A0665/W/18/3207952

Kirsty Smith (nee Morris)  
Senior Paralegal  
Planning and Infrastructure Consenting  
Eversheds Sutherland

7 June 2022

By email only: [KirstySmith@eversheds-sutherland.com](mailto:KirstySmith@eversheds-sutherland.com)

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY ISLAND GAS LIMITED  
LAND AT ELLESMERE PORT WELLSITE, PORTSIDE NORTH, ELLESMERE PORT,  
CHESHIRE  
APPLICATION REF: 17/03213/MIN**

*This decision was made by Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry which opened on 15 January 2019 into your client's appeal against the decision of Cheshire West and Cheshire Council to refuse your client's application for planning permission for mobilisation of well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension, in accordance with application ref: 17/03213, dated 20 July 2017.
2. On 27 June 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

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

## **Procedural matters**

5. As set out at IR5-6 public consultation took place on what the appellant considered to be a non-material amendment to the submitted application (IR5) and the responses were taken into account by the Inspector (IR6).

## **Matters arising since the close of the inquiry**

6. While there have been developments in Government policy since the close of inquiry, in particular on net zero, this decision is based on material that was relied on before the Inspector, including the Committee for Climate Change's 2016 Net Zero report. The Secretary of State does not consider the development of Government policy materially affects the decision in this case, or that they necessitate a referral back to parties.
7. On 20 July 2021 a revised National Planning Policy Framework (the Framework) came into force. However, the Secretary of State does not consider that the revised Framework raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. Where paragraph numbers from the IR are referenced in this letter the numbering has been updated to this version.
8. The Secretary of State has received post inquiry correspondence from the parties identified in the Schedule of Representations at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
9. An application for a full award of costs was made by the appellant, Island Gas Ltd against the Council. Similarly, an application for a partial award of costs was made by the Rule 6 Party, Frack Free Ellesmere Port and Upton against the appellant (both referred to at IR2). Both these applications are subject to separate costs reports by the Inspector and decision letters of the Secretary of State.

## **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the Cheshire West and Chester Local Plan (Part One) Strategic Policies Local Plan (2015), the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (July 2019) and the saved policies of Cheshire Replacement Minerals Local Plan (1999). The Secretary of State considers that relevant development plan policies include those set out at IR20-37.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') as at July 2021 and associated planning guidance ('the Guidance').

### *Emerging plan*

13. The consultation on the six main themes relating to the emerging plan was completed in September 2021 and the Council is considering its next steps. Given its early stage of progress the emerging plan has not been afforded weight.

### **Main issues**

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR592.

### *Energy, shale gas and climate change policy*

15. The Secretary of State has carefully considered the Inspector's analysis at IR661-746 concerning whether the proposal fails to mitigate and adapt to the effect of climate change and ensuring development makes the best use of the opportunity for renewable energy use and generation. He has considered the proposal against national shale gas policy, including various Written Ministerial Statements (WMS); the November 2019 BEIS WMS (IR8), May 2018 BEIS WMS, May 2019 MHCLG WMS and September 2015 DECC WMS. The WMSs remain extant. In assessing the weight they carry, he has taken into account that specific shale gas policy in the Framework was quashed in 2019 by the Talk Fracking judgment<sup>1</sup>, following which paragraph 209(a) of the 2019 version of the NPPF was withdrawn (IR704 refers).
16. On the basis of the evidence put before this inquiry, and for the reasons given at IR690-732, the Secretary of State agrees with the Inspector at IR732 that neither the 2015 nor the 2018 WMSs can be said to reflect the latest climate change science put before the inquiry. The Secretary of State considers that they must therefore, in this case, be read accordingly. He notes that the MacKay and Stone report was published in September 2013 and underpins the 2015 WMS and the 2016 Climate Change Committee ('CCC') reports (IR691) and while the 2018 WMS references the (CCC) report, it too relies on the MacKay and Stone report for evidential justification (all IR691). He has taken into account that scientific information is available that post-dates the MacKay and Stone report and was presented to the Inspector at the inquiry (IR709-716). The Secretary of State further agrees with the Inspector for the reasons given at IR717-727 that the evidence on greenhouse gas (GHG) emissions in this case casts doubt on the extent to which the MacKay and Stone report can be considered consistent with the 2019 CCC net zero report and the latest science that it reports upon (IR727). Overall, based on the evidence before him, the Secretary of State considers that the weight which can be afforded to the 2015 and 2018 WMSs should be reduced. He further considers that while the proposal does draw some support from the element of paragraph 152 of the Framework regarding transition to a low carbon future, the weight attaching to that support should be reduced.
17. The Secretary of State has further considered the Inspector's assessment of the May and November 2019 WMSs at IR733-745. He agrees with the conclusion at IR734 that paragraph 210 of the Framework is not directly relevant to the determination of this appeal. However, as exploration is a necessary precursor of exploitation, and the Secretary of State considers that this paragraph of the Framework does cover shale gas, he considers that paragraph 211 is a material consideration, as is paragraph 209 (differing from the Inspector's view at IR711 and 734). He notes that the November 2019

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<sup>1</sup> Claire Stephenson v Secretary of State for Housing and Communities and Local Government [2019] EWHC 519 (Admin)

WMS, which introduced an 'effective moratorium', states that 'the shale gas industry should take the Government's position into account when considering new developments', and considers overall that this WMS is a material consideration in this case, albeit not one which carries more than limited weight.

18. Taking the matters set out in paragraphs 15-17 into account, the Secretary of State considers that on the basis of the evidence put forward in this case, national policy support for the benefits of shale gas exploration in this case should carry no more than moderate weight.
19. He has gone on to consider whether the proposal is in conflict with paragraph 152 of the Framework as a whole. The Secretary of State agrees with the Inspector's reasoning at IR717-726 and IR738, and has taken into account that government legislated to give effect to the headline recommendation that by 2050 emissions of GHGs should be reduced to net-zero (IR729 - The Climate Change Act 2008 (2050 Target Amendment) Order 2019 refers). He agrees with the Inspector that taking into account the unmitigated GHG emissions in this case, and given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. Taking into account his conclusion on the element of paragraph 152 regarding transition to a low carbon future in paragraph 16 above, he considers that the proposal would conflict with Framework paragraph 152 as a whole. For the reasons given at IR746, he agrees with the Inspector that this is a material consideration, albeit one that in his view should carry moderate weight in the planning balance.
20. Turning to local policy, for the reasons given at IR665-683 the Secretary of State agrees with the Inspector that the appellant's interpretation of LP policy STRAT1 should be applied – i.e. that the policy requires the appeal proposal to mitigate GHG emissions so far as practical (IR668). For the reasons given at IR684-688, he further agrees with the Inspector that the gas management techniques to be employed would reduce and thus mitigate the effect of the proposal on climate change, and therefore agrees that there would be no conflict with LP policy STRAT1 in this regard or with ELP policy M4 to the extent that it is considered relevant (IR688).
21. The Secretary of State has gone on to consider the Inspector's assessment against LP policy STRAT1 as a material consideration. For the reasons given at IR689-740 (but excluding the elements where he differs from the Inspector as set out in paragraph 17 above), he agrees with the Inspector that the appeal proposal would give rise to unmitigated GHG emissions of between 3.3 to 21.3 kt CO<sub>2</sub> equivalent although the actual release is more likely to be towards the top end of the range (IR738). He further agrees that this is a material consideration that weighs significantly against the proposal in the planning balance (IR740).
22. For the reason given at IR680-681 the Secretary of State agrees that LP policy ENV7, which is the most relevant policy, supports proposals to exploit the borough's alternative hydrocarbon resources providing there are no unacceptable impacts on range of matters as set out in the policy. LP paragraph 8.67 is clear that shale gas exploitation falls within the scope of the policy and the Secretary of State notes that this was common ground between the parties. He therefore considers that at the local level, the development plan contains permissive policies for the exploration of shale gas, and notes that the Council's

SPD (CD5.5) envisages and provides guidance about exploration for unconventional resources within the Council area with shale gas being specifically mentioned (IR681).

23. The Secretary of State has gone on to consider whether LP policy ENV7 is satisfied in practice. He notes that it is common ground between the Council and the appellant that the proposal is in compliance with this policy, while FFEP&U (Frack Free Ellesmere Port and Upton), and by inference the local community, consider that there is conflict primarily with criterion 1 relating to the effect on human health and well-being (IR594-595).

#### *Human health and well-being*

24. The Secretary of State has carefully considered the Inspector's analysis of whether the proposal would have an unacceptable effect on human health and well-being (IR596-639). For the reasons given at IR596-599, he agrees with the approach set out by the Inspector in IR599.

25. For the reasons given at IR600-610 the Secretary of State agrees with the Inspector's conclusions in respect of the potential effects that the emissions from the development would have on the health of the local community, and further agrees that there would be no conflict with Local Plan policies ENV7 and SOC5 (IR611) in this regard.

26. The Secretary of State has also carefully considered the analysis at IR613-639 in respect of the potential effect that the development would have on the well-being of the local community, including the effect on mental health. He agrees that stress and anxiety are recognised as factors affecting an individual's mental health, and are therefore considerations that fall within the scope of LP policies SOC5 and ENV7 (IR614). He acknowledges that in the light of the evidence considered at IR616-620, the proposed development is perceived as another development being introduced into the area which has already seen more than its fair share of health-affecting industry, and one that has the potential to cause harm to the health and well-being of the local community (IR621). He further acknowledges that this has caused a level of stress and anxiety in the local community (IR621). He agrees with the Inspector that concerns about the effect of 'fracking' activity (albeit this proposal is not for fracking) carry limited weight in this case, and that the matters addressed in IR438-440 should be given no weight (IR622-623).

27. Like the Inspector, the Secretary of State has considered the question of whether the stress and anxiety experienced by the local community is justified. He has taken into account the evidence that has been put forward on this point at IR625-633. However, he does not consider that either perceived past impacts arising from unrelated developments, or the fact that accidents and unexpected incidents do happen, undermines the assumption set out in paragraph 188 of the Framework that pollution control regimes will operate effectively. The Secretary of State has also considered the matters raised at IR562-591, noting that it was agreed that no breach of planning control had occurred (IR573) and that necessary information was before the Council and hence the local community as part of the statutory process of consultation (IR588). He considers that the matters raised are not sufficient to undermine the assumption that the Council's development control processes would work effectively and that the proposal would be delivered in line with the planning permission. In reaching this conclusion he has taken into account the fact that conditions would provide for the establishment of a community

liaison group (IR545-546), and for control of the activity undertaken (IR540-542 and IR544).

28. For the reasons given at IR633-639, the Secretary of State agrees with the Inspector that an unspecified but not insignificant number of individuals will experience stress and anxiety (IR637). He further agrees that the appeal site is embedded in a community that is specifically vulnerable to the adverse health effects that may be caused by stress and anxiety (IR636).
29. Overall the Secretary of State considers that the stress and anxiety felt by the local community is real and understandable, and would have an adverse effect, but considers that it is not justified by the evidence put before this inquiry. He does not consider that the adverse impacts arising from the stress and anxiety associated with this proposal would be so significant as to put the proposal in conflict with LP policies SOC5 and ENV7 in this respect (IR638). However, he considers on the basis of the evidence before the inquiry that these adverse impacts carry moderate weight against the proposal in the particular facts and circumstances of this case.

#### *Other matters*

30. The Inspector considers whether the proposed development would have an unacceptable effect on landscape, visual or residential amenity (in so far as it relates to air quality) at IR640-645. For the reasons given the Secretary of State agrees that in the landscape and visual context, there would be no harm caused due to the short duration of the proposal, and no conflict with Local Plan policy ENV7 in this regard or with Local Plan policy ENV2 (IR644). For the reasons given at IR646-657 he further agrees with the Inspector that there would be no policy conflict in respect of the matters of noise (subject to condition), water and highways (IR650, IR657 and IR656 respectively). Air quality has been dealt with at paragraph 25 above. He further agrees for the reasons given at IR658 that (subject to condition) there would be no conflict with LP policies ENV7 or ENV4 in respect of biodiversity and the natural environment.
31. For the reasons given at IR747-759 the Secretary of State agrees the proposal would not conflict with Local Plan policy STRAT4 in respect of the regeneration of Ellesmere Port (IR760). The Secretary of State further agrees with the Inspector's conclusions in respect of IR761-768. Additionally, he further considers, for the reasons given at IR770-771, that the reuse of the existing well pad and other infrastructure would represent a good use of existing development, attracting limited weight, and that limited weight should be afforded to the short term economic benefits.
32. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. In this regard he notes there are two relevant designations for the purposes of HRA located within 2km of the proposed development. The relevant sites are the Mersey Estuary Special Protection Area (SPA) and the Mersey Estuary Ramsar Site (IR Annex D paragraph 5). However, he also considers that an Appropriate Assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) is only required should the appeal be allowed. While the Secretary of State agrees with the assessment and findings in Annex D of the IR, he does, however, not consider that carrying out an Appropriate Assessment would overcome his reasons for dismissing this appeal, and has therefore not proceeded to make an Appropriate Assessment in his role as the Competent Authority on this matter.

## **Planning conditions**

33. The Secretary of State has given consideration to the Inspector's analysis at IR539-560, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

## **Planning balance and overall conclusion**

34. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the LP policies discussed above, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

35. In the light of the evidence put forward in this case, and for the reasons set out above, the Secretary of State attaches moderate weight to national policy support for the benefits of shale gas exploration in this case. The short-term economic benefits and reuse of the existing well site each attract limited weight.

36. The Secretary of State considers that the unmitigated proportion of the GHG emissions carries significant weight against the proposal, and the conflict with paragraph 152 of the Framework as a whole also carries moderate weight. He further considers that the harm arising from the adverse effects of stress and anxiety on the local community in the particular circumstances of this case carries moderate weight.

37. Overall the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan – i.e. a refusal of permission.

38. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

## **Formal decision**

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for mobilisation of well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension at the Ellesmere Port Wellsite, Portside North, Ellesmere Port in accordance with application ref 17/03213/MIN, dated 20 July 2017.

## **Right to challenge the decision**

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

41. A copy of this letter has been sent to Cheshire West and Chester Council and Frack Free Ellesmere Porton & Upton, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*M A Hale*

Decision officer

*This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf*

## **Annex A Schedule of representations**

### **SCHEDULE OF REPRESENTATIONS**

#### **General representations**

<b>Party</b>	<b>Date</b>
C Moore	2 Jan 2020
R N Francis	23 Jan 2020
A Cartmell	23 Jan 2020
R J Tacon	11 March 2020
A Cockcroft	12 March 2020
Renie	11 April 2021
J Copeman	10 April 2020
Justin Madders MP	4 February 2020
Justin Madders MP	9 April 2021
Justin Madders MP	10 September 2021



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

by **Brian Cook BA (Hons) DipTP MRTPI**  
an Inspector appointed by the Secretary of State

Date: 6 January 2020

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THE TOWN AND COUNTRY PLANNING ACT 1990

CESHIRE WEST AND CHESTER COUNCIL

APPEAL BY

ISLAND GAS LIMITED

Inquiry Opened on 15 January 2019

Ellesmere Port Wellsite, Portside One, Portside North, Ellesmere Port, Cheshire CH65 2HQ

File Ref(s): APP/A0665/W/18/3207952

**File Ref: APP/A0665/W/18/3207952**  
**Ellesmere Port Wellsite, Portside One, Portside North, Ellesmere Port, Cheshire CH65 2HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Island Gas Limited against the decision of Cheshire West & Chester Council.
- The application Ref 17/03213/MIN, dated 20 July 2017, was refused by notice dated 26 January 2018.
- *The development proposed is mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension at the Ellesmere Port Wellsite, Portside North, Ellesmere Port.*

**Summary of Recommendation: The appeal be dismissed.**

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**Procedural Matters**

1. Throughout this report where Documents listed in Annex A are referred to the Document number is given in (). Figures in [] are cross references to other paragraphs in the report. Footnotes are limited to legislation, authorities and the like referred to by a party but not included in Annex A.
2. At the Inquiry applications for costs were made by the appellant against the Council and by Frack Free Ellesmere Port & Upton (FFEP&U) against the appellant. These applications are the subject of separate Reports.
3. FFEP&U were granted 'Rule 6' status and appeared as a main party at the Inquiry.
4. The Inquiry sat for 12 days between 15 January and 6 March 2019. In accordance with Rule 17 (2)<sup>1</sup> and with the agreement of the parties an accompanied site visit was not held. In my judgement given the main considerations (see below), such a visit would have been of no assistance. I carried out two separate unaccompanied visits to the area, one the day before the Inquiry opened and another once all the evidence had been heard.
5. Document A1 sets out an alternative approach put forward by the appellant to address an issue that had been raised by the Health and Safety Executive (HSE). In short, the proposal is to relocate two tool stores, which are regarded by HSE as habitable buildings, outwith the relevant safeguarding zone. The purpose of the alternative layout is to obviate the need to notify the Manchester Ship Canal Company Limited of the times of particular events. The appellant carried out a public consultation on what the appellant considered to be a non-material amendment to the submitted application.
6. Responses were received from HSE and Peel Ports Group and these have been taken into account. In the absence of any objection from any party, I have had regard to Document A1 in making the recommendation.
7. The Inquiry was originally expected to last for 6 days. In those circumstances a pre-Inquiry meeting shall be held only if the Inspector considers one to be

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<sup>1</sup> The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 SI 2000 No. 1625

- necessary. In this case, it was not possible to hold one in any event in the timescale. As is normal in these circumstances, and indeed encouraged by both the Planning Inspectorate and the Planning Bar, I issued a detailed pre-Inquiry note.
8. The purpose of such notes is two-fold. First, it sets out an Inspector's initial understanding of the evidence so far submitted and enables the parties to clarify any points where that is requested by the Inspector or to correct any misunderstandings that the Inspector may have gained. Second, it sets out what seem to the Inspector at that stage to be the main matters on which the Inquiry should focus in the interests of effective use of Inquiry time. This is especially important where a group such as FFEP&U, who may well have limited resources, are playing a full part in the Inquiry.
  9. In opening the Council's case, Mr Griffiths raised two points in respect of the pre-Inquiry note. The first concerned what he termed a perception of, rather than an actual, pre-determination of the case arising from some of the content while the second concerned a conflict of interest arising from paragraph 49 of the note. Mr Cannock for the appellant saw no issue arising from either of these matters and indeed returned to address this fully in his closing submissions. Ms Dehon for FFEP&U expressed a 'neutral' view. When pressed as to what she meant by that she confirmed that FFEP&U made no submissions as to either concern but that standing in the shoes of the Council she '*might have shared their sense of alarm*'. As a matter of record, neither the Council nor FFEP&U asked me to recuse myself.
  10. I saw no reason to do so and the Inquiry continued.
  11. During the Inquiry, the National Planning Policy Framework (Framework) was re-issued. The limited changes in the February 2019 version are not material to my consideration of this appeal.
  12. Literally while Mr Cannock was giving his closing submissions on 6 March a judgement<sup>2</sup> was handed down. This is highly material to the determination of this appeal. The judgement concluded by giving the parties to those proceedings an unspecified time to consider the implications of it and either agree, or make further submissions in relation to, the appropriate relief. The parties to this appeal were given sequentially until the 8 April to make any submissions that they considered appropriate in the light of the judgement. Those submissions are Documents C11, A19 and R19 and have been taken into account in preparing this report.
  13. It was known that Mr Griffiths would not be available on 6 March to respond on behalf of the Council to the appellant's application for costs. It was therefore agreed that the application, the response and any further response from the appellant would be in writing within the same 8 April timeframe.
  14. In the light of all these factors the Inquiry was formally closed in writing on 8 April 2019.
  15. Following the close of the Inquiry a number of other material documents were published. These are the report *Net Zero: The UK's contribution to stopping*

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<sup>2</sup> Document R18

*global warming*: Committee on Climate Change (CCC) May 2019 (Document PI1); *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin): Sealed Order and Judge's approved note (Document PI5); Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (Document PI9); The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (Document PI13); the adopted Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies on 18 July 2019 (Document PI18) and the Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy issued on 4 November 2019 (Document PI19). The respective responses by each party are listed in Annex A and have been taken into account.

16. Finally, on 27 June 2019 in exercise of his powers under s79 of the principal Act, the appeal was recovered by the then Secretary of State for his own determination. The reason given was that the appeal involves proposals for exploring and developing shale gas which amount to proposals for development of major importance having more than local significance. As a matter of fact, the proposal is for exploration only, not 'developing' shale gas.

### **The Site and Surroundings**

17. The appeal site lies about 1.85km to the north west of the town centre of Ellesmere Port, some 4km to the west of the Stanlow oil refinery complex and just 0.2km south of the Manchester Ship Canal. The Mersey Estuary Special Area of Conservation, Site of Special Scientific Interest and Ramsar site is approximately 280m to the north east.
18. The appeal site itself is enclosed by a solid fence over 2m in height. It comprises an existing exploration wellsite compound (the EP-1 well) which is currently not in use. How this came into being is set out more fully under Planning History below. The site has a hardcore surface overlaying an impermeable membrane and containment system with an earth bund to the north west perimeter and concrete hardstanding in the centre. A surface water and containment system were installed as part of the wellsite construction.
19. More widely, the appeal site is located within an industrial area close to junction 8 of the M53 motorway from which it is generally accessed before being immediately accessed via a private road. There are now business premises to all sides of the site. On the other side of the motorway are yet more business parks and residential development. A new residential development has been built on land very close to the motorway and, at the time of my site visits, remained under construction. The properties nearest to the site have been completed and are roughly 350m from the EP-1 well.

### **Planning Policy**

#### ***The adopted development plan***

20. This includes the Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP) (CD5.1), the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (AELP) (PI18) and the Cheshire Replacement Minerals Local Plan (MLP) (CD5.3). When the Inquiry sat and up to July 2019 it also included the saved policies of the Ellesmere Port and Neston Borough Local

Plan (BLP) (CD5.2). These policies are now replaced by the AELP but are still set out below in order that the cases put by the parties can be followed.

*Cheshire West and Chester Local Plan (Part One) Strategic Policies*

21. LP policy STRAT1 addresses sustainable development. It states that *'proposals that are in accordance with relevant policies in the LP and support the following sustainable development principles will be approved without delay unless material considerations indicate otherwise.'* Eight sustainable development principles are then listed. The first, *mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation* forms the basis of the Council's sole reason for refusing to grant planning permission. LP paragraph 5.19 confirms that the policy provides a framework of locally specific sustainability principles that provide the basis upon which other policies in the development plan as a whole will shape development in the borough over the plan period.
22. The potential for Ellesmere Port to deliver substantial economic growth through the availability of significant sites for industrial, manufacturing and distribution purposes is recognised through LP policy STRAT4. In addition, at least a further 4,800 dwellings are planned to complement the town's role as a key employment location. Three key sites are identified as having considerable potential to achieve future economic growth. The appeal site does not fall within the boundaries of any of them. Reference is made in the explanatory text to the Ellesmere Port Vision and Strategic Regeneration Framework (SRF) (EP19). This document has no statutory planning status although it is a material consideration.
23. The LP policy of most direct relevance to the appeal proposal is LP policy ENV7. This is entitled *'alternative energy supplies'* and explicitly includes within its scope proposals to exploit the borough's alternative hydrocarbon resources. It is in two parts. First it is supportive of renewable and low carbon proposals that would have no unacceptable impacts on the bulleted criteria, some of which are also the subject of other LP policies. Second, as set out in LP paragraph 8.67, it permits proposals to exploit the borough's alternative hydrocarbon resources (which are neither renewable nor low carbon) where any adverse impacts of doing so can be managed. It is confirmed that such proposals will be supported in accordance with the criteria listed in the policy itself and all other policies within the LP.
24. The criteria referred to are landscape, visual or residential amenity; noise, air, water, highways or health; biodiversity, the natural or historic environment; and radar, telecommunications or the safety of aircraft operations. For a proposal to be supported there must be no unacceptable impacts on any of these matters. It is common ground that the appeal proposal would have no impact on the historic environment, radar, telecommunications or the safety of aircraft operations.
25. Some of the other criteria are subject of further LP policies.
26. Health and well-being are addressed by LP policy SOC5. This is in two parts. First, in order to meet the health and well-being needs of the borough's residents, proposals that provide, support, consider or promote one or more of the seven elements listed will be supported. As the appeal proposal does not aim to provide such elements, it is only the second part of the policy that is relevant.

This confirms that development that would give rise to significant adverse impacts on health and quality of life (eg. soil, noise, water, air or light pollution and land stability, etc.) including residential amenity, will not be allowed. This is therefore relevant to elements of both the first and second criteria within LP policy ENV7 set out above.

27. The protection of water quality is the subject of LP policy ENV1; landscape character and distinctiveness are addressed by LP policy ENV2; while biodiversity and the natural environment are protected by LP policy ENV4.
28. FFEP&U refer to LP policy ENV9, minerals supply and safeguarding. However, the preamble to the policy makes clear that it relates to the provision of an adequate, steady and sustainable supply of sand, gravel, salt and brine in the context of the sub-national guidelines for aggregate land-won sand and gravel before setting out how this will be achieved. The policy is not therefore relevant to this appeal proposal.

#### *Ellesmere Port and Neston Borough Local Plan*

29. The appeal site is included within the boundaries of the 'Portside, Ellesmere Port' allocation in BLP policy EMP1. Proposals for particular sites will be judged against four criteria to assess their suitability. These include no unacceptable detrimental impacts on sensitive locations in the vicinity (examples are listed) arising from the appearance of the development or its potential for pollution or noise generation; no unacceptable detracting from visual amenity; satisfactory accommodation of traffic generated on the surrounding highway network; and that the appearance and type of development is consistent with the surrounding development where appropriate.
30. BLP policy ENV11 addresses the visual appearance of the M53/Shropshire Union Canal Corridor within which the appeal site lies. The explanatory text states that the Council is seeking to upgrade the visual appearance of the Corridor as a key element of the development of the Mersey Forest in Ellesmere Port. Development proposals that do not secure a positive net environmental improvement will not be permitted.

#### *Cheshire Replacement Minerals Local Plan*

31. Of those saved policies that are relevant to the appeal proposal, MLP policy 9 sets out an extensive list of topics that should be addressed in planning applications for exploration for and/or winning and working of minerals and MLP policy 12 sets out the matters that the Council will seek to control by conditions. Respectively, MLP policy 15 seeks to avoid any unacceptable impact on the landscape, policy 16 addresses the impacts of any associated plant and machinery while MLP policy 17 requires appropriate screening of the development from public view and the avoidance of an unacceptable impact on the visual amenities of sensitive properties. MLP policy 37 sets out the hours of operation that will, other than in specific circumstances warranting an exception, be permitted.

#### *Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies*

32. At the date when the Inquiry was closed the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (ELP) (CD5.4) had reached the stage where the Council was working on the detailed wording of each of the

main modifications necessary following the hearing sessions of the local plan examination. At that date, public consultation on the proposed main modifications had not taken place and the appointed Inspector had not reported on the examination. On 18 July 2019 the ELP was adopted (AELP) (PI18) was adopted; it is those plan policies that are referred to below.

33. AELP policy EP1 supports development proposals that are in line with relevant development plan policies and consistent with the principles set out in the policy which is aimed at delivering LP policy STRAT4. Principle 5 refers to the regeneration of previously developed land for a range of uses, particularly to support new housing, while principle 7 requires that development does not give rise to significant adverse impact on air quality in line with AELP policy DM31. That policy references back to LP policy SOC5.
34. AELP policy EP2 allocates specific sites in accordance with LP policy STRAT4; the appeal site is not allocated. This policy replaces BLP policy EMP1.
35. AELP policy M3 addresses proposals for mineral development generally while AELP policy M4 deals specifically with proposals for all stages of oil and gas development. There are general criteria to be met and specific ones for each of the three stages (exploration, appraisal and production). Both policies reference LP policies ENV7 and SOC5 in particular. While the criteria are developed in more detail in both AELP policies, the essence of the requirements set out in the primary LP policy remains the same.
36. The AELP includes many development management policies many of which are of some relevance although each derives at least in part from a LP policy and while the detail may be enhanced, the substance is the same. Particular reference is made by FFEP&U to AELP policy DM33 which addresses new and extensions to hazardous installations and AELP policy DM43 which addresses water quality, supply and treatment.

### **Supplementary planning policy**

37. In May 2017 the Council adopted a Supplementary Planning Document: Oil and Gas Exploration, Production and Distribution (SPD) (CD5.5). This sets out the approach that the Council will take when dealing with applications and explains its expectations of prospective developers. In section 5 the wide range of key issues that are to be satisfactorily addressed are set out. Particularly relevant to this appeal proposal are noise, air quality, surface and ground water protection, flaring, landscape and visual impacts, traffic and transport, nature conservation, economic impact and health impact.

### **Planning History**

38. The Ellesmere Port wellsite was constructed in 2011 under a planning permission granted on 15 January 2010. The permission (CD1.1) allows the *drilling of two exploratory boreholes for coal bed methane appraisal and production. The installation of wells, production and power generating facilities and the extraction of coal bed methane and the subsequent restoration of the site.* One of the approved drawings entitled Indicative Well Profile shows a well with a total vertical depth of circa 900m. The well itself was drilled in 2014. Prior to this an exhibition was held to explain the proposal to the public and an information brochure was produced (CD1.8).

## The Proposals

39. The proposal would entail re-entering the existing EP-1 well to carry out flow testing to determine whether hydrocarbon production can be established from the Pentre Chert formation. No drilling, deepening of EP-1 or any hydraulic fracturing (or other stimulation) is proposed. The proposal would comprise four stages as follows.
40. Stage 1 would be the mobilisation of the well test equipment including the workover rig (up to 33m in height) and the installation of supporting infrastructure. This would include: office accommodation; fluid storage tanks; choke manifold; bath heater; three-phase test separator and shrouded flare (up to 12.2m high); and mobile lighting columns (up to 9m high). This stage would take 7 days to complete on the basis of 12 hour working days from 07.00 to 19.00 hours.
41. Well completion and drill stem test (DST) would comprise stage 2. This would involve the installation of down-hole equipment using the workover rig in order to allow hydrocarbons to flow from the Pentre Chert formation into the well. As set out briefly above, the purpose is to obtain a greater understanding of the formation properties and to determine if the formations are capable of producing commercial quantities of hydrocarbons.
42. A DST is a standard oilfield practice short duration test to provide an initial analysis of hydrocarbon composition and flow characteristics. If it is concluded that composition, flow rates and pressures are favourable for further analysis a longer term testing programme (extended well test (EWT)) would be undertaken.
43. To establish connectivity between the Pentre Chert formation and the wellbore, perforations would be made through the wellbore casing and cement surrounding the casing. Once debris had been circulated to the surface and the Pentre Chert formation isolated from the remaining section of the wellbore above that formation, the target formation would then be 'flowed', meaning that gas present in the formation would be allowed to flow to the surface.
44. To re-establish the natural flow of the gas in the formation a dilute acid (most commonly hydrochloric acid) at 15% concentration with water would be applied to the near wellbore through perforations. The dilute acid would dissolve calcitic sediments trapped within the formation to enable the natural flow of natural gas. The process, known as 'acid wash' would be undertaken to clean out the natural fracture network and re-instate natural permeability. Pressure may need to be applied to the acid in order for it to penetrate debris from previous drilling operations (known as 'acid squeeze').
45. Having established a flow of natural gas, fluids from the wellbore would be brought to the surface. Most would be separated out and stored for sale or safe disposal off-site as appropriate. Any natural gas would be diverted to a shrouded ground flare onsite for flaring.
46. Stage 2 would be expected to last for 14 days within a 28 day period. The workover rig and associated equipment would then be removed over a further 7 day period. If insufficient gas were extracted to justify further testing, the well would be suspended. However, if successful the EWT would commence.

47. The EWT represents stage 3 and amounts to a more comprehensive analysis of the flow characteristics of the hydrocarbons over an extended period using much of the DST equipment. Once flow rates and pressure of the natural gas have stabilised the shrouded ground flare would be replaced by an 8.2m high enclosed ground flare. This stage would be expected to last for 60 days on the basis of 24 hour working.
48. Well suspension and demobilisation together comprise stage 4. Well suspension would involve setting a bridge plug to isolate the hydrocarbon bearing formation and the installation of a circulating string. On the basis of 24 hour working this would take 2 days. This would follow the completion of either an unsuccessful DST or the EWT stage. Demobilisation would see the removal of all remaining equipment over a 7 day period working 12 hour days.
49. Final restoration of the site would be in accordance with the previously approved scheme (CD2.27).

### **The cases made**

50. For the reasons set out above [12 and 15] the cases made by the main parties were presented in several stages. First, following completion of the oral evidence, each advocate made their closing submissions at the final hearing sessions of the Inquiry. Second, although responses to the *Stephenson* judgement were made in sequence, those further legal submissions in response to the publication of the various material documents referred to [15] were requested by the same date for all parties. In some cases, while not invited, rebuttal comment was made on another party's earlier submissions in respect of another of the documents.
51. In order to reflect how each party considered that their own and the other cases were affected by the content of the various newly available documents, the cases are set out below as they were made at each stage. Inevitably, some of the points made in one submission are superseded by other, later, points prompted by the publication of subsequent documents on which comment was invited. Nevertheless, the submissions are recorded as they were made at the time to present the Secretary of State with a complete picture of the way the evidence has evolved over the period during which the appeal has been and is still being considered. However, by the time responses PI20, PI21 and PI22 were made, there was a good deal of repetition of the central points of the respective cases. In the interests of brevity, these points are not set out yet again under those headings.
52. Included in the cases are references to ELP policies, most notably in the discussion of the regeneration of the area and LP policy STRAT4. These are retained but my conclusions are set out in the context of the relevant AELP policies which are the subject of the further submissions PI20, PI21 and PI22.
53. The cases are set out below in the order in which the evidence was heard rather than the order in which the closing submissions were given; at that point FFEP&U were followed by the Council, then the appellant.
54. All three parties made detailed submissions on the case law relating to the relationship between the planning and the regulatory regimes. These are set out in the closing submissions (FFEP&U, R21 paragraphs 75 to 66; the Council, C12

paragraphs 11 to 16; the appellant, A21 paragraphs 73 to 75). The summary case law points made do not differ in substance and are not therefore set out below. Instead, the points that each consider of relevance to the determination of this appeal are set out.

55. It might also be noted that it is the appellant's submission that in this section of the Council's closing submissions [63 to 65] the appellant's case has been mischaracterised. Indeed, the appellant says that it has simply not asserted that the grant of a Permit can be construed as an approval of a planning permission in accordance with LP policy STRAT1 [339].
56. Finally, Ms Dehon was unable to be present for the discussion on the conditions that should be imposed in the event of planning permission being granted. FFEP&U's position on conditions and the legal basis for them is set out in the closing submissions (R21 paragraphs 111 to 125). Those paragraphs are not summarised under the case for FFEP&U below but all of the points put have been taken into account in the report on conditions [539 to 560].

## **The Case for Cheshire West and Chester Council**

### ***Closing submissions***

57. The case put by the Council is set out in the closing submissions of Mr Griffiths (C12). The text can be read in full but numerous additional points were made as the submissions were read out. The following summarises both the written text and the additional points.

#### *Introduction*

58. This Inquiry is about the effects of shale gas exploration on climate change. In cross examination Mr Adams agreed that the description by the Institute of Public Policy Research that climate change is a '*crisis facing up to the age of environmental breakdown*' (C4) was the case not only for his industry but generally in the field of human activities.
59. The Institute concludes that '*mainstream political and policy debates failed to recognise that human impacts on the environment have reached a critical stage, potentially eroding the conditions upon which socioeconomic stability is possible.*' Its view is that policy makers and politicians are not adequately recognising, let alone responding to, the catastrophic threat posed by environmental change.
60. The Council's central submission is that the planning system, applying normal land use principles, should recognise this threat by refusing to grant planning permission for the proposed exploration for shale gas development.
61. In the Council's submission the decision maker needs to consider and decide on various matters of law and fact which arise out of the refusal to grant planning permission for the appellant's exploration activities. Certain preliminary but fundamental matters of approach need to be clarified and considered. These are:
- i) the extent to which, if at all, the Council has to take into account the grant of an Environmental Permit to the appellant for carrying out certain operations which form part of the exploration activities.
  - ii) the relationship between central government policy and the policies of the adopted Local Plan.

- iii) the status of the Paris Agreement.
- iv) the relevance of local public opinion to the decision making process.  
Can the Secretary of State ignore local public opinion on the basis that central government policy is generally supportive of shale gas exploration and production?
- v) the relevance and weight to be attached to scientific evidence which arguably runs counter to central government policy and guidance currently in existence.

62. These are addressed in the following.

*Environmental permits*

63. Blurring the distinction between regulatory and planning matters can lead to errors of law, irrational judgement and implausible reasoning. The regulatory body looks at operations from a different perspective and vantage point to the planning authority. Even though what is proposed may be permissible in regulatory terms, that does not amount to a land use finding of acceptability in planning terms.
64. This can be illustrated by the fact that an Environmental Permit relating to the flaring of emissions is wholly different from a grant of planning permission for the exploration of shale gas. The land use considerations of granting a planning permission for shale gas development are totally distinguishable from the granting of an Environmental Permit dealing with emissions of natural gas including methane as a consequence of the development being carried out. That is why the grant of an Environmental Permit cannot be construed as an approval of a planning permission which is in accordance with LP policy STRAT1.
65. The matters within LP policy STRAT1 [21] have to be evaluated as a matter of judgement by the Council as planning authority. The grant of an Environmental Permit follows from an assessment made by the Environment Agency (EA) of factors relevant to the grant of the Permit in terms of operational matters. It does not amount to a finding that the conversion of methane into carbon dioxide as part of the process of exploration is sustainable development and does not adversely have an impact on climate change. If it did, that would mean that the EA was the sole and determinative arbiter of what was in this case the sole reason for refusing planning permission. Furthermore, the levels of emissions compatible with climate change are matters solely vested in the local planning authority which must exercise judgement in accordance with the development plan and all other material considerations.

*The appellant's case*

66. The appellant has not lead any scientific evidence to rebut that of the Council and FFEP&U. The response by Mr Adams was that it was not needed as government's policy supported it and an Environmental Permit had been granted and the mitigation proposal had been accepted by the EA as Best Available Technique (BAT) (in fact this is not correct as to the DST stage). But in any event, what the appellant has completely misunderstood is that the use of BAT is not the yardstick of what is acceptable in planning terms.
67. Witnesses for the appellant accepted that the regulatory regime did not deal with the impact of the development after the regulatory controls had been

- implemented. The issue does not turn therefore on whether flaring accorded with BAT but on whether, notwithstanding that it may be, the effect of methane emissions into the atmosphere would have a significantly adverse effect on climate change. The appellant has simply not grappled with that.
68. Indeed, it seems now to be common ground between the parties from the estimates set out in the agreed tables (C6). The agreed range of emissions that may result from the exploration stage is critical and indeed determinative evidence for a number of reasons.
69. On all the estimates it is clear that there will be the release of methane emissions into the atmosphere which, when converted to CO<sub>2</sub> by flaring, will have a deleterious effect on climate change.
70. The appellant accepts by way of admission that the EA had before it incorrect information as to the level of emissions that would be generated by the development. This is a highly material fact. Mr Foster in cross examination suggested that the appellant was to go back to the EA to correct this error. But for the purpose of this Inquiry, this is too late. To say that the appellant would go back to the EA after an Inquiry is over is obviously a recognition of a major deficiency in the appellant's case, especially bearing in mind the great weight it attached to the EA's grant of the permit and its failure to object to the proposed development.
71. The reality is that the appellant's Environmental Risk Assessment (CD1.9g) contained mistaken evidence as to the emissions that will result from the exploration stage. The EA would, therefore have been working on the premise that these emissions were low and could be discounted.
72. They would have been looking at the matter in the way it was set out by Mr Foster (APP/JF/2 paragraph 8.9) where he says;
- Paragraph 11 of CW&CC's SSoC (CD4.4) sets out paragraph 49 of the 2016 CCC (CD8.1) which makes reference to emissions from exploration being generally small but it should not be taken as a given, especially for extended well tests. It states that appropriate mitigation techniques from exploration are generally small, the thrust of the matter is whether 'appropriate mitigation techniques' have been employed 'where practical'.*
73. The EA therefore granted the Permit on the basis of a false premise. This fact is at the heart of the Council's case. This flaw only came to light as a result of the research by the Council's witnesses. It is a micro level factor which requires the decision maker to reach his determination not on the broader contextual basis of shale gas development and its impact on climate change but on the basis of empirical evidence which establishes a fundamental flaw in the appellant's case.
74. It was only in the appellant's response to Dr Balcombe's paper (C3) that it was acknowledged '*there is an error in the GWP calculation, having used a default value emission for production gas flaring, rather than the default values for well testing*' (paragraph 2.2 A4).
75. In evidence now is a range of potential GHG emissions (C6). Whichever range is adopted the conclusion is as set out (C6 paragraph 13):
- It remains clear that the climate impacts associated with well testing are materially large, as well as being highly uncertain. The differences between*

*emissions estimated by IGas in the environmental risk assessment and those presented here is also large and shows that emissions have up to now been mistakenly underestimated.*

76. Dr Balcombe concludes (C3 paragraph 6):

*The effect on the climate of these additional emissions that are not currently accounted for is equivalent to 0.7 – 5.4 kt CO<sub>2</sub>eq. using a global warming potential (GWP) of 36. This is equivalent to a single modern passenger car (121 gCO<sub>2</sub>/km) travelling up to 54 million km, equivalent to driving around the Earth's circumference 1,111 times, or driving to the moon and back 58 times.*

77. This is simply the effect of additional emissions not currently accounted for. The impact of total emissions is significantly greater (C3 and C6). Total emissions agreed between parties equate to 4 – 10.8 kt CO<sub>2</sub>eq. using a GWP factor of 36, 3.3 – 7.6 using a GWP factor of 21 and 6.1 – 21.3 using a factor of 87.

78. These have been placed in context (C6 paragraph 5) and are not disputed by the appellant:

*To place these values in context, the estimated total annual GHG emissions from industry and commercial activities within the Cheshire West and Chester local authority in 2016 was 1,099 ktCO<sub>2</sub>. Total GHG emissions are up to 1% of annual regional industrial emissions using a GWP of 36, or 2% with a GWP of 87. It is the equivalent of adding 7,100 new cars on the road per year (13,000 with a GWP of 87). This is equivalent to a single modern passenger car (121 gCO<sub>2</sub>/km) travelling up to 89 million km, equivalent to driving around the Earth's circumference 2,200 times, or driving to the moon and back 116 times.*

79. Dr Balcombe characterises these emissions as 'large' and notes that it is not just flaring but that methane emissions are also likely to occur via vents and fugitive emissions not previously accounted for (C6 paragraph 8). In his expert view there is also a risk of lower efficiency flaring due to uncertainty of both gas flow rate and the gas composition (C6 paragraph 8).

80. As Dr Balcombe explains the use of different GWP values has a large impact on results. Several GWP values for methane have been used, some of which are significantly out-of-date. The value of 21 used by the appellant is based on a 13 year-old UN Intergovernmental Panel on Climate Change (IPCC) third assessment report. This value has been updated twice to 36 in the IPCC fifth assessment report. This represents the average climate forcing of methane over 100 years so as to make the climate change comparison linked to CO<sub>2</sub> which remains in the atmosphere for hundreds of years.

81. FFEP&U also present a higher value of 87 which is based on the most recent IPCC report. This reflects the significant additional harm caused by methane in the short term (as it is a short-lived climate pollutant) as well as being a long-term climate change factor (C6 paragraph 12).

82. What is undisputed by the appellant is that the EA in acting pursuant to a flawed Environmental Risk Assessment failed to take into account highly relevant material as to the likely extent of emissions attributable to the proposed development.

83. Dr Balcombe concludes (C6 paragraph 13):

*It remains clear that the climate impacts associated with well testing are materially large, as well as being highly uncertain. The difference between*

*emissions estimated by IGas in the environmental risk assessment and those presented here is also large and shows that emissions have up to now been mistakenly underestimated.*

84. This conclusion is supported by the distinguished scientists called by FFEP&U. It has not been rebutted by the appellant and, indeed, there has been no attempt to do so.
85. In fairness none of the witnesses called by the appellant claimed to be qualified to express an opinion on these matters. Ms Hawkins agreed in cross examination that the EA did not set standards for climate change and were not making determinations in relation to climate change in the grant of Environmental Permits. The EA was not looking at the impact of emissions that remained after the adoption of BAT.
86. It was clear from Mr Foster's evidence that he and the whole of the appellant team was proceeding on the basis that the emissions from the exploration stage are 'generally small'. That was the context in which the appropriate mitigation techniques were considered both by the appellant and the EA. Neither assessed the necessary mitigation techniques or their practicality against a backdrop of emissions being high and uncertain.
87. We now know that the EA and the Council officers were proceeding on the basis of a flawed premise (that emissions were low). Members were not aware of the relevant scientific facts and the discrepancy between assumption and actuality as to the exploration stage in terms of emissions. They cannot be criticised for failing to take into account something that they did not know about. It cannot be excluded that limited resources did not allow them to obtain their own scientific evidence.
88. Circumstances have now changed with the evidence that has been put before the Inquiry. This shows Members' intuitive view to have been correct.
89. Mr Adams agreed in cross examination that the EA decision to issue the permit is not conclusive and determinative in this case. He also agreed that scientific evidence is relevant to the decision maker's consideration of the issues and that the evidence of Drs Balcombe and Broderick in particular was relevant. He also agreed that the Paris Agreement was a material consideration.
90. What in the Council's submission is the syllogistic and illogical nature of the appellant's case is illustrated by what Mr Adams accepted in cross examination are essentially non sequiturs. He accepted that the flawed reasoning in this part of his evidence could not stand.
91. The first is that because government's position is that exploration for domestic supplies of gas is of national importance and that therefore great weight should be given to it, it follows that the inevitable land use planning consequences of exploration are accepted (APP/DA/2 paragraph 3.55).
92. As a matter of planning approach it does not follow at all; that is simply analytically wrong. In other words you cannot jump to the conclusion that planning permission should be granted simply on the basis that government policy generally supports shale gas development and that the environmental impact of that development (including climate change) is accepted.

93. As a matter of planning guidance, there should be a balancing exercise in which some considerations, like the development plan, are given great weight as a matter of law with others being material because they are relevant to the impact of the development on the use of land.
94. In the Council's submission what has to be looked at is the relationship between two potentially conflicting matters of national importance. By way of analogy, if a shale gas proposal was to be located within a national park any national interest that there may be in the development of the shale gas industry would have to be balanced against another public interest, namely, the protection of the national park as laid down in the statute. The balancing of two national interests is a difficult and complex exercise but it is not one that can be circumvented by attaching greater weight to one national interest from the weight you attach to another national interest.
95. The appellant's case is that overriding weight should be attached to shale gas development ignoring the fact that protection of the environment from climate change is, itself, a national interest recognised both nationally and internationally by the Climate Change Act 2008, the Paris Agreement and the national energy policy statement of May 2018.
96. The second is the reasoning drawn from government intentions to treat certain shale exploration development as permitted development (APP/DA/2 paragraph 3.42). In cross examination he rightly accepted that the potentiality of exploratory development being considered as permitted development was not, even if factually correct, a matter which coupled with the granting of the necessary relevant consents from the regulators resulted in the conclusion that shale gas development was acceptable to government in terms of its environmental effects. It is this type of simplistic reasoning which results in superficially attractive arguments being adopted at a cost to the environment that future generations will condemn.
97. As has been pointed out, and the Council adopts this as part of the submissions, *'there is a contradiction between the warnings of environmental scientists and the actions of politicians'* (C4). It is that apparent contradiction with which this Inquiry (and now the Secretary of State) has to grapple. It is not eradicated by regarding government policy on shale gas development as the indicator of government's policy on climate change. The two issues should not be conflated (which is what the appellant has sought to persuade the Inspector to do). The conflation of issues is invariably the hallmark of irrationality and implausibility.

#### *Climate change as a national interest*

98. Section 10(2)(b) of the Climate Change Act 2008 is set out in full (C12 paragraph 49). At the forefront of the matters to be taken into account by the CCC are (a) scientific knowledge about climate change and (b) technology relevant to climate change. Also relevant are (g) differences in circumstances between the four UK countries and (h) circumstances at European and international level.
99. It is the Council's submission that these matters must also be taken into account in reaching a decision on this appeal. As a matter of law that must mean they are not only material considerations to be taken into account in the matter of a consideration of a planning application, but their importance is enshrined in statute and accordingly great weight must be attached to them by the decision

maker in circumstances where climate change is relied upon as a reason for refusal.

100. Section 10(2) of the Climate Change Act 2008 specifically incorporates as matters to be taken into account at (h) circumstances at European and international level. That, in the Council's submission, incorporates both the Paris Agreement and Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (15 January 2008). In that sense the factors are legally binding as a material consideration on the decision maker when considering an appeal of this kind. They are considerations of a normative form and are binding. The Paris Agreement is a legal instrument whose provisions are legally binding on the UK government, it having been ratified as a treaty in November 2016. In our submission, the legal character of a norm differs from whether the norm is justiciable. The legally binding character of the norm does not depend on whether there is any court or tribunal with jurisdiction to apply it. Furthermore, the concept of a legally binding character is distinct from enforcement. As with justiciability, enforcement is not a necessary condition for an instrument or norm to be legally binding. If a norm is created through a recognised law-making process then it is legally binding whether or not there are any specific sanctions for violations. That is the case with the Paris Agreement. It creates legal norms within the community of its signatories and binding as norms in domestic circumstances on ratification by government.
101. The most recent national energy policy statement says, among other things, that *'the UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations.'*
102. Reference is made to the work of Prof. A L Hart although that has not been produced in evidence (C12 paragraph 53). From our experience of international legal agreements as opposed to domestic agreements, most international legal agreements provide no mechanism for judicial application and little enforcement. But that does not mean that they do not apply and are not legally binding on the decision maker. We do not accept, therefore, as a matter of law that the Paris Agreement ratified by the UK government is not a weighty material factor in considering the impact of the proposed development. It self-evidently is one. It would be legalistic pedantry if the view was taken that the contents of the agreement should not be given a normative legal force in the consideration of this appeal.

#### *The Paris Agreement (EP46)*

103. This contains some highly relevant provisions which, individually and collectively, show that as far as the UK government is concerned, climate change considerations are to be characterised as a weighty public interest norm which should be applied in the balancing exercise of shale gas development and climate change mitigation.
104. While several matters within the Paris Agreement are set out (C12 paragraph 56), the most important for the purposes of the determination of this appeal is the recognition of the need for an effective and progressive response to the urgent threat of climate change on the basis of the *'best available scientific knowledge'* (emphasis added) Article 4 specifically refers to *'reach global peaking*

*of greenhouse gasses as soon as possible' and to 'undertake rapid reductions thereafter' in 'accordance with best available science.'*

105. Article 6(4) establishes a mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development. Its aim is:
- i) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
  - ii) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;
  - iii) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and
  - iv) To deliver an overall mitigation in global emissions."

106. In the context of the IPCC report (EP10) and various other recent reports (C12 paragraph 57) the importance of the Paris Agreement cannot be underestimated.

*Directive 2008/1/EC (15 January 2008)*

107. This focusses on GHG emissions and other pollutants and is of limited assistance to the determination of this appeal save for the preamble to paragraph 24. Emphasising the importance of public participation in the taking of decisions on these matters it states:

*Effective public participation in the taking of decisions should enable the public to express, and the decision maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.*

108. The Council relies on this to establish the principle that the opinions and concerns of the public in the decision making process are relevant. We see no reason to limit that right of effective public participation to pollutant emissions and not to apply it to the opinions and concerns of the public in relation to climate change. In other words, the concerns of the public are material considerations.

*Mitigation technologies*

109. The most recent energy policy statement (the 2018 Written Ministerial Statement (WMS) - APP/DA/3 Appendix 14) refers to innovative technology such as carbon capture usage and storage as having the potential to decarbonise this (shale gas) energy supply and prolong its role in the future energy mix. It is not saying that *per se* shale gas development is acceptable. It goes on to say:

*Our current import mix via pipelines from Norway and Continental Europe and LNG terminals that can source gas from around the world, provides us with stable and secure supplies. However, we believe that it is right to utilise our domestic gas resource to the maximum extent and exploring further the potential for onshore gas production from shale rock formations in the UK, where it is economically efficient, and where environmental impacts are robustly regulated.*

110. The explicit and clear inference from the final sentence is that when looking at the prospect of shale gas exploration, the environmental impacts of the exploration are factors which have to be taken into account. The premise of the potential for onshore gas production is that it is '*robustly regulated.*'
111. The Council's case, as developed by Dr Balcombe and indeed Dr Broderick, is that currently the best available techniques still do not reduce the methane levels to an acceptable level in climate change terms and the residual impact after complying with the existing regulatory regime is not low but high. Their evidence, especially that of Dr Broderick on this point, reinforces the Secretary of State's focus in this statement on '*potential.*'
112. When referring to the benefits of shale gas potential the statement says:
- We also believe that further development of onshore gas resources has the potential to deliver sustainable economic benefits to the UK economy and for local communities where supplies are located by creating thousands of new jobs directly in extraction, local support services, and the rest of the supply chain. A potential new shale gas exploration and production sector in the shale basins of England could provide a new economic driver. We also see an opportunity to work with industry on innovation to create a "UK model" – the world's most environmentally robust onshore shale gas sector – and to explore opportunities from this model, a core theme of our modern industrial strategy.*
113. However, in essence, the document is saying that the UK model has yet to be created. The indisputable fact is that we have not reached the stage in this country where the adverse environmental impacts of shale gas development have been reduced to an acceptable level in climate terms. Although the technology to achieve that reduction is being looked at, it has not yet been designed and implemented. That is the thrust of the appellant's case - carbon capture usage and storage it says has not been satisfactorily used in practice and that Dr Broderick's evidence in particular where he points to the prospect of using that technology is unrealistic. The appellant does not seem to be able to see that on its own case it is saying, '*we have not yet developed a robust means of limiting the effect of shale gas development on the environment.*' That is why the appellant has constantly said that shale gas development will inevitably cause these emissions – effectively that is the price we have to pay. That approach is entirely inconsistent, the Council submits, with government policy as evidenced by the statement of the two Secretaries of State.
114. It is understood that although there is a need for a shale gas regulator to be appointed, that has not yet happened (C1). The recognised need for one is however indicative of government's concern that current arrangements are complex and not always transparent.
115. The Council does not dispute that government considers shale gas development to be of national importance. However, it seems to the Council that government also makes it very clear that as a matter of principle it should not go ahead irrespective of its impact on the environment.
116. Dr Broderick refers to various negative emissions technologies (CC4 paragraph 20) as still being in development; this mirrors the view of the Secretaries of State set out above. While he supports such technical research and development, there is wide recognition that the efficacy and global rollout of it is highly speculative. His view is there is a '*non-trivial risk of failing to deliver at, or even*

*approaching the scales typically assumed.'* It is that assumption that he says, *'unreasonably lends support for continued and long-term use of gas and oil whilst effectively closing down more challenging but essential debates over supply and demand for fossil fuels, lifestyle changes and deeper penetration of a genuinely decarbonised energy supply'* (CC4 paragraph 20).

117. He advocated *'an urgent programme to phase out existing natural gas and other fossil fuel use across the EU.'* In his view, this was an imperative of any scientifically informed and equity-based policies designed to deliver on the Paris Agreement. His view of mitigation in LP policy STRAT1 was that it should be interpreted in relation to compatibility with achieving the objectives of the Paris Agreement and for this to be the relevant standard (CC4 paragraph 21).
118. It is plain from the minutes of the Committee meeting (CD2.25) that the international legislative context and the Paris Agreement was explained to the Members. In approaching their task, they would therefore have been aware that the Paris Agreement was implemented *'to reflect equity and the principle of common but differentiated responsibilities'* and that developed countries should, *'continue taking the lead by undertaking economy-wide absolute emission targets.'*
119. The Council submits, therefore, that mitigation, in the circumstances of this case and as relied upon by the Council in its reason for refusal, has two equally applicable connotations. Firstly, mitigation in the broader sense relating to the achievement of the objectives of the Paris Agreement. We submit this is a legally binding obligation as opposed to a legally enforceable obligation which the decision maker should take into account in considering the application for planning permission. Secondly, there is mitigation in the technical sense as expounded by Dr Balcombe in relation to the failure to use technology to reduce carbon emissions to an acceptable level in planning terms. On both of these grounds the appeal should be dismissed.

### *Conclusions*

120. We accept that the latest energy policy statement (APP/DA/3 Appendix 14) says that shale gas development is of national importance. It is characterised in that way because of the benefits of mineral extraction, including to the economy. But that does not mean that the impact of shale gas development on climate change should not also be given great weight as a legally binding material consideration, not just of national but worldwide importance. As the Secretaries of States' ministerial statement says, applications must be assessed having regard to their context.
121. Shale gas development is treated by the present Government (at January 2019) as relevant to our economy and as a modern industrial strategy. Climate change is relevant to the future of our planet and mankind. In the balancing exercise of one national interest (our present economy) against another national interest (climate change) an objective evaluation by an informed and rational decision maker of what should be afforded greater weight is required. There can be no doubt that until a robust regulatory regime is in place the technology available to halt the march of climate change to the abyss of self-destruction predicted by the vast majority of scientists worldwide, planning authorities should apply the precautionary principle to the control of development of this kind.

There is no legitimate justification for not acting in this way. There is nothing inconsistent with that proposition in government policy or the development plan.

122. The joint statement by both Secretaries of State in May 2018 stated, '*the UK must have safe, secure and affordable supplies of energy with carbon emission levels that are consistent with the carbon budgets defined in the Climate Change Act and our international obligations.*' In this case, the Council found (entirely reasonably) that having regard to the Paris Agreement, the Climate Change Act 2008 and LP policy STRAT1, the proposed development should be refused. The Council found it was not in accordance with national policy or in accordance with an international Treaty ratified by the UK government and that the development was unacceptable in land use terms. The appellant's case is a weak one. It rests on a fundamentally flawed argument, the premise of which is that government policy supports shale gas development, the necessary regulatory permits are in place, and that concludes its case. That is simply wrong (as was accepted by Mr Adams in cross examination). Government policy does not support shale gas development unless there is a robust regulatory regime in place and the technology exists to decarbonise this energy supply and prolong its role in the energy mix.
123. On the basis of the evidence before the Inquiry those condition precedents for shale gas development have not been satisfied. That does not mean that will always be the case. Science and technology make huge advances mainly for the benefit of mankind. Currently, shale gas development is not safe. It is not consistent with the carbon budgets defined in the Climate Change Act 2008 or our international obligations. The likelihood is that one day, perhaps not so far distant, shale gas development will be acceptable. But we should be vigilant as a society and so should the planning system, to ensure that in pursuit of that goal we do not end up contributing to the demise of our planet. If that is an alarmist submission then so be it. It is made on the basis of the best available science and a sensible reading of government policy and an international Treaty, a highly relevant LP policy and by giving due and proper regard to the weight to be attached to the justifiable concerns of the public, the residents of Chester and Cheshire West and the Members of the Council's Planning Committee.

### **Stephenson<sup>3</sup> (R18) – Legal submissions (C11)**

124. The Council's comments are embedded within its response to the appellant's application for costs. Essentially, two points are made.
125. First, with reference to paragraph 73 of the judgement, it is noted that the Council's approach (namely, that the planning system exists to identify a decision that best fits the balance of considerations where policies within local and national policy documents pull in different directions) is endorsed. That is the approach that should be taken in this case and not the simplistic one put forward by the appellant that government policy supports shale gas therefore it is assumed the inevitable environmental consequences are accepted.
126. Second, it is noted that Dove J found that Framework paragraph 209(a) was unlawful. It cannot therefore be relied upon in the determination of this appeal.

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<sup>3</sup> *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

**Net Zero: The UK's contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI3)**

127. The Council's broad submission is that the net zero report deals with matters of great materiality to the determination of the appeal, especially in relation to matters of national interest which should be taken into account in the analysis of government's current energy policy and its compatibility with the Paris Agreement and other binding international obligations on policy commitments concerning climate change. The report strongly reinforces the evidence given to this Inquiry by Drs Balcombe and Broderick on behalf of the Council and indeed the evidence of Professor Anderson on behalf of FFEP&U.
128. Several quotes from the Foreword to the report are included in the Council's submissions. Among these are that the extensive evidence presented to the CCC resulted in a *'new understanding of the potential to achieve deep emissions reduction in the UK'* and that a reduction to net zero GHG emissions by 2050 is necessary, feasible and cost effective. Importantly, Lord Deben concluded his foreword by saying, *'We must now increase our ambition to tackle climate change. The science demands it; the evidence is before you; we must start at once; there is no time to lose.'*
129. In terms of the specifics, especially in relation to the calculation of CO<sub>2</sub> and methane resulting from exploration where shale gas is concerned as calculated by Dr Paul Balcombe and supported by Professor Anderson on behalf of FFEP&U, it is to be noted that the net zero report points to the importance of the net zero target, *'UK emissions now constitute only a small proportion of the global total, but those who say the UK's actions no longer matter are wrong. Every tonne of carbon counts, wherever it is emitted'* (emphasis added)."
130. The case put against the development by the Council and FFEP&U cannot be dismissed on the basis of economic viability. The report shows that what is necessary to halt the march of climate change can be achieved without interfering with industrial enterprise and achievable financial aims.
131. The net zero target is consistent with the requirements of the Paris Agreement and sets the standard for the EU and other developed countries. That is what the net zero report says is its importance and it reflects the meaning of the stipulation of highest possible ambition in the Paris Agreement.
132. The net zero target for 2050 is a response to the latest climate science and meets our legal obligations under the Paris Agreement and reflected in other international obligations we have entered into;
- i) It would constitute the UK's 'highest possible ambition', as called for by Article 4 of the Paris Agreement. The CCC do not currently consider it credible to aim to reach net-zero emissions earlier than 2050.
  - ii) It goes beyond the reduction needed globally to hold the expected rise in global average temperature to well below 2°C and beyond the Paris Agreement's goal to achieve a balance between global sources and sinks of greenhouse gas emissions in the second half of the century.
  - iii) If replicated across the world, and coupled with ambitious near-term reductions in emissions, it would deliver a greater than 50% chance of limiting the temperature increase to 1.5°C.

133. The UK government is already committed to net zero GHG emissions. The question is “by when”? The answer provided by the CCC is 2050. This is a conclusion drawn from a wide consultation exercise and the compilation of an extensive evidence base.
134. In the context of the appeal proposal it is to be noted, especially in relation to the conversion of methane into CO<sub>2</sub>, the report emphasises that all GHGs contribute to climate change, not just CO<sub>2</sub> and, therefore, there should be a substantial reduction of short lived gasses like methane which should be stabilised.
135. The recommendation in Chapter 8 of the net zero report is that the UK should set a net zero target to cover all GHGs, including CO<sub>2</sub> and methane. It makes clear at page 50, net zero emissions for all GHGs would reflect the requirement in Article 4 of the Paris Agreement. In the appeal proposal it is the burning or flaring of methane which results in the emission of CO<sub>2</sub> into the atmosphere. Hence the net zero CO<sub>2</sub> reduction would in any event, result in this application for planning permission being in breach of Article 4 of the Paris Agreement. That in itself is a justifiable ground for refusal.
136. The recommendations in the net zero report endorse the premise of the Council’s closing submissions that this appeal should be dismissed because it is contrary not only to the terms of the Paris Agreement but is incompatible with best scientific evidence.
137. The Council referenced section 10(2)(b) of the Climate Change Act 2008 [98 and 99]. The net zero report, its recommendations and targets are based on the following principles as to the approach that should adopted:
- i) Any target must be scientifically robust and recognise the need for urgency that was clearly emphasised by the IPCC.
  - ii) Targets should be aligned to the UK’s international commitments, including through the Paris Agreement. That implies a need to reflect both the UK's capability and considerations of equity.
  - iii) To limit the effects of climate change on the UK and the world, global emissions must fall. UK action should support increasing global action.
  - iv) Targets should be realistic. Therefore, it is also vital to identify what can be feasibly delivered in the UK at an acceptable cost (in the long run and during the transition) and alongside other government objectives.
138. The Council refers to the release of methane into the atmosphere which, when converted to CO<sub>2</sub> by flaring, will have a deleterious effect on climate change [69] and to the fact that it was admitted that incorrect information had been given to the EA [70]. The Council’s estimates of GHG emissions [72 to 80] should be read in conjunction with pages 58 and 59 of the net zero report. Those passages wholly support the Council’s case that the impact of CO<sub>2</sub> emissions at the exploration stage will have a seriously damaging effect on climate change. That means that any addition to emissions of CO<sub>2</sub>, and certainly at the level calculated by Dr Balcombe, will significantly add to higher levels of warming and increase the probability rates of warming given in the net zero report.
139. The Council’s further submissions in the light of the above are set out in full (PI3 paragraphs 28 to 34). Dr Balcombe’s calculation of the tonnage of CO<sub>2</sub>

anticipated as a consequence of the appeal proposal must be assessed for its significance on the basis of the net zero report's finding based on current scientific evidence that every tonne of CO<sub>2</sub> causes approximately the same increase in the long-term global average temperature no matter where or when it is emitted.

140. The GHG emissions from the development cannot be dismissed as just a drop in the ocean. Every tonne of CO<sub>2</sub> released into the atmosphere by the flaring of the methane is adding to the cumulative emissions of CO<sub>2</sub> that have been a major factor in causing global warming.
141. These are matters that should be given significant weight and provide scientific support and justification for the Council's reason for refusal. This is not just a precautionary approach but a rational decision based on cogent and probative evidence and having regard to scientific fact that harm will be caused by allowing development of this kind to go ahead.
142. Urgent actions are needed to cut emissions. The net zero report emphasises that the "business as usual" approach cannot continue. Mitigation of global emissions is vital and is a requirement of the Paris Agreement. The Council stressed in Closing Submissions, this is not a voluntary process but arises out of the UK signing up to a Treaty ratified by Parliament and acknowledged as an international obligation.
143. In common with FFEP&U, the Council argues that it is necessary also to have regard to sustainable development goals which are specifically referred to by the CCC as sitting alongside international efforts to combat climate change. There are 17 agreed by governments, including the UK, prior to the Paris Agreement. They include ending poverty in all its forms, zero global hunger and affordable and clean energy for all. Governments were aiming to achieve the sustainable development goals by 2030. There is a correlation between climate change objectives and the aims for sustainable development goals. Many are directly or indirectly affected by the state of the global climate system. Increases in climate risks are expected to fall predominantly on the most vulnerable parts of society. Keeping warming to lower levels would, therefore, help efforts to achieve the sustainable development goals.
144. In conclusion, the Council's further submission is that the net zero report wholly supports the Council's case. The net zero objective makes it clear that the Council was acting in a responsible and reasonable way in reaching its conclusion and that subsequent evidence, including this Report, confirms the need for robust decision making and the strengthening of policies aimed at reducing the impact of GHG emissions and especially CO<sub>2</sub>. That is what the Council sought to do in refusing planning permission for the proposed development.

***Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI7)***

145. No weight at all can be given to the policy expressed in Framework paragraph 209(a) as it has been quashed. There has been no Order directing that a further consultation exercise should be carried out in order to adopt a new policy, nor is there at the time of the consideration of this appeal a new policy to which regard can be had. On that basis there is no policy justification in the Framework for

attaching any weight to the alleged benefits of onshore oil and gas development including unconventional hydrocarbons.

146. The relationship between Framework paragraphs 148 and 209(a) was described in the appellant's Closing Submissions as '*complementary, not mutually exclusive.*' As a result of the quashing of Framework paragraph 209(a), Framework paragraph 148 is now free-standing and not complementary to paragraph 209(a). The policy framework, therefore, now is solely focused on the transition to a low carbon future in a changing climate and plans should take a proactive approach to mitigating and adapting to climate change. Plans should take into account the long-term implications identified in Framework paragraph 148, including the Climate Change Act 2008.
147. As a result, therefore, of the quashing, the policy thrust is wholly and exclusively supportive of the transition to a low carbon future. In our submission, that mirrors the recommendations in the CCC's net zero report (PI1).
148. It is instructive to consider the quashing of Framework paragraph 209(a) in the light of the net zero report which urged government to adopt the '*highest possible ambition*' in the Paris Agreement. In the Council's further submissions (PI3 paragraph 8) reference was made to the fact that net zero requires '*an integrated set of policies throughout the UK which makes the most of the attributes of each of the UK nations.*'
149. Mr Justice Dove, by excising Framework paragraph 209(a), has left Framework paragraph 148 as the relevant operative policy. He has removed any inconsistency in policy statement by government. Government has not replaced Framework paragraph 209(a) or made it clear its intention is to carry out a further consultation exercise on a replacement new policy. That being the case the appeal proposal is wholly inconsistent with Framework paragraph 148. The appellant cannot rely upon a national policy in support of its proposals for exploratory shale gas development. The policy framework has now radically changed and the Council's case is entirely consistent with the Framework and in particular Framework paragraph 148.

**Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) – Legal submissions (PI11)**

150. Nothing in the WMS conflicts with the Council's earlier submissions.
151. With great respect to the Parliamentary Under Secretary for State, his statement seems to be a misconceived attempt to circumvent the major problems caused by Mr Justice Dove's Judgment. Its timing is indicative of an attempt to interfere with the decision making process relating to the current appeal. A specific policy relating to the shale gas development has been quashed and, therefore, cannot be relied upon by the Inspector or the Secretary of State.
152. The attempt by way of Ministerial Statement to avoid the consequences of the Court's Judgment is, in the Council's submission, ultra vires and unlawful. Furthermore, it is trite law that as a matter of interpretation, a specific policy dealing with a specific form of development outweighs a general policy dealing with a broad category of uses. The general reliance upon government's support for the extraction of mineral resources of local and national importance does not mean that notwithstanding the quashing of policy of Framework paragraph

209(a), the determination of this appeal can take into account the substance of that paragraph through the backdoor by way of a general Ministerial Statement.

153. That policy in the Framework specifically prescribed that Mineral Planning Authorities should recognise the benefits of onshore oil and gas development including unconventional hydrocarbons. That policy no longer exists and no replacement policy has been introduced to fill the policy void. The WMS cannot lawfully, and does not as a matter of fact, change that position. Framework Policy 209(a) has gone and has not been replaced; it cannot be relied upon.

***The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI15)***

154. In laying the Statutory Instrument before Parliament, the Secretary of State for Business and Energy characterised it as a *'defining decision of our generation in fulfilling our responsibility to the next generation.'* He further added that it was a landmark proposal and that the new target was, feasible and deliverable. He also made it clear that the *'Government today is accepting the recommendations of the Committee on Climate Change.'* In terms of government's policy on climate change, the position now is that the most recent CCC Report on the net zero objective is accepted and is enshrined in legislation which will be legally binding on decision makers.

155. The appeal proposal must therefore be considered in the light of the amendment to the Climate Change Act 2008 to make the net zero emissions objective a binding legal obligation and the Secretary of State's acceptance of the CCC's Report. The Council's previous submissions [127 to 144] are now fundamentally reinforced by the Secretary of State's statement to the House on 12 June 2019.

***Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI21)***

*The Local Plan Part Two (PI18)*

156. This Plan was not drafted to take into account the most recent national policy statements or other international guidance from advisory bodies relating to climate change. However, policy M4(2) is a specific policy which now provides the justification and additional ground for refusal to that contained in LP policy STRAT1. The material part of the policy states:

*gas emissions from exploration, appraisal or production operations and from associated transport methods are controlled and minimised using the best available technology. Gas emissions must not have a significant detrimental impact on air quality, residential amenity or the environment, in line with Local Plan (Part One) policy SOC 5*

157. The evidence of the Council's expert witnesses established that the gas emissions from exploration would not be controlled and minimised using BAT. Furthermore, contrary to policy M4 the emissions would have a significant detrimental impact on air quality and the environment. It is, therefore, the Council's submission that the exploration proposals are additionally in breach of the relevant policy contained in the most recently adopted Plan.

### *The Written Statement (PI19)*

158. Up to and including paragraph 9 of the further submissions reference is made and conclusions are drawn from a government publication that is not in evidence and upon which comment was not invited. That publication, in effect, leads to the final paragraph of the Written Statement which amounts to confirmation that the Government does not intend to change the statutory planning process for shale gas development at this time. The Council's case is that the appellant claimed the consultation proposal to bring shale gas exploration within permitted development demonstrated that the Government viewed shale gas exploration as not harmful to the environment and as having no adverse impact on climate change. With reference to various paragraphs of the consultation response document, the Council argues that this position is now untenable.
159. The full submission document (PI21) is available to be read but, apart from noting that the Written Statement places an effective moratorium on further hydraulic fracturing consents, no material observations have been made on the document (PI19) upon which views were invited.

### **The Case for Frack Free Ellesmere Port & Upton**

#### ***Closing submissions***

160. Ms Dehon did not depart significantly from her written closing submissions (R21). The following sets out the main points made at the close of the Inquiry hearing sessions.

#### *Introduction*

161. On a site 320m from local residences and 50m from local businesses, the appeal proposal is not sustainable. Its impact in terms of GHG emissions, its negative air quality impacts, negative public health impacts, the social and economic harm it will cause, the risks it poses to nearby residents and businesses and the way in which it undermines the regeneration vision for Ellesmere Port and its historic Waterfront mean that it is not sustainable development, and it is in breach of two key local strategic policies: LP policies STRAT1 and STRAT4. It is also in breach of LP policies SOC5 on health and well-being; ENV7 on alternative energy supplies; ENV1 on water management; ENV4 on biodiversity and ENV9 on mineral development.

#### *Preliminary matters*

##### *The scheme description*

162. The description of the scheme proposal set out in the summary details above requires reference to be made to documents extrinsic to the planning permission in order to understand what hydrocarbons were '*encountered during the drilling of EP1*'. It is unclear to any reader of the description what those hydrocarbons were or where to find out that information. No explanatory document is incorporated by reference. That is contrary to the commentary in the Encyclopedia of Planning Law and Practice and the case law cited therein both of which FFEP&U rely upon.
163. The description is also highly confusing. If a reader reasonably referred to the previous planning permission for '*drilling of the EP-1 well*', in order to understand

what hydrocarbons may have been 'encountered', the reader would find an explicit reference to EP1 having been drilled 'for coal bed methane appraisal and production'. A reasonable reader might then think the appeal application refers to that hydrocarbon (thus making the whole application entirely redundant).

164. There would be no difficulty with specifying shale gas, given that is the hydrocarbon which, on the appellant's evidence, its operation aims to test. That fluids would also flow as part of the testing does not change the fact that the appellant's application is aimed at, and designed to, test for shale gas. Furthermore, the fluids referred to in the Scheme Description Submissions (A5) as a reason for the reference to shale gas being imprecise would also not be captured in the term hydrocarbon – demonstrating that the possibility of fluids flowing is a non-issue. Similarly, the possibility of other hydrocarbons flowing during the testing would not make a description specifying shale gas imprecise, given that is the gas at which the testing will at all times be aimed.

165. FFEP&U's proposed scheme description is:

*"Mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite and re-enter the existing well to perform a workover, drill stem test and extended well test for shale gas, followed by well suspension and site restoration."*

166. The appellant suggests:

*"Mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite and re-enter the existing well to perform a workover, drill stem test and extended well test for hydrocarbons from within the Pentre Chert formation, followed by well suspension and site restoration."*

167. FFEP&U submits that its description is preferable, both for the reasons given above and because, as became clear from Mr Grayson's evidence, the extent of any rock formation described as Pentre Chert is disputed. On the evidence of the Lithology Log, as put to Mr Foster, it is not a feature of the geology. If the appellant's formulation is preferred, then the reference to Pentre Chert should be replaced by Middle Bowland Shale – Mr Foster confirmed that is the description given in the independently produced Lithology Log for the relevant zone of interest – 'from 1,795mMD to 1,849mMD, with the primary interval being between 1,846mMD and 1,849mMD.' (CD1.9a)

#### *The nature of the proposed development*

168. FFEP&U is content that the scheme description does not need to specify the extraction method as this can and should be the subject of a condition in the event of planning permission being granted.

169. FFEP&U also accepts in the light of the clarification by the EA (A2) that the extraction method will not amount to matrix acidisation. FFEP&U is content to proceed at the Inquiry on the basis that the method to be used comprises an acid wash and an acid squeeze as described by Mr Foster (APP/JF/2).

#### *Sustainable development and lack of compliance with LP policies STRAT1 and STRAT4*

170. In short, the appeal proposal is simply in the wrong location. Therefore, it is not sustainable development and planning permission should be refused.

171. In oral evidence Prof. Watterson expressed surprise that the location was proposed for such a development. He would not normally expect to see testing like this in a town area with a large population.
172. He had good reason to do so. The comparative images (R9) make it clear how very different this site is in terms of proximity to neighbouring businesses and residences and its position on the cul de sac, compared to the development relied on by Mr Foster in his responses to the Inspector on this matter. The objection to Mr Foster's comparison is not a quibble with his suggested distances – he is allowed a margin in his top-of-the-head estimates. The objection is that the comparison was proffered at all as a reliable one, given the comparator well is surrounded by fields on three sides and is at the end of the cul de sac (rather than neighbouring businesses being at the end of the cul de sac, with the well-site hemming them in).
173. Mr Watson draws attention to the particularities of the location that make the development unsustainable (EPP01). It is:
- i) within 100 metres of 9 industrial units;
  - ii) 150 metres from the M53, the major link from Birkenhead to the rest of the UK;
  - iii) 200 metres from an explosives store (exact location not known for security reasons);
  - iv) 250 metres from the epicentre of an earth tremor registering M1.6 in 1992;
  - v) 250 metres from the Manchester Ship Canal which is used to carry petroleum and hazardous chemicals to the Stanlow petrochemical complex;
  - vi) 270 metres from one of the most important wildfowl overwintering sites in the UK which is classed as a SSSI / RAMSAR / SPA site, with cross national boundary implications;
  - vii) 320 metres from a high-density residential area, which could be developed to within 250m of the well;
  - viii) on the edge of the Rossmore Ward which is within the 5% most deprived wards in the country (2015 HM Gov. Indices of Multiple Deprivation);
  - ix) 800 metres from a children's play centre;
  - x) 860 metres from the closest of two large residential homes for the elderly, including highly vulnerable poor mobility people;
  - xi) 1 km from several schools.
  - xii) 1 km from a hotel / tourist attraction complex.
  - xiii) 1 km from Rivacre Brook. This brook is addressed in the evidence of Mr Grayson.
  - xiv) 1.2 km from an existing Air Quality Management Area running through the town centre.
  - xv) 1.7 km from the centre of Ellesmere Port.
  - xvi) 5,000 residences within a 2km radius. A zone that many Australian states would class as a "buffer zone" between wells and residences / public buildings, and which the USA emergency services would evacuate in the event of a well blowout.

- xvii) 3.3 km from water extraction points identified as for human consumption.
- xviii) 4.5 km from a nuclear site which has strict seismic criteria in its nuclear licence.
- xix) Above the Sherwood Aquifer

174. Some of the elements that make this unsustainable are based on impacts discussed later, particularly the potential geological and groundwater impacts to which the precautionary principle must apply.
175. But others stand on their own – in particular, the proximity to neighbouring businesses and residences. For a very long time, assessments in relation to the proposed development by the appellant were carried out on the basis that it was 600m away from residential development (CD 2.4 pages 8, 16, 18, 33, 35 and 40); sensitive receptor report (CD 1.9(d)); the air quality report (CD 1.9f page 5). The EA in its permitting decision states the nearest residences were around 500m away (CD 2.13 page 9). The EA appears to have carried out at least some of its assessment on the basis that the nearest residences were around 745m away<sup>4</sup>. The very near neighbouring businesses are not referred to.
176. As Mr Foster accepted, the risk of an incident occurring on the site can never be zero, even if it is the best regulated site. This was vividly illustrated to the local community in August last year (2018) when an explosion occurred in a chemical plant on the same site at the Stanlow Oil Refinery – thankfully located much further from sensitive receptors. There remains a residual risk of blowout or fire, which could affect neighbours or could, via a gas plume, impact on receptors up to 800m away, depending on wind direction (this would encompass the children’s play area and a residential home for the elderly).
177. The statutory requirements and duties placed upon the police, the fire and rescue service and local authorities in respect of emergency plans are set out (R21 paragraph 21). These are looking more broadly to the wider impact on the nearest vulnerable receptors than the COMAH site-specific emergency plans referred to by Mr Foster in evidence.
178. There is a clear difficulty in crafting such an emergency plan given the position of the site on the cul de sac. But in any event, it appears from the FOI responses to FFEP&U that neither the Police nor the Fire Service has been involved in the creation of an emergency plan for the site.
179. The appellant has not attempted to quantify the residual risk in its evidence; only to suggest it is very small. Mr Watson has provided clear evidence on risk and its consequences (EPP01 paragraph 6.6). It must be remembered that in terms of unconventional gas exploration, the UK industry is immature and only a handful of wells have been drilled.
180. Even if the risk is taken to be low, or very low, the other vector in the assessment is the potential significance of the impact. As Mr Foster’s evidence shows, the harm that could potentially be caused could be serious.

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<sup>4</sup> The reference given for this statement is “EA 29”. This is not an Inquiry document and this distance is not referred to in CD2.13

181. The site was chosen by the then developer in 2009 for a number of reasons, one of which was the location *'remote from surrounding residential properties'* (CD1.5 paragraph 10.4). That has changed irrevocably and the location is no longer sustainable.
182. The site was also chosen prior to the November 2011 SRF [22]. This aims to change fundamentally the perception of Ellesmere Port. It envisages the site as part of the Waterfront development. This is in line with LP policy STRAT4's ambitions for Ellesmere Port – which is a mixed use community, where substantial economic growth is delivered through industrial, manufacturing and distribution sites (not minerals extraction, as Mr Adams accepted).
183. The LP endorsed the SRF, stating that LP policy STRAT4 *'supports the ambitions of'* the Vision document (CD5.1 paragraph 5.31). It is not just another piece of evidence supporting the local plan. It is a document explicitly referenced in the first paragraph of reasoned justification under LP policy STRAT4, with the wording carefully showing that **the policy** supports the ambitions of the SRF.
184. So too the ELP which refers to the SRF in the Ellesmere Port section (CD5.4 paragraph 3.4). It too states that *'the policies in this section ... support the local regeneration initiatives'* in the SRF (emphasis added).
185. FFEP&U evidence is that the appeal proposal is ill suited to the regeneration vision in planning terms. Not only because it could prevent regeneration of the site and surrounds for a number of years (whether exploration is successful or not), but also because of the knock-on effect on surrounding sites – developers may not be keen to bring forward their regeneration schemes in proximity to a shale gas well, particularly given the perceptions that surround such development.
186. The appellant has sought to undermine the SRF and during Ms Copley's evidence introduced the Peel Holdings Supplementary Response dated May 2014 (A6). While, as Peel requested, the site was not allocated, as Mr Adams accepted, not all sites within a regeneration vision need to be allocated for that vision to carry planning weight or to be taken forward.
187. The chronology is also important. The Peel response did not prevent the SRF from being explicitly referenced in the ELP now going through examination with the draft main modifications making no amendment. It is not Peel's views that take precedence, despite Mr Adams' reasoning back from the developer's position to what the regeneration vision should be. It is the democratically elected council and the examined development plan, LP and ELP, which support the SRF, that take precedence.
188. The proposed development thus does not comply with LP policy STRAT4. It would undermine the perceptual shift so desperately needed for Ellesmere Port and wanted by the community and the Council.

#### *Climate change and lack of compliance with LP policy STRAT1*

##### *Legal submission on planning and climate change*

189. Climate change is a material consideration in all planning decisions – accepted by the appellant – and nothing in the assessment by other regulators, such as

- the EA, has addressed the climate change impact of the GHG emissions that will be produced by the proposed development.
190. Decisions concerning exploration for hydrocarbons, such as for shale gas, are not exempted. Indeed, the adverse effect of GHG emissions caused by open cast coal mining have recently been accepted by the High Court to be a relevant material consideration in the grant of planning permission for such a minerals development (R17). Although decided on 'reasons' neither the Court nor any of the parties suggested that GHG emissions were not a relevant and material consideration.
191. The relevance of GHG emissions and climate change impact to every planning permission is in line with the statutory obligations on government, under the Climate Change Act 2008 (legislation referred to in the Framework), including to remain within the carbon budgets, and with the requirements set out by the IPCC (EP10).
192. Framework paragraph 148 provides that the planning system, which obviously includes decision making, should '*shape places in ways that contribute to a radical reduction in greenhouse gas emissions*' (emphasis added).
193. In submissions to the court in the *Stephenson* case (R18), the position of the Secretary of State was that local decisions are the point at which the Secretary of State will consider developments since the last policy statements. The decision-maker must evaluate the up-to-date evidence, including any updated science that post-dates the Framework, and make the decision accordingly – the Framework '*cannot dictate to the plan-maker and the decision-maker*'<sup>5</sup>.
194. Mr Adams accepted that the re-issue of the Framework in February 2019 did not represent government's planning policy updated in the light of the IPCC report. Therefore, it is for the decision maker to take into account the latest climate position as set out in the IPCC report which post-dates all relevant policy statements on shale gas. This justifies greater weight being given to policies addressing climate change and GHG emissions than was previously the case.
195. So too does the Secretary of State's submission to the High Court in *HJ Banks* (R17 paragraph 3) that he has begun to give greater weight to the impact of GHG emissions than had previously been the case. That submission was made on instruction from the Secretary of State and so represents the stated position of the then Government. Although the Judge did not accept that change in position explained all of the Secretary of State's reasoning in refusing *HJ Banks'* appeal (R17 paragraph 106), he did accept that the Secretary of State was entitled to adopt a deliberately different approach from previous decisions (R17 paragraph 121), so long as his reasons are clear. What is indisputable is that the Secretary of State, openly and robustly through David Elvin QC and his submissions to the High Court, heralded his intention to give greater weight to the impact of GHG emissions than was previously the case. That is highly relevant to this decision.
196. In light of the case law, the proposed development does not get a "GHG pass" because GHG emissions are "inevitable".

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<sup>5</sup> The source for this submission was given by Ms Dehon as the Drill or Drop web site, 20 December 2018

*FFEP&U case on climate change*

197. Simply put, the appeal proposal will cause GHG emissions, from the flaring of the gas, from cold venting (CD 1.9k page 12), from tank venting (CD 2.12 page 14) and from traffic emissions. While traffic emissions may be part of every development, the traffic impact of this development is significant (3,144 two-way traffic movements over the 104 proposed working days, 572 of which will be HGV movements) (APP/KEH/4 paragraph 2.3.27) and will sit alongside the direct release of methane emissions from fossil fuel being brought out of the ground and burned (or in some circumstances cold vented). This makes the proposed development very different from other forms of development and more impactful.
198. The GHG emissions caused by the proposed development will persist for a very long time in the atmosphere. They will impact on the ability of the UK to achieve the radical reductions needed to avoid the extremely serious impacts of warming above 1.5°C.
199. In planning terms, those GHG emission impacts mean that planning permission should be refused under LP policy STRAT1. The proposed development is not sustainable development in climate change terms. It does not meet the environmental objective of LP policy STRAT1 and it does not mitigate and adapt to the effects of climate change. Mr Adams attempted to narrow the meaning of LP policy STRAT1 so that a development which undertakes as much "mitigation" – ie reduction of - GHG emissions as possible must be taken to comply with STRAT 1. That is not so. Planning permission can be refused under LP policy STRAT1 if the residual emissions, after all possible steps to reduce GHG emissions have been designed into a development, are unacceptably high. That is the meaning of mitigating the effects of climate change. The LP makes this clear, albeit in a slightly unexpected place (CD5.1 paragraph 8.56). Mr Adams accepted this when it was put to him directly.
200. Furthermore, in planning terms the IPCC Report [EP 10] and the science that sits behind it means that more weight must be given by planning decision-makers to the policies requiring control or limiting of GHG emissions and the policies addressing climate change, in particular Framework paragraph 148 [192].
201. That impacts on the planning balance. While weight can and must still be given to government policy on minerals extraction and on the need for shale gas (even though those policies all predate the IPCC Report), even greater weight must be given to the policies preventing climate change.
202. The appellant's approach in policy terms in trying to narrow the meaning of Framework paragraph 148 by reading it "in light of" Framework paragraph 209(a), so that they sit together, is simply wrong. Planning policies often pull in different directions. The answer is not to read one set of policies down in light of the other. The answer has always been that the decision-maker must weigh the various policies in light of the evidence before him and come to a conclusion as to which bears the greater weight.
203. Given the existential threat of climate change, given the IPCC's warnings of the need for immediate action to stay within 1.5 degrees of warming (we have 11 years in which to act), it is the policies that seek to address climate change and limit GHG emissions that must be given the greatest weight.

204. Prof. Anderson's evidence is that the UK is not on track to meet either the fourth or fifth carbon budgets and the IPCC report (EP10) shows that every GHG emission release is important and impactful. Prof. Anderson explains that we are already at 1 to 1.1 degrees above pre-industrial levels and that if this is to be held at the 1.5 degrees advocated by the IPCC, the available carbon budget is incredibly small. Every additional GHG emission molecule subtracts from that available budget. There is therefore little emissions space as recognised by government in Michael Gove's speech (EPP7 appendix).
205. Also relevant to the weight to be given to limiting GHG emissions is the CCC Report (CD 8.1). This also justifies significant weight being given to planning policies preventing GHG emissions and the harmful GHG impact of the appeal proposal. Although the appellant contends that the three tests in the CCC report have been met, FFEP&U contends the opposite, Prof. Anderson stating that the third is not met.
206. The appellant tries to minimise the importance of the CCC report in two ways.
207. First, the appellant contends that the three tests in the Report do not apply to exploration. Prof Anderson's view is that is not correct. The Report is not using "production" as some term of art. It uses "production" to mean '*getting the gas out of the ground*'. Exploration is part of that and so is included within the three tests. The appellant's approach '*is taking the technical language too far.*' The CCC Report explicitly says it cannot be assumed that emissions from exploration will be low. It is unreasonable to assume the CCC is not interested in exploration emissions and intended to exclude them from the three tests.
208. Second the appellant contends that the CCC's response to the "uncertainties" around the GHG impact of exploration is for that exploration to be carried out and monitored. This was based on a sentence in the conclusions and recommendations (CD8.1 page 69). Prof Anderson's response on this was clear. While some uncertainty will be overcome through exploration, the other key part of the uncertainty – fugitive emissions – will not. The appellant's approach is to take a single sentence out from a complex issue. Prof Anderson knows both the individuals on the CCC and the CCC's work well and his conclusion was that the appellant's approach '*is not a fair reflection of their view*'.
209. It must be recalled that when Prof Anderson gave his evidence, it was at a time that the appellant had not carried out any GHG emissions calculations. Based on Dr Balcombe's calculations, an estimate of 17000 tonnes CO<sub>2eq</sub>, Prof Anderson likened this to the equivalent to all of the gas use over a full year of all the houses in Chester. Or a typical saloon car being driven around the world 3.5 times or 170 times to the moon.
210. There is now before the inquiry a range of emissions, updated in light of the appellant discovering that it had been mistaken in the information on emissions it provided to the EA. The range that FFEP&U asks particularly to be considered is a minimum of 6,143.57 tonnes CO<sub>2eq</sub> and a maximum of 21,345.69 tonnes. That is calculated in light of the IPCC Report on the basis of a GWP of 20 years. The urgency of the need to address climate change justifies this choice of GWP.
211. Every emission emitted by the appeal development, as Prof Anderson commented, is one that cannot be emitted by a school or a hospital or any other development if we are to stay within our carbon budget.

### Unacceptable impacts

*The Permit solves all the problems – “other regulators”, permits and the planning system*

212. Mr Adams accepted in cross-examination that the Environmental Permit is not determinative of the planning matters and the grant of the permit is not conclusive of whether the proposed development is acceptable in planning terms.
213. There are two relevant matters of discretion which apply to planning decision making which encompass material considerations that are also touched on by other regulatory regimes.
214. First, case law, the Framework and the Planning Practice Guidance all confirm that a decision maker may assume that separate pollution control regimes will operate effectively. This is not, however, an irrebuttable presumption. It is an assumption. There will be circumstances in which that assumption cannot properly be made and the case law recognises that there must be evidence to justify the assumption being made (R13 paragraphs 100-101; R14 paragraphs 52-53). Ultimately, Mr Adams accepted that and agreed that the use of the word “must” in his proof (APP/DA/2 paragraph 2.16) was wrong.
215. Second, a planning decision-maker may, in the exercise of his *‘discretion consider that matters of regulatory control could be left to the statutory regulatory authorities to consider’*: (R13 paragraph 100). This is a particular aspect of the assumption in the foregoing paragraph – that unresolved issues; or issues that have not yet arisen, can be left for other regulators to address. Again, there must be evidence to justify this assumption – the decision-maker cannot simply abdicate his responsibility to the other regulatory body.
216. Accordingly, where there is evidence that a regulatory decision is not based on up-to-date evidence or has not taken a relevant matter into account, the planning decision maker cannot make the assumption that it has been dealt with by the other regulatory regime and is required to address the relevant material consideration through the planning regime. This is not improper, or a “duplication” of control, as the appellant wrongly suggests. It would in fact be an error of law in those circumstances to assume that another regulatory regime has addressed a material consideration where there is positive evidence that is not the case.
217. The appellant’s case is, however, shot through with Mr Adams’ mistaken approach to the assumption about the regulatory regime. Throughout, the appellant’s answer to FFEP&U’s evidence has been that it must be assumed the permit solves the problem. But it does not.

### *Air quality and public health impacts*

218. The appellant accepts that air quality impacts and public health impacts are material planning considerations. In contrast to FFEP&U, who called two witnesses with public health expertise, the appellant called none, Ms Hawkins accepting that she had no such expertise.
219. It is not the case that simply because the EA has undertaken an assessment and referred to health impacts, that dictates the outcome in planning terms. This

- is particularly so when the EA's assessment was carried out before various relevant changes, such as closer sensitive receptors being near the site.
220. Prof. Watterson takes a properly cautious approach seeking to have as a complete a data set as possible to know the risks and make the requisite assessment. His analysis of data supplied by the appellant drew out a number of flaws in the assessments. The EA in its permitting decision requested further information from the appellant and concluded in the end the proposal was low risk from an air quality perspective, with a number of caveats. Prof Watterson's view is that at the time the EA's approach to the proposal was reasonable, but with the changes to the location that have taken place – the residential and business receptors now closer to the site – that has changed. Accordingly, the assumption that the regulator's assessment can be relied on to address air quality impact and thus public health impact cannot be made.
221. Ms Hawkins' evidence before the Inquiry does not fill the gap to show that there will not be public health impacts based on air quality (EPP/11R paragraphs 5.1-7.2)
222. Furthermore, Prof Watterson highlights lacunae in the assessment, including a failure to deal with the link between GHG emissions and air quality impact. The latest independent peer reviewed evidence indicates clearly that unconventional gas extraction does create poor air quality (EPP2 paragraph 6.8). Bodies such as the World Health Organisation have been unequivocal about the public health toll due to poor air quality from GHG emissions. Dr Saunders also speaks to the public health impact of climate change (EPP2 paragraph 11). At the very least, Ms Hawkins should have considered the air quality impact from these GHG emissions. Furthermore, air quality impact from the diesel emissions have not been considered.
223. It is also the case that EA's permit variation decision was not a public health impact assessment nor did it consider a wider environmental health impact assessment of the proposal. As the Inspector pointed out in his questions, the document (CD 2.13) shows that the Department for Public Health and Public Health England did not respond to the EA's consultation on the permit variation.
224. Prof Watterson and Dr Saunders both emphasise another aspect, specific to this site, which has not been taken into account by the appellant: the Indices of Deprivation 2015 – Hotspots of Deprivation in Cheshire West and Chester (EP21 and EP22) show that two of the wards closest to this proposal, Rossmore and Ellesmere Port Town, include populations that are ranked amongst the 10% most deprived nationally. The proportion of Rossmore, Ellesmere Port and Netherpool wards populations in the most deprived quintile of deprivation nationally are 100%, c. 85% and c. 55% respectively. Standardised mortality ratios in these wards are 53%, 42% and 24% higher than England respectively. There is evidence that deprived communities are disproportionately exposed and vulnerable to the effects of exposure to environmental pollution including traffic related impacts on air quality. Even small levels of exposure can impact negatively on such communities.
225. In light of this expert evidence on public health, the appellant simply cannot show that it complies with LP policies SOC5 and ENV7.

## Geology

226. The precautionary principle was articulated by the CJEU<sup>6</sup> as follows:

*Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the real likelihood of harm to public health persists should the risks materialise, the precautionary principle justifies the adoption of restrictive measures, provided they are non-discriminatory and objective. (paragraph 61)*

227. Again, while FFEP&U has called evidence from two expert geologists, the appellant has called none.

228. Prof Smythe's evidence can essentially be summarised in two key points.

229. First, the geological information provided by the appellant to the EA does not correspond to geology at the wellsite. It was taken from an area 8km to the east near Ince Marshes. The appellant accepts that the geology reflects the position 8km to the east. Mr Foster sought to justify this because the geological information produced in relation to the site itself is of poor quality – the poor quality of the information concerning the seismic lines near the site was something Prof Smythe also highlighted. Mr Foster contended that it was acceptable in the circumstances to use the information from 8km away. However, it should be emphasised that nowhere in the documents provided to the EA was it made clear that was what was being done, nor is any explanation proffered.

230. Instead, Prof Smythe's view of the information provided to the EA was that it removed relevant scales, cut off most of the aquifer and put in what purported to be the EP-1 well at the right hand side of the diagram. His view was that the provision of information from 8km away, and the way it was presented, was unacceptable.

231. Second, Prof Smythe was able to study the geological survey maps which he obtained from a number of sources, as well as looking at the appellant's geological information from the seismic lines near the well. Prof Smythe's view is that geology is '*littered with faults*'. He made the best he could of the appellant's information and, although it was poor, it is clear that the geology around the wellsite is cut up by dozens of faults, a number of which were shown at depth (EPP6 paragraphs 4.7.1-4.7.8; 4.8.1-4.9.8 and examination in chief). In his view, the well is intersected by at least one fault.

232. The upshot of Prof Smythe's evidence is that it cannot be assumed that because the EA considered the geological data there is no risk of seismicity and no risk to groundwater. At present, the expert evidence before the Inquiry is that it is impossible to determine with certainty the existence or extent of the alleged risk to seismicity and groundwater because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted.

233. There is also a real likelihood of harm to public health which persists should the risks materialise. Prof Smythe's gives very detailed evidence on the potential conduits for contamination (EPP6 paragraphs 3.1.1-3.6.3). He was not seriously

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<sup>6</sup> *Afton Chemical Ltd v Secretary of State for Transport* [2011] 1 CMLR 16

challenged on that evidence. His evidence shows that risks to air and groundwater from hydrocarbon seepages are real. Accordingly, based on the precautionary principle, planning permission should not be granted.

234. Mr Grayson's analysis supports the evidence on seismic risk. His particular expertise however is in relation to hydrogen sulphide (H<sub>2</sub>S). Referring to his own research paper (EPP5 Appendix 1) he explained why he was concerned about the presence of H<sub>2</sub>S on the appeal site despite none having been detected. That too is a basis for exercising the precautionary principle.

235. In light of LP policy ENV1 and the requirement to protect and enhance water quality, and against the background of the precautionary principle, the potential for impact on the aquifer also provides a reason to dismiss the appeal.

#### *Public perception and social harm*

236. Neither of these two distinct aspects of impact fall within the purview of the EA.

237. The Court of Appeal (R15) held that:

- i) Public concern, in particular the public's perception of risk to their health and their safety inherent in a proposed development, is a material planning consideration (paragraphs 179-180);
- ii) It is a '*material error of law*' that '*genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal*' (paragraph 183 per Hutchison LJ).

238. The appellant's contention that the public concern in relation to the proposed development is objectively unjustified and so cannot form the basis for refusal of planning permission is legally unfounded and plainly wrong.

239. There is clear evidence before the Inquiry that there are widespread, genuinely held fears on the part of the local community that the development represents a risk to their health and to their safety. FFEP&U says that these fears are objectively justified. Dr Szolucha's evidence on this in evidence in chief was:

*The assertion of the appellant that residents' fears are based on misinformation or irrational fears rather than scientific uncertainty is just factually incorrect. It contradicts the social science literature. That shows clearly and repeatedly that opposition cannot be explained by a lack of awareness on the part of local residents. Research consistently found residents well informed and with a good lay understanding. The objective basis for residents' concerns are the prevailing scientific uncertainties.*

240. This is not an ignorant or an ill-informed community. They have long experience of the impacts of industry. They have access to, and have accessed, information on the impacts of shale gas exploration within a residential community, even when regulated. They have read the science. They have a wealth of information about the public health impacts of climate change, to which this development unquestionably will contribute – again, they have read the science. These genuinely held and entirely justified concerns, in and of themselves, are a reason to refuse planning permission. FFEP&U invites significant weight be given to this.

241. However, if it is considered that some of the fears are not objectively justified in that, for example, they are based on concerns about fracking, that does not

- mean the fears are irrelevant. It does not even mean that they are deserving of less weight. In light of *Newport* (R15) these fears too provide a reason for refusing planning permission.
242. Turning to social harm, the expert sociological evidence of Dr Szolucha is that the grant of planning permission for the proposed development would cause social harm. This harm would amount to a "collective trauma", which would negatively impact on the community, its social cohesion and its health. It can be classed as '*a local stressor that causes anxiety, fear, stress and fatigue.*' (EPP4 paragraph 5.5).
243. In her oral evidence Dr Szolucha explained her research methodology, including that the sample size and sampling method through referrals are recognised in social science as the proper way to investigate the potential social harm of the proposed development when no previous data exists. She was not improperly fishing in a self-selected pool – in terms of the social science, her fishing method was impeccable.
244. FFEP&U therefore invites the decision maker to accept her evidence.
245. Ellesmere Port is already a socially vulnerable area. The town consistently ranks among the most deprived areas in Cheshire West and Chester across a number of deprivation factors. Over 80% of Ellesmere Port Town (ward) residents live in areas of multiple deprivation (compared to approximately 20% for England and less than 20% for the borough of Cheshire West and Chester). Residents who are poorer, suffering from health problems, unhappy and opposed to the proposed development may experience its impacts more intensely than others. Labelling those experiences as non-significant may lead to the deepening of unequal distribution of impacts among different groups in society (EPP4 paragraph 5.2). Accordingly, the specific characteristics of the local community make the social harm caused by granting planning permission more acute.
246. Her evidence on the significance of the social harm was that it would be '*present at both individual and collective level*' and has '*the potential to be irreversible in social terms*', at least for a significant period of time – for example, in the damage done to the relationship between the local community and police force.
247. In planning terms this social harm is relevant in two ways.
248. First, it goes to sustainability. Framework paragraph 8 in terms recognises the social objective of sustainable development and that proposals should support strong, vibrant and healthy communities. On Dr Szolucha's evidence this proposed development will do the antithesis.
249. Second, it goes to the public health impact of the proposed development and compliance with LP policies SOC5 and ENV7.
250. The appellant objects to social harm as a basis for refusing planning permission – without any of its own expert sociological evidence – primarily because it sees the harms as flowing from the development being for fossil fuel or concerned with shale gas, and the appellant cannot help that.
251. However, FFEP&U contends that it could have. In the way it interacted with the community (right from 2014), in the information it provided, in what FFEP&U

characterise as its high-handed approach, in its resort to injunctions, the appellant made a series of decisions that caused and then exacerbated the community's lack of trust. This contributed significantly to the social harm which the development would cause.

252. This pattern has continued by the appellant stating a number of times at the Inquiry that it drilled the EP-1 well in 2014 responsibly in light of the information it provided to the Council and the EA and the '*community information*'. It is plain on its face that the Community Information Ellesmere Port Exploration Well brochure (CD1.8) was designed to give the impression that the appellant's primary objective was drilling a Coal Bed Methane well and for Coal Bed Methane. This was in July 2014, well after the appellant had articulated in January 2014 a very different objective to the Council (CD1.7) and the EA (CD1.6 page 6).
253. In oral evidence Mr Foster insisted that a thin line on one schematic (CD1.8 "Schematic Coal Bed Methane Well") would have informed the public of the intention to drill into and test the shale for shale gas. But he did finally accept that a reasonable member of the public looking at the brochure would have come away with the impression that the appellant was going to drill for Coal Bed Methane. FFEP&U contends that public trust in the appellant plummeted when it emerged that the well had been drilled into the shale with the express purpose of testing for shale gas.
254. Similarly, the appellant told the EA when it applied for the permit variation that it had permission "to drill a borehole for **hydrocarbon** exploration" (CD1.6 page 3 section 2.1) (emphasis added). Mr Foster accepted that was not the full story and it certainly was not the actual wording of the planning permission.
255. Stepping back, what makes this proposal different from other proposals is that it is planned to be situated in the heart of an already vulnerable community, in the context of a complete breakdown in trust between that community and the developer, based on the developer's behaviour, and where the expert evidence shows a grant of planning permission would lead to social harm and a public health impact.
256. It is lawful for this to be taken into account in assessing compliance with LP policies SOC5 and ENV7.
257. It is also the right time for social harm properly to be dealt with as a material planning consideration – especially as the appellant accepts it can be such a consideration. The planning process is not just about allowing the community to come and air its views at Inquiry, important though that is. It is not about recording those views, important though that is too. It is about actually addressing in the decision on sustainability and health impacts, the social harm that underlies and animates those views and the future social harm that would, on expert evidence, flow from the grant of planning permission.

### The planning balance

258. The proposed development does not comply with the development plan so planning permission should be refused unless material considerations indicate otherwise.
259. They do not. FFEP&U acknowledges that there is support in national policy both for minerals development and for shale gas exploration, including the

“national need” for such exploration. These policies must be applied and given weight. But, in light of the IPCC Report, even greater weight must be given to the adverse climate change impact of the proposed development and to Framework paragraph 148.

260. The harms in terms of air quality impacts, uncertainty around the geology and the groundwater position, social harm and public concern weigh heavily in the balance. The appellant attempts to avoid this through Mr Adams’ evidence, suggesting that because exploration for domestic gas supplies is of national importance and great weight, the inevitable land use consequences of the development are acceptable (APP/DA/2 paragraph 3.55). Mr Adams accepted that is a non-sequitur. He accepted it is for the decision maker to make his own judgment on the actual impacts of the proposed development and to give them such weight as is appropriate. In FFEP&U’s submissions, they properly attract significant weight.
261. As against this, the benefits are minimal. All benefits linked to production must be ignored – the appellant accepts this. Mr Adams sought to smuggle something of those benefits back in by relying on the “intangible economic benefit” of the data obtained via exploration. Being “intangible”, the benefit is unquantifiable. But more importantly, this is primarily an economic benefit to the appellant; to IGas, and as such should carry minimal, weight.
262. Mr Adams attempted in his evidence to widen out the “intangible economic benefit” by suggesting that it is the financial benefit to “UK Plc” from the data obtained by IGas and from knowing about whether the site can be exploited. But in truth that is simply the policy benefit inherent in the “national need” for shale, which already takes into account that type of economic argument. There should not be double counting of benefit by giving Mr Adams’ “intangible economic benefit” weight in the planning balance separately from that given by the 2018 WMS.
263. FFEP&U contend that any employment benefits from the development would not be drawn from the local community but acknowledges that if any were (if evidenced by the appellant) some limited weight should be afforded to this in the balance.
264. Nevertheless, material considerations therefore firmly weigh against the proposed development.

#### Habitats – People over Wind

265. FFEP&U made a legal submission about the implications of *People over Wind* (A16) for the Competent Authority. As the Secretary of State is now the Competent Authority these matters are addressed in Annex D. The appellant’s view was given in closing submissions [455].

#### Conclusion

266. The local community has said a resounding no to the proposed development. Its opposition is not ill-informed or ignorant or knee-jerk, as some have attempted to characterise it. FFEP&U’s expert witnesses have shown that the proposed development is simply in the wrong place and, in light of its adverse impacts, is not acceptable in planning terms. It is in breach of two key local strategic policies: LP policies STRAT1 and STRAT4. It is also in breach of LP

policies SOC5 on health and well-being; ENV7 on alternative energy supplies; ENV1 on water management; ENV4 on biodiversity (until a lawful Appropriate Assessment (AA) says otherwise) and ENV9 on mineral development (as the proposed development is not sustainable). Material considerations do not require planning permission to be granted despite lack of compliance with the development plan.

267. The decision maker is invited to dismiss the appeal.

**Stephenson<sup>7</sup> (R18) – Legal submissions (R19)**

268. In essence, paragraphs 1 to 16 inclusive set out what FFEP&U consider the key points from the judgement. Paragraphs 17 to 22, summarised below, assess the implications for the appeal.

269. The primary impact is that no weight can now be safely given to Framework paragraph 209(a). That policy was adopted using an unlawful process and as a result of an unlawful failure to take into account relevant considerations. Even though Framework paragraph 209(a) has not formally been quashed, it would plainly not be safe to place any weight on that policy in light of the very full reasons given by Dove J.

270. A secondary impact is that little weight can be given to the 2015 WMS and the 2018 WMS (referred to by the appellant as the “National Energy Policy”). The Judge was clear that the 2018 WMS was adopted without considering the updated scientific evidence that was obviously relevant when a similar policy was adopted through Framework paragraph 209(a) – expressing support for shale gas as a result of energy security and transition to a low carbon economy. The 2018 WMS is therefore infected with the same flaw as Framework paragraph 209(a). In FFEP&U’s submission it would be legally unsound to give weight to the 2018 WMS.

271. Little weight can be afforded to the 2015 WMS, given that there is obviously relevant later scientific evidence which undermines the basis on which it was made. Furthermore, Dove J held that later scientific evidence and the requirements in Framework paragraphs 148 and 149 to secure radical reductions in GHG emissions could properly be weighed against any ‘in principle’ support for shale gas extraction and could justify departure from that ‘in principle’ support. FFEP&U has put before the Inquiry relevant later scientific evidence, in the form of the IPCC Report and Prof. Anderson’s evidence, including the scientific paper on fugitive emissions (EP43), referred to in EPP7 paragraph 3.9 and Prof. Anderson’s evidence that shale gas does not support secure energy supply (EPP7 paragraphs 3.10-3.15).

272. Turning to the impact of the Judgement on the submissions made by the parties:

- i) It supports FFEP&U’s submissions concerning the proper approach to planning policy and climate change (R21 paragraphs 34-41).
- ii) It supports FFEP&U’s submissions concerning weight (R21 paragraphs 45 to 47).

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<sup>7</sup> *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

- iii) In light of the Judgement, the appellant's submissions are incorrect and cannot stand (A21 paragraphs 138 to 140). As a matter of law it was simply incorrect for the appellant to suggest that Framework paragraph 148 should be read in a way that was "complementary" to Framework paragraph 209(a) and the 2018 WMS. The submissions of the Secretary of State and the decision of Dove J show that contention to be hopelessly flawed (R18 paragraphs 71 to 73);
- iv) The same flaw means that appellant's submissions cannot stand (A21 paragraph 152). Not the Framework, nor the 2018 WMS, nor any other 'in principle' support for shale gas development means that '*the Government considers the impact of GHG emissions is outweighed by the need for gas*', as suggested by the appellant. Had that been the case, Ground 2 of the challenge would have succeeded. Rather, the various planning policies pull in different directions (R19 paragraph 73) and it is the decision maker's task, based on the up-to-date scientific evidence before him, to determine whether the proposed development would have a deleterious impact on GHG emissions and so should be refused planning permission (R19 paragraph 71).
- v) The same flaw infects the appellant's submissions about how to read LP policies STRAT1 and ENV7, such that A21 paragraph 113 no longer stands;
- vi) The appellant's submissions based on the 2018 WMS and Framework paragraph 209(a) cannot stand (A21 paragraphs 36 to 41). In particular, the suggestion that the then Government's "direction of travel" is inevitably continued support for on-shore shale gas extraction is no longer safe, given the Mobbs Report and the Talk Fracking consultation response specifically attacked that direction of travel and it is clear from the Judgment that the Secretary of State has not in fact given any substantive consideration to the up-to-date scientific evidence undermining that direction of travel. It is simply not known, and cannot be known, what government's considered response will be when it engages with the up-to-date scientific evidence.

273. The Judgment therefore removes two important limbs of the appellant's case in favour of grant of planning permission: it removes the recent 'in principle' policy support for shale gas development in the Framework and in the 2018 WMS (or National Energy Policy) and it removes the contention that LP policies STRAT1, ENV7 and Framework paragraphs 148 and 149 have to be read in a way that is complementary to the 'in principle' support for shale gas development.

274. In conclusion, the Judgement supports and strengthens the FFEP&U case that the proposed development should be refused because it is contrary to LP policy STRAT1 and Framework paragraph 148. It also supports and strengthens the FFEP&U case that significant weight can be given in the planning balance to policies that seek to address climate change and limit GHG emissions, given the relevant up-to-date scientific evidence.

***Net Zero: The UK's contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI4)***

275. The CCC gave increased weighting to methane emissions as recommended by the IPCC. Accordingly, in the GHG emissions spreadsheet agreed by the parties

- (C6), the appellant's GWP of 21 is clearly not the correct approach and the IPCC's weighting of 87 is preferable.
276. FFEP&U therefore wishes to revise paragraph 55 of its closing submissions [210] and the range given and asks that it be found that the development proposed will produce 21,345.69 tonnes of CO<sub>2eq</sub>.
277. The CCC report removes three foundations of the appellant's case.
278. First is the case that on climate change, neither government's nor the CCC's position in terms of climate change policy and GHG reduction target has shifted since the Paris Agreement (A21 paragraphs 123 to 124, 149 and 152 to 156). This strand of argument is removed by the clear position of the CCC that the target should change; the Secretary of State is obliged to take this advice into account.
279. Second, in attempting to dilute the evidence of Prof. Anderson regarding the IPCC report, the appellant contended that government's response to the scientific evidence in the IPCC's Report was "highly uncertain" and reliant on "multi-factorial issues" which the CCC's advice would have to take into account, including economic, fiscal and social circumstances, energy policy and the differences between England, Scotland and Wales (A21 paragraphs 145 to 149 and 153). In fact, the CCC's report has taken all those factors into account and has recommended a considerable tightening of the target for England, less so for Wales but more so for Scotland.
280. Third, the appellant's assertion (which is not accepted) that the 2016 CCC report and government response to it strongly support the appeal proposal can no longer stand as a matter of simple maths. Both were based on a target of 80% reduction in GHG emissions by 2050 and carbon budgets based on that target. A move to 100% reduction renders government response out-of-date and it can no longer be asserted that the three tests are being or can be met by shale gas development.
281. In contrast, the net zero report is wholly in line with Prof. Anderson's oral evidence and that in his written evidence (EPP7 paragraphs 2.15 to 2.16 and EPP14R paragraph 1.4). In summary the net zero report advises:
- i) Power sector decarbonisation is a key near-term action to put the UK on track to net-zero GHG emissions by 2050. This means phasing out of gas for domestic heating and electricity generation.
  - ii) Nowhere does the CCC mention any bridging for gas. Instead it recommends moving to renewable energy for electricity generation and/or alternative fuels such as hydrogen.
282. This resonates with Prof. Anderson's evidence that every release of GHG emissions is important and impactful and that the release of same from the appeal development is unjustified. The high degree of certainty that the recommended target will be adopted weighs strongly against the grant of planning permission.
283. The CCC explicitly recognises that action needs to be taken across government if the net-zero target is to be achieved. Planning decisions are no exception. CCC recognises that not all GHG emissions can or will fall to zero in any industry. This puts significant additional pressure on high-carbon energy sources to go to

zero carbon, and as such places a huge additional risk on any new high carbon energy investment, such as shale gas, rapidly becoming a stranded asset. As the net-zero report states the impact of emissions cutting '*can culminate in a tipping point, where incumbent technologies and networks become redundant. Embracing the transition too late risks exposure to stranded or devalued assets.*' The proposed development for fossil fuel exploration, without carbon capture and storage (a technology that is still a long way off) will result in the unabated release of over 21,345.69 tonnes of CO<sub>2eq</sub> into the atmosphere. It therefore falls outwith any potential residual role for gas plus carbon capture and storage in the 2020s.

284. FFEP&U contend that the net zero report strengthens the case made in respect of conflict with LP policy STRAT1 and supports its submissions on the greater weight that should be given to national and local policies addressing climate change and GHG emissions than was previously the case such that they outweigh the pre-net zero report policies supporting shale gas exploration.

***Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI8)***

285. In confirming that Framework paragraph 209(a) is quashed, no weight can now be given to it; this is common ground. No mandatory order was made requiring a fresh consultation exercise or the publication of a new policy. Either, in addition to not replacing the quashed paragraph, are options open to the Secretary of State.

286. It is clear from the judgement that the Mobbs report and other evidence brought by the claimant was obviously material (R18 paragraphs 63 to 68). Any contention that the 2018 WMS somehow now carries the weight previously attributed to the quashed paragraph because it reflects long standing government policy is wrong because it is the fact that it is 'longstanding' that is the flaw.

287. Dove J sets out the link between the 2015 WMS, the 2018 WMS and Framework paragraph 209(a). He also sets out the Secretary of State's own evidence that this "longstanding" policy has remained unchanged because the officials in the Department's shale policy team did not review the detailed evidence provided to them on whether the evidence base for the 2015 WMS had changed (R18 paragraphs 25-26; 51 and 63-68). The detailed evidence showed that the evidence base, in particular the evidence for the MacKay and Stone Report, was out of date and that there was new relevant evidence on climate change impact. The Secretary of State promulgated the 2018 WMS "prior to examining or evaluating" that evidence (R18 paragraph 51).

288. FFEP&U therefore submit that weight cannot be safely placed upon the 2018 WMS or the 2015 WMS to the extent that any is claimed by the appellant. FFEP&U also notes the decision of the UK Parliament to declare a climate emergency on 1 May 2019 and a similar decision by the Council on 21 May which carries a presumption against the development of fossil fuel industries.

**Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) –  
Legal submissions (PI12)**

289. In this document, the 2019 WMS, other Framework paragraphs concerning mineral resources are emphasised.
290. Framework paragraph 204(a) concerns plan-making, not decision-taking. It is reflected in LP policy ENV7 and evidence and submissions have been made about the appeal proposal's compliance, or lack of, with that policy.
291. Framework paragraph 205 requires great weight to be given to the benefits of minerals extraction to the economy. Importantly, mineral extraction *per se* is not given great weight; it is the benefits flowing from extraction. The appeal proposal is for exploration, not production. There would be minimal economic benefit from the proposed exploration.
292. Framework paragraph 209(b) emphasises the clear distinction between exploration and production, reinforcing the above points.
293. The 2019 WMS states that the 2015 WMS and the 2018 WMS '*remain unchanged and extant*' and that they '*should be afforded appropriate weight as determined by the decision maker.*' The 2019 WMS does not develop the policy position on onshore shale gas development in light of the *Stephenson* judgement; it simply reiterates the policy position before it was 'cut and paste' into the now quashed Framework paragraph 209(a) (R18 paragraph 25).
294. As a result, the 2019 WMS does not address the substance of the points made by FFEP&U concerning the impact of the judgement on the 2015 and 2018 WMS [287]. It does not address the fact that the 2018 WMS simply reiterated the 2015 WMS, without taking into account the "obviously material" scientific evidence showing that the evidence base for the 2015 WMS's approach to supporting onshore shale gas development has changed.
295. The 2019 WMS does not purport to take the up-to-date scientific evidence into account or to assess the cogency of the 2018 WMS, having regard to that evidence. It is not the Secretary of State's considered response in light of the new scientific evidence, but it is a reiteration of the 2018 WMS. This must perforce, affect the weight to be given to the 2019 WMS, and concomitantly to the 2015 and 2018 WMS.
296. This should be taken into account when assessing the weight to be given to the 2019 WMS and the 2018 WMS. Minimal weight can be attributed to the 2018 WMS, as the High Court has held that it was promulgated without reference to "obviously material" scientific evidence.
297. Furthermore, the 2019 WMS does not seek to dilute the clear findings in the Judgment that it is open to decision takers to depart from the 'in principle' support for shale gas development in the 2018 WMS, '*on the basis of the requirement, for instance in paragraphs 148 and 149 of the Framework in particular, for the planning system to take decisions which support reductions in greenhouse gas emissions and plan proactively for climate change.*' (R18 paragraph 71). The Secretary of State submitted to the court that it was open to participants to provide decision-makers with evidence which showed the deleterious impact on GHG emissions of the proposed development, and that this

could be taken into account in order to depart from the 'in principle' support (R18 paragraph 71).

298. In this case therefore, if it is considered that the 2015, 2018 and 2019 WMSs provide 'in principle' support for the appeal proposal, then this should be departed from and greater weight should be afforded to the policies preventing climate change on the basis of the clear scientific evidence put before the Inquiry and referenced above.

***The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI16)***

299. The binding requirement on government to reduce GHG emissions, which is directly material to planning decision making, will this month be tightened significantly. This is highly material to the determination of the appeal:

- i) The tightening of the 2050 target makes it more clear that the proposed development does not comply with LP policy STRAT1, as the "residual" GHG emissions from the proposed development will be unacceptably high;
- ii) The binding requirements of section 1 of the Climate Change Act 2008 will have been tightened when government is presently on course to miss both the fourth and fifth carbon budgets (devised to achieve a 20% lower target); and
- iii) The tightening of the target informs the weight to be given to Framework paragraph 148 – the requirement for the planning system to shape places in ways that contribute to a radical reduction in GHG emissions is not observed by granting permission for the proposed development.

300. Given that Framework paragraph 209(a) has been quashed and section 1(1) of the Climate Change Act 2008 has been amended the plainly correct approach, commended by FFEP&U throughout, is to give even greater weight to policies preventing climate change than to those which support mineral and shale gas development.

***Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI22)***

*The Local Plan Part two (PI18)*

301. As an adopted local plan, it now carries full weight. Such weight must now be given to the non-compliance with AELP policies DM33 and DM43.

302. AELP policy EP1 delineates a settlement boundary for Ellesmere Port and provides, amongst other things, that delivery of LP policy STRAT4 will be achieved by regeneration of previously developed land for a range of uses, particularly to support new housing development. The appeal proposal does not comply with this policy. Significant weight should be afforded to this lack of compliance given the serious need for regeneration of Ellesmere Port.

303. AELP paragraph 3.8 refers to the SRF relied upon by FFEP&U. Although the appellant tried to diminish the importance and relevance of the SRF it is now referred to in the adopted AELP.
304. Quoting various paragraphs of a recent Court of Appeal judgement<sup>8</sup> FFEP&U argue that the appellant's closing submissions (A21 paragraphs 245 to 252) are wrong as a matter of law. The SRF cannot effectively be ignored and little weight given to it because it was not a policy document or referred to in the text of a policy. FFEP&U closing submissions (R21 paragraphs 26 to 32) are therefore reiterated.
305. The main modification to ELP policy M4 which is included in the adopted wording of the policy is not relevant to the assessment by Ms Copley that the appeal proposal fails to comply with this policy. The examining Inspector's report makes clear that development must comply with both this policy and LP policy STRAT1 in relation to '*mitigate and adapt to the effects of climate change*' and so cross reference to the LP policy was not required.

*The Written Statement (PI19)*

306. The opening section of the Written Statement must be read in the light of the CCC's net zero report (PI1 pages 149, 221 and 252) which make clear that the CCC's prediction about the future of gas consumption, based on its use to produce hydrogen, refers to the use of natural gas with carbon capture and storage. The Written Statement should not and cannot properly be read as providing support for natural gas development now without carbon capture and storage.
307. FFEP&U anticipate (correctly) that since the appeal proposal does not involve hydraulic fracturing, the appellant will submit that the Written Statement is irrelevant. FFEP&U does not agree and sets out why (PI22 paragraphs 15 and 16). However, in my view, this is new evidence upon which the appellant has not had a chance to comment and is, moreover, evidence that is, in part, from 2014 and was therefore available when the Inquiry was held; it could have been put before it for testing.

**The Case for Island Gas Limited**

***Closing submissions***

308. Mr Cannock did not depart significantly from his written closing submissions (A21). The following is a summary of the main points of the appellant's case at the close of the Inquiry hearing sessions.

*Assessment of the case for the Council*

309. None of the witnesses for the Council had any understanding of the basis on which planning permission had been refused. In truth, the Council's case has changed beyond recognition over time. That betrays a fundamental lack of merit in the refusal.
310. Planning permission was refused contrary to the unequivocal recommendation of the professional Officers. There was no objection from any statutory

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<sup>8</sup> 8. *Gladman Developments Ltd v Canterbury City Council* [2019] PTSR 1714, [2019] EWCA Civ 669,

- consultee. The Committee Report (CD2.23) therefore provides no basis for the refusal of consent.
311. The appellant sought clarification of the reason for refusal but received no response prior to the first statement of case (SOC). This document (CD4.2) prepared by consultants on behalf of and approved by the Council raised new policy conflicts for the first time and made other assertions by way of the requested clarification that were subsequently not relied upon or were just wrong. Furthermore, there is no reference to the CCC Report (2016) (CD8.1), the IPCC Report (2018) (EP10) and/or any request for further information on the mitigation of emissions of methane, which now (apparently) form a central part of the Council's decision.
312. The Supplementary SOC (CD4.4) does not supersede the SOC (Mr Vallely in cross examination). Included in it are the following statements:
- i) *The reason for refusal is, "fail to mitigate and adapt to the effects of climate change and fail to make the best use of opportunities for renewable energy use and generation." Clearly, this reason requires an explanation from the Appellant as to the steps it has taken to mitigate and adapt to the effects of climate change.*
  - ii) *Various other alternative interpretations of the reason for refusal are given under the consideration of STRAT1 but what really is the issue is whether the Appellant is proposing to employ the appropriate mitigation techniques for shale gas exploration (emphasis added).*
313. It is therefore beyond doubt that the "real issue" (in the sole reason for refusal) is whether the appellant has proposed appropriate mitigation techniques for shale gas exploration. All of the other points raised variously by the witnesses or SOC fall outside the resolved position of the Council.
314. Indeed, Mr Vallely is unequivocal (in his written and oral evidence) that:
- i) His evidence reflects the resolved position of the Council
  - ii) National Planning Policy supports the UK shale gas industry
  - iii) On the face of it, a properly designed well flow testing proposal with adequately proposed mitigation would be development plan compliant
  - iv) If there is emissions' mitigation so far as practical the proposal complies with the Development Plan
  - v) In line with national guidance, such proposals should normally be granted planning permission
  - vi) The Council were not fully informed on the nature of the proposals, specifically in respect of GHG mitigation techniques
  - vii) If the Inspector concludes that adequate information has been submitted regarding mitigation techniques, planning permission should be granted
315. It follows that significant parts of the evidence of Drs Balcombe and Broderick are irreconcilably inconsistent with: the resolved position of the Council; the evidence of Mr Vallely; and extant local and national planning and energy policy. It is entirely unclear how or why the Council has called witnesses whose evidence conflicts. However, where they conflict, it is the position of Mr Vallely which should prevail, as it is his evidence which is consistent with the reason for refusal

and the Supplementary SOC and which specifically takes account of the other two witnesses and applies it against the statutory test.

316. Furthermore, Mr Vallely confirms that elected Members were advised to balance the role of the statutory planning process against their democratic role of representing the local community. The views of local people were significant in the Members' discharge of their democratic function. However, a decision in accordance with s38(6) of the Act is the application of a legal test, not a democratic decision notwithstanding that it is taken by democratically elected councillors. In the appellant's submission the Council refused planning permission on a flawed legal basis.

*Development plan policy*

317. All agree that LP policy ENV7 (CD5.1) provides 'in principle' support for the appeal proposal provided there is no unacceptable impact on the four criteria within it [24]. It is common ground with the Council that there is no such impact (CD9.1, para 6.1).

318. Although adopted in 2015 and consistent with the Framework published in 2012, the Council acknowledges that LP policy ENV7 remains consistent with both national energy policy of May 2018 (APP/DA/3 Appendix 14) and the Framework published in July 2018.

319. The latter post-dates the Climate Change Act 2008 (CD7.4), the Paris Agreement 2016 (EP46), the CCC report (CD8.1) and the government response (APP/DA/3 Appendix 32) 2016 and national energy policy 2018 (APP/DA/3 Appendix 14). Although subject to legal challenge Framework paragraphs 203 and 209a provide further continued support for exploration of on-shore shale gas.

320. For the Council Mr Vallely accepted that full weight must attach to LP policy ENV7 since it was consistent with Framework paragraph 209a and national energy policy and was not 'out of date' in Framework terms. He further accepted that provided appropriate mitigation techniques are secured planning permission should normally be granted for a development such as that proposed.

321. It follows therefore that great weight should be attached to the appeal proposal's compliance with LP policy ENV7.

322. The relevant part of LP policy STRAT1 (CD5.1) requires all development proposals to '*mitigate and adapt to the effects of climate change*'. LP policy STRAT 1 must, therefore, be interpreted and applied in a manner which is consistent and appropriate to all forms of development. Mr Vallely agreed with this and that LP policy STRAT1 applies to all development proposals. He accepted that it cannot rationally be applied in a manner that renders LP policy ENV7 incapable of compliance.

323. He also agreed that, if there are land use planning impacts which are the inevitable consequence of on-shore gas exploration (such as emissions), LP policy STRAT1 cannot be applied to refuse consent, given the strong 'in principle' support for exploration in LP policy ENV 7. The policies cannot be objectively interpreted to be mutually exclusive.

324. Mr Vallely is completely clear in cross examination that he interprets and applies LP policy STRAT1 to require emissions from the exploration to be

- mitigated, so far as practical (applying BAT). This is entirely consistent with his written evidence that a properly designed well flow testing proposal with adequately proposed mitigation would be development plan compliant (CC1, paragraph 6.5).
325. There is, therefore, common ground between the Council (CC1 paragraphs 4.25 and 4.30) and the appellant (APP/JF/2, paragraph 8.16) that LP policy STRAT1 requires this proposal to mitigate emissions so far as practical (applying BAT). That interpretation is entirely in accordance with national energy policy, national planning policy (extant at the time of adoption), the SPD, the CCC Report (properly read and understood) and United Kingdom Onshore Oil and Gas (UKOOG) Guidelines.
326. It was conceded by Dr Balcombe that the focus of the CCC report and the government response is the production phase of shale gas, not the exploration phase. Insofar as the CCC report carries weight since it is neither policy nor guidance, its information about the exploration phase is limited:
- i) Exploration emissions are generally small, relating to transporting the seismic equipment and drilling the exploration well;
  - ii) Small volumes of gas may be generated during the development of the well, most of which is likely, at a minimum to be burned in a flare;
  - iii) There is, however, little information available on emissions associated with exploration. Most studies either ignore this phase or assume the emissions are negligible;
  - iv) However, the CCC Report does not suggest a moratorium on exploration or production, given the absence of such information. Rather, the Report concludes and recommends that "uncertainty" "can only be resolved via exploratory drilling" (CD8.1 page 69 paragraph 1). The government response states that exploration is required to determine both the size of a UK shale industry and its associated emissions footprint (APP/DA/3 Appendix 32 page 3 at (ix));
  - v) It should not be taken as a given that emissions from exploration will be low, especially for an EWT;
  - vi) Appropriate mitigation techniques should be employed where practical.
327. It is precisely because it cannot be assumed that exploration emissions will be low that there is a requirement for appropriate mitigation techniques.
328. The CCC Report therefore supports the agreed position of the Council and the appellant that the proposal should be considered to be acceptable provided appropriate mitigation techniques are employed where practical.
329. The three tests within the CCC report do not apply to the exploration phase but to extraction on a significant scale; this means the production phase. While test 1 applies to emissions, these are the emissions from well development, production and decommissioning, not exploration. In any event, all test 1 requires (when it is read fairly and in full) is that emissions are strictly limited, tightly regulated and closely monitored. There can be no dispute that this proposal will be tightly regulated by the EA and monitored in accordance with the Permit consistent with the Framework and Planning Practice Guidance. The emissions are limited so far as reasonably practical. There is compliance with the first test. Tests 2 and 3 do not apply to this proposal.

330. Accordingly, so far as relevant, the CCC Report supports the approach of the appellant in respect of the exploratory phase. This is expressly confirmed by government's response to it (APP/DA/3 Appendix 32).
331. The SPD (CD5.5) is supplemental to LP policies STRAT1 and ENV7 (paragraph 2.3). It requires sufficient information, in the light of discussions with Officers (paragraph 1.4). Gas should be utilised '*where possible*' (paragraph 5.9). This is, of course, consistent with the commercial operator's own self-interest. Flaring or venting should be kept to the minimum that is '*technically, economically and environmentally justified*' (paragraph 5.9). Proposals for the disposal of waste gasses will be assessed by the EA (paragraph 5.9). The SPD could not be clearer.
332. Both Dr Balcombe and Mr Vallely agree that this means that emissions by flaring should be minimised, applying BAT.
333. It is recognised that the 'green completions' approach to emissions minimisation will not always be practical at the exploration/appraisal phase of a development, where '*flaring of natural gas should be the preferred option, minimising venting of hydrocarbons wherever practicable.*' (APP/JF/3 Appendix 20).
334. Consistent with the CCC Report, the SPD and UKOOG Guidelines, LP policy STRAT1 is therefore requiring this development to minimise emissions, so far as practical, consistent with BAT. If the proposal complies with BAT, the proposal complies with the development plan and planning permission should be granted. This is the agreed position of Mr Vallely and the appellant (CC1 paragraphs 6.5 and 6.6).
335. It follows from the above that there is a single point in dispute between the Council and the appellant: whether this proposal minimises emissions, so far as reasonably practical, applying BAT. The principle of the development is clearly acceptable to the Council, as it is supported in LP policy ENV7.

#### *The permit regime*

336. Framework paragraph 183 provides that the focus of planning decisions should be on whether the proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.
337. The position is further set out clearly in national energy policy (APP/DA/3 Appendix 14) and Planning Practice Guidance Minerals (CD6.1b, paragraph 112). This approach reflects longstanding national policy which has been the subject of judicial scrutiny. The correct legal approach, established in a line of authorities beginning with the *Gateshead* case (A12), was analysed by Gilbert J in *R (Balcombe Frack Free v West Sussex CC* [2014] EWHC 4108 (Admin). Gilbert J held inter alia that:

*In my judgment there is ample authority to the effect that the Planning Authority may in the exercise of its discretion consider that matters of regulatory control could be left to the statutory regulatory authorities to consider (A9 paragraph 100).*

338. The appellant therefore submits that it is beyond dispute that the issue of whether the development applies appropriate mitigation, so far as reasonably practical, in accordance with BAT, is a matter for the EA and which the EA have determined.
339. That does not mean (in the way the Council has mischaracterised the appellant's case) that the Council/Secretary of State is '*obliged as a matter of law*' to leave such matters to the EA (C12, paragraph 12). It does not mean that the '*only possible option available to an Inspector was to leave everything to that regime*' (per Harrison C12, paragraph 14). Rather, it means that significant weight should attach to the conclusion of the statutory regulator, to which the Council was a consultee, especially in the absence of any robust evidence to the contrary. The appellant has simply not asserted that the grant of a Permit can be construed as an approval of a planning permission in accordance with LP policy STRAT1 (C12, paragraphs 7 and 9).
340. The permit application (CD1.9) is for the incineration of waste by flaring. The Waste Management Plan (CD1.9e paragraph 8.3) provides a justification for the incineration of methane by flare, in preference to cold venting. Harnessing the gas for alternative use is not considered to be BAT because it is not practical. It is not feasible to capture/harness the gas because this is inconsistent with the exploratory nature of the DST and EWT, which require a free flow of gas. This is not an issue of cost (as Dr Balcombe accepted, contrary to his written evidence). The Flare Technical Document also considers BAT for the disposal of gas (CD 1.9k section 5 page 12). It also addresses which flare constitutes BAT for the DST and EWT (section 8.2.1 *et seq*).
341. Both documents were the subject of public consultation. The Council was a consultee and specifically responded to the consultation (CD 2.13 page 9). It is quite clear that the Council accepted that flaring was BAT and that the EA was the competent decision maker. That is consistent with the Committee Report (CD2.23).
342. In specific answer to consultation responses, the EA conclude (CD 2.13, page 11(6)):
- i) Flaring has been assessed by the EA;
  - ii) The proposed flaring activities conform to BAT, as set out in EA onshore oil and gas sector guidance;
  - iii) At present "green completions" are not considered BAT for this activity.
343. Mr Vallely conceded that:
- i) Members were specifically aware that the issue of emission controls had been dealt with by the Permit;
  - ii) Members were advised that issues relating to licenses and the EA/HSE were outside the remit of this planning decision;
  - iii) He had no criticism of the advice of Officers, which he commended as a comprehensive and professional piece of work;
  - iv) At the time of the determination there was no objection from the EA based on the proposed mitigation of emissions or at all;
  - v) He had not made any reference to the EA's statutory powers and responsibilities and/or its role in decision making;

vi) He had not “engaged at all” with Framework paragraph 183, the Planning Practice Guidance, the SPD, the CCC Report, the government response and the national energy policy, all of which stress the role of regulation in decision making.

344. He also agreed that he had made no reference at all to:

- i) The application for the EA permit (CD 1.9);
- ii) The process and operating techniques controlled by the Permit (CD 2.12);
- iii) The process of consultation on the permit application (consistent with the Environmental Permitting Regulations);
- iv) The consultation response of the Council to the Permit application, which did not contest the proposition that the proposed mitigation of emissions was a matter for the EA’s determination (see CD 2.13);
- v) The EA’s consideration of the Permit application (CD 2.12 and 2.13);
- vi) The EA’s conclusion that the proposed flaring was considered to constitute BAT, applying EA sector Guidance (CD 2.13 pages 2 and 11/12);
- vii) The consented operating technique is secured by the Permit (CD 2.12);
- viii) The proposed monitoring of emissions (CD 2.12).

345. He therefore conceded that the matter of whether emissions had been adequately mitigated by BAT was a matter which had been addressed by the Permit, without any criticism or comment from the Council. It follows that the Inspector (and now also the Secretary of State) may (not must) consider that matters of regulatory control could be left to the statutory regulatory authorities to consider (per *Gilbart J* in *A9*).

#### *Inadequacy of information*

346. A central criticism is that the appellant failed to submit sufficient evidence to show that adequate mitigation of emissions had been provided, so far as practicable. Mr Vallely asserts that planning permission was refused because Members:

- i) were aware of the various policy and technical issues and decided in this case that the absence of information in relation to mitigation details warranted refusal of the proposals (CC1, paragraph 2.18);
- ii) were not satisfied with the lack of detail within the application proposals specifically in relation to emissions mitigation associated with the exploration phase (CC1, paragraph 2.19).

347. While the basis for the refusal is therefore clear, it has is no evidential foundation as Mr Vallely conceded in cross examination. Specifically, at the time of the of the refusal:

- i) The EA Permit had been submitted;
- ii) The Permit Application appended the Waste Management Plan and Flare Technical Document (CD 1.9);
- iii) Those documents provided information on the mitigation proposals and why they constituted BAT;

- iv) That information was advertised in accordance with the Environmental Permitting Regulations;
- v) The Council had no criticism on the publicity and consultation;
- vi) The Council were specifically aware of the content of the Permit application;
- vii) The Council responded to the application criticising some of the submitted evidence (regarding the Air Quality Assessment);
- viii) The Council passed no comment on the adequacy of information regarding the proposed emissions mitigation and whether it comprised BAT;
- ix) Accordingly, if Members wanted information on the mitigation proposals, it had already been provided to the Council and was publicly available to them.

348. He accepted that there were no outstanding requests for information from any Council officer or statutory consultee. He therefore conceded that Members refused planning permission because they wanted further information:

- i) On a matter within the statutory remit of the EA;
- ii) On a matter controlled by the Permit;
- iii) Which they had never asked to see;
- iv) Which was publicly available; and
- v) On which the MPA had actually commented.

349. He conceded that there was not a respectable basis for the refusal. That is the definition of unreasonable behaviour given in the Planning Practice Guidance.

#### *Proposed mitigation of emissions*

350. During cross examination of the Council's witnesses, none of whom are experts in flaring or reservoir or petroleum engineering, it emerged that the sole issue between the Council and the appellant is whether flaring during the EWT phase minimises the emissions of gas so far as reasonably practical.

351. Notwithstanding what is said in the Supplementary SOC about a range of techniques for such minimisation (all of which are dismissed by Mr Foster with the evidential reasons for doing so being given (APP/JF/2, paragraph 8.54 *et seq*), the Council's position in evidence is that gas capture, the sole technique promoted as a means of mitigation, is feasible (CC2, paragraph 5.4.5).

352. The note (C2) produced by Dr Balcombe explains the different uses of the term "capture". It provides (literally) no technical explanation of how free flowing gas may be captured in the EWT.

353. In contrast the uncontested (indeed unquestioned) evidence of the appellant is that:

- i) There are 2 forms of gas capture (a) export to the national grid via pipeline and (b) connection to a tanker and export to the grid;
- ii) Neither technique is feasible nor safe;
- iii) Before the gas can be used, there is a requirement for the characteristics of the gas to be known. Such characteristics include the gas composition, calorific values, flow rates, pressures and

moisture content. Such information is simply not known until flow rates and pressures have stabilised. Indeed, this is the whole point of the DST and EWT;

- iv) The proposition that such untested gas would be allowed into the national grid is risible (and Dr Balcombe did not suggest the contrary);
- v) Capturing the gas in a storage tanker would not be safe and would require very frequent interruptions to the flow, which is wholly inconsistent with the proposed exploration. It would preclude the necessary information being obtained from the exploratory phase.
- vi) It is for this reason that the appellant, EA, SPD and UKOOG all understand that it is not BAT at the EWT phase.

354. Indeed, it appears from the Council's closing submissions (C12, paragraph 65) that the point has been conceded since it is now asserted that carbon capture usage and storage is "unrealistic". Contrary to the evidence of the Council it is now asserted that there is no acceptable mitigation. That is wholly inconsistent with the evidence of Mr Vallely. There is no evidential basis for the reason for refusal at all.

355. It follows that it is beyond dispute that the appellant has mitigated the emissions so far as reasonably practical, applying BAT. This is the conclusion of the EA and (in this regard) there is no criticism of their conclusion from the Council.

356. Further or alternatively, even if Dr Balcombe is correct, there is no basis for a refusal. He considers there is a better scheme of mitigation. If so, this could be secured by a negatively worded scheme condition. This is an issue which was simply not considered by the Members of the Planning Committee, Dr Balcombe or Mr Vallely. On this basis alone, the refusal is unreasonable. However, for the avoidance of doubt, the appellant rejects the imposition of a condition because it has mitigated emissions, so far as reasonably practical. The condition would do nothing beyond further delay and frustrate the development.

357. It follows that (applying the evidence of Mr Vallely) the proposal complies with the development plan. Adequate information has been submitted and planning permission should be granted.

#### *Calculation of GHG emissions*

358. It is acknowledged that there was an error in the calculation of the GHG emissions (A4). Applying the EA's standard methodology, the GWP of emissions was underestimated (3.929 ktCO<sub>2</sub>e instead of 4.131 ktCO<sub>2</sub>e). That is an error of 4.8%.

359. Nothing turns on this miscalculation. The impact on the climate will, of course, be different depending on the range selected (and no party suggests anything other than a range is appropriate). However, it is not suggested that anything turns on the precise figure, as Dr Balcombe considered the impact to be significant on his figures or even on the basis of half of them.

360. Rather, the Council submit that the miscalculation means that reliance cannot be placed on the EA's conclusion that the proposal does constitute BAT. Neither the appellant nor the EA had ever assessed the necessary mitigation techniques and the practicality of those techniques available against a backcloth of the

emissions being high and uncertain (C12, paragraph 37). That submission is flawed.

361. As Mr Foster explained in oral evidence without contradiction, gas capture and storage has been rejected because it is not feasible or safe. That conclusion is not influenced by the residual amount of the emissions. It is a function of the nature of the exploratory process. He was explicit that the conclusion on BAT does not change because of the miscalculation. There is no evidence to the contrary. Total emissions are inherently uncertain, given the nature of the exploration. They vary between 3.3-7.6 ktCO<sub>2</sub>e using a GWP of 21 and 410.8 using a GWP of 36. The emissions set out in the environmental risk assessment (CD 1.9) are therefore within the agreed range using the EA's standard GWP (which is to be preferred). Dr Balcombe's statement does not explain how/why the proposed mitigation may change based on the different ranges.

#### *Emissions impact on the climate*

362. The Council argue that there is a further interpretation of LP policy STRAT1 which requires '*mitigation in the broader sense relating to the achievement of the objectives of the Paris Agreement*' (C12, paragraph 71). This argument is based upon the evidence given by Dr Broderick which states (CC4 paragraph references given):

- i) Any addition of carbon dioxide to the atmosphere causes an additional warming effect. Hence temperature stabilisation necessitates "net zero emissions" (8);
- ii) That is net zero emissions from any source i.e. from all development (cross examination of Dr Broderick);
- iii) There is limited empirical data available in the scientific literature that isolates emissions associated with exploration (11);
- iv) Any release from a well site ought to be balanced by a reduction from another source (13);
- v) There is no practical mechanism whereby this development can offset (cross examination of Dr Broderick);
- vi) Any source of emissions (from any development) must presently be assumed to directly contribute to climate change and not be offset (13);
- vii) An urgent programme to phase out existing natural gas and other fossil fuel across the EU is an imperative of any scientifically informed and equity-based policy to deliver on the Paris Agreement (22);
- viii) It follows that: if there is an imperative not to consent new natural gas production, there is an imperative not to consent new natural gas exploration.

363. This part of the Council's case contains a number of fundamental weaknesses.

364. Firstly, neither Dr Broderick nor Mr Vallelly knew whether this line of argument formed any part of the Members' reasoning. It is not set out in the reasons for refusal, which makes no reference to "net zero emissions". It is not set out in the SOC or Supplementary SOC. Further, this is not a policy interpretation which applied to any other development, let alone all development, in the application of LP policy STRAT1.

365. Secondly, it is irreconcilably inconsistent with Mr Vallelly's policy interpretation (as the policy planner) that this proposal can comply with LP policy STRAT1 and the development plan, provided there is mitigation, so far as reasonably practical (CC1, paragraph 6.5).
366. Thirdly, it renders LP policy ENV7 otiose. If LP policy STRAT1 means that there is an imperative not to consent new onshore exploration, LP policy ENV7 becomes incapable of compliance. That is an irrational objective interpretation of LP policy ENV7 and contrary to the evidence of Mr Vallelly.
367. Fourthly, Dr Broderick's evidence (like that of Prof Anderson for FFEP&U) is irreconcilably inconsistent with national energy policy and the Framework which provide strong support for onshore gas exploration, in the light of the Paris Agreement. He accepted this expressly in cross examination.
368. Finally, the Council's submissions (and those of FFEP&U) fail to understand and apply the correct statutory and policy background.
369. The statutory background given by Climate Change Act 2008 (CD7.4) and the Paris Agreement (EP46) is set out in factual terms at A21 paragraphs 116 to 122 and is not repeated here.
370. The Paris Agreement does not impose a legally binding target on each specific contracting party to achieve any specified temperature level by 2050 (per Supperstone J in A10, paragraph 30). Rather, it contains an ambition: to "pursue efforts" to limit temperature increases to 1.5°C above preindustrial levels.
371. In response to the Paris Agreement, the CCC advised (in Oct 2016) that no change should be made to the 2050 target at this time (CD8.1, paragraph 11).
372. Factual points are made about the CCC report (CD8.1) in A21 paragraphs 125 to 127 including further reference to the three tests [329]. If, however, the three tests are met, the CCC conclude that onshore petroleum production is compatible with UK climate targets (CD8.1, page 69).
373. Objectors have made no meaningful reference to government's statutory response to the CCC Report.
374. The Infrastructure Act 2015 requires government to seek advice from the CCC on the impact of combustion of, and fugitive emissions from, petroleum obtained through onshore activity. Under the Act, the Secretary of State is required to lay the CCC report before Parliament with either: (a) regulations to provide for the right to use deep level land to cease to have effect; or (b) a report explaining the reasons for not laying such regulations (points (i) and (ii) on page 2). This government response explains why regulations are not required (APP/DA/3 Appendix 32).
375. In the light of the CCC Report, the government's statutory response provides among other things:
- i) Government is committed to taking action on climate change by reducing GHG emissions and making the transition to a clean, low carbon economy;
  - ii) The successful transition to that low-carbon economy requires clean, safe and secure supplies of natural gas in the coming years;

- iii) In electricity generation, government believes that shale gas can be a bridge while the UK phases out old coal generation and develops energy efficient renewables and nuclear;
- iv) There are potential economic benefits in a new industry (64,000 jobs), which would benefit from 50 years' worth of experience and skills developing oil and gas in the UK;
- v) The shale gas resource in the Bowland-Hodder basin could be 23.2 to 64.6 trillion cubic metres. Government does not yet know how much can be extracted technically or economically;
- vi) Government therefore believes there is a clear need to explore and test our shale resources. Government agrees with the CCC that uncertainty exists and that exploration is required to determine the potential of both the size of a UK shale industry and its emissions footprint;
- vii) Government agrees that: '*appropriate emissions mitigation techniques should be employed where practical*' during the exploration phase;
- viii) Government welcomes the CCC's primary conclusion that shale gas development at scale, i.e. at production stage, is compatible with carbon budgets if 3 tests are met;
- ix) Government believes that the strong regulatory framework for shale gas development, plus the determined efforts of the UK to meet its carbon budgets, means that the 3 tests will be met.

376. It is quite clear, therefore, that in the light of the Climate Change Act 2008, the Paris Agreement and the CCC report (on which significant reliance is now placed by the Council), government strongly supported the exploration of shale gas resources. The response to uncertainty over emissions was not a moratorium. Rather, such uncertainty was to be addressed by exploration and monitoring (as provided by this proposal).

377. The CCC Report and the government's response therefore strongly support the proposal.

378. The national energy policy (2018 WMS) (APP/DA/3 Appendix 14) is dated May 2018. It is clearly up-to-date and post-dates: the Climate Change Act (2008), the Paris Agreement (2015), the CCC Report (2016) and the government's response (2016).

379. It provides a balanced approach to energy policy. It states that:

*The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our CCA and our international obligations. We believe that gas has a key part to play in meeting these objectives both currently and in the future ... (emphasis added).*

380. It recognises that Gas still makes up around a third of our current energy usage and every scenario proposed by the CCC setting out how the UK could meet its legally binding 2050 emissions reduction target includes demand for natural gas.

381. It considers that it is right to use domestic gas resources to the maximum extent and to explore the potential for onshore gas production from shale rock formations in the UK, where it is economically efficient and robustly regulated.

382. It provides that “great weight” should be given to the benefits of mineral extraction. This expressly includes exploration. In so doing, government expressly takes account of carbon emission levels, the Climate Change Act and the Paris Agreement.
383. Framework paragraph 148 supports the transition to a low carbon future in a changing climate. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures, including the Climate Change Act 2008 (Framework paragraph 149).
384. The Framework also specifically recognises the benefits of onshore gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy. Mineral Planning Authorities are therefore required to put in place policies to facilitate their exploration and extraction (Framework paragraph 209(a)).
385. Reading Framework paragraphs 148, 209 and the 2018 WMS together, it is beyond dispute that government considers that onshore development supports the transition to a low carbon economy in a changing climate, in the light of the Climate Change Act 2008. To suggest that onshore development of gas is inconsistent with the Climate Change Act 2008 and Paris Agreement renders Framework paragraph 209 otiose, which is an irrational interpretation of the Framework. Government sees Framework paragraphs 148 and 209 as complementary, not mutually exclusive. That is the only objective interpretation which is consistent with the Framework as a whole and the 2018 WMS which immediately preceded the Framework.
386. The IPCC Report (EP10) is directed towards national policy makers (cross examination of Prof Anderson). It will, therefore, inform emerging policy, as part of a balanced approach to energy policy (together with issues such as affordability, security of supply and economic growth). The appellant does not contest the content of the IPCC Report. Accordingly, there has been no need to call a witness to address issues of climate change.
387. The appellant’s case in anticipation of the government response to the IPCC report which is to be informed by the further CCC report requested by the then Minister in October 2018 can be read in full (A21 paragraphs 142 to 150). However, since the CCC report (PI1) was published in May 2019 and the appellant’s response is set out below [470 to 482], the anticipatory case made is not set out here. However, what amounts to the conclusion on this section of the case follows.
388. The appellant does not contest evidence on climate science. Hence, it has not called any witnesses on this evidence. It does not contest the conclusions of the IPCC Report. It does not deny that the proposal will generate GHG emissions. It does not dispute that the Paris Agreement is a material consideration.
389. Rather, the appellant submits that government has specifically balanced the competing policy imperatives of (i) security of energy supply, affordability and economic growth; and (ii) mitigation of climate change in the formulation of national energy policy and the Framework (and also LP policy ENV7). Government strongly supports the exploration of onshore gas, in the light of the

Paris Agreement. Reading the Framework and national energy policy as a whole, it is quite clear that government considers the impact of GHG emissions is outweighed by the need for gas. Indeed, this is consistent with the grant of consent at Preston New Road and other sites. That same balanced approach should be applied in the determination of this appeal (whether the impact to the climate is considered under LP policy STRAT1 (Dr Broderick) or as a material consideration (FFEP&U)).

390. The IPCC Report post-dates the development plan, national energy policy and the Framework. It adds to our scientific knowledge. However, it is but one consideration in the formulation of future carbon budgets. Security of supply, affordability and economic growth are also inputs into a balanced consideration of future policy and future carbon budgets. Until the statutory process is concluded, we do not know the future policy position. In the meantime, this proposal should be determined in accordance with current policy.

391. Further, the CCC's new power scenarios for 2030 all predict a significant demand for gas. In the Fifth Carbon Budget, the 100gCO<sub>2</sub>/kWh power band for 2030 expects a significant need for gas (see CCC Reducing UK Emissions 2018 Progress Report for Parliament June 2018 – Dr Broderick Appendix 19 at page 70). Even in the 50g CO<sub>2</sub>/kWh scenario (the Paris Agreement's 1.5 degree ambition) there remains a significant use of gas. Such a scenario is, however, much more strict than the current legal target set out in the Climate Change Act 2008. It nonetheless budgets for the use of gas (Mr Adams evidence in chief).

392. Finally, that reality is acknowledged by Dr Balcombe. He considers that, given North Sea production is set to reduce and UK gas demand is set to remain relatively stable, the UK may rely more heavily on imported natural gas (CC2, paragraph 6.2.6). He accepts that imports of liquified natural gas (LNG) may have a "significantly" higher GHG emission profile than domestic gas due to the energy intensity associated with liquefying natural gas to -160 C. Typically 10% of the natural gas product may be burnt as fuel to drive the liquefaction process (CC2, paragraph 6.2.6). He therefore considers that:

*If best available techniques are utilised for UK shale gas production, processing and delivery, shale may exhibit lower emissions than from LNG imports. From previous work, unconventional (and conventional) piped supply chains could exhibit approximately half of the supply chain emissions associated with LNG ... Thus, if domestic shale gas results in avoiding the import of higher emission-natural gas, then this would contribute to limiting emissions growth in the UK ...* (CC2, paragraph 6.2.7)

393. In all the circumstances, therefore, the appellant submits that, whilst the development would result in the inevitable release of GHG emissions, such emissions have been minimised by the use of BAT. The level of such emissions is no more than you would anticipate on any exploratory well (Mr Foster evidence in chief). The level of emissions is considerably lower (in all scenarios) than consented at Preston New Road (Mr Foster evidence in chief and re-examination). Mindful of such emissions and international obligations, government strongly supports the development of exploratory wells. There can be no doubt that gas will continue to be a vital resource in all future scenarios and domestic gas can replace imported LNG, having a benefit in terms of emissions and security of supply. In all the circumstances, therefore, consent should be granted.

*The Council's closing submissions*

394. A number of submissions were made that are either departures from the Council's own evidence and policy or straight forward misrepresentations of national policy.
395. It is not the case that government does not support shale gas until a '*robust regulatory regime is in place*' (C12, paragraphs 73 and 74). The CCC and national energy policy are expressly clear that there is robust regulation on which reliance can be placed. Shale gas is not considered premature, pending a Shale Regulator, and no witness has suggested the contrary.
396. It is not the case that government does not support shale gas until the technology exists to decarbonise this energy supply (C12, paragraph 74). National energy policy does not require net zero emissions. Government supports the exploration for gas, provided it demonstrates BAT. That is why Preston New Road and other sites have been consented, expressly in accordance with the Framework and national energy policy. This submission is simply untrue.
397. Equally, it is not government's position that shale gas is not "safe" (C12, paragraph 75).

*Assessment of the additional points made by FFEP&U*

398. FFEP&U take a number of points in addition to those already covered above. However, there is no objection to the appeal proposal in respect of any of them by the Council or any statutory consultee. The appellant submits that significant weight should be attributed to this level of agreement on these matters.

*The extant planning permission*

399. The planning history of the site is set out above [38]. Although various criticisms have been levelled by FFEP&U and others in respect of the validity of the permission and/or whether there has been a breach of planning control, by the close of the Inquiry hearing sessions FFEP&U accepted that the EP-1 well had been drilled in accordance with the planning permission and associated conditions.
400. Nonetheless, Mr Watson asserts (contrary to the evidence above) that there was a lack of transparency towards the public. However, he fails to identify any statutory or planning policy requirement for consultation/exhibitions with the public once planning permission and permits (all of which required advertisement and public consultation) have been undertaken.
401. Further, he conceded in cross examination that the myriad Regulators are specifically required to regulate the development in the public's interest. Finally, the public exhibition was entirely voluntary. It post-dated the consents of the well depth from the EA, HSE and Oil and Gas Authority (OGA), when the proposed well-depth had been the subject of consultation. Indeed, the exhibition expressly explains: (i) the nature of the proposed exploratory drilling; (ii) with a schematic showing an indicative exploratory well of 5,000-10,000 feet depth; and (iii) a Coal Bed Methane schematic showing an indicative depth of 10,000 feet penetrating the shale (CD 1.8). There is no conceivable lack of transparency and no evidential basis for any lack of trust.

### *The proposed development*

402. The development proposed is described above [39 to 49]. Contrary to the repeated assertions and concerns of local residents by the end of the Inquiry hearing sessions it was common ground between the three main parties that the proposal did NOT entail hydraulic fracturing nor matrix acidisation.
403. The Environmental Permit simply does not allow hydraulic fracturing to take place.
404. The process outlined above [44] does not amount to matrix acidisation, a fact expressly confirmed by the EA (A2). The process is materially different to matrix acidisation because it does not target the geological formation (a point FFEP&U have repeatedly failed to grasp). Indeed, unlike matrix acidisation it is considered to be *de minimis* by the EA because there is no likelihood of any impact to groundwater (or anything else). The only permitted chemical is PROTEKT – 7HCL with inhibitors. This is a 7% HCL solution. At a maximum of 95m<sup>3</sup>, this is 6.65m<sup>3</sup> of acid, hence the EA considering it to be acceptable and *de minimis*. The spent acid returns at close to neutral pH.

### *Sub surface issues*

405. The evidence of Prof Smythe and Mr Grayson is based on two flawed understandings about the nature of the appeal proposal and the responsibilities of the various regulators. However, Prof. Smythe accepted in cross examination that Protekt 7 HCL was a 7% HCL solution which was normal for an acid wash. He expressly agreed with the EA's position (A2) that matrix acidisation is neither proposed nor permitted. His concerns were largely based on an understanding that stimulation of the formation would occur when this is not, in fact, correct.
406. A similar misunderstanding underpins Mr Grayson's concerns about seismic impact; there will be none because the formation is not to be stimulated.
407. Impacts to groundwater are for the EA. They and United Utilities who are responsible for the aquifer take no issue on this matter. Furthermore, the concerns expressed by FFEP&U fail to take into account that the EP-1 well has already been drilled and its continuing integrity demonstrated to the responsible regulators.
408. FFEP&U also misrepresents the way that risk (in this case primarily from an escape of Hydrogen Sulphide-H<sub>2</sub>S) is managed. No on-shore well could ever be 100% risk free. However, HSE are responsible for the enforcement of legislation concerning well design and construction. Before design and construction, operators must assess and take account of the geological strata and fluids within them (Planning Practice Guidance Minerals, paragraph 112). This is not, therefore, a matter to consider at this stage of the process. The well has been constructed without incident and the HSE do not object to this proposal.
409. In any event, H<sub>2</sub>S is a very well known issue to operators and regulators. When the EP-1 well was drilled, no H<sub>2</sub>S was encountered. Further, no anhydrite was encountered. This is consistent with the IM-1 well at Ince Marsh. The well was drilled with an alarm set at 5ppm (15 mins). Staff were trained to deal with any occurrence. The exploration will be similarly monitored and controlled. If the exposure limit is met, the well operation will cease and cannot recommence without the agreement of the EA. There is, therefore, no evidential basis for a

concern. Further, the presence of H<sub>2</sub>S is not, in any event, a rare occurrence or one which precludes onshore operation. It is a risk which must be managed. It is not, however, a risk which is likely to be encountered at this site.

#### *Public health*

410. The appellant does not dispute that local residents have concerns over the health impacts of the development. However, there is no robust policy or evidential basis for them.
411. LP policy ENV7 supports the principle of development unless there is an “unacceptable impact” on health. LP policy SOC5 provides that development which gives rise to significant adverse impacts on health will be refused. It follows that there must be evidence of a “significant adverse health impact” to be unacceptable.
412. It is therefore of central importance that FFEP&U are not making a positive case. Neither of FFEP&U’s witnesses positively assert that there will be a significant adverse impact on health. Rather, they seek only to question the robustness of the appellant’s assessment.
413. Dr Saunders identifies that there are a number of potential sources of health impact (EPP3, paragraph 2.5). However, there is no issue raised about the health impact from: (a) odour; (b) the proposed lighting; (c) noise and/or (d) dust. Rather, he accepted that the sole public health concern arose from air quality (including from road traffic).

#### *Air quality*

414. Turning then to air quality, by virtue of LP policy SOC5 the proposal is acceptable unless there is a significant adverse impact to health as a result of a deterioration in air quality.
415. Framework paragraph 181 requires that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones and the cumulative impacts from individual sites in local areas.
416. Accordingly, neither local nor national policy requires there to be “no impact” on air quality. It is not premised on the basis that there is “no safe limit of exposure” to certain pollutants. Rather, policy requires there to be compliance with relevant limit values and/or national objectives for pollutants. This is because (the uncontested evidence of Ms Hawkins) such emission limits protect the health of the young, sick, old and vulnerable, even in deprived areas. The setting of the emission limits embody a precautionary approach (Ms Hawkins in re-examination). If the emission limits are met, the impact to the health of vulnerable people in deprived areas is acceptable and they do not suffer any “disproportionate impact” as asserted by FFEP&U.
417. Ultimately, the parties agree that the air quality impacts of the following are irrelevant: (i) hydraulic fracturing; (ii) matrix acidisation; and (iii) production impacts. Accordingly, it must be conceded that those (significant) parts of Prof Watterson’s evidence, which addressed such impacts, are simply irrelevant.

418. Further, there is not (and nor has there ever been) any criticism of the methodology, applying the Planning Practice Guidance and Institute of Air Quality Management methodology, which is agreed by the EA and the Council.
419. The EA control emissions to air (Planning Practice Guidance Minerals, paragraph 110). The flaring or venting of gas produced as part of the exploratory phase will be regulated by the EA (Planning Practice Guidance Minerals, paragraph 112). The conclusions of the EA on any assessment of emissions to air as part of its decision to issue the Environmental Permit is therefore a material consideration of significant weight (evidence in chief of Ms Hawkins).
420. It is, however, accepted by the appellant that it is appropriate for the Council to reconsider the assessment if there has been a material change in circumstances since the EA's assessment. In this case, residential properties have moved from 500m to 350m. It was, therefore, appropriate for the Council to reconsider the significance (if any) of this change; this is precisely what the Council did.
421. The application for the permit variation was supported by several documents including the Air Quality Monitoring Report (CD1.9 Appendix 5) and the Flare Technical Document (CD1.9 Appendix 2). In response to the consultation that the EA is required to undertake the Council's Environmental Protection Team raised the issue of the proximity of residential properties. It did not raise a similar concern in respect of industrial premises which were far closer.
422. The EA permit was granted because (at the time of the determination) properties were 500m away (impacts were insignificant) and it was anticipated that the exploratory phase would have been completed before properties with planning permission but still to be constructed moved closer. It is, therefore, appropriate to reconsider this issue because (as a matter of fact) properties are now closer.
423. The EA does, however, specifically endorse the appellant's assessment in a number of regards: (i) the use of wind data from John Lennon Airport; (ii) the acid used and inhibitors have been fully defined; (iii) the use of benzene as a proxy for all PAH's; (iv) using benzene as a proxy is a worst case assumption (CD 2.13 pages 9-12). There is no reason to revisit such conclusions. On the contrary, Prof Watterson accepts that the EA approach at this stage was "reasonable" (EPP2, paragraph 7.6.6).
424. The sole issue is the proximity of residential developments. However, even this needs to be reconsidered in the context of the Air Quality impacts on industrial premises at 5m being found to be acceptable (Ms Hawkins evidence in chief).
425. Naturally, the Council raised the same issue when the planning application was submitted because the same air quality assessment reports were provided as part of the planning application (CD2.4 Appendix 11) as had been provided to the EA. A further technical memorandum (CD2.21) was provided in response which satisfied the professional officer in respect of the impact on the more proximate residential properties.

426. There is, therefore, a powerful consensus of professional evidence between the appellant's three sets of independent air quality experts, the EA, the Council's Environmental Protection Team and its Planning Officers and the Planning Committee. This is a consideration of very significant weight.
427. For the purposes of the appeal Inquiry Ms Hawkins prepared a further air quality assessment (APP/KEH/3, Appendix 1), the contents of which are summarised by Mr Cannock (A21, paragraphs 210 to 219). This evidence was not challenged. It demonstrates objectively that there would be no material adverse impact on air quality. There is therefore no evidential basis for a health concern and the proposal complies with policy.
428. Similarly, there is no evidential basis for an objection based on particulates from road vehicles, as the EA concluded without criticism. FFEP&U's case that there would be is irreconcilably inconsistent with its desire for comprehensive regeneration of the local area. If the site was comprehensively redeveloped, the HGV movements of such a mammoth construction task would dwarf the proposed HGV movements of this temporary use. Similarly, any employment re-use/redevelopment of the site/local area adjacent to the M53 would generate many more movements. Yet, FFEP&U have no concern about such particulate emissions from the comprehensive redevelopment.
429. There is, therefore, no objective evidence of any health impact. Accordingly, there is no requirement for any further bespoke health impact. Indeed, the Council's position is that one is not required, even in the light of FFEP&U's concerns.

*Public perception/fear*

430. The well-known and relevant case law is reviewed in bulleted detail (A21, paragraph 229). On analysis of those cases, the appellant's position is that public concerns and fears, even if shown to be baseless, are a material consideration but that, if not justified, they cannot be conclusive. The appellant simply submits (on the evidence of this case) that very limited weight should attach to the claimed fear/anxiety caused by this development.
431. This sets the context for the evidence of Dr Szolucha at the end of a section on residents' views about the effect that the proposed development would have that:
- The local community therefore has legitimate reasons to consider that this development may involve fracking. This amplifies distrust of the Appellant and creates a local perception that the company is going to use hydraulic fracturing but is trying to avoid fracking regulations (EPP4, paragraph 4.36).*
432. This analysis is hopelessly flawed. It is now common ground with FFEP&U that this proposal does not constitute hydraulic fracturing. It has never comprised hydraulic fracturing and hydraulic fracturing has never been 'removed' as asserted. It would be in breach of the planning permission and/or permit. This is not, and never has been, in dispute. Accordingly, the local community do not have any "legitimate" (or objective) basis for their concerns.
433. Because they are baseless, perceived risks can only be afforded very limited weight (Mr Adams evidence in chief). The source of the contention that the proposal comprises hydraulic fracturing is from other objectors (such as Friends

of the Earth). It cannot be rational that fears founded on false assertions from objectors justifies refusal. That would be an entirely self-serving proposition that is likely to lead to all controversial developments being refused (as per *Gateshead* (A12)). This situation bears no resemblance to the *Newport* decision (A14).

434. Finally, there is no evidence of fears being caused by the proposed operating technique. The proposed acid wash/squeeze is deemed to be *de minimis*. It has been used on thousands of water wells up and down the country without complaint. No-one has expressed a fear (or the perception of a fear) based on this proposed technique, which is secured by the permit.

#### *Social harm*

435. This is a separate but related aspect of stress and anxiety over the development proposed which FFEP&U considers not to have been properly considered by the appellant, the Council in the widest sense and statutory consultees. There are five points taken none of which have any merit and, as such, they do not weigh materially in the balance at all.

436. First, the appellant is criticised for providing no compensatory mechanisms to address the negative visual impressions and the historic impressions of the area. (EPP4 paragraph 3.13). However, there is no material adverse impact from the development compared with the lawful base line and this proposal is not responsible for any historic impressions. Furthermore, there is no policy basis for such compensation and Dr Szolucha could not identify in cross examination what such compensatory provision would be.

437. Second, even though the Council is content that the consultation carried out by the appellant was adequate, it is asserted that it fell short of the expectations regarding community consultation (EPP4 paragraph 3.20). The appellant has no control over the expectations of the public and cannot be judged against them.

438. Third, FFEP&U asserts that involvement in the planning process causes stress (EPP4 paragraph 4.19) and resentment if appeals succeed (EPP4 paragraph 4.24), as a result of a breach of local democracy. However, this is no more than a criticism of the statutory planning system, which is not up for review.

439. Fourth, FFEP&U considers that distrust of the Police and government are material considerations (EPP4 paragraph 4.24). The authority for that proposition is not provided. However, it is denied that the regulation of the use of land in the public interest by the Police and government, in accordance with extant planning permissions and statute, can rationally form the basis of an objection.

440. Finally, there is an assertion (EPP4 paragraph 4.25) that the relationship between the appellant and local residents is likely to sow the seeds for a wider social conflict, once the operations commence. This cannot be the basis of an objection. The development will not proceed unless planning permission and relevant permits are obtained. At that stage, the development is deemed to be in the public interest. Local residents may persist in their disagreement. They can demonstrate lawfully against the proposal. On that basis, there is no reason for any conflict. However, objectors cannot rationally rely on the stress caused by any such demonstration, as this is a self-serving analysis which pulls itself up

by its own bootstraps. Further, reliance cannot be placed on the implied threat of an unlawful demonstration, resulting in conflict with the Police. This would result in planning anarchy, as unlawful demonstrations were staged, simply to support the contention that permission should be refused because of "social harm".

### *Regeneration*

441. There is no planning policy or evidential basis for the alleged unacceptable impact on regeneration (on the site or in the local area).
442. The SRF was published in November 2011 (EP19). As Ms Copley conceded: there was no formal consultation, no opportunity for objections, no opportunity for objections to be independently determined and it was not the subject of Sustainability Appraisal or Strategic Environmental Assessment. It does not form part of the development plan (EP19 page 3) and is not a supplementary planning document. It is not a policy document at all as Ms Copley conceded.
443. The appeal site and adjacent dockland/industrial areas form part of site 8 (Waterfront) in the Strategic Framework for the Town (page 7).
444. The SRF pre-dates the adoption of the LP and is part of the LP evidence base. Although referred to in the policy justification (CD5.1 paragraph 5.9), it is not part of the LP or part of any LP policy. It has not been assessed through the Strategic Environmental Assessment process (CD5.1 paragraph 5.11).
445. The appeal site does not form part of a strategic allocation. There is no reference in LP policy STRAT4 to the site being developed/safeguarded for housing (or anything else). There is no policy support for the SRF. Further, Ms Copley could not identify any part of the policy with which there is conflict. So far as relevant (on Ms Copley's evidence), the policy seeks to maintain a portfolio of employment land and premises available within Ellesmere Port to meet a range of sizes and types of business needs to 2030. That is not a regeneration policy. Further, there is no conceivable conflict with it. The site and surrounding areas are occupied. If planning permission is granted for the appeal development, there will be no impact on the portfolio of employment land and premises (and Ms Copley does not argue the contrary).
446. The site is currently allocated as BLP policy EMP 1. However, that allocation will be superseded by the adoption of the ELP. The SRF is (again) referred to in the policy justification to the (CD5.4 paragraph 3.4) where it states that the policies in this section support the regeneration initiatives in the SRF. However, none of the policies in the section make any reference to the development of site 8 (Waterfront). There is no policy support for the relevant part of the SRF (Mr Adamas re-examination). Indeed, Ms Copley conceded:
- i) The site is not allocated in the ELP (A3);
  - ii) It is not allocated because the SRF is not being progressed;
  - iii) There is no site specific policy in the ELP which reflects the SRF.
447. The reasons for this are quite clearly set out by the landowner, Peel Holdings, in a representation to the LP examination Inspector (A6). In short, it was said the (then) recent success of the port operation at Ellesmere Port docks now means that it is no longer viable or possible for Peel to continue to propose the redevelopment of the docks for mixed use (the Ellesmere Quays scheme).

Instead, regeneration at the docks would be by continued improvement as a port facility as part of the Ocean Gateway.

448. Ms Copley accepted that since the SRF was published there had been no activity such as land assembly or relocation of existing businesses which would enable it to be implemented. The contention that a Compulsory Purchase Order could be promoted and confirmed to support a non-statutory SRF with no prospects of progress and no policy foundation is absurd.
449. Even if all the necessary elements could be put in place to develop the appeal site for housing in accordance with the SRF Mr Adams in re-examination estimated that it would take at least five years before development could commence. The reality is that the appeal development could take place for its 18 week duration at any point within that five year window and have no possible effect on any regeneration.
450. It should also be noted that not a single regeneration partner (the SRF being a partner document) has objected to the appeal proposal; this includes the landowner and the Council as a local planning authority.
451. There is therefore no credible impact to regeneration to weigh in the planning balance.

#### *Landscape and visual impact*

452. The landscape context for the appeal site is set out above[17 to 19], as is the planning history of the EP-1 well site development [38]. This forms the baseline against which the impacts of this proposal (so far as relevant to this Inquiry) fall to be considered. In that context, it becomes plain that claimed unacceptable landscape and visual impacts cannot be reasonably countenanced. Indeed, it is difficult to conceive of a more appropriate site in character, transport and noise terms, especially given that the well was drilled without complaint.
453. A landscape and visual appraisal was appended to the SOC (CD4.1 Appendix C). It concludes that no notable landscape or visual effects would result. This is due, most notably, to the industrialised nature of the context, the presence of similar structures as proposed and the very short duration of the impact.
454. This assessment has not been the subject of any reference (much less critique) from Ms Copley and FFEP&U. There is no contrary assessment. It is unanswerably correct. There is no conceivable conflict with policy. Indeed, there is no reference to landscape and visual impact in the FFEP&U Closing Submission.

#### *Biodiversity*

455. The sole issue in this respect is whether or not there is a requirement for an AA in the light of the *People over Wind/Sweetman* judgement<sup>9</sup> (A16). The appellant submits that (without prejudice to its primary case) an AA should be undertaken to avoid a meritless statutory challenge in the event of planning approval being given. A 'shadow' AA has been undertaken (APP/KBH/2, Appendix 1). It concludes that the proposed development will not have an

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<sup>9</sup> *People over Wind & Sweetman v Coillte Teoranta* (C-323/17) [2018] Env LR 31

adverse impact on the integrity (etc) of the SPA/SSSI/RAMSAR site. Natural England (NE) agree (A7).

*Sustainable location*

456. Mr Watson provides a long list of site characteristics but, on examination, none suggest that the site is not sustainably located.

Conclusion

457. The appeal scheme complies with the development plan and material considerations (such as the Framework, Planning Practice Guidance and national energy policy) further support the grant of consent.

458. The appellant therefore submits that planning permission should be granted subject to conditions.

**Stephenson<sup>10</sup> (R18) – Legal submissions (A19)**

459. The appellant's submissions respond (in the normal course of allowing an appellant the final right of reply) to those made earlier by the Council and FFEP&U. Paragraphs 6 to 22 inclusive set out in summary form the findings of Dove J in respect of each of the four grounds. The fact that there was no challenge to national energy policy contained in either the 2015 WMS or the 2018 WMS is recorded as is the fact that, at the date of the response, no formal Order had been issued. The implications of the judgement for the determination of the appeal are set out in paragraphs 23 to 43 inclusive.

460. The judgement does not impact on the weight that should be afforded to the development plan in this case, nor does it affect the interpretation and application of LP policies ENV7 and STRAT1. There is therefore no material impact on the central part of the appellant's case contrary to the submissions on *Stephenson* of FFEP&U.

461. In the light of the judgement the appellant agrees with FFEP&U that weight cannot now be afforded to Framework paragraph 209(a) even though (at this stage) it had not been formally quashed (that was done later when the Order (PI5) was issued). However, substantial weight can still be afforded to Framework paragraphs 203, 204(a) and 205 to which the claim was not directed.

462. The development plan therefore remains consistent with national policy which continues to: (i) support the best use of mineral resources to meet identified energy needs in the national interest and (b) attach significant weight to the benefits of such mineral extraction.

463. In that context and in response to the submissions of FFEP&U (R19 paragraphs 20(c) and (d)):

- i) The appellant's Closing at paragraph 138 remains valid. It acknowledges the requirement to plan positively to meet climate change issues (Framework paragraphs 148 and 149). The Judgment does not change this (R19, paragraph 20(c));

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<sup>10</sup> *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

- ii) The appellant's Closing at paragraphs 38 and 39 refers to Framework 209(a). For the reasons given above, no weight should be afforded (now) to that aspect of the Framework;
- iii) The appellant's Closing at paragraph 140 sought to apply the Framework as a whole, in a manner which rendered it internally consistent. Given that Framework 209(a) should be afforded no weight, that submission can no longer be made (R19 paragraph 20(c)). It is not however accepted that this materially impacts on the appellant's case as a whole, for the reasons set out in full in the Closing (R19 paragraph 21). The Framework must nonetheless be read as a whole, taking account of Framework paragraphs 203, 204, 205 and 148, which is the appellant's approach;
- iv) The Judgment has held that government did not take into account relevant technical evidence in the adoption of Framework 209(a). The appellant does not, therefore, submit that government specifically balanced the benefits of exploration against the impact of the climate in the formulation and adoption of Framework 209(a). However, it remains the case that: (i) the Council and government strongly support the exploration for onshore gas (in LP policy ENV7 and the WMS respectively); and (ii) in granting consent for the Preston New Road exploration, the Secretary of State considered that the benefits of shale gas exploration outweighed the impacts on climate change. The appellant's Closing at paragraph 152 needs to be read in that light (R19 paragraph 20(d));
- v) However, it remains the case that the Framework post-dates the Climate Change Act 2008, Paris Agreement (2016), the CCC Report and government's response (2016) as a matter of fact (R19 paragraph 20(f)). In that context, it remains correct (appellant Closing at paragraph 39) that: (i) it is essential that there is a supply of minerals to provide the energy the country needs (Framework paragraph 203); (ii) it is a fundamental principle that minerals can only be worked where they are found. Best use needs to be made of them (Framework paragraph 203); (iii) great weight should be given to the benefits of mineral extraction (Framework paragraph 205).

464. No reliance was placed on the 2015 WMS by the appellant in closing submissions. It is uncontroversial that such as the Paris Agreement, the CCC report and the government response all post-date the 2015 WMS but the judgement does not affect the weight to be attached to it. In any event, it has been updated by the 2018 WMS.

465. This was not the subject of the legal challenge and, contrary to the submissions of FFEP&U (R19 paragraphs 18 and 19), it must as a matter of law remain a material consideration with weight being for the decision maker.

466. Substantial weight should be afforded to the 2018 WMS:

- i) It provides that the UK must have safe, secure and affordable supplies of energy, with carbon emission levels that are consistent with existing carbon budgets (defined in the Climate Change Act 2008 and international obligations). Such national energy policy imperatives remain unchanged by the judgment, which does not address them at all;

- ii) In the light of the Climate Change Act 2008 and the Paris Agreement (2016), government considers that gas has a key part to play in meeting such objectives (currently and in the future). That is because (as the WMS recognises): (i) gas still makes up around a third of our current energy usage; and (ii) in every scenario proposed by the CCC - setting out how the UK could meet its legally binding 2050 emissions reduction targets – includes demand for natural gas. Such are matters of judgment based on objective analysis. They are addressed in the evidence of Mr Adams and the appellant’s Closing. They are not addressed in the judgment at all and remain unchanged by it;
- iii) Government also considers that further development of onshore gas resources has the potential to deliver substantial economic benefits to the UK economy. But to achieve such benefits (strongly supported in all iterations of the Framework), government recognises that they must work with responsible companies prepared to invest in exploration, to test the size and value of the potential reserves and to ensure that our planning and regulatory systems work appropriately. Again: such matters are not addressed in the judgment at all and remain unchanged by it;
- iv) Government considers that this country has ‘*world class regulation*’ to ensure that shale gas exploration can happen ‘*safely*’. That is not addressed in the judgment and remains unchanged by it;
- v) Government expects mineral planning authorities to give great weight to the benefits of mineral extraction. That remains part of the Framework which was not the subject of challenge. It remains national energy policy.

467. The 2018 WMS relies on longstanding national energy policy imperatives such as security of supply, affordability and economic growth. It expressly recognises our national and international commitments in respect of climate change. However, it also recognises the reality of the current energy market, which is heavily reliant on gas both now and in the foreseeable future (applying current CCC scenarios). Such material considerations are not (even arguably) reduced in weight due to this judgment.

468. The CCC may revise its position in the light of more recent scientific data. However, as explained in detail in Closing (A21 paragraph 116 *et seq*), there is a clear statutory framework for the CCC to consider and report upon a wide range of factors (A21 paragraph 143). The outcome of this process is uncertain and cannot be anticipated by this Inquiry. Strong support for this approach is provided by the approach of the Inspector and Secretary of State at Preston New Road, summarised by Dove J (R18 paragraph 12).

469. In all the circumstances, therefore, the 2018 WMS is a material consideration of significant weight, which further supports this proposal’s compliance with the development plan.

***Net Zero: The UK’s contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI2)***

470. The appellant’s submissions are set out in section 2 of PI2. Paragraphs 2.1 to 2.3 inclusive set out the context in which the CCC net zero report was requested while paragraph 2.4 sets out what the report has been prepared to achieve. This

is to make recommendations for a new emissions target for the UK, having regard to the latest scientific evidence on climate change. The CCC Report seeks to advise the UK government to put policies in place, as well as legislation where appropriate, in order to reduce GHG emissions in the UK as a contribution to global climate change.

471. The net zero report:

- i) Demonstrates that there remains a continuing need for onshore gas extraction;
- ii) Does not direct decision makers to apply different statutory or planning principles and/or tests to those stipulated within the CCC's March 2016 report (CD8.1); and
- iii) Recognises that the offshoring industry, such as oil and gas production and exploration, is not constructive for domestic energy production, the UK economy or global emissions (i.e. such as the importation of LNG).

472. The ultimate recommendation of the report is for a new target for the UK of net-zero GHG emissions by 2050.

473. Reviewing what the net zero report says about fuel sources to achieve this target and the continuing role to be played by gas, the UK therefore has a choice. It can produce the resources needed to meet the energy demand of a net-zero economy domestically, or it can choose to import these resources, with consequent concerns over security of supply.

474. It should therefore be a priority for the UK to meet the UK's recognised natural gas demand from the sources with the lowest pre-combustion emission footprint. Drawing on the findings in the 2016 CCC report (CD8.1) this would be UK shale which would offer at least a 50% pre-combustion emission saving over LNG and long distance pipeline and reduce the carbon footprint of the fuels the UK consumes.

475. Under international carbon accounting rules, carbon emissions are accounted within the territory they originate. This system effectively means that any territorial increases in domestic pre-combustion emissions (e.g. by reducing the UK's import dependency), the UK's emissions would be marginally increased. By comparison, the UK could perversely reduce its emissions by importing all of its oil and gas despite the same level of consumption.

476. The CCC Report acknowledged that this system creates an incentive to import goods into the UK, including oil and gas. However, the CCC states very clearly as follows (PI1 first bullet point on page 106):

*The design of the policy framework to reduce UK industry emissions must ensure it does not drive industry overseas, which would not help to reduce global emissions, and be damaging to the UK economy.*

477. In addition to the details set out above in relation to pre-combustion emission gas sources, it is clear that the CCC recognises that an offshoring of oil and gas production is not constructive for domestic energy production. It is also clear that the only conclusion to be drawn in this regard is that it should be a priority for the UK to source that natural gas from the sources with the lowest pre-combustion emission footprint. Otherwise, the CCC's recommendation to not

- offshore the UK's emissions cannot be met. This, of necessity, requires the consent of exploration development as a necessary precursor to (i) understanding the nature and size of any resource and (ii) production.
478. The net zero report raises implications for cumulative import dependency. Oil and gas are critical to the UK, with 75% of UK final energy demand sourced from oil and gas, and natural gas providing 87.5% of the annual heat and power demand of a typical home.
479. Under one of the National Grid's Climate Change Act compliant scenarios (APP/DA/3, Appendix 22), there is a forecast gas demand of 60bcm in 2050 which is similar to the net zero 2050 demand forecast by the CCC. Under the National Grid community renewables scenario, UK gas demand was forecast to be 30bcm by 2050. Under these two scenarios, UK natural gas cumulative import dependency from 2020 - 2050 ranges from 1150bcm to 1450bcm. The appellant understands that UKOOG (the industry trade association) expects the UK's cumulative gas import dependency from 2020-2050 stipulated in the CCC Report to fall within this range (1150-1450bcm i.e. 12,650TWh to 15,950TWh).
480. Assuming the UK meets its strict carbon net-zero target out to 2050, without increased domestic natural gas exploration and production – the UK would find itself locked into reliance on more carbon intensive imports, such as LNG and long-distance pipeline. This would represent an offshoring of the UK's environmental responsibility and economic opportunity, with consequent risks for security of supply.
481. Section 3 refers to the 2016 CCC report (CD8.1) and notes that the net zero report does not identify any amendment to or revocation of the CCC's comments in the 2016 report advising in respect of the need for exploration, which states:
- In order to start to ascertain the UK reserve, a period of exploration would be required to find the most productive areas in the shale formation. ... If flow-rate levels consistent with commercial exploitation can be established over a number of exploration wells the industry might then move on to development well drilling and the production phase of operations.*
482. In conclusion, while the CCC net zero report provides a recommendation to the UK government in light of the most up-to-date scientific evidence, the legislative and policy position in respect of the determination of the appeal remains as at the time the Inquiry was heard. As such, the appellant's evidence to the Inquiry, as formally tested by way of cross examination, remains correct in respect of the approach to be taken to consideration of the proposal against the relevant national and local policy frameworks.

**Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI6)**

483. The practical effect of the case has already been addressed in the legal submissions above [459 to 469]. No further submissions were made.

**Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) – Legal submissions (PI10)**

484. The appellant considers that the 2019 WMS (PI9) is clear and straightforward and requires little in the way of explanation. The following points are made, if only to set out the true context in which the 2019 WMS was made.

485. It is correct that Framework paragraph 204(a) relates to plan making and requires authorities to plan for mineral extraction of local and national importance (which expressly includes oil and gas (including conventional and unconventional hydrocarbons)). It is in this context that LP policy ENV7 was adopted. This policy provides clear 'in principle' support for the proposed development. This was agreed by the Council. There is no dispute that LP policy ENV7 is up-to-date and consistent with the Framework. The appellant is quite clear that it has demonstrated compliance with this policy such that if the development were determined in accordance with the development plan, permission should be granted. This has been the straightforward and primary position of the appellant throughout the appeal and has not changed as a result of either the *Stephenson* case or the 2019 WMS. It is, in fact, the Council and FFEP&U that must cast around for other material considerations to overcome what is a straightforward conclusion.
486. In this regard, the 2019 WMS could not be more clear. The 2015 and 2018 WMS remain material considerations, which further support LP policy ENV7 and the development. Consistent with that, the Government '*remain committed to the safe and sustainable exploration and development of our onshore shale gas resources*' (emphasis added). The successive 2015, 2018 and 2019 WMS are material considerations of significant weight which further support the development.
487. Framework paragraph 205 requires great weight to be given to the benefits of minerals extraction (which includes both exploration and production). It is quite absurd to suggest that this requires a decision maker to close their mind to the purpose behind exploration. This would be to ignore the obvious fact that there cannot be production without exploration. Indeed, government has been explicit in numerous publications that exploration is required in order to understand the viability and size of the resource. Exploration is always a logical pre-cursor to production. Decisions of the Secretary of State have understood this. If the alleged lack of support for exploration was correct, then production would be impossible and the policy would be self-defeating. The policy does not require evidence that benefits arise directly and immediately from a particular scheme, rather it is the benefits of mineral extraction (including to the economy) which must be recognised. It is entirely proper for the decision maker to recognise that the benefit of exploration is that it allows production to follow, with all the consequent benefits that then flow. There is nothing to support the submission that such factors must or even should be ignored.
488. With regard to the purpose of Framework paragraph 209(b), the appellant would firstly note the full text, which requires authorities to '*distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production)*' (emphasis added). That is precisely what this Council has done in LP policy ENV7. This is hardly support for ignoring the wider benefits of production. Rather, it recognises the significantly different stages of the process from a land use planning perspective, requiring appropriate policy for each stage. That is consistent with the approach in the CCC Report 2016 (CD8.1).
489. The 2019 WMS represents a clear and up-to-date position of government policy and expressly states that the 2015 and 2018 WMS remain extant as material considerations. They were simply not the subject of challenge. The fact

that the court found that '*obviously material*' submissions were not taken into account as part of a consultation exercise for the revised Framework does not speak to the veracity or quality of such material. As the appellant pointed out in evidence, there are a range of factors required to be balanced in the formulation of energy policy which certainly does not need to be recast every time there is a suggestion of some new scientific information. It would seem that (again) FFEP&U asks that less weight be attached to extant government policy, which expresses itself to be a material consideration of significant weight, and to second guess what policy makers may do in the future. This submission is, in the view of the appellant, completely untenable, for the reasons previously discussed.

490. Fundamentally however, the appellant remains of the view that the Framework must be read to be internally consistent, where possible. If it were the case that the inevitable GHG emissions from exploration should weigh so heavily against such development that it should not proceed, then that would defeat the clearly stated objective of government energy policy.

491. Thus the appellant reaffirms its position that not only does the proposal comply with the expressly supportive development plan policy, but also government policy. The Council and FFEP&U have not identified any other material considerations that indicate that permission should be withheld.

***The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI14)***

492. The parties have already commented on the net zero report (PI11) and the appellant has made clear that the proposal to reach a net zero target by 2050 is entirely consistent with domestic oil and gas production for the reasons set out above [470 to 482]. The Council and FFEP&U continuously mischaracterise the net zero report as being inconsistent with this form of development, which is patently wrong. As such the appellant considers that the Government's statement and the draft order (subsequently confirmed) do not in any way affect the conclusion that the proposed development is in accordance with the development plan and national policy and that there are no other material considerations that suggest that permission should be withheld.

***Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI20)***

*The Local Plan Part Two (PI18)*

493. In short, the appellant submits that all of the material main modifications to the ELP prior to adoption were anticipated in the evidence considered before the Inquiry was closed. The modifications only go to strengthen the development plan support for the appeal proposal. All that has changed is the weight that should be given to those policies, increasing from 'significant' to 'full'.

*The Written Statement (PI19)*

494. After summarising the principal points set out in the Written Statement the appellant concludes that it only goes to support the case made by recognising the importance and value of securing a domestic supply of natural gas. The appeal

proposal does not involve the use of hydraulic fracturing and as such the effective moratorium placed on this type of exploration technique, which may be removed if evidence is provided to address current concerns, has no relevance to the decision making process for this appeal.

### **The Cases made by the Interested Persons**

495. In total, some 30 people spoke during the first Friday morning of the Inquiry which was set aside for interested persons to make their oral contributions. I am indebted to Joanne Spark of FFEP&U for all the work she did to organise the speakers who, for the most part, read from prepared statements and, again for the most part, avoided duplication of points already made.
496. The statements, which are referenced where available at the end of the summary, are listed in Annex A and can be read in full. Below therefore is a summary of the main points made in the order in which they were given. A fuller summary is given for those who did not have a prepared statement or who departed significantly from the one listed in Annex A. In all cases the full statement has been taken into account in forming my conclusions.
497. **Chris Matheson MP** represents the City of Chester. On the basis of his experience the appellant company does not conduct itself in a way that can be considered trustworthy. This is relevant to the decision on this appeal because it affects the view to be taken about any promises that might be made with regard to mitigation of health, safety and economic risks to local residents. He made three points.
498. First, to overrule the locally taken decision would be an affront to democracy itself.
499. Second, the scientific consensus set out in the IPCC October 2018 report is that there are 12 years to keep global warming to a maximum of 1.5°C. The continued burning of fossil fuels is not consistent with this objective and approving this planning application will not contribute to meeting these targets. This links directly to an impact on climate change in the Framework.
500. Third, GHG emissions and a negative impact on local air quality will impact on public health. The proposal will also affect plans to bring forward development of the Ellesmere Port area and undoubtedly cause economic harm and put nearby residents and businesses at risk. (IP1)
501. **Justin Madders MP** represents Ellesmere Port and Neston and made three points. First was a similar local democracy point to that of Mr Matheson. Second was a concern about the impact on the new housing that was being built a few hundred metres from the appeal site. He feared that the construction of this needed housing may come to a halt if the appeal development went ahead. Finally, and most importantly, he was concerned about the impact that the development would have on climate change given the CO<sub>2</sub> emissions that would be released to atmosphere. The CCC had already found that unconventional gas exploitation could be inconsistent with climate change objectives.
502. **Mike Amesbury MP** represents Weaver Vale. He made the same local democracy point as his parliamentary colleagues while recognising that it may not be a material consideration for the Inquiry. He also endorsed the comments of Mr Madders regarding the potential impact on local housing development. He

- raised similar concerns to Mr Matheson regarding the appellant's failure to offer sufficient guarantees regarding the safety of the processes that would be employed or even enough information about what those processes would actually entail.
503. His principal points related to the effect that there would continue to be on the natural environment as a result of climate change, the desire of his constituents to see the area develop through the provision of clean and innovative low carbon technology and the air quality of the area. In all three areas shale gas exploration does not represent the type of future that those he represents hope for. (IP2)
504. **Police and Crime Commissioner for Cheshire** David Keane was unable to attend due to a long-standing prior commitment and his statement was read on his behalf by Matthew Walton. His main concern related to the potential impact on public resources, particularly police resources, should the development proceed. He referred to the costs and police numbers required in connection with the Upton operation and the effect that had on other police priorities both in Cheshire and neighbouring areas even though the protest was predominantly peaceful and described as good natured. His concern was whether Cheshire Police could substantially resource a similar type of situation given the pressures already placed on daily policing demand. (IP3)
505. **Councillor Matt Bryan** represents the Upton by Chester ward. He referred to the fact that the EP-1 well was drilled 1000m deeper than permitted and a statement about this by the Council's Environment cabinet Member. He had been informed by the head of planning that it would not be expedient to take action. While this may not be a material consideration it goes some way to show why the local community does not trust the appellant. This in turn leads to stress and anxiety which is a material consideration, especially as the appellant must deal with such technical issues as methane emissions.
506. He also stated that the shale gas industry was simply not compatible with our Paris Agreement climate change obligations or the warning from the IPCC [see 499 above]. (IP4)
507. **Councillor Pat Merrick** represents Rossmore ward in which the appeal site lies. Cllr Merrick was raised in Ellesmere Port and considers that it was time that the town stopped being a convenient dumping ground for polluting industry. The Stanlow oil refinery had raised fears at the time that the area would suffer from pollution and the local Primary Healthcare Trust is aware that breathing problems such as asthma are more prevalent than elsewhere. While not opposed to the exploitation of shale gas 'in principle' it should be in the USA and Australia rather than in the UK where space is so limited.
508. **Councillor Ben Powell** represents Blacon ward. His concern is for the detrimental effect that the development would have on future business investment in the area. He considers that the need for the appellant, HSE and the Manchester Ship Canal Company to reach an agreement in connection with drilling activities and simultaneous handling of explosives is evidence of effectively declaring an exclusion zone for growth in the docks area of Ellesmere Port. This would put at risk the creation of many more jobs than would be provided by the development. (IP5)

509. **Councillor Jill Holbrook** spoke as a local resident, not as an elected representative. She made similar points to those of others regarding local democracy and the impact that there would be on families in Ellesmere Port. She emphasised that public opinion was a material consideration.
510. **Barbara Gegg** argued that the appeal proposal could adversely affect the health of those already in an area of multiple deprivation and existing ill health. Heavy industry already affects the area adversely through light pollution and poor air quality to which daytime black smoke contributes. The appeal proposal will only make this situation worse for people in an already polluted area. (IP6)
511. **Felicity Dowling** raised the prospect of ground instability being caused by the drilling activities as had been experienced at Preston New Road. This had potential implications for both the Ellesmere Canal, which would be vulnerable to tremor, and to a pipeline serving airports in the region. She made similar points to others regarding the effects that there would be on health, particularly that of children, who had seen instances of asthma increase considerably over the years. (IP7)
512. **Anthony Walsh** is a retired headteacher resident in Ellesmere Port for 40 years. His main objection to the appeal proposal is that it is incompatible with the need to reduce our dependence on fossil fuels in order to address the consequences of runaway climate change. Additional points are the effect that the development would have on regeneration plans for the town and the proximity to the new residential developments on the sites of former employment sites and at the National Waterways museum. A further concern is the effects on health and mobility of residents arising from the increase in lorry and tanker movements. Health effects on the young from vehicle pollutants are a particular concern. Finally, there seems to be ambiguity about the type of acid to be used to frack the gas and there is also the risk of explosive events due to hydrogen sulphide. Each poses a risk to local residents. (IP8)
513. **Chris Hesketh** is a spokesperson for Frack Free Dudleston and gave evidence about events leading to a similar planning application by the appellant company in this appeal being withdrawn before determination of that appeal. (IP9)
514. **Helen Rimmer** is the North West Campaigner for Friends of the Earth. She made similar points to others about the air quality impacts of vehicle movements, the effect that there would be on the regeneration of the area, the incompatibility of high carbon fossil fuel development with climate change targets and the lack of transparency in the planning application documents about the way that the gas in the rock will be flowed. (IP10)
515. **Peter Benson** is the Secretary of the Chester and District Friends of the Earth and made the case that the time for action on climate change is now and that decision makers would be judged harshly in less than 12 years' time if rules and regulations were simply quoted and excuses made for why nothing else could be done. (IP11)
516. **James Cameron** is a resident of Chester with 50 years' experience as an architect working in environmental design and urban renewal. He acknowledges that his concerns regarding noise emissions can be controlled by conditions. While he makes similar points to others about the effect on the regeneration of the area, his case is that the appellant is disingenuous to claim that it is only a

short-term development. It has already been there for nine years and, if the appeal proposal is approved, could be re-suspended or brought to production under the original planning permission for another 25 years. (IP12)

517. **Dr John Tacon** spoke on behalf of Chester World Development Forum and is a former employee of the EA North West Region, retiring in November 2010. He made five points. Point one repeats the climate change concerns raised by many others. Point two expresses views about fracking and distrust of government policy which are not material to this appeal. Point three concerns the way the EA regulates processes controlled by an Environmental Permit. His evidence is that, in essence, it relies on self-monitoring through adoption of an agreed process management system. A breach of a permit condition, such as an uncontrolled release of gas, would have to be reported to the EA within a specified period. Failure to report the breach rather than the release itself would be grounds for sanction by the EA. This enables the EA's small number of inspectors to prioritise high risk activities. Actual inspections on sites are rare and control relies on generally annual submission of data from the process management system. Point four gives a view about staff numbers at the EA in the period after he had retired. Point five explains the permanent risk to the aquifer that could be caused by fracking anywhere in the UK with its fractured geology. (IP13)
518. **Paul Bowers** is a member of Cheshire West and Chester Green party. He raised similar points to others about the need to avoid catastrophic levels of climate change, the proximity of the proposed development to housing, the significantly poorer levels of health experienced by the local population and the various damaging effects of emissions from the development and associated traffic to which poorer people are more susceptible and the damaging physical and mental health effects of continual lighting, noise and dust from an additional source of heavy industry. His view is that the proposed development is simply too great a risk to establish so close to communities already sensitized to the adverse cumulative effects of heavy industry and environmental contamination. (IP14)
519. **Phil Coombe** is a founder member of FFEP&U. He spoke about the surveys that were carried out on behalf of FFEP&U of residents in the affected local communities, businesses within a 500m radius of the appeal site and those living in the new housing on the other side of the M53. In short, the surveys found that very few people had been made aware of the proposed development. He also referred to what he described as the poorly publicised and poorly attended event held by the appellant in July 2017. His conclusion was that the appellant has been totally disingenuous and disrespectful in failing to engage and inform the local community and businesses of Ellesmere Port. (IP15)
520. **Tim Budd** has lived in Ellesmere Port for 24 years, about half a mile from the appeal site. He expressed the same view as others that the area had simply had enough industry. People of the town work in the industries and therefore know about the mistakes that have been made and the corners that have been cut. While commitments can be made, no-one can really predict what the health effects will be or how lives will be affected. This increases stress and anxiety.
521. **Jackie Mayers** has lived in Ellesmere Port for about six years in a new-build home. It was only after moving in that she became aware of the extent of the pollution in the area. Some days the smells are horrendous and not long after

black liquid spots would be found on the car, windows and children's climbing frame and garden furniture. This comes from Stanlow when the wind is in a certain direction. She was told it was nothing to worry about and received £50 compensation and had her car cleaned. She also referred to the recent fire at Stanlow, which from a video she had seen was terrifying for the employees, chemical weapons being incinerated at the Veolia plant and nuclear submarine dismantling at Capenhurst. (IP16)

522. **Linda Shuttleworth** pointed out that there were no local residents speaking in favour of the development. Instead, there has been a huge response from the local community against the proposal which will cause pollution, disruption and contributes to potentially catastrophic climate warming and climate instability. (IP17)
523. **Drew Bellis** lives in Ince where the appellant has also drilled a well. He referred to the boiling frog fable likening the frog to humanity and the boiling water to climate change. In summary, he argued that burning fossil fuels is archaic and that if something had to be burnt for fuel, it should be hydrogen. He referred to plans to build a hydrogen production facility in Cheshire. (IP18)
524. **Pam Bellis** is of the view that the appellant would not be devoting the resources to this application and appeal process purely for exploration and therefore has the clear intention to apply for shale gas production in future. That is the basis on which she objects to the appeal proposal. The prime reason for that objection is that at this crucial time for climate change we should no longer be seeking to extract fossil fuels. Similar points to those of others about the need to uphold local democracy were made. (IP19)
525. **Alan Scott** raised very similar points on the proximity of the appeal site to housing, schools and the town centre and the serious medical problems caused by shale gas exploration to those made by others. He too expressed the view that allowing the appeal would cause stress, fear and anxiety throughout the community. (IP20)
526. **Fiona Jackson** has lived in the Ellesmere Port area for over 30 years and is now resident in Ince where the appellant has also drilled a well; a development about which she was completely unaware. She attended a consultation event arranged by the appellant but, being dissatisfied with the answers given, undertook her own research. On the basis of that she discovered that the EP-1 well was drilled 1000m deeper than permitted and that a connector pipe to a storage tank at the site had bolts missing and was held in place by gaffer tape (source BBC report in 2014). This eroded her faith in this industry. She also expressed concerns about the health impacts of gas drilling on surrounding local communities and noted that the area has the highest rate of asthma in the UK and is in the top eight cancer hot spots. She expressed anxiety about the constant incremental industrialisation of the countryside around Ince and stated that Ellesmere Port has become a dumping ground for the petrochemical industry.
527. She also read out a short statement from her 11 year-old daughter expressing her fears for the future of the planet, the health of her friends with asthma and the world that she and her children will be living in. (IP21)

528. **Catherine Green** referred to the need for action on climate change and the fact that planning law was not keeping up with the imperatives for action now.
529. **Stephen Savory** is a retired architect, resident of Chester and voluntary Director of Chester Community Energy Limited which aims to develop and facilitate renewable energy schemes in Chester and surrounds. He argued that in the context of the need to address climate change an increase in emissions, even at testing and exploration, becomes part of the wider problem. Alternatives are available and should be pursued in accordance with the development plan. (IP22)
530. **Fiona Leslie** still has family living in Ellesmere Port. She referred to a meeting she attended at Capenhurst in 2005. In a presentation about cancer and leukaemia hot spots associated with nuclear plants it was said that such a direct connection was not demonstrable at Capenhurst given the many other sources of pollutants in the Ellesmere Port area (such as the petro-chemical industries). It was not possible to say that the nuclear activity at Capenhurst was the primary cause of the many cancers in the Ellesmere Port area. Her point was that while she exercised her choice when returning to the area not to live again in Ellesmere Port, many do not have that choice and are unable to move away. It is not therefore appropriate to start yet another dirty industrial activity such as that proposed. (IP23)
531. **Gazer Frackman** made a series of points that related to his experience of protesting against the Preston New Road development and the need for monitoring of air quality and rapid responses by the regulators.
532. **Thomasine Buckeridge** gave a detailed account of her long-standing personal health circumstances which, when they began, her GP had confirmed were linked to the climate and environment of the area (Ellesmere Port) to which she had moved less than a year previously. She also gave evidence about the many issues at Stanlow including the recent fire and explosion referred to by several others. In common with several others, she considers all these factors contribute to the anxiety that local people feel about the introduction of the appeal proposal into this environment. Her view is that those who can afford to leave the area will do so which, in itself, would have an effect on employment and the economy. (IP24)

### Written Representations

533. The Planning Inspectorate received 16 representations before the Inquiry opened and a further four before it closed (I1 to I4). Some people sent more than one representation. In the main, they drew attention to what the authors see as the adverse effects of the shale gas industry on climate change, air quality and thus the health of the surrounding population, the noise environment and water quality. Further points were made about what amounts to a democratic deficit since the locally elected Council has already refused the application which should therefore be the end of the matter.
534. Specific reference was made several times to a recent fire at 'Essar' noting that very little information about it had been made public. Concern was raised about the sense of considering fracking close to an oil refinery, a fertiliser factory and an incinerator.

535. Further specific queries were raised about the validity of the planning application at appeal and the implementation of the 2010 planning permission given the depth of the EP-1 well actually drilled was nearly 2000m rather than the c900m permitted [38].
536. A GP working in the area for over 29 years referred to serious public health issues arising from the release in 2000 of a highly toxic and carcinogenic substance that was discovered to be leaching through the porous sandstone strata with the source being an ICI legacy site. Over 1000 patients required screening and monitoring for signs of respiratory and cancer, principally renal, effects. This added to the extraordinarily high pre-existing cancer morbidity and mortality rates in the area. The point made was that however well regulated, the appeal proposal could lead to similar releases through faults in the strata in an area already heavily industrialised where pollution abounds both in the ground and the air. Often the effects will only present later but will impact on the health of the local population (I1).
537. Another GP working in the same area for a similar length of time recorded her experience of increased respiratory illnesses and the high incidence locally of respiratory and cardiovascular disease. She noted that it is now '*widely accepted*' that poor air quality contributes to physical ill health and that the site at Ellesmere Port will provide a cocktail of emissions to vulnerable members of the population. She also referred to the significant effects on mental health arising from poor sleep and poor concentration arising from light and noise pollution. She raised the recent explosion at the oil refinery noting that this was a cause of concern and anxiety to local residents and asked how much worse that would be if there were unconventional gas extraction wells nearby (I2).
538. At planning application consultation stage the Council received some 1411 representations and a petition with 1044 signatures. These are summarised in the officer report to the Council's committee (CD.2.23) under the headings:
- i) Procedural matters
  - ii) Ecological concerns
  - iii) Air quality and pollution concerns
  - iv) Noise impacts
  - v) Highway concerns
  - vi) Climate change and long-term effects
  - vii) Other matters

## **Conditions**

539. The conditions that should be imposed if the Secretary of State allows the appeal and grants planning permission were discussed at a round table session towards the end of the Inquiry. In the main, the Council and the appellant were agreed as to the conditions that should be imposed. FFEP&U however were not. Amended wording was suggested for several and a large number of additional conditions were proposed. These and the appellant's comments upon them are set out in the document (R3) which formed the basis of the discussion. The conditions are discussed below by the number given in the document, and broadly in the order in which they appear therein, in the light of the tests set out in the Planning Practice Guidance. Where a condition is proposed to be included its number as it appears in Annex C is given in bold.

540. Before that however it has been a consistent feature of the FFEP&U case that the appellant should be transparent about the nature of the development for which planning permission is being sought and that this should be clearly reflected in the scheme description in the planning application. FFEP&U therefore put forward an alternative scheme description.
541. This is set out together with the appellant's response (A5). In short, the appellant does not accept FFEP&U's suggestion but would accept an amendment which would limit the formation that could be tested for hydrocarbons to the Pentre Chert.
542. There is a considerable body of case law on the way that planning permissions should be interpreted, especially the relationship between the scheme description and the conditions subsequently imposed. In my view therefore the correct way to address the concern of FFEP&U, which the appellant clearly appreciates, is through the imposition of an appropriately worded condition (proposed condition **3**) rather than an amendment to the scheme description.
543. There are a number of draft conditions which all parties agree are required and which meet all of the relevant tests. These are number 1 (**1**) (statutory commencement period); numbers 7 (**7**), 8 (**8**) and 11 (**9**) which control the heights of the shrouded ground flare, the enclosed ground flare and the workover rig respectively; number 12 (**10**) (prior approval of any lighting); number 13 (**11**) (routing of construction traffic as per the approved plan); and number 14 (**12**) (noise levels not to be exceeded). Draft condition 15 (**13**) is also agreed save for the FFEP&U suggested addition of making noise monitoring results available also to the community liaison group [see paragraph 546 below]. All are required to control the effect that the development would have on the visual amenity and living conditions of the occupiers and users of buildings in the vicinity of the appeal site. A further condition (proposed condition **2**) listing the approved plans would also be required in the interests of clarity and to enable any departure to be investigated as a potential breach of planning control. Included in the list are the revised plans discussed above for the reasons set out there [5].
544. Draft condition 2 (**3**) seeks to ensure that no stimulation of the formation takes place, which is the consistent position of the appellant [402 to 404]. Although the appellant argued that such a condition would duplicate the conditions of the Environmental Permit, I agree with FFEP&U that this could be varied at a later date. The appellant nevertheless confirmed that if the draft condition was deemed to be necessary, the proposed FFEP&U wording would be acceptable. While the appellant questioned the competence of the Council to monitor the condition, that does not mean it is unenforceable and it is for the Council, which raised no objection to the condition, to ensure compliance, taking advice as necessary.
545. It is normal practice in my experience for a community liaison group to be established in association with mineral working sites. Where, as here, there are likely to be many contentious issues to discuss and community confidence to build it is important that one is established with the terms of reference agreed and the group operational before the development takes place. Draft condition 3 is therefore required but the wording put forward by FFEP&U incorporates elements such as frequency of meetings that are more appropriate for the terms

- of reference. Proposed condition **5** therefore follows the wording in another appeal decision (R5).
546. Having established a community liaison group through proposed condition **5**, FFEP&U then propose a number of other draft conditions requiring various matters to be reported to it at specified stages or time periods. These are draft conditions 4, 9, 10, and 18. There is an immediate problem with the wording of each since what is required is the provision of monitoring outcomes to a body (the community liaison group) with no powers of enforcement. While this could be remedied by requiring submission to the local planning authority, compliance would be secured simply by the provision of some data. There is no indication of how that data would be used in monitoring of the development by the Council. The draft conditions therefore serve no purpose that is related to the development and should not be imposed. Reporting of such data to the community liaison group could nevertheless be included within the terms of reference if all agreed this was appropriate.
547. There is a further difficulty with draft condition 10. Such a condition presupposes that such a GHG reduction plan is practicable in this instance. It is the appellant's case that it is not [353]. This is not therefore a reasonable condition since it goes to the heart of whether planning permission should be granted in any event.
548. Draft condition 5 as agreed by the appellant and the Council would ensure that the various stages of the development would not exceed the time periods set for them in the planning statement (CD2.4) that accompanied the planning application unless in the interests of specified factors. There is however no requirement for the appellant to notify the Council of any delays that do occur and thus of a potential breach of the condition. The additional wording suggested by FFEP&U is therefore not unreasonable although for the reasons set out above [546], it is not appropriate to require reporting to the community liaison group. Proposed condition **6** also includes a period (7 days) within which any delay must be reported.
549. Draft condition 6 does not meet the tests set out. Proposed condition **3** will ensure that stimulation of the formation does not take place which is the primary purpose of FFEP&U in suggesting this draft condition. It is therefore unnecessary and duplicates the requirements of the Environmental Permit. In requiring the use of a specific, named, commercial product which may not be available when development takes place it is also unreasonable.
550. Draft condition 16 does not seek the imposition of an odour monitoring scheme, just a scheme for responding to any complaints received. This is unnecessary since such mechanisms already exist within the environmental health regulation regime.
551. In contrast, proposed condition **14** requires the submission and approval prior to the commencement of the development of an air quality monitoring plan, the parameters of which are set out in the condition. This is required in the interests of the health and well-being of the local community and meets all the necessary tests.
552. While the sentiment that underlies draft condition 19 is understood, the wording is imprecise and the actions of the drivers of vehicles parked beyond the

- site boundaries would not be under the control of the appellant. The draft condition is therefore unenforceable.
553. There is no evidence that either of draft conditions 20 and 21 are necessary since these are matters dealt with by the EA. In any event, the draft wording simply requires sampling to be taken at defined intervals (draft condition 20) and information to be provided and records to be kept (draft condition 21). There would be no outcome from a failure to comply or any action to be taken as a result of the information gathered. Neither therefore serves any purpose related to the development.
554. Draft condition 22 (**15**) requires the containers in which any solids extracted from the well are stored to be covered so as to prevent materials being carried outside the site by the wind or surface water flow. That is a reasonable condition given the proximity of the appeal site to other business and residential occupiers.
555. The reason provided by FFEP&U for the imposition of draft condition 23 demonstrates why it is unnecessary. The emergency plan sought must be in place before development commences in order to comply with the quoted regulations.
556. Draft condition 24 would require, in effect, the appellant to satisfy the Council that it had third party liability insurance in place. That is unreasonable in my view.
557. It is essential that the restoration of the site is secured and draft condition 25 (**16**) secures this. There is no reason why a restoration scheme different to that approved under the extant planning permission should be imposed and the condition does not seek to do so. However, the appeal proposal is an entirely different scheme and there is no justification in requiring the same 25 year restoration period. This is acknowledged by the appellant in the revised wording put forward and which is included in the proposed condition.
558. Draft condition 26 seeks the imposition of a 25 year aftercare plan to include monitoring of various aspects such as groundwater quality and fugitive methane emissions. As set out above [49] final restoration would be in accordance with the same scheme as already approved under the extant planning permission. It is a simple scheme requiring the removal of all fixtures and equipment (including below ground), the removal of all surface stabilising materials, the retention of all translocated grassland and new hedgerows and the spreading of the retained topsoil across the previously surfaced areas followed by seeding with grass. No aftercare scheme was previously specified. The Planning Practice Guidance<sup>11</sup> advises that aftercare conditions can only be imposed where the land is to be used for agriculture, forestry or amenity purposes following mineral development. Since that is not the case here (and indeed would run counter to the case that FFEP&U makes that the development proposal would frustrate the economic regeneration of the area including the appeal site) such a condition would not be appropriate.
559. Finally, draft condition 27 seeks the provision of a bond or other financial guarantee in the event of the applicant company ceasing to trade prior to the end

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<sup>11</sup> Paragraph: 052 Reference ID: 27-052-20140306

of the restoration and aftercare period. There is no evidence that any of the exceptional circumstances set out in the Planning Practice Guidance<sup>12</sup> apply in this case.

560. Where I considered that the wording of some of the pre-commencement conditions should be amended these were sent to the appellant in accordance with the statute. The wording which is set out in Annex C was formally agreed in writing by email dated 6 March 2019 (A22).

## **Conclusions**

561. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion is based or the inference is drawn.

## ***Preliminary matters***

562. FFEP&U and the local community have raised two preliminary matters which are addressed in turn below. I believe that both matters were addressed during the Inquiry and that the clarity sought by the local community and FFEP&U was given as a result of the evidence produced and examined through the appeal and Inquiry process. However, the Secretary of State may conclude that the appeal and Inquiry process was required to provide that clarity and that this does raise the issue of transparency which the appellant tacitly acknowledges [401]. In turn, that goes, in my view, to one of the main considerations that I have identified [592 1(a)(i)].

### *The extant planning permission*

563. The appeal proposal relies upon the existing EP-1 well which would be re-entered [39]. Representations were made that either the extant planning permission was invalid or that in carrying out the development permitted by it there had been a breach of planning control [535]. This point is maintained in the evidence of FFEP&U (EPP01 paragraphs 2.2 to 2.7) although not pursued in the closing submissions as noted by the appellant [399].

564. It is quite clear from the description of the proposal for which planning permission was granted in January 2010 that the sole focus of the development, including the drilling of the exploratory boreholes, was the appraisal and production of Coal Bed Methane [38].

565. The planning permission is subject to 13 conditions (CD1.1). However, none explicitly require the development to be carried out as described. Instead, condition 3 requires the development to be carried out in strict accordance with the documents there listed. These include the planning application, the planning statement and the approved drawings.

566. The key drawing in this context is 62096/006 (wrongly listed as 62098/006 in the planning permission certificate). The drawing title is 'Indicative Well Profile' and it shows a 'mother bore' and a 'lateral bore' with a total vertical depth (TVD) for the two of 900m.

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<sup>12</sup> Paragraph: 048 Reference ID: 27-048-20140306

567. The submitted planning statement (CD1.5-5 paragraph 9.3.1) confirms that the vertical boreholes are for the appraisal stage and the lateral/near horizontal boreholes will be drilled for the extraction phase. It says that during the appraisal stage boreholes will be drilled to an estimated minimum depth of '*...circa 900m total vertical depth.*' (CD1.5-5 paragraph 9.3.6). However, elsewhere (CD1.5-5 paragraph 10.5) it says:
- The proposed ...location has been selected to be within an area where the coal has not previously been mined. By drilling into this fault-block the unmined coals should be encountered at depths in excess of 900m TVD where the gas contents are likely to be at commercial levels...*
568. Taken at face value, that appears to confirm that it is only the coal measures that are to be appraised (indeed, that is said to be why the location was selected) while recognising that these may be encountered below a depth of 900m.
569. Prior to drilling the EP-1 well in 2014 the appellant held an exhibition on 10 July 2014 for the local community and produced an information brochure (CD1.8). Its title is 'Community Information Ellesmere Port Exploration Well'. It includes information about the company (IGas Energy Plc), what it does, where it operates and how sites are selected. Specific information about the proposed Ellesmere Port operations is set out. The primary objective of the Ellesmere Port well is said to be to identify the resource potential including Coal Bed Methane in the underlying rock formations. In cross examination Mr Foster for the appellant accepted that a reasonable person reading the information brochure would assume that the well was being drilled to explore for Coal Bed Methane [253].
570. It is however clear from earlier correspondence to the Council (in January 2014) (APP/DA/3 Appendix 40) that this was not the purpose for which the well would be drilled. Instead, one well only would be drilled with the aim of providing, in combination with data from the company's well at Ince Marsh in the adjoining Petroleum Exploration and Development Licence area, a better understanding of the geological structures of the area. It is explicitly stated that the Bowland shale would be penetrated where it exists.
571. The EP-1 well was drilled to a depth of nearly 2000m and therefore into the Bowland shale (CD2.23 paragraph 6.9 and EPP01 paragraph 2.6). The Council carried out a monitoring visit on 3 December 2014 and confirmed compliance with all relevant conditions of the planning permission, including condition 3 (APP/DA/3 Appendix 41).
572. The report to Members considering the appeal application addressed the concerns expressed by the local community that the depth of the well drilled was a breach of planning control. It concluded (CD2.23 paragraph 6.12):
- It is therefore considered that the well as constructed to a depth of 1949m has been done so in accordance with approvals from the (named regulators). Although the previously approved planning application shows an indicative depth of 900m this was a minimum for the planning application with the final drill depth consented by the OGA. It is not part of the planning approval process to confirm and approve the final well depth.*
573. It is apparent that some of this detailed information only came to the attention of the local community as a result of the appeal planning application documents (EPP01 paragraph 2.6) and the Inquiry itself. As a result, FFEP&U accepted by the end of the Inquiry hearing sessions that there had not been a breach of

planning control [399]. It was also common ground that the Secretary of State has no power to review the Council's decision through an appeal made under s78 of the Act. That power is only available if the local planning authority has issued a notice under s172 and an appeal has been made under s174 (emphasis added).

574. Nevertheless, there appears to be a clear difference between the information made available to the public and the information given to the Council about the intent of the appellant in drilling the EP-1 well.

575. In my judgement, it is reasonable for the local community to conclude that the appellant has not been transparent about the purpose for which the EP-1 well was drilled.

*The scheme description and the nature of the proposed development*

576. On the first of these points, FFEP&U argue that the scheme description lacks clarity and is therefore confusing; an alternative wording is put forward [162 to 167]. As set out in the immediately preceding paragraphs [563 to 575] what is, on its face, a precise scheme description in the extant planning permission did not prevent the drilling of the EP-1 well pursuant to that permission being for an explicitly different purpose as advised to the Council but not the local community. For the reasons set out above [540 to 542] I therefore recommend that, in the event of planning permission being granted, this issue be dealt with by way of a suitably worded condition rather than a change to the scheme description.

577. On the second point, FFEP&U accepted that, by the end of the Inquiry hearing sessions, it was clear that the appeal proposal would not involve the fracturing of the formation through the use of an acid process [169].

578. However, it is again my judgement that this only became clear through the Inquiry process since the planning application documents are not, in my view, transparent on this point (emphasis added).

579. The appellant's position is clear [402 to 404] and best captured by the assertion that *'the process outlined above [44] does not amount to matrix acidisation, a fact expressly confirmed by the EA (A2)'* [404]. The difficulty with that approach however is that Document A2 was only produced during the Inquiry and following a request from the appellant to the EA for site-specific clarification.

580. Applications for planning permission and a variation to the then existing Environmental Permit were made in parallel. By the time the Council determined the appeal application the Permit variation had been approved and issued by the EA (CD2.12). There are however what the local community consider apparent inconsistencies between the two applications (EPP01 section 2 in particular).

581. In the planning statement (CD2.4) the only time 'acid' is mentioned is at paragraph 6.2.4 in the context of re-establishing the natural flow of the formation fluids, including any gas. It says that this will be achieved by applying a dilute acid, most commonly (but by implication or omission not exclusively) hydrochloric acid (HCl), at 15% concentration with water to the near wellbore formation through perforations. This is said to be standard oilfield practice but that practice is not explained.

582. However, the contemporaneous Permit variation document (CD1.9i) makes clear that it is only a proprietary HCl at a concentration of 5-8% that is permitted together with named inhibitors at 2-4%. There is therefore an apparent difference between the two applications which has been interpreted by the local community as a lack of transparency on the part of the appellant, especially concerning the type of acid to be used and its strength (EPP01).
583. Permit applications are subject to consultation. The points raised and the EA response to each are set out in the decision document (CD2.13). The consistent response of the EA to the various queries raised is that 'fracking' is not allowed as part of the permitted activities, the injection of fluids into the ground is limited to acid wash and acid squeeze activities which must conform to the *de-minimis* test set out in the EA Guidance.
584. That Guidance is included in the appellant's evidence (APP/JF/3 Appendix 4). Among other things it sets out the different types of acidisation and explains whether or not the EA considers each to be a well stimulation method. In short, the EA considers acid wash NOT to be a stimulation method, matrix acidisation TO be a form of stimulation and fracture acidisation/acid fracturing TO be a form of stimulation (emphasis added). It also explains that 'acid squeeze' is a term used in industry when the intention is for the acid not to travel far from the well into the geological formation. However, it does not say whether or not this is considered to be a form of stimulation. It simply notes that the processes at work are exactly the same as those in the other three and that it may result in the opening up of new fractures although these will be very small and close to the well.
585. It was common ground between FFEP&U and the appellant during the cross examination of Prof. Smythe that this Guidance was not particularly helpful and that it was better to characterise the processes as acid wash, matrix acidisation and acid fracturing; only the first would not involve stimulation of the target formation.
586. FFEP&U witnesses had difficulty accepting that the appeal proposal would not involve stimulation of the target formation. In oral evidence their view was that the volumes of acid to be used are inconsistent with a simple acid wash and are more appropriate to matrix acidisation and thus a stimulation of the formation with all the consequences that, in their view, could flow from that.
587. However, as set out above [579] during the Inquiry the EA produced a site-specific clarification of the Environmental Permit variation (A2). In summary, this confirms, first, that the permitted activities do not include hydraulic fracturing or other groundwater activities and, second, that the EA does not consider the proposed acid wash and squeeze described in the Waste Management Plan (CD1.9e section 7.1.3) to constitute matrix acidization. Under the terms of the Permit the operator is legally required to follow the Waste Management Plan.
588. The appellant's position is that the information required to understand all this was before the EA as part of the Permit variation application. Moreover, it did not need to be submitted in detail to the Council as part of the planning application since these were all matters that would be controlled by the EA. Nevertheless, the Council, and for that matter the local community, would have

been aware of these documents through the statutory process of consultation on any Permit application.

589. That may well be correct as a matter of fact. However, it means those wishing to fully understand the nature of the planning application and the potential impact upon them could not do so from the planning application alone; it required somewhat of a paper chase.

590. In my judgement, that amounts to a lack of transparency on the part of the appellant through the planning application process.

### *Summary*

591. In summary, I consider there has been a lack of transparency on the part of the appellant about the drilling of the EP-1 well and the nature of the appeal proposal. In light of this, comments made by the elected representatives of the local community about the confidence that can be had in the way the appeal proposal would be taken forward [497] carry considerable weight in my view.

### **Main considerations**

592. Having considered all the evidence and submissions I believe the main issues (as they were then) identified in my opening of the Inquiry should be reframed. I therefore consider the main considerations for the Secretary of State's determination of the appeal are:

- (a) Whether the proposed development would have an unacceptable effect on:
  - (i) Human health and well-being;
  - (ii) Landscape, visual or residential amenity;
  - (iii) Noise, air, water, highways;
  - (iv) Biodiversity and the natural environment.
- (b) Whether the proposal fails to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation;
- (c) The effect the development would have on the regeneration of Ellesmere Port.

593. While the sole reason for the Council's refusal to grant planning permission for the appeal proposal identifies a conflict with LP policy STRAT1, it is LP policy ENV7 that sets out the development plan policy for the type of development proposed [23]. This is therefore the first main consideration with the four bullets of the policy that remain in contention [24] forming the sub-considerations. The alleged conflict with LP policy STRAT1 forms main consideration (b). The reason for recovery of the appeal is given above [16]. Consideration of the matters raised falls within the scope of main consideration (b).

### **Main consideration (a): compliance with LP policy ENV7**

594. It is common ground between the Council and the appellant that LP policy ENV7 is a policy relevant for the determination of the appeal (CD9.1 paragraph 4.2). It is also common ground between those two parties that compliance with LP policy ENV7 is not a matter in dispute between them (CD1.9 paragraph 5.1) and that there would be no unacceptable impact on any of the criteria listed

(CD1.9 paragraph 6.1). In oral evidence, Mr Vallely accepted that provided appropriate mitigation techniques are secured, planning permission should normally be granted for a development such as that proposed [320]. In closing submissions, the Council made no reference at all to LP policy ENV7.

595. The substantive case made against the proposal on grounds of conflict with LP policy ENV7 was made explicitly by FFEP&U and, by inference, by those in the local community. That conflict falls mainly to be considered against the criteria set out in the policy and listed above as sub considerations of this main consideration. Each is dealt with in turn although very little evidence was submitted in relation to criteria (ii), (iii) and (iv) and virtually no reference was made to these matters by FFEP&U in closing submissions; the case made relates almost solely to criterion (i).

*Main consideration (a) (i): Whether the proposed development would have an unacceptable effect on human health and well-being*

596. By way of introduction to this sub issue, within LP policy ENV7 'health' is among those matters within the second bullet upon which a proposed development must not have an unacceptable impact. The policy also requires development proposals to be in accordance with all other policies within the LP which, in this context, brings LP policy SOC5 into play. This policy addresses 'health and well-being' of 'our residents', the relevant part of it confirming that development giving rise to significant adverse impacts on health and quality of life will not be allowed [26].

597. The written justification for LP policy ENV7 does not explain what would constitute an unacceptable impact on health although drawing LP policy SOC5 into the assessment suggests it would be one that was 'significant adverse'. That is also the interpretation of the appellant [411]. LP policy SOC5 does not explain whether those impacts are to be considered at the individual, community or some other level on the spectrum between the two. However, the use of the term 'our residents' in the preamble and the focus of some of the criteria indicates that it is well below the whole community level. While 'adverse' can be a matter of assessment against defined standards or levels, the term 'significant' will, in the absence of any other definition, be a matter of judgement.

598. The supporting text to the LP policy SOC5 (CD5.1 paragraph 7.29) does recognise that health and well-being is closely linked to deprivation, with areas of significant deprivation having residents with poorer health and well-being. It continues to explain how the Council will work to improve matters; this will include help to deliver physical improvements to the neighbourhoods themselves.

599. In my judgement therefore, there are two aspects to this sub consideration; the effects that the emissions from the development would have on the health of the local community and the effect that the development would have on the well-being of the local community, including the effect on mental health.

600. Turning to the first of these, it should be noted that FFEP&U did not make a case that the proposed development would conflict with LP policies ENV7 and SOC5 on this matter [412]. Instead, FFEP&U placed the onus on the appellant to show compliance with these two policies, arguing that it could not [225].

601. In connection with the extraction of hydrocarbons, it is the role of the EA to protect water resources (including groundwater aquifers); to ensure appropriate treatment and disposal of mining waste and emissions to air and ensure suitable treatment and manage any naturally occurring radioactive materials [419]. However, that is the limit of its remit and the notification by the EA to the appellant that the Permit variation was complete and that the EA was *'...satisfied that you can continue to carry out your activities in accordance with the variation, without harm to the environment or human health'* (CD2.12) must be seen in that context.
602. Mainly at issue is whether that was a legitimate conclusion for the EA to draw in November 2017 when the Permit variation was issued and whether it remains a conclusion that the Secretary of State may rely upon in reviewing this sub consideration.
603. The Permit variation application was accompanied by a suit of technical documents [421], some of which were also submitted to the Council with the planning application.
604. Among the consultation responses received by the EA was one from the Council's Environmental Protection Team to the effect that what were shown on the map within the Environmental Risk Assessment as industrial areas 3 and 4 were, in fact, areas with planning permission for residential development as part of mixed-use schemes. The EA was advised that the relevant risk assessments should therefore be reappraised to see if the outcome changes.
605. The EA did not consider this necessary. Its response (CD2.13, page 9) appears to assume that the short-duration activity that was the subject of the Permit variation application would be completed before the consented residential development took place. That is also the clear understanding of the appellant [422]. In addition, the appellant notes that the EA endorsed a number of the elements underpinning the assessment [423].
606. In any event, the Council raised this issue with the appellant prior to the determination of the application. In response, a Technical Memorandum (CD2.21) was issued. Based on this further information the Council's Environmental Protection Officer advised that, regarding air quality, the development would be acceptable if subject to detailed regulatory controls under the Permit and the planning permission conditions (CD3.1d). It is clear however, that the short-duration of the proposed development, and the DST phase in particular, was highly material to this conclusion.
607. For the Inquiry the appellant prepared a supplementary air quality assessment of the flare emissions (APP/KEH/3 Appendix KEH1). The emission limit values used protect the health of the young, sick, old and vulnerable even in deprived areas such as those in the vicinity of the appeal site [416].
608. In addition to assessing the effects on the more recently identified residential receptors certain modifications were also made to the model. However, the essential conclusions remained the same [427]. In summary, these are that for the DST flare long-term concentrations of NO<sub>2</sub>, benzene, 1,3 butadiene and butane and short-term concentrations of NO<sub>2</sub>, benzene and butane would be negligible at all modelled human health receptors for all three modelled gas feed scenarios. For the DST flare the potential short-term process contribution of

CO<sup>13</sup> under all modelled scenarios would be well below the relevant statutory Air Quality Assessment Level (AQAL) for both residential and industrial receptors. Similar conclusions were reached at all modelled human health receptors in respect of the same short-and long-term concentrations of the named emissions for the EWT flare.

609. These conclusions were not seriously challenged by either the Council or FFEP&U [427]. Nevertheless, the appellant confirmed in oral evidence that this new modelling output had not been submitted to the EA for assessment. The strict position therefore is that the issued Permit variation was based on what the EA were aware was an incorrect identification of, and therefore assessment of the potential impacts upon, the nearest residential receptors. However, given the robust conclusions of the latest analysis prepared by the appellant, it seems highly unlikely to me that the EA would come to a significantly different conclusion with regard to the effect of the development on human health.
610. Emissions from vehicles associated with the development proposal were similarly considered and no evidential basis for an objection put forward [428].
611. I therefore consider that with regard to the first aspect of this sub consideration there would be no conflict with LP policies ENV7 and SOC5.
612. I turn now to the second aspect, namely, the effect that the development would have on the well-being of the local community, including the effect on mental health.
613. The appellant recognises and acknowledges the evidence that fear/anxiety is claimed by some to be caused by the proposed development [430] and that the social harm argued in the evidence of FFEP&U is a separate but related aspect of stress and anxiety over the appeal proposal [435].
614. Stress and anxiety are recognised as factors affecting an individual's mental health. It is therefore a consideration that falls within the scope of LP policies SOC5 and ENV7 as contended by FFEP&U [256].
615. This is a complex matter but can, I believe, be distilled to three questions. First, why has the appeal proposal given rise to stress in the local community, second, is it justified and, third, would there be an actual rather than a perceived health and well-being impact? I shall address these in turn dealing first with the question 'why has the appeal proposal given rise to stress in the local community?'.
616. Ellesmere Port is a heavily industrialised area. The most obvious industrial developments when passing through the area on the M53 are the Stanlow petrochemical complex (EPP01 paragraph 3.2) and the Vauxhall Motors plant. There is also a uranium enrichment facility at Capenhurst, built in the 1950s just to the south of the town where a facility had been developed recently to reprocess low-grade uranium waste and where there were also plans to build a nuclear reactor decommissioning facility (EPP01 paragraph 3.3). Evidence was also given by others about an energy-from-waste plant operated by Veolia

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<sup>13</sup> In respect of health impact it is the carbon that is not fully converted to carbon dioxide and is therefore present in exhaust gases that is relevant (APP/KEH/3 Appendix KEH1, paragraph 4.1.2)

- between Stanlow and the appeal site [521] which I saw on my unaccompanied tour of the area.
617. Some of those who gave either oral or written evidence spoke to experiences of cancers and respiratory health issues of family members who had lived and worked in the area and their experiences of the rise in cases of asthma in children over the course of their careers in local education [507, 511, 518, 526, 530]. A local GP also referred to the high local incidence of respiratory and cardiovascular disease [537] and (I2).
618. Another local GP gave written evidence of what he termed a local health disaster in 2000 in what, from his letter, would appear to be the Runcorn area in association with a legacy ICI site. In short, he stated that a highly toxic and carcinogenic solvent was found to be leaching through the sandstone strata. The clean-up operation required properties to be demolished as uninhabitable and over 1000 people to be screened and monitored for signs of respiratory problems and, mainly renal, cancer (I1).
619. There were also references to some specific incidents associated with the Stanlow complex, some of which are air quality issues. These included incidences of black smoke issuing from the complex during the daytime [510] and black liquid spots being deposited over the windows of houses and external property such as garden furniture, children's play equipment and cars. Evidence was given of compensation payments in the amount of £50 and cars being cleaned [521]. To my mind, these are very visible indications of what could be interpreted as an air quality issue. Furthermore, several references were made to an explosion and fire at the complex in the summer of 2018 [532]. While there was no evidence that any residents had to be evacuated from their homes, the '*thick black smoke*' could be seen for several miles (EPP01 Appendix 1).
620. Although no specific evidence was given on this point, it would be reasonable to assume that, given their nature, the highly specialised industries in the area referred to are strictly regulated by the appropriate body to the standards that are from time-to-time in force. Nevertheless, this evidence suggests that some in the community see a clear link between the nature of the industry in the area and the poor quality of the health of some residents. The local community is well aware of the poor quality health experienced generally and the level of deprivation recorded [245]. Views were expressed that the area had now had at least its fair share of such developments [507, 520, 526, 530]; in evidence FFEP&U referred to the concept of 'sacrifice zones' (EPP4 paragraph 4.10).
621. The proposed development is, in my judgement of the evidence, perceived as another development being introduced into the area which has already seen more than its fair share of health-affecting industry [eg. 518, 520, 526, 530] and one that has the potential to cause harm to the health and well-being of the local community. To answer my first question, it is why the prospect of the appeal proposal taking place has caused a level of stress and anxiety in the local community about the effect that it will have. That stress and anxiety is location specific.
622. Before turning to my second question, I acknowledge that genuinely held concerns have also been expressed about the effect of 'fracking' activity (even though FFEP&U accept that the proposal is not such a development [169]) on both the environment and climate change [240]. However, such concerns are

generalised in nature rather than specific to the appeal proposal in this location. I therefore believe that they should be afforded limited weight in the context of the two LP policies under consideration.

623. For the reasons given by the appellant [438 to 440] I also consider that no weight should be given to the matters referred to therein and identified by the research undertaken by FFEP&U. These are matters that could be prayed as stressors in connection with any development proposal that gave rise to objections locally. To afford them any weight in this case would be to indicate that they could be raised to frustrate any development.
624. Having set out why I consider that stress and anxiety has been caused in the local community by the appeal proposal, the second question posed is 'is that stress and anxiety justified?'. I believe that it is for several reasons.
625. First, if the development proceeds it will be regulated by the EA and others. However, as I have assumed in the absence of any evidence to the contrary [620], the industries that are perceived by the local community to have caused the health issues presented by residents in the area will also have been subject to regulation.
626. Moreover, oral and written evidence was given by a former employee of the EA who retired some eight years ago [517]. He explained how the EA regulates activities that are subject to an Environmental Permit. He explained that, in essence, it relied on self-monitoring and that it would be the failure to report an uncontrolled release of gas that would be grounds for sanction rather than the release itself. The inference to be drawn from this evidence is that the Permit does not of itself prevent the unauthorised release of substances, it simply imposes penalties if they occur, are identified and reported. Any health effects that might arise from an unauthorised release would therefore not necessarily be prevented. This evidence was not challenged by the appellant.
627. In my view it is, to an extent, corroborated by the Permit variation application documents. The accompanying Environmental Risk Assessment (CD19.g) is set out in tabular form with columns listing the hazard, pathway, receptor, risk management method, probability of exposure, consequences and overall risk.
628. In the table 'assessment of fugitive emissions risks' in most cases the risk is assessed as 'low if management techniques, planning and procedures are followed.' The consequences of what would be an unplanned exposure are generally identified as a nuisance or complaints although the non-odorous nature of volatile organic compounds is noted which raises the question of how such a fugitive release would be noticed.
629. The Secretary of State will be mindful that Framework paragraph 183 advises that planning decisions should assume that pollution control regimes will operate effectively. Nevertheless, on the basis of what they perceive to be their local experience when presumably those regimes have so operated, it is not unreasonable, in my view, for local people to be concerned about the practical application of those controls if and when the appeal development takes place.
630. Second, there is the risk of an escape of H<sub>2</sub>S (EPP05 section 6) and the consequences that could flow from that (EPP01 paragraphs 6.4 and 6.5). The appellant addresses this comprehensively [408 and 409]. However, read fairly,

- this is an acknowledgement that a risk does exist which must (and would be) managed.
631. This is an issue that will be addressed by the appropriate regulators at the appropriate time [555]. The case put by FFEP&U [178] must be seen in that context. I therefore give very little weight to the concern expressed by FFEP&U as a matter in its own right. However, as the recent event at Stanlow demonstrated, accidents and unexpected (rather than unforeseen) incidents do happen which the appellant accepted [176]. While the consequences can be planned for as far as practicable, the evidence of local people is that they are nevertheless deeply concerning when they do. In my view, concern that, however unlikely, such an event may occur at the appeal site is not irrational and adds to the stress and anxiety that is apparent from the evidence.
632. Finally, there is the issue of transparency that I have addressed under 'preliminary matters' above and which FFEP&U characterised as the appellant's high-handed approach [251]. Put simply, the local community does not trust the appellant to do what it says. In my view and for the reasons set out [562 to 591] that is not an irrational or unreasonable conclusion to draw. Equally it is not irrational or unreasonable to be concerned that the development may not proceed as the appellant says it will. That concern manifests itself as stress and anxiety in some individuals.
633. Turning finally to the third question, 'would there be an actual rather than a perceived health and well-being impact?', it is common ground between the appellant [430] and FFEP&U [237] that, either way, this is a material consideration in the determination of this appeal. However, for there to be a policy conflict it must, in my understanding, amount to an actual harm [596].
634. My understanding of LP policy SOC5 is that a significant adverse impact on some residents is sufficient to cause a conflict with the policy [597]. I acknowledge that this was not a matter expressly addressed by the advocates and that the interpretation of policy may ultimately be a matter for the courts. Nevertheless, that is the interpretation that I commend to the Secretary of State.
635. It was the oral evidence of the appellant that most proposals such as that which is the subject of this appeal are in the open countryside. FFEP&U gave evidence that the area around the site had become more developed since the extant planning permission was approved in 2010 (EPP01 section 4). In answer to my question, Mr Foster could not readily identify an existing exploration or production well in a similar location so proximate to residential and business premises. For FFEP&U Prof. Waterson expressed surprise that such a location could be considered [171 and 172].
636. The general health and deprivation conditions in the local area and the way in which these can exacerbate the impact of particular factors such as psychosocial stresses on health conditions such as cardiovascular health was not the focus of the appellant's challenge to the evidence given by Prof. Waterson and, particularly, by Dr Saunders. The evidence shows therefore that the appeal site is embedded within a community [245] that is specifically vulnerable to the adverse health effects that may be caused by stress and anxiety. Locally undertaken research evidence from FFEP&U [243] indicates that this is felt by a wider group than simply those who have actively campaigned against the development.

637. In my judgement, the totality of the evidence is that an unspecified but not insignificant number of individuals will experience stress and anxiety about the way the development will proceed and the consequences for them and the local area if it does. The health effect would be exacerbated by the social conditions and deprivation in the local area as set out in the evidence of Prof. Waterson and Dr Saunders and summarised in closing submissions [245]. This would amount to a conflict with LP policy SOC5 and thus a conflict with LP policy ENV7.
638. My conclusion on this sub issue as a whole therefore is that the proposal would not deliver any physical improvement to the neighbourhood itself and that it would cause an actual adverse impact on the health and well-being of some residents in the local community. For those individuals the adverse impact would be significant. I therefore conclude that the proposal would conflict with LP policies SOC5 and ENV7 in this regard.
639. I would emphasise that this conclusion has been reached on the evidence of the effects of this proposal in this location within this particular community with its specific characteristics of health and deprivation and in the light of the relationship that has developed between the local community and the appellant. It is therefore a highly case-sensitive conclusion.

*Main consideration (a) (ii): Whether the proposed development would have an unacceptable effect on landscape, visual or residential amenity*

640. The appeal site is located within an industrial landscape. Tall structures abound, most frequently associated with the Stanlow complex in the form of emissions stacks and flares of various designs.
641. The appeal site is enclosed by a solid fence over 2m in height. From close views this would screen most of the surface level infrastructure to be provided. The closest residential properties are within a new estate on the other side of the M53 motorway to the appeal site. The development was still under construction early in 2019 when I made my site visits [4]. The dwellings closest to the motorway were separated from it by a field. Along that common boundary and so between the houses and the motorway was a high, close-boarded timber fence. At this point the motorway is slightly elevated and there was good tree screening to both sides of it which would be very effective when in full leaf. I could discern no visual relationship whatsoever between the appeal site and the nearest dwellings.
642. During the development it would be the tallest structures only that would be visible from beyond the site boundaries. As I understand it, the structures would be in place for a maximum of 104 days (mobilisation-7 days; well completion and DST-14 days within a 28 day operational period; EWT-60 days; well suspension-2 days; demobilisation-7 days) [40, 46 to 48].
643. The tallest structure would be the workover rig at a height of some 33m. This would be in place for the whole of the operational period. During the DST phase there would be the shrouded ground flare at a height of 12.2m. The shorter enclosed ground flare (8.2m) would be in place during the much longer duration EWT phase [40]. None would be uncharacteristic in the local context.
644. In the landscape and visual context of the development there would be no harm caused by the short duration development proposed. There would

therefore be no conflict with LP policy ENV7 in this regard or with LP policy ENV2 which deals specifically with landscape since, in my judgement, the development does take full account of the characteristics of the site, its relationship with its surroundings and views into and over the site.

645. The case made by FFEP&U in respect of residential amenity relates, as I understand it, to air quality and traffic. The first has been addressed within the assessment of the preceding sub issue and, to the extent that traffic embraces aspects other than the effect of diesel emissions and therefore also air quality, those issues are addressed under 'highways' below.

*Main consideration (a) (iii): noise, air, water, highways*

646. These four matters are listed in a single bullet within LP policy ENV7. Issues relating to air, which is taken to mean air quality, have already been addressed.

647. The issue of noise was the subject of an unchallenged proof of evidence submitted by the appellant (APP/SS/2). This gives details of a comprehensive noise assessment carried out in accordance with current guidelines.

648. It notes that the close-boarded fence between the new residential development to the other side of the M53 and the motorway itself to which I have already referred [641] was, in fact, required by a condition on the planning permission for that development to provide an acoustic barrier. Two of the selected noise monitoring locations chosen were within this new residential area.

649. In short, the assessment concurs with the view of the Council's Environmental Protection Officer that the primary impacts will stem from flaring during the DST phase (CD3.1d). There would be no discernible impact from traffic noise for residential receptors whose noise environment is dominated by the M53 traffic. More local effects of traffic noise must be seen in the context of the industrial setting of the proposed development.

650. The Council's view was that subject to an appropriate condition, the wording of which was agreed by all parties [543], there would be no policy conflict on noise. On the evidence before me I agree with that assessment.

651. There is a dispute between FFEP&U and the appellant about the effect that the development would have on the water environment. There are, in my judgement, two aspects to FFEP&U's concern.

652. The first concerns the perceived seismic effects that the development would have on the strata, potentially creating new pathways for pollution of the water environment. I believe this concern arises principally because of FFEP&U's contention that the development would involve stimulation of the target formation. However, in closing submissions FFEP&U accepted that this would not be the case [169]. Furthermore, since the well has already been drilled and constructed, further stimulation of the strata would arise only from processes which FFEP&U now accept are not permitted. I do not believe therefore that this concern is well-founded.

653. The second arises from a dispute about the geology of the area and the information that was provided to the EA at Permit variation application stage. FFEP&U therefore consider that a precautionary approach should be taken to the

EA statement (CD2.12) that the activities can be carried out without harm to the environment [229 to 232].

654. Several of the consultation responses to the Permit variation application made similar points to the EA in relation to the outcome for the water environment (CD2.13). The EA responses fall into two main categories. First, that the development proposed does not involve and would not be permitted to undertake matrix acidisation or any other form of hydraulic fracturing. Any risk from increased seismicity is therefore considered to be negligible. Second, in response to a specific comment that the precautionary principle should be adopted on grounds of risk to groundwater the EA stated '*the applicant has demonstrated that the site surfacing and well construction is sufficient to protect groundwater and surface water receptors. The risk to these receptors is therefore negligible.*' (CD2.13 page 13). The appellant makes essentially the same point [407].
655. The EA has access to its own geological data, geologists and hydrogeologists. If the geological data provided by the appellant had been seriously at odds with that held by the EA it would have been raised at application stage; the evidence is that it was not. The Secretary of State may therefore accept the EA's conclusion regarding any effect that there would be on the water environment.
656. Finally, I turn to highways. The Council's highways officer advised that the higher level of vehicle movements during site setup and demobilisation would be noticeable but would not give rise to a severe detrimental impact and would be absorbed into the wider highway network (CD3.1c). Routing of construction traffic would be subject to a condition agreed by all parties [543] which would ensure that no traffic passed through any residential area. The Council's highway officer concluded that there were therefore no objections to the development on highway grounds and no evidence has been put forward to cause me to recommend that the Secretary of State comes to a different view.
657. For all the above reasons there would be no conflict with LP policy ENV7 or LP policy ENV1 insofar as it is relevant in respect of the water environment on this sub consideration of main consideration (a).

*Main consideration (a) (iv): Whether the proposed development would have an unacceptable effect on biodiversity and the natural environment*

658. While some of those making written and oral representations raised general concerns on this ground [503 and 538], no evidence was produced by FFEP&U to dispute that of the appellant or the conclusion of the Council's Biodiversity Officer (3.1b) that subject to suggested condition 6 [543] the development would not conflict with this aspect of LP policy ENV7 or LP policy ENV4.
659. Legal submissions were made regarding the effect of *People over Wind* (A16). While this falls under this heading, it is addressed at Annex D [265].

*Conclusion on main consideration (a)*

660. I conclude that the proposal would not conflict with policy on any of sub considerations (a) (ii) to (a) (iv). However, for the reasons set out under the first of the sub considerations (effect on human health and well-being) I conclude that the proposal would conflict with LP policies SOC5 and thus ENV7.

*Main consideration (b): whether the proposal fails to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation*

*Background*

661. The wording of this main consideration is taken directly and fully from the decision notice (CD2.26). It is the reason why the Council considered the appeal proposal to be contrary to the provisions of LP policy STRAT1. It is the sole reason why planning permission for the development proposed was refused.
662. Officers' recommendation to the Council's Planning Committee was that planning permission should be granted subject to conditions (CD2.23). The proposal was assessed against LP policy STRAT1 under the heading 'Climate Change'. No conflict with the policy was identified.
663. It appears from the initial SOC (CD4.2) and the correspondence trail between the appellant and the Council (APP/DA/3 Appendices 25 to 28 inclusive) that officers and those appointed to present the Council's case have found it difficult to articulate the reasons why the Committee came to this conclusion. It was confirmed in oral evidence that the Committee Members had not been approached to assist the preparation of the Council's case. No Council officer gave evidence.
664. It was however finally confirmed in the Supplementary SOC that '*...what really is the issue is whether the appellant is proposing to employ the appropriate mitigation techniques for shale gas exploration...*' (CD4.4, paragraph 5).

*Interpretation of LP policy STRAT1*

665. The parties take different positions on the interpretation of the policy.
666. The Council's position at the Inquiry is encapsulated towards the end of the closing submissions [119]. The Council's position is that the term 'mitigate' within the policy [21] has both a broad meaning relating to legally binding obligations in international treaties and a technical meaning relating to the (failed in this case) use of technology to reduce carbon emissions to an acceptable level in planning terms.
667. The position of FFEP&U is that the policy requires all GHG emissions to be taken into account, including those that remain after as much mitigation – or reduction – as possible has taken place. FFEP&U argues that planning permission can be refused under LP policy STRAT1 if the residual emissions, after all possible steps to reduce GHG emissions have been designed into a development, are unacceptably high [199].
668. The appellant accepts that there will be residual GHG emissions as a result of the development taking place [393]. However, the interpretation the appellant gives to LP policy STRAT1 is set out above [322 to 325]. In summary, it is that the policy requires the appeal proposal to mitigate GHG emissions so far as practical. That is a narrower interpretation than both FFEP&U or the Council gave in closing submissions although the Secretary of State will note the appellant's view that this was also the understanding of the Council's planning witness expressed in cross examination [325].

669. The Secretary of State will need to come to a view on the way the policy should be interpreted since it influences whether the wider cases made on climate change, international treaties and obligations and national energy policy fall to be considered in relation to the policy itself or as material considerations having determined the matter against policy. My conclusion is that the appellant's interpretation is correct for the following reasons.
670. The LP contains 16 strategic objectives. SO14 aims to mitigate and adapt to the effects of climate change by addressing flood risk and water management and supporting the development of new buildings and infrastructure that are resilient, resistant and adapted to the effects of climate change. SO15 aims to take action on climate change by promoting energy efficiency and energy generation from low carbon and renewable resources. In my judgement both draw explicitly upon chapter 10 of the Framework of 2012, *'meeting the challenge of climate change, flooding and coastal change'*. It is that Framework that the LP would have been found to be consistent with on examination prior to adoption.
671. The subject matter of LP policy STRAT1 is sustainable development. It sets out eight sustainable development principles. Proposals in accordance with and supporting them will be approved without delay unless material considerations indicate otherwise. The first principle is *'mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation'*. This appears to combine strategic objectives SO14 and SO15 without giving any further policy guidance as to how they are to be achieved. It is this principle with which the appeal proposal would conflict in the Council's view.
672. The written justification for the policy does not explain any of the eight sustainable development principles in any further detail. It does explain that the policy reflects the presumption in favour of sustainable development seen as the golden thread in the Framework 2012. This role of giving local expression to the overall presumption in favour of sustainable development is reiterated in the officers' report to Committee (CD2.23, paragraph 6.67). The LP written justification also states that it provides a framework of locally specific sustainability principles establishing the basis upon which other policies in the adopted and emerging development plan will shape development (CD5.1 paragraph 5.19).
673. This overarching nature of the policy is confirmed in the LP monitoring framework (CD5.1 page 220). The appellant is therefore correct in my view to say that all development proposals must be assessed against this policy [322] if it is to be used in development management as the Council and FFEP&U contend. In fact, there are no indicators or targets for the monitoring of LP policy STRAT1. Instead, it is to be monitored through the implementation and monitoring of other LP policies.
674. During cross examination of Mr Adams, Ms Dehon referred to the explanation of *'mitigate and adapt to the effects of climate change'* given in the LP (CD5.1 paragraph 8.56). However, this is part of the written justification for LP policy ENV6 which addresses high quality design and sustainable construction; paragraph 8.56 references the sustainable construction aspects of the policy. As she said in her closing submissions, it would be unexpected to find an

- explanation for the interpretation of one policy under another policy dealing with an entirely different subject matter [199].
675. Nevertheless, LP paragraph 8.56 does say that mitigation relates to the causes of climate change and is primarily addressed through the control of GHGs and carbon dioxide in particular. It further explains that adaptation relates to the consequences of climate change and is primarily addressed through design, behavioural changes and land use controls.
676. Drs Broderick and Balcombe gave evidence for the Council as climate science experts as did Prof. Anderson for FFEP&U. Both of the Council's experts gave their interpretation of what 'mitigation' means with respect to LP policy STRAT1. In summary, Dr Broderick's view (which was the evidence also of Prof. Anderson [204]) was that the global carbon budget now available if the global temperature rise is to be limited to 1.5°C above pre-industrial levels is very small. It was his evidence that, if the implications of the Paris Agreement and the IPCC SR1.5 report (EP10) are to be met within the UK, an urgent programme to phase out existing natural gas and other fossil fuel use is an imperative [117]. Furthermore, with stricter carbon budgets, the UK must plan for a larger proportion of known natural gas reserves not to be produced.
677. In short therefore, his interpretation of 'mitigation' in this context is compatibility with these international obligations. The proposed development, which as previously noted [668] the appellant accepts would add GHG emissions to the atmosphere, would be incompatible with achieving these objectives.
678. Dr Balcombe took a different and contrary view. His evidence was that mitigation was possible [352 and 356] and Mr Vallely for the Council gave evidence that with adequate proposed mitigation the appeal proposal could be development plan compliant [324 and 334]. However, Dr Balcombe's mitigation method, carbon capture and storage, would, for the reasons explained by the appellant [353], be impracticable for this development. In short, it would require interruption of the gas flow which would effectively negate the purpose of the application.
679. Although the evidence of the Council regarding the way LP policy STRAT1 should be interpreted is inconsistent, in practice it amounts to the same outcome; applications such as the appeal proposal could never be compliant with LP policy STRAT1. That amounts to a moratorium on this type of development proposal within the Council area.
680. I do not believe that interpretation can be correct. First, LP policy ENV7, which is the most relevant policy, supports proposals to exploit the borough's alternative hydrocarbon resources subject to various criteria being met [23]. LP paragraph 8.67 is clear that shale gas exploitation falls within the scope of the policy; this was common ground. While policies in a development plan can and frequently do pull in different directions, one cannot operate such as to render another otiose [366].
681. Second, the Council's SPD (CD5.5) envisages and provides guidance about exploration for unconventional resources within the Council area with shale gas being specifically mentioned (emphasis added). Development like the appeal proposal is therefore envisaged and supported subject to various criteria being met [37].

682. What LP policy STRAT1 means for the determination of this appeal may ultimately be a matter for the court. In circumstances where the interpretation is unclear the court often gives to language and words their everyday meaning. The on-line Oxford Dictionary defines 'mitigation' as '*The action of reducing the severity, seriousness, or painfulness of something*' and, by coincidence, gives as an example sentence '*the identification and mitigation of pollution.*' (emphasis added).
683. That is the interpretation given by the appellant. Although she did not agree with the point being advanced by the witness, 'reduction' is also the meaning given to the term by Ms Dehon for FFEP&U [199] and is the one that I commend to the Secretary of State.

*Assessment against this interpretation of LP policy STRAT1*

684. In my view, the planning statement (CD2.4) gives only limited information about the purpose and the implications for climate change of using the two different ground flares at the DST and EWT stages of the proposed exploration. Much greater information was provided to the EA when seeking the Permit variation. This includes the Waste Management Plan (CD1.9e), the Environmental Risk Assessment (CD1.9g) and the Flare Technical Document (CD1.9k). These set out in some detail why flaring the natural gas at both exploration stages (DST and EWT) is considered to be BAT. Included in the Waste Management Plan are the different techniques considered for the disposal of natural gas having due regard to the hierarchy of waste management [340].
685. The Environmental Permit Decision Reasoning document (CD2.13) explains why the EA agrees that, in the particular circumstances of the DST and the EWT, the proposed use of the two different types of ground flare are considered to be BAT in accordance with EA published guidance [344 (vi)].
686. It appears from the totality of the documentation that the GWP of the gas management techniques is a consideration even if it is not the determining factor in the EA assessment. Disposal of the natural gas by flaring reduces the amount that would vent directly to atmosphere. It thus achieves some mitigation (as defined) of the effects on climate change.
687. During the Inquiry the appellant volunteered the information that there had been an error of calculation in one of the tables in the Environmental Risk Assessment submitted to the EA [358]. While this has an impact on the residual gas venting to atmosphere and thus the release of GHG emissions, it does not impact the assessment of BAT as I understand it.
688. In my judgement, the appellant has shown that the gas management techniques to be employed would reduce and thus mitigate the effect of the proposal on climate change. The reason for refusal as now framed by the Council cannot be sustained and there would therefore be no conflict with LP policy STRAT1 in this regard or with ELP policy M4 to the extent that it is considered relevant [305] given what is said in ELP paragraph 9.53. This makes it clear that '*issues such as climate change*' are addressed by other policies in the development plan and, since the development plan must be read as a whole, this, and other issues similarly addressed, are not considered specifically within ELP policy M4.

*Further assessment against LP policy STRAT1 or as a material consideration*

689. As pointed out above [669], the Secretary of State may agree with both the Council and FFEP&U that the correct interpretation of LP policy STRAT1 requires a wider consideration of the effect that the development would have on climate change matters. The following sets out my conclusion on that consideration. Even if the Secretary of State agrees with the appellant's and my interpretation of the policy this nevertheless becomes an important material consideration in this appeal. Indeed, my understanding of the evidence is that any development for shale gas exploration will cause GHG emissions since, as the appellant explains [353], it is not technically feasible to reduce those emissions to zero at the exploration stage. This consideration is therefore highly relevant to the reason for the appeal being recovered [16] as it is applicable at more than the local level.
690. Several documents have been submitted in evidence that are material to this consideration. Of equal importance to their content is the timing and sequence of their publication and the extent to which reliance is placed upon the conclusions of commissioned reports and studies in policy statements. This section of my conclusions addresses the weight that the Secretary of State can, in my view, now give to the three WMSs issued in 2015, 2018 and 2019.
691. The MacKay and Stone report (CD8.2) was requested by the Secretary of State for the Department of Energy and Climate Change in December 2012. It was published in September 2013. The study was to gather available evidence on the potential GHG emissions from production of shale gas in the UK and the compatibility of future production and use of shale gas in the UK with climate change targets. The study reports on all phases of shale gas production and its subsequent use.
692. It examines local GHG emissions associated with shale gas exploration and production and notes that the carbon footprint includes carbon dioxide and methane. The GWP of methane used is 25 which is said to be consistent with the agreement of the UN Framework Convention on Climate Change to adopt the IPCC 2007 fourth assessment report (CD8.2 page 3, paragraph 2 and footnote 1). The equivalent GWP today would be 36 [80] or, if the 20 year time horizon is used rather than 100 years, 87 [210]. All three of these are higher than the GWP of 21 used by the EA and adopted by the appellant [358].
693. The report makes clear that there is considerable uncertainty about outcomes in the UK because of a lack of data. Introducing 'estimated shale gas carbon footprint for the UK', the following is representative (CD8.2 paragraph 63):
- The following section combines the evidence from available sources to estimate the credible range of potential GHG emissions from the production of shale gas in the UK. The results carry significant uncertainties because of the limits to available evidence and the lack of data for the UK.*
694. The conclusions and recommendations note that there had, at that time, been no production of shale gas in the UK and only limited exploration and that there was almost no data on fugitive GHG emissions from shale gas operations in the UK (CD8.2 paragraph 104). Studies in the United States were therefore used and caution was advised in extrapolating results to the UK where actual emissions would be dictated by local circumstances (CD8.2 paragraph 105). Nevertheless, the conclusion was drawn that with the right safeguards in place,

the net effect on UK GHG emissions from shale gas production in the UK would be relatively small (CD8.2 paragraph 106) (emphasis added).

695. The basis for this conclusion was that the potential increase in cumulative emissions (CD8.2 paragraph 107) could be counteracted by equivalent and additional emission-reduction measures made somewhere in the world. This would be achieved through measures such as carbon capture and storage and carbon off setting. The assumption was that these and other measures would lead to fossil fuels that would have otherwise been exploited remaining in the ground. Without these policies new fossil fuel exploitation would likely lead to an increase in cumulative carbon emissions and the risk of climate change (CD8.2 paragraph 108).
696. The appellant did not rely upon the 2015 WMS in closing submissions [464]. Nevertheless, it is an important document in the sequence. It explains in the section 'the national need to explore the UK's shale gas and oil resources'
- but we need gas - the cleanest of all fossil fuels - to support our climate change target by providing flexibility while we do that and help us to reduce the use of high-carbon coal (APP/DA/3 Appendix 12).*
697. Of relevance to this consideration is the further statement in the same section that shale gas:
- can create a bridge while we develop renewable energy, improve energy efficiency and build new nuclear generating capacity. Studies have shown that the carbon footprint of electricity from UK shale gas would be likely to be significantly less than unabated coal and also lower than imported Liquefied Natural Gas.*
698. Footnote 9 confirms the '*studies*' referenced is in fact only the MacKay and Stone report<sup>14</sup>.
699. In March 2016 the CCC issued its report on the compatibility of UK onshore petroleum with meeting the UK's carbon budgets (CD8.1). The Foreword confirms that the report is the first the CCC has issued under the Infrastructure Act 2015 which allows for a more in-depth consideration than previous CCC assessments on emissions attached to shale gas. The context was the then 2050 emissions reduction target of 80%.
700. The assessment was that exploiting shale gas by fracking on a significant scale would not be compatible with UK climate targets unless three tests were met (CD8.2 page 69). In my judgement the three tests were not intended to apply to the exploration phase but, as the appellant contends [329], to the production phase. However, material to the determination of this appeal was the statement that exploration emissions are generally small although it was noted that little information was available on emissions associated with exploration. The acknowledged source for these statements is the MacKay and Stone report. It also said that most studies analysing the GHG emissions from exploiting onshore petroleum either ignore this phase or assume the emissions are negligible. It

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<sup>14</sup> While the footnote references are included in the text submitted in evidence, the extract provided by Mr Adams excludes the actual references. The content of footnote 9 was identified from the document available on the Parliament UK web site

cautioned that this should not be taken as a given, especially for any EWT phase (CD8.1 page 49).

701. In the conclusions and recommendations it was noted that the prospects for a domestic onshore petroleum industry were currently highly uncertain with that uncertainty only resolvable via exploratory drilling (CD8.1 page 69).
702. Government's statutory response to the CCC 2016 report was issued in July 2016 (APP/DA/3 Appendix 32). The appellant summarised some of these [375]. As set out by the appellant, numbers (vi) and (vii) are both taken from response (ix). Also included within response (ix) (but not set out by the appellant) is the statement that *'the CCC report states that emissions associated with exploration are "generally small"'*.
703. The 2018 WMS (APP/DA/3 Appendix 14) was issued in May 2018 shortly before the Framework was published in July. Under 'energy policy' it emphasises the role that gas must play in every scenario set out by the CCC [380] and under 'planning', in effect, anticipates Framework paragraph 209(a).
704. Framework paragraph 209(a) has been quashed (PI5). The judgement (R18) is highly material to this part of my conclusions. In the following, paragraph references are to those in the judgement of Dove J.
705. At paragraph 7 is the factual finding that it is the Mackay and Stone report that provides support for the implicit conclusions in the 2015 WMS that the use of shale gas would be consistent with government's targets for climate change and GHG emissions. Specific reference to the Mackay and Stone report is again referenced within the government response to the CCC 2016 report in relation to life cycle emissions from UK shale and meeting the test set by CCC (paragraph 10). At paragraph 21 points raised at consultation on the draft Framework by Talk Fracking are set out. In particular, what were claimed to be changes in the state of scientific knowledge about the impact of fracking on climate change since 2015 (essentially 'the Mobbs Report') were summarised.
706. On behalf of the Secretary of State it was stated that in relation to Framework paragraph 209(a) it was purely and simply an exercise of copying across the 2015 WMS. That was being done without any intention to revisit or re-examine the validity of the policy (paragraph 45). At paragraph 51 Dove J concluded that:

*...in fact there was no interest in reviewing or re-evaluating the substance of the policy of the 2015 WMS, or listening to any consultation engaged with the merits of the policy or the evidential and scientific issues associated with it. After all, the Defendant jointly engaged in the promulgation of the 2018 WMS prior to examining or evaluating the consultation responses in relation to the revised Framework (albeit shortly after the consultation period had closed).*

707. At paragraph 67 Dove J concluded:

*What appears clear on the evidence is that the material from Talk Fracking, and in particular their scientific evidence as described in their consultation response, was never in fact considered relevant or taken into account, although on the basis of my conclusions as to what the reasonable member of the public would have concluded as to the nature and scope of the consultation, this material was relevant to the decision which was advertised, which included the substance and merits of the policy. On this basis it clearly was obviously material on the basis*

*that it was capable of having a direct bearing upon a key element of the evidence base for the proposed policy and its relationship to climate change effects. As is clear from what is set out above, on the particular facts of this case the MacKay and Stone Report was an important piece of evidence justifying the validity of the policy in the 2015 WMS, and the need to avoid adverse consequences for climate change were an important aspect of whether or not to adopt the policy. Indeed, (the Secretary of State) did not contend to the contrary and indicated in his submissions that the (Secretary of State) would be engaging with this scientific debate at a time when the substance of the policy in question was being considered.*

708. This was also the Secretary of State's position in another case, *H J Banks* (R17) [195].
709. In my view four material conclusions flow from the all the above [691 to 707]. First, the MacKay and Stone report underpins the 2015 WMS. Second, it also underpins the material conclusions in the CCC 2016 report which, in itself, was prepared in the context of a 2050 emissions reduction target of 80%. Third, while the 2018 WMS references the CCC report, in all material respects it too relies on the MacKay and Stone report for evidential justification. Finally, although other scientific information is available that post-dates the MacKay and Stone report that has not been reviewed or considered by government in relation to any implications for the interaction between its shale gas policy and its climate change policy [see also 287].
710. Before Dove J the Secretary of State submitted that:
- ... in the context of individual decisions by plan makers or decision takers it would be open to depart from the 'in principle' support for fracking provided by paragraph 209(a) on the basis of the requirement, for instance in paragraphs 148 and 149 of the Framework in particular, for the planning system to take decisions which support reductions in greenhouse gas emissions and plan proactively for climate change. Thus, he submitted that in the context of individual decisions it would be open for the Claimant and other participants to place before the decision maker material like the Mobbs Report which supported the contention that shale gas extraction would have a deleterious impact on greenhouse gas emissions, and these could be weighed against the 'in principle' support contained in paragraph 209(a) of the Framework. (R18 paragraph 71)*
711. In this case the submitted material is the IPCC SR1.5 report, the CCC report (PI1) requested by the governments of the UK, Scotland and Wales to provide updated advice on their long-term emissions targets, including the possibility of setting a new 'net-zero' target and government response to it (PI13) and the unmitigated GHG emissions that would be caused by the appeal development. In any event, the 'in principle' support formerly provided by Framework paragraph 209(a) no longer stands to be weighed against this evidence.
712. The IPCC SR1.5 report (EP10) post-dates the MacKay and Stone report, the 2015 WMS, the 2016 CCC report and the 2018 WMS [194]. It reflects the expert panel's view of the latest science and conveys messages about the threat to the planet from climate change which require urgent action [203 and 204]. The UK, Scottish and Welsh governments confirm that *'this report deepens the scientific evidence base on the implications of pursuing efforts to limit global warming to 1.5 degrees above pre-industrial levels, as set out in the Paris Agreement'* (EPP7

- Appendix 1). Both the UK Parliament and the Council have subsequently declared climate emergencies [288].
713. The request to the CCC for its advice was made pursuant to the Climate Change Act 2008, not the Infrastructure Act 2015 (EPP7 Appendix 1). It was requested in the form of an update to advice provided in October 2016 as part of a previous CCC report on UK climate action following the Paris Agreement. As far as I am aware, that report has not been submitted in evidence and, from the date, must be different to the 2016 CCC report (CD8.1) published earlier in 2016. The letter requests that the report provide evidence on, among other things, how reductions in line with the recommendations made might be delivered in key sectors of the economy.
714. The key recommendation in the CCC net zero report (PI1) is that by 2050 emissions of GHGs should be reduced to net-zero thus ending the UK's contribution to global warming. It confirms that a net-zero GHG target for 2050 will deliver on the commitment that the UK made by signing the Paris Agreement. It is achievable with known technologies, alongside improvements in people's lives, and within the expected economic cost that Parliament accepted when it legislated the existing 2050 target for an 80% reduction from 1990 (PI1 executive summary page 1).
715. On 12 June 2019 a draft SI was laid before parliament to amend s1(1) of the Climate Change Act 2008 and substitute '100%' for '80%'. It came into force on 27 June 2019 (PI13). The net zero target is a response to the latest science [132] which the appellant acknowledges [482]. There is no evidence that government has made any other response to the CCC's net zero report or that it intends to do so.
716. A further key point in the CCC's net zero report is the advice that every tonne of carbon counts [129]. This is important evidence in the light of the conclusions of the MacKay and Stone report [700] which underpins the 2016 CCC report, the government response and the policy set out in the 2015 and 2018 WMSs [709].
717. The appellant's evidence is that GHG emissions would still be inevitable as a result of the development [393]. The scale, expressed as ranges, of those emissions during the exploration phase has been agreed between the parties and is set out (A8). The Council includes commentary on those agreed figures (C6) to which the appellant does not agree. In short, the appellant does not agree to those paragraphs that characterise the agreed GHG emissions as 'large' and uncertain (C6 paragraphs 4 and 13) and that which gives some comparatives for context (C6 paragraph 5).
718. The range agreed is 3.3 to 21.3 kt CO<sub>2</sub> equivalent [361]. Previous estimates made by the appellant are now higher due to the increased contribution from methane emissions (C6 paragraph 8). The risk of lower efficiency flaring given uncertainty about both gas flow rates and gas composition also has an effect (C6 paragraph 8). The Council's top end figure is also reduced. This is due to revised (higher) EWT flaring efficiency and lower maximum flow rate of gas during the EWT phase (C6 paragraph 9).
719. However, by far the greatest influencer on the agreed ranges is the GWP factor applied to methane emissions. The appellant used a GWP of 21, the Council a GWP of 36 and FFEP&U a GWP of 87 (C6 paragraph 10).

720. The value of 21 is that used by the EA and is based on the IPCC third assessment report. This is agreed to be 13 years old and has been updated twice to 36 (C6 paragraph 11). This is the value preferred by the Council and is the figure in the IPCC fifth assessment report from 2013. This figure represents the average climate forcing of methane over 100 years compared to CO<sub>2</sub>. FFEP&U prefer the value of 87 which is the average climate forcing of methane over 20 years and is also based on the latest IPCC report. Justification for this value is that it reflects the additional harm caused by methane in the short term as it is a short-lived climate pollutant (C6 paragraph 12).
721. In my judgement, there appears to be no continuing justification for using a GWP factor that has been updated twice by the body generating it. On a conservative basis, I consider that for the purposes of this appeal, the Council's use of the GWP factor of 36 has merit although an equally strong case could be made for the 87 value.
722. There was no evidence that a carbon budget had been set at the Council or regional level. No direct judgement is possible therefore about how much of a local carbon budget the development would take up.
723. Various comparators have been provided (for example C6 paragraph 5). These are not however meaningful in the local context in my view. Perhaps more meaningful is the comparison with total annual emissions from industry and commercial activities in the Council area in 2016. The top end of the range would be some 1% of those emissions at a GWP factor of 36 and 2% at FFEP&U's preferred 87 (C6 paragraph 5).
724. I also drew the parties' attention to the Council's Carbon Management Plan 2016-2020 (EP24). This sets out how the Council plans to reduce its own annual CO<sub>2</sub> equivalent emissions by 30% over a five-year period to April 2020 from 45.5 kt CO<sub>2</sub> equivalent to 31.8 kt CO<sub>2</sub> equivalent. That is an aspirational saving of some 13.7 kt each year. On the Council's range, the proposed development would represent a once-only 'use' of between 29% and 79% of the Council's aspirational annual saving in about 100 days. On FFEP&U's preferred value the 'use' would be significantly greater in the 100 day period of the development.
725. The Council characterises the residual GHG emissions that would be released from the development as 'large' although that description is disputed by the appellant [717]. The appellant also says that it would be considerably lower than that consented by the Secretary of State elsewhere [393].
726. How the agreed amount, which I consider more likely to be at the top end of the range given the GWP value that should be applied, is characterised is less important than the fact that it will occur at all. The CCC statement that during exploration assumptions about GHG emissions from exploiting onshore petroleum either ignore this phase or assume the emissions are negligible [700] does not appear to be supported now by the evidence and there is no evidence that the GHG emissions would be off set elsewhere; a key assumption underpinning the MacKay and Stone report findings [695].
727. In my judgement this casts doubt on the extent to which the MacKay and Stone report can be considered consistent with the 2019 CCC net zero report and the latest science that it reports upon.

728. Drawing all this together allows a conclusion on the weight that can properly be afforded to the 2015 and 2018 WMSs.
729. The latest science put in evidence to the Inquiry is that associated with the IPCC SR1.5 report. Government responded to this report in the same month that it was published requesting the advice of the CCC. The CCC reported in May the following year (2019) and the next month government legislated to give effect to the headline recommendation that by 2050 emissions of GHGs should be reduced to net-zero. That establishes a wholly different context to that in which the CCC prepared its 2016 onshore petroleum sector specific report (CD8.1).
730. Furthermore, as just set out, the assumptions about GHG emissions during the exploration phase that underpin the MacKay and Stone report and thus the 2016 CCC report [726] must be seen in the context of the 2019 CCC net zero report statement that every tonne of carbon emitted counts towards global warming.
731. In quashing the national planning policy as it related to the facilitation of exploration and extraction of unconventional hydrocarbons (Framework paragraph 209(a)), Dove J in *Stephenson* established the clear evidential link between the 2015 WMS and the MacKay and Stone report. The same link is present between the 2016 CCC report and MacKay and Stone while Dove J also established that there was no review or consideration of the more up-to-date science before the 2018 WMS was issued.
732. It follows therefore that neither WMS can be said to reflect the latest climate change science put before the Inquiry. In my view, the weight that can be afforded to either is therefore limited.
733. The 2019 WMS (PI9), which from the text would seem to be the response to the quashing of Framework paragraph 209(a), refers to Framework paragraphs 203 to 205 and the remainder of Framework paragraph 209 having established that hydrocarbon development (including unconventional oil and gas) are considered to be a mineral resource. As a recent statement of government policy it should be afforded significant weight.
734. For the reasons given by FFEP&U neither Framework paragraphs 204 or 205 appear to be directly relevant to the determination of this appeal [290 and 291]. Even if that is wrong, LP policy ENV7 addresses the matters set out in both and the appeal proposal has been assessed against these under the first main consideration.
735. For the same reasons, Framework paragraph 209(b), being the only criterion of those listed of relevance to the determination of this appeal, is addressed through assessment of the appeal proposal against LP policy ENV7 under the first main consideration.
736. The 2019 WMS goes on to confirm that the 2015 and 2018 WMSs remain unchanged and extant and that the associated Planning Practice Guidance is unaffected by the judgement. The next paragraph states the obvious point that these remain material considerations in decision taking with the appropriate weighting to be determined by the decision maker. In this case that is the Secretary of State, but I have set out above the reasons why I consider limited weight may be afforded to them.

737. It is not clear how the statement in the final substantive paragraph of the 2019 WMS, which confirms that government remains committed to the safe and sustainable exploration and development of onshore shale gas resources, is intended to be taken into account in plan making and decision taking. My understanding is that government has not requested from CCC any review of its specific on shore petroleum report (CD8.1) in the light of the latest scientific evidence, the CCC's net zero report or the amendment to the Climate Change Act 2008 to implement its headline recommendation. There is therefore no evidence that the stated commitment is informed by a review or consideration of the latest climate change science.
738. To conclude this further assessment, the evidence is that the appeal proposal would give rise to unmitigated GHG emissions of between 3.3 to 21.3 kt CO<sub>2</sub> equivalent although the actual release is more likely to be towards the top end of the range in my view. Given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. The proposed development would therefore conflict with Framework paragraph 148.
739. The proposal may well be supported by the 2018 WMS as the appellant contends [469] and, although the appellant does not rely upon it, by the 2015 WMS too. However, in my view, limited weight may be given to these WMSs. Since Framework paragraph 209(a) has been quashed there is no shale gas policy within the Framework to set against the climate change policy in Framework paragraph 148. For the reasons set out more particularly by the Council [151 to 153] the 2019 WMS does not amount to such a policy.
740. Therefore, if the Secretary of State takes the same view as the Council and FFEP&U about the way that LP policy STRAT1 should be interpreted, the appeal proposal would be contrary to the LP policy in this regard (and to AELP policy M4 to the extent that it is considered relevant [688]). If however the interpretation of the appellant (which I commend) is preferred, the conclusion of the further assessment is a material consideration that weighs significantly against the development in the planning balance.
741. Before setting out my overall conclusion on this main consideration it is necessary to consider the Written Statement made in the House on 4 November 2019 (PI19).
742. It was made by the Secretary of State for Business, Energy and Industrial Strategy. Only the final paragraph is made jointly with the Secretary of State for Housing, Communities and Local Government. There, it is confirmed that following consideration of the response to the consultation, the Government will '*not be taking forward proposed planning reforms in relation to shale gas*'.
743. The Council argues [158] that this makes the appellant's contention that for the government to consider exploratory development as potentially capable of being considered as permitted development, suggests that it is of the view that the inevitable environmental impacts (including climate change impacts) of such development are not likely to be significant and that the existing consents from the three regulators (the EA, the HSE and the OGA) are sufficient to control potential environmental effects to an acceptable level (APP/DA/2 paragraph 3.42) untenable. I do not think the Council's argument holds. For the appellant, Mr

Adams was expressing an inference which he drew from the fact that the formal consultation was being held. The fact that government does not intend now to implement the changes to statute consulted upon does not, in my view, undermine the inference he drew. In any event, having considered what the Council say is a concession during cross examination [96], no reference to this point was made in the appellant's closing submissions.

744. The Written Statement was clearly prompted by events during Cuadrilla's operations at Preston New Road and the subsequent report by the Oil and Gas Authority. The new evidence submitted by FFEP&U [307] is a paper on the likely impact of fracking in Lancashire on seismicity by Prof. Smythe and the volumes of fluids used by Cuadrilla at the site. It is stated that '*the volume of fluid proposed to be used by the appellant is significantly above those which triggered seismic events at Preston New Road*' (PI22 paragraph 17). Notwithstanding that it is repeated that '*the proposed development is not hydraulic fracturing*' the clear inference that the Secretary of State is, in my view, being invited to draw is that the appeal development will stimulate the formation at the acid volumes to be employed.
745. That is an unreasonable proposition to put after the Inquiry has closed having accepted that the appeal proposal does not involve matrix acidisation and thus stimulation of the formation [169]. The appeal proposal would not involve hydraulic fracturing, it would not require a Hydraulic Fracturing Consent and so is unaffected by the "effective moratorium" on same announced in the Written Statement. The appellant is therefore correct in my judgement that the Written Statement has no relevance to the Secretary of State's decision on this appeal [494].

*Overall conclusion on this main consideration*

746. On this main consideration my conclusion, which I commend to the Secretary of State, is that the appeal proposal would mitigate the effects of climate change as far as is practicable and would thus not conflict with the relevant development plan policy [688]. However, the unmitigated GHG emissions, which the appellant acknowledges would be inevitable from this, and, as I understand it, any, shale gas exploration proposal, would be contrary to Framework paragraph 148. This is a material consideration of significant weight in the planning balance [738 to 740].

*Main consideration (c): the effect the development would have on the regeneration of Ellesmere Port.*

747. In November 2011 the Ellesmere Port Development Board (EPDB) published the SRF (EP19). The EPDB was brought together by the Council and appears to comprise (unnamed) key organisations and individuals across public, private, voluntary and community sectors with an interest in and a passion for Ellesmere Port.
748. The SRF is owned by the EPDB and supported by, among others, the Council (EP19 page 2). It explicitly states that it does not replace or supersede the statutory development plan (EP19 page 3).
749. The appeal site falls within area 8 of the SRF. This is identified as an area for residential projects. The supporting text for LP policy STRAT4 confirms that the

- policy supports the ambitions of the SRF (CD5.1 paragraph 5.31). It does this in part through the specific allocations in LP policy STRAT4 and through more locally specific policies and proposals in the AELP (PI18 section 3).
750. The appeal site is not listed in LP policy STRAT4 for development. Although it was allocated for employment development in the BLP it is not now allocated for that use in the AELP (PI18 Interactive Plan). It is unallocated land.
751. The position of the landowner, Peel Investments (North) Limited as presented to the LP examination Inspector in May 2014 has been set out (A6). Put simply, in that document the landowner does not currently see the future for this land being residential development. Instead, it sees a very positive and productive future ahead as a continually improving port facility. It also stated that *'...commercially now the Docks are very successful and the redevelopment of the Docks is not a viable option. Regeneration has and is being achieved at the Docks through more intensive port use rather than the site's overall redevelopment for other uses.'* There is no evidence of any change in the landowner's position [447].
752. FFEP&U referred to the SRF as not just another piece of evidence supporting the local plan [183]. However, it has no formal development plan status and has not been subject to any public consultation or independent scrutiny as would be the case with, for example, a neighbourhood plan [22 and 442].
753. However, following the formal inclusion of the AELP within the Council's development plan, the appellant's assertion that there is no policy support for the relevant part of the SRF [446] is challenged by FFEP&U citing recent and relevant case law [304].
754. AELP paragraphs 3.1 explains the strategic context given by LP policy STRAT4 while paragraphs 3.2 and 3.3 address employment and housing respectively. The SRF is then referred to in the next paragraph thus:
- The policies in this section also support local regeneration initiatives in the Ellesmere Port Vision and Strategic Regeneration Framework (2011) and Ellesmere Port town centre improvements; supporting strong connections and linkages with the town centre, physical and landscape improvements along key routes such as the M53 and canal corridors, and the regeneration of previously developed sites and a central hub with public realm enhancements. (PI18 paragraph 3.4, emphasis added)*
755. In my view, the word 'also' is used to show those elements of the SRF that are taken forward in the AELP.
756. This is reinforced by those further AELP paragraphs where the SRF is actually mentioned. In most cases this is in connection with unlocking the potential of the area through the development of a public services hub (PI18 paragraph 3.8); a stronger network of pedestrian and cycle routes linking different parts of the town and new development areas (PI18 paragraph 3.9); and the provision of green infrastructure (PI18 paragraph 3.38).
757. In any event, however the SRF should be viewed in relation to the AELP, to conflict with LP policy STRAT4 as contended by FFEP&U, there must be evidence that the appeal development would prejudice the regeneration of Ellesmere Port. In my view, there is none. In fact, the evidence is to the contrary.

758. I have already referred to development in the immediate area that has taken place since the extant planning permission was granted (paragraph 635). In addition, mixed use planning permissions have been implemented on the other side of the M53 as also referred to above [19 and 641]. This, along with the landowner's evidence of future intentions, tends to show that the existing well development has had very little, if any, impact on development in the area coming forward.

759. In my judgement, the contention that shale gas development would have a negative effect on regeneration efforts in Ellesmere Port is unsupported by any evidence, even setting aside that the appeal proposal is for exploration only, not production. Indeed, in his evidence in chief Mr Plunket told Ms Dehon that the 18 week period of the appeal development would not make too much difference to the issues he identified, namely, that business would not re-locate to Ellesmere Port if it is not an attractive location and that development, including, importantly, sustainable development, would go elsewhere (EPP8(S) paragraphs 9 to 12). It was the longer-term development associated with what he identified as step 3 (production), that would be for 18 years, that he considered would have that effect. That is not the development proposal before the Secretary of State.

760. In my view, this is all evidence which leads to a conclusion on this main consideration that there would be no conflict with LP policy STRAT4 either in relation to the appeal site itself or the wider area.

### **Other matters**

#### *Local democracy*

761. This matter has been raised in evidence by FFEP&U [246 and 438] and by several of those from the local community, including the three MPs, who gave oral evidence [498, 501, 502, 509 and 524]. I deal with it in some detail as it is material to my recommendation to the Secretary of State in respect of the appellant's application for an award of costs against the Council.

762. At the core of this point is the contention that the local planning authority has refused the planning application in line with the wishes of local people and that should be the end of the matter. To then allow the appeal would be a denial of or an affront to local democracy. Furthermore, the feelings of anger or powerlessness that would result would lead to distrust of the police and government sowing the seeds for wider social conflict once the development begins.

763. My reading of the Police and Crime Commissioner's letter (IP3) is that he shares this latter concern. He drew attention to the resource required to police what he called the 'Upton operation' in 2016, despite that being predominantly peaceful and good-natured. If it had not been, he advised that the costs incurred by the public purse and the diversion of officers from other duties could have been much more substantial. He expressed his concern about the likely implications for both the priorities and the budget of Cheshire Police if the development went ahead. He concluded '*I have great concern whether Cheshire Police could substantially resource this type of situation given the pressures already placed on daily policing demand.*'

764. The Secretary of State will know that Framework Chapter 3 makes clear that the planning system should be genuinely plan-led. It says that up-to-date plans provide a positive vision for the future of an area and a platform for local people to shape their surroundings. The preparation of local plans by the local planning authority involves the local community at every stage. The adopted development plan is therefore the expression of how the local community wishes to see its area develop. Framework paragraph 47 confirms and restates the planning law position that applications for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise.
765. It is not unusual for planning applications for all kinds of significant or unusual development to attract opposition which is often expressed through representations to the local planning authority and, sometimes, through public meetings and demonstrations and the establishment, as in this case, of single-issue groups formed to oppose the development proposed (Mr Watson evidence in chief). Support for such schemes is rarely expressed on the same scale or in the same way but may nevertheless be reflected in the development plan. Where such opposition raises planning matters these must of course be weighed by the planning authority and the decision maker. They may lead to a conclusion that the development would not accord with the development plan in the first place or they may amount to a material consideration that outweighs compliance with development plan policy.
766. If planning permission is refused there is a right of appeal and the Secretary of State or (if the appeal is transferred) an Inspector determines the matter afresh. If the appeal is allowed that is simply the outcome of the legal planning process operating in this country; it is not a denial of local democracy. If the appeal is dismissed, that would indicate that those opposing the project had sound planning reasons for doing so.
767. I believe no weight therefore should be given to any contention that this appeal should be dismissed simply because not to do so would be somehow undemocratic. For that to form any part of the reason to dismiss the appeal would, I believe, be unlawful although it would be for the Secretary of State to be satisfied about that.
768. I also consider no weight should be given to the implication of the Police and Crime Commissioner's statement that the outcome of the appeal should be influenced by the unsustainable pressures that would be placed on his resources by enabling two groups (the appellant and any protesters) to go about their lawful activity. This could apply to any development proposal that was likely to attract opposition at the site. The appellant's position on this matter in response to the evidence of FFEP&U [440] must be correct.

*Benefits of the proposed development*

769. The appellant identifies very few benefits arising from the development beyond those which flow from government energy and planning policy [463, 466 and 487]. These have been addressed above under the 'Further assessment against LP policy STRAT1 or as a material consideration' heading and, of course, the specific national planning policy as it related to shale gas expressed through Framework paragraph 209(a) which has now been quashed.

770. A benefit of the proposal to which I attribute some weight is the existing well pad and other surface infrastructure and the fact that the exploratory well has already been drilled. This offers the chance to explore the shale gas potential of one part of Petroleum Exploration and Development Licence area 184 without the need to create a further well site (APP/DA/2 paragraph 2.8). This would represent a good use of existing development.
771. The appellant fairly does not seek to overstate the economic benefits of what would be a short duration development [261]. Furthermore, the distinction is drawn between the limited duration exploration stage and the production stage, when any economic benefits could be expected to be more substantial and sustained. There would, nevertheless, be likely to be some short-term employment opportunities locally and an injection of money into the local economy through various contractors and other service providers engaged in the set-up and demobilisation phases. Like FFEP&U, I therefore give limited weight to these short-term economic benefits [263].

*Other development plan policies*

772. The appellant has provided an assessment of the proposal against all relevant adopted and (then) emerging development plan policies and national planning policy (APP/DA/3 Appendix 1). In the main, these policies have been considered above either in the context of LP policies ENV7, STRAT1 and STRAT4 or when considering the conditions that may be imposed in the event of planning permission being granted with respect to the saved MLP policies [31].
773. Except for those policies that have already been the subject of my conclusions, the appellant's assessment was not challenged. The Secretary of State can therefore rely on the appellant's analysis where necessary to do so.

**Overall conclusions and the planning balance**

774. For the reasons set out above, I consider that the development proposed would conflict with LP policies ENV7 and SOC5 on the grounds of the effect that there would be on the health and well-being of some residents in the local community [638 and 660].
775. If the Secretary of State agrees with the interpretation of LP policy STRAT1 advanced by the Council and FFEP&U there would also be a conflict with this policy [740].
776. Either or both conclusions would mean that the presumption in favour of sustainable development contained within Framework paragraph 11 does not therefore apply.
777. The development proposed should therefore be refused in accordance with the policies of the development plan unless material considerations indicate otherwise.
778. In favour of the development are two factors. First, would be the use of an existing well pad and other surface infrastructure to which some weight should be given [770]. Second, there would be some short-term economic benefits that I have found and to which limited weight would be appropriate [771].

779. Exploration is required to inform national energy policy. In that sense, the appeal proposal would be consistent with national energy policy as set out in the 2015 and 2018 WMSs (to the extent that they are materially different) and the response to the 2016 CCC report (APP/DA/3 Appendix 32) although for the reasons set out above, I consider that limited weight only can be given to these policy documents at this time [728 to 732].
780. Set against this should be the residual GHG emissions that the evidence concludes would be produced by the development. If the Secretary of State comes to the view that LP policy STRAT1 should be interpreted in the way advanced by the appellant (with which I agree [679 to 683]), this is a material consideration to which significant weight should be given [740].
781. Moreover, the development would not contribute directly to radical reductions in GHG emissions; it would have the opposite effect. It would therefore be inconsistent with Framework paragraph 148 which, as a very recent expression of government policy, attracts great weight [738]. For the reasons given, I conclude that the 2019 WMS does not amount to a policy that can be set against that Framework paragraph in the way that the now quashed Framework paragraph 209(a) would have been [733 to 739].
782. At best therefore the material considerations balance one another out although, in my view, those against the development (residual GHG emissions - if not found to be a conflict with development plan policy in any event - and inconsistency with Framework paragraph 148) substantially outweigh those in favour (use of the well pad, limited short-term economic benefits and informing future energy policy through exploration).
783. Material considerations do not therefore indicate that the appeal should be determined other than in accordance with the policies of the development plan. The appeal should therefore be dismissed.

### **Recommendation**

784. I recommend that the appeal be dismissed.
785. If the Secretary of State is minded to disagree with my recommendation, Annex C lists the conditions that I consider should be attached to any planning permission granted.
786. However, if the Secretary of State is so minded there are two matters that will need to be addressed. In the light of my recommendation it has not been necessary for me to conclude on either in my report.
787. First, the Council has made legal submissions regarding government's obligations under the Paris Agreement as an international treaty [98 to 102]. The appellant has countered that government has been 'mindful' of those obligations in developing energy policy [393]. This is a legal matter for the Secretary of State to determine but in my view the appellant is correct that the obligations identified by the Council will have already been taken into account in the formulation of national policy.
788. Second, as Competent Authority, the Secretary of State would have to address the issues raised by the *People over Wind/Sweetman* judgement (A16). These

are addressed very briefly above [265 and 455] with further advice to the Secretary of State set out in Annex D.

*Brian Cook*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Robert Griffiths QC	Instructed by Pamela Chesterman, Solicitor for the Council
Nicola Strachan of counsel	
They called	
Conor Vallely BA (Hons) MTCP MRTPI	Associate Planner GVA HOW Planning
Dr Paul Balcombe MEng PhD CEng MChemE	Research Fellow Imperial College London
Dr John Broderick BA MSc PhD	Lecturer University of Manchester Tyndall Centre for Climate Change

### FOR THE APPELLANT:

Giles Cannock QC	Instructed by Peter Nesbit, Eversheds Sutherland (International) LLP
He called	
David Adams MA MRTPI	Director, AXIS
Jonathan Foster	Managing Director Zetland Group Limited
Katrina Hawkins BSc (Hons) MSc	Chairman Smith Grant LLP

### FOR FRACK FREE ELLESMERE PORT AND UPTON:

Estelle Dehon of counsel	Instructed under direct access by Frack Free Ellesmere Port and Upton
She called	
Dr Anna Szolucha MA (Hons) PhD	Research Fellow Northumbria University
Prof. Andrew Watterson PhD CFIO SH	Fellow Collegium Ramazzini, Stirling University
Colin Watson B.ENG C.ENG MIET	FFEP&U member
David Plunket MSc	Retired local government research and statistics manager
Dr Patrick Saunders FRCP FFPH	Consultant in Public Health and Visiting Professor in Public Health, University of Staffordshire
Jackie Copley BA (Hons) MA MRTPI PgCert	Planning consultant
Prof. David Smythe BSc PhD	Emeritus Professor of Geophysics, University of Glasgow
Robin Grayson MSc	Senior Consultant geology and environment
Prof. Kevin Anderson PhD CEng FIMechE	Deputy Director of the Tyndall Centre for Climate Change Research

### INTERESTED PERSONS:

Where marked \* a statement was read out and is included as numbered (IPn) in the appeal documents. These are available as hard copy only.

*Chris Matheson MP IP1	MP for City of Chester
Justin Madders MP	MP for Ellesmere Port and Neston
*Mike Amesbury MP IP2	MP for Weaver Vale
*David Keane IP3	Police & Crime Commissioner for Cheshire
*Matt Bryan IP4	Councillor for Upton by Chester ward
Pat Merrick	Councillor for Rossmore ward
*Ben Powell IP5	Councillor for Blacon ward
Jill Holbrook	Councillor but speaking as a local resident
*Mrs Barbara Gegg IP6	Local resident
*Felicity Dowling IP7	Local resident
*Anthony Walsh IP8	Local resident
*Chris Hesketh IP9	Frack Free Dudleston
*Helen Rimmer IP10	Friends of the Earth
*Peter Benson IP11	Chester and District Friends of the Earth
*James Cameron IP12	Local resident
*Dr John Tacon IP13	Local resident
*Paul Bowers IP14	Cheshire West and Chester Green Party
*Phil Coombe IP15	Local resident
Tim Budd	Local resident
*Jackie Mayers IP16	Local resident
*Linda Shuttleworth IP17	Local resident
*Drew Bellis IP18	Local resident
*Pam Bellis IP19	Local resident
*Alan Scott IP20	Local resident
*Fiona Jackson IP21	Local resident
Catherine Green	Local resident
*Stephen Savory IP22	Local resident
*Fiona Leslie IP23	Local resident
Gayzer Frackman	Local resident
*Thomasine Buckeridge IP24	Local resident

## **ANNEX A**

Where a document is only available in hard copy, the document number is in **bold**

## **DOCUMENTS**

### ***CORE DOCUMENTS***

- CD1.1 EP-1 Extant Planning Permission 09/02169/MIN dated 15 January 2010
- CD1.2 Discharge of Conditions Approvals to EP-1 Extant Planning Permission 09/02169/MIN relating to both 2011 (see CD1.3) and 2014 (see CD1.4) applications
- CD1.3 Application for discharge of planning conditions 6, 7, 8, 9, 10, 12 and 13 of permission 09/02169/MIN (2011)
- CD1.4 Application for discharge of schemes relating to planning conditions 6, 10 and 12 of permission 09/02169/MIN (2014)
- CD1.5 Application documentation submitted in support of extant planning permission 09/02169/MIN (2009)

- CD1.6 Application documentation submitted in support of application for Environmental Permit (2014)
- CD1.7 E-mail to the Council dated 10 January 2014 regarding intentions to drill
- CD1.8 Community Information for Public Exhibition in July 2014
- CD1.9 Application documentation submitted in support of application for Environmental Permit Variation (2017) (see CD2.12 for copy of varied Permit)
- CD2.1 Screening Opinion issued by Cheshire West and Chester Council ("the Council") dated 21 July 2017
- CD2.2 Application Covering Letter to the Council dated 21 July 2017
- CD2.3 Completed Application Form dated 20 July 2017
- CD2.4 Planning Statement dated July 2017 including plans and documents
- CD2.5 Site Location Plan (Drawing No. ZG-IGAS-EP-PA-02) submitted to the Council separately on 21 July 2017
- CD2.6 E-mail to the Appellant from the Council dated 24 July 2017 with queries regarding well depth
- CD2.7 E-mail to the Council from the Appellant dated 14 August 2017 attaching letter responding to well depth queries
- CD2.8 E-mail to the Council from the Appellant dated 18 August 2017 attaching exchange of correspondence with Natural England dated 10 December 2009
- CD2.9 E-mail to the Appellant from the Council dated 29 September 2017 with query relating to noise assessment
- CD2.10 E-mail to the Council from the Appellant dated 24 October 2017 attaching: a Supplementary Noise Report; and Report to Information Habitats Regulation Assessment Screening in response to comments from Natural England and the Council
- CD2.11 E-mail to the Appellant from the Council dated 8 November 2017 regarding clarification requested by the Biodiversity Officer on the Phase I Habitat Map
- CD2.12 E-mail to the Council from the Appellant dated 14 November 2017 attaching a copy of the Environmental Permit for the Ellesmere Port Wellsite issued on 10 November 2017
- CD2.13 Environmental Permit Variation Decision Reasoning dated 10 November 2017
- CD2.14 E-mail to the Council from the Appellant dated 15 November 2017 responding to query raised by the Biodiversity Officer on the Phase 1 Habitat Map
- CD2.15 E-mail to the Council from the Appellant dated 17 November 2017 responding to comments received by United Utilities
- CD2.16 E-mail to the Appellant from the Council dated 4 January 2018 regarding query on rigs/high equipment
- CD2.17 E-mail to the Council from the Appellant dated 4 January 2018 responding to query regarding rigs/high equipment
- CD2.18 E-mail to the Appellant from the Council dated 5 January 2018 raising queries in relation to the Air Quality Impact Assessment
- CD2.19 E-mail to all parties from the Department for Communities and Local Government dated 5 January 2018 attaching the Secretary of State's Screening Direction
- CD2.20

- CD2.21 E-mail to the Appellant from the Council dated 8 January 2018 raising further queries in relation to the Air Quality Impact Assessment
- CD2.22 E-mail to the Council from the Appellant dated 17 January 2018 attaching: a Technical Memorandum providing clarification on the Air Quality Impact Assessment
- CD2.23 E-mail to the Council from the Appellant dated 23 January 2018 with an update for Members in relation to the pre-application consultation undertaken
- CD2.24 Officer Report for the Committee Meeting on 25 January 2018
- CD2.25 Addendum to the Officer Report for the Committee Meeting on 25 January 2018 (dated 24 January 2018)
- CD2.26 Minutes of the Committee Meeting held on 25 January 2018
- CD2.27 Decision Notice dated 26 January 2018
- CD2.19 Approved Restoration Scheme (drawing number RSK/M/P660249/02/01/01 Rev 04) pursuant to 11/01541/DIS E-mail to all parties from the Department for Communities and Local Government dated 5 January 2018 attaching the Secretary of State's Screening Direction
- CD2.20 E-mail to the Appellant from the Council dated 8 January 2018 raising further queries in relation to the Air Quality Impact Assessment
- CD2.21 E-mail to the Council from the Appellant dated 17 January 2018 attaching: a Technical Memorandum providing clarification on the Air Quality Impact Assessment
- CD2.22 E-mail to the Council from the Appellant dated 23 January 2018 with an update for Members in relation to the pre-application consultation undertaken
- CD2.23 Officer Report for the Committee Meeting on 25 January 2018
- CD2.24 Addendum to the Officer Report for the Committee Meeting on 25 January 2018 (dated 24 January 2018)
- CD2.25 Minutes of the Committee Meeting held on 25 January 2018
- CD2.26 Decision Notice dated 26 January 2018
- CD2.27 Approved Restoration Scheme (drawing number RSK/M/P660249/02/01/01 Rev 04) pursuant to 11/01541/DIS
- CD3.1 Consultation Responses to Application Documentation, including:
  - 3.1a Campaign for the Protection of Rural England (3 November 2017)
  - 3.1b CWACC Biodiversity Team (4 January 2018)
  - 3.1c CWACC Highways (13 September 2017)
  - 3.1d CWACC Portside Environmental Protection Team (23 January 2018)
  - 3.1e Environment Agency (25 August 2017)
  - 3.1f Friends of the Earth (28 August 2017)
  - 3.1g Health & Safety Executive (22 September 2017)
  - 3.1h Health & Safety Executive (Explosives) (4 December 2017)
  - 3.1i Health & Safety Executive (Explosives) (22 January 2018)
  - 3.1j Natural England (14 September 2017)
  - 3.1k Natural England (2 October 2017)
  - 3.1l Natural England (4 December 2017)
  - 3.1m Peel Ports Group (22 January 2018)
  - 3.1n United Utilities (2 November 2017)

- 3.1o United Utilities (5 February 2018)
- CD3.2 Third Party Representations comprising an objection petition of 184 people, 1,595 objections of which 1,172 proforma style and 3 letters of support (provided in separate folders)
- CD3.3 Third Party Responses to the appeal
- CD4.1 Statement of Case of the Appellant and Appendices, including:
  - 4.1a Proposed Planning Conditions
  - 4.1b Planning Policy Appraisal
  - 4.1c Expert Statement on Landscape and Visual
  - 4.1d Expert Statement on Ecology
  - 4.1e Expert Statement on Noise
  - 4.1f Expert Statement on Air Quality
  - 4.1g Expert Statement on Cultural Heritage
  - 4.1h Appellant's List of Supporting Documents comprising the appeal
- CD4.2 Statement of Case of the Council and Appendices, including:
  - 4.2a Unconventional Gas and Oil Extraction Working Group Final Report of September 2015
  - 4.2b Methane Emissions Article
- CD4.3 Statement of Case of Frack Free Ellesmere Port and Upton
- CD4.4 Supplementary Statement of Case of the Council
- CD5.1 Cheshire West and Chester Local Plan (Part One) Strategic Policies (adopted 29 January 2015)
- CD5.2 Saved Policies of the Ellesmere Port and Neston Borough Local Plan (adopted 15 January 2002)
- CD5.3 Saved Policies of the Cheshire Replacement Minerals Local Plan (adopted 1999)
- CD5.4 Emerging: Submission Version – Chester West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (March 2018)
- CD5.5 Oil and Gas Exploration, Production and Distribution SPD (adopted 5 May 2017)
- CD6.1 National Planning Practice Guidance (online resource so not provided in hard copy)
- CD6.2 National Planning Policy Framework (24 July 2018)
- CD7.1 Air Quality Standards Regulations 2010 [available electronically only]
- CD7.2 Borehole Sites and Operations Regulations 1995 [available electronically only]
- CD7.3 Civil Contingencies Act 2004 [available electronically only]
- CD7.4 Climate Change Act 2008 [available electronically only]
- CD7.5 European Union (Withdrawal) Act 2018 [Extract – Section 16] [available electronically only, save for extract provided in hard copy]
- CD7.6 Planning and Compulsory Purchase Act 2004 [Extract – Section 38] [available electronically only, save for extract provided in hard copy]
- CD7.7 Pollution Prevention and Control Act 1999 [available electronically only]
- CD7.8 Radioactive Substances Act 1993 [available electronically only]
- CD7.9 Town and Country Planning (Environmental Impact Assessment) Regulations 2017 [available electronically only]

- CD7.10 Water Resources Act 1991 [available electronically only]
- CD7.11 Infrastructure Act 2015 [Extract – Section 49] [available electronically only, save for extract provided in hard copy]
- CD7.12 Petroleum Act 1998 [Extract – Section 4A] [available electronically only, save for extract provided in hard copy]
- CD8.1 Committee on Climate Change: Onshore Petroleum – The Compatibility of UK Onshore Petroleum with Meeting the UK’s Carbon Budgets (March 2016, published 7 July 2016)
- CD8.2 Potential greenhouse gas emissions associated with shale gas extraction and use: A study by Professor David J C MacKay FRS and Dr. Timothy J Stone CBE (September 2013)
- CD9.1 Statement of Common Ground as agreed between the Council and the Appellant on 7 December 2018

**FRACK FREE ELLESMERE PORT & UPTON CORE DOCUMENTS**

- EP01 Adequacy of Current State Setbacks for Directional High-Volume Hydraulic Fracturing in the Marcellus, Barnett and Niobrara Shale
- EP04 Rossmore Ward Snapshot 2017 Cheshire West and Chester Council
- EP05 Everything you always wanted to know about Acidising Kathryn McWhirter et al. for Weald Action Group, Revised 2018
- EP07 Fracking Lancashire: The planning process, social harm and collective trauma  
Damien Short, Anna Szolucha
- EP08 Fracking under the Radar Weald Action Group 2017
- EP09 Fracking: How far from Faults? M P Wilson, et al 2018
- EP10 IPCC Global Warming of 1.5C: A summary for Policymakers Intergovernmental Panel on Climate Change 2018
- EP14 Site Map of proposed development site Frack Free Ellesmere Port and Upton
- EP16 The Manchester Marl Seal and the freshwater Eccles Mudstone Robin Francis Grayson
- EP17 THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT The Precautionary Principle United Nations General Assembly 314 June 1992
- EP19 Ellesmere Port Development Board Vision and Strategic Regeneration Framework: Executive Summary
- EP20 Use of acid at oil and gas exploration and production sites Environment Agency 2018
- EP21 Ellesmere Port Snapshot 2017 Cheshire West and Chester Council
- EP22 Netherpool Snapshot 2017 Cheshire West and Chester Council
- EP23 Correspondence between FFEP&U and IGas Oct-Dec IGas
- EP24 Carbon Management Plan 2016-2020 Phase 2 Cheshire West and Chester Council
- EP25 Air Quality Status Report 2017 Cheshire West and Chester Council
- EP26 Air Quality Status Report 2018 Cheshire West and Chester Council
- EP27 Cheshire West and Chester Council Locality Dashboard Ellesmere Port

	Cheshire West and Chester Council 2015
EP28	Environmental Permit EPR/BB3708GN Environment Agency
EP29	EA Screening tool V1 EPR BB3708GN DST Environment Agency
EP31	Offshore Statistics and Regulatory Activity 2017 HSE
EP32	OGP Blowout Frequencies International Association of Oil and Gas Producers
EP33	HSE Offshore Hydrocarbon Releases HSE
EP34	Letter from HSE to CW&C 4 Dec 2017 HSE
EP36	A guide to the Borehole Sites and Operations Regulations 1995 HSE
EP37	Cheshire West and Chester Council. (2014). Integrated Strategic Needs Assessment: Summary NHS: West Cheshire Clinical Commissioning Group
EP38	Cheshire West and Chester Inequalities Report Cheshire West and Chester Council 2015
EP39	Health Impacts of Pollution. What do we Know? Annual Report of the Chief Medical Officer 2017.
EP40	Oil and Gas Wells and their Integrity: Implications for shale and unconventional resource exploitation RJ Davies et al 2014
EP41	Fourth Carbon Budget Review Part 2 - Extract Committee on Climate Change
EP42	Methane and CO2 Emissions from the Natural Gas Supply Chain ICL / SGI 2015
EP43	Is Shale Gas a Major Driver in Recent Increase in Global Atmospheric Methane? Robert Howarth 2018
EP44	Carbon Budgets: How we monitor emissions targets CCC - current webpage - 9 Dec 18
EP45	Local Authority Carbon Dioxide Emissions Estimates 2016 Dept BEIS 2018
EP46	Paris Climate Agreement 2015
EP47	Potential Air Quality Impacts of Shale Gas Extraction in the UK Air Quality Expert Group, for Dept. for the Environment, Food and Rural Affairs, 2018

## ***PROOFS OF EVIDENCE***

### ***APPELLANT***

APP/DA/1	Summary proof of David Adams
APP/DA/2	Proof of David Adams
APP/DA/3	Appendices to proof of David Adams
APP/DA/4	Rebuttal proof and appendices of David Adams
APP/JF/1	Summary proof of Jonathan Foster
APP/JF/2	Proof of Jonathan Foster
APP/JF/3	Appendices to proof of Jonathan Foster
APP/JF/4	Rebuttal proof and appendices of Jonathan Foster
APP/KEH/1	Summary proof of Katrina Early Hawkins
APP/KEH/2	Proof of Katrina Early Hawkins

APP/KEH/3	Appendices to proof of Katrina Early Hawkins
APP/KEH/4	Rebuttal proof and appendices of Katrina Early Hawkins
APP KBH/1	Summary proof of Kevin Honour
APP KBH/2	Proof of Kevin Honour
APP KBH/3	Appendices to proof of Kevin Honour
APP/SS/1	Summary proof of Simon Stephenson
APP/SS/2	Proof of Simon Stephenson
APP/SS/3	Appendices to proof of Simon Stephenson

#### *COUNCIL*

CC1	Proof and appendices of Conor Vallely
CC2	Proof of Dr Paul Balcombe
CC3	Rebuttal proof of Dr Paul Balcombe
CC4	Proof of Dr John Broderick
CC5	Rebuttal proof of Dr John Broderick

#### *FRACK FREE ELLESMERE PORT & UPTON*

EPP01	Proof and appendices of Colin D Watson
EPP01S	Summary proof of Colin D Watson
EPP2	Proof and appendices of Prof. Andrew Watterson
EPP2S	Summary proof of Prof. Andrew Watterson
EPP3	Proof and appendices of Dr Patrick Saunders
EPP3S	Summary proof of Dr Patrick Saunders
EPP4	Proof and appendices of Dr Anna Szolucha
EPP4S	Summary proof of Dr Anna Szolucha
EPP5	Proof and appendices of Robin Grayson
EPP5S	Summary proof of Robin Grayson
EPP6	Proof and appendices of Dr David Smythe
EPP6S	Summary proof of Dr David Smythe
EPP7	Proof and appendices of Prof. Kevin Anderson
EPP7S	Summary proof of Prof. Kevin Anderson
EPP8	Proof and appendices of David Plunkett
EPP8S	Summary proof of David Plunkett
EPP9	Proof of Jackie Copley
EPP9S	Summary proof of Jackie Copley
EPP10R	Rebuttal proof and appendices of Colin Watson
EPP11R	Rebuttal proof of Prof. Andrew Watterson
EPP12R	Rebuttal proof and appendices of Robin Grayson
EPP13R	Rebuttal proof of Jackie Copley
EPP14R	Rebuttal proof of prof. Kevin Anderson

#### ***DOCUMENTS SUBMITTED DURING THE INQUIRY***

##### *DOCUMENTS SUBMITTED BY THE COUNCIL*

<b>C1</b>	Oil and Gas Authority Announcement re Shale Gas Regulator dated 5 October 2018
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- C2** Clarification of the terms 'capture of natural gas', 'carbon capture and storage' and 'direct air capture' as used in the Council's evidence
- C3** A clarification on estimates of methane emissions from exploration activities
- C4** This Is a Crisis: initial report by IPPR February 2019
- C5** Letter in the Times dated 27 February 2019
- C6** Statement on agreed estimate of greenhouse gas emissions from well testing activities
- C7** *The Queen oao Jeremy Bailey, Allan Norman and Peter Wilson v Secretary of State for Business, Enterprise and Regulatory Reform and others* [2008] EWHC 1257 (Admin)
- C8** *Gateshead Metropolitan Borough Council v Secretary of State for the Environment and another* [1996] CoA 71 P. & C. R. 350 (also submitted by the appellant as Document A12 and by Frack Free Ellesmere Port & Upton as Document R11)
- C9** *Ian Frank Harrison v Secretary of State for Communities and Local Government and another* [2009] EWHC 3382 (Admin)
- C10** *Hopkins Developments Limited v First Secretary of State and North Wiltshire DC* [2006] EWHC 2823 (Admin)
- C11 Response to the appellant's application for costs and submissions in respect of *Stephenson*
- C12 Council's closing submissions

#### DOCUMENTS SUBMITTED BY THE APPELLANT

- A1** Letter dated 14 January 2019 relating to and enclosing alternative site layout plans
- A2** Environment Agency briefing note dated January 2019 and covering email dated 16 January 2019
- A3** Extract from the Climate Change Act 2008
- A4** Response to Calculation on Methane and Global Warming Potential
- A5** Scheme Description: Proposed Amendment
- A6** Cheshire West and Chester Local Plan Part 1: Strategic Policies Examination Inspector's questions 11, 12 and 13 on Matter 4 Ellesmere Port and Peel Investments (North) Limited's supplemental response.
- A7** Email exchange between the appellant and Natural England
- A8 Revision of the statement on agreed estimate of greenhouse gas emissions from well testing activities (Document C6) to include only those matters with which the appellant agrees
- A9 *The Queen (oao) Frack Free Balcombe Residents Association v West Sussex CC* [2014] EWHC 4108 (Admin) (also submitted by Frack Free Ellesmere Port & Upton as Document R13)
- A10 *Plan B Earth and others v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 1892 (Admin)
- A11 *West Midlands Probation Committee v Secretary of State for the Environment* [1997] COA
- A12 *Gateshead Metropolitan Borough Council v Secretary of State for the Environment and another* [1996] CoA 71 P. & C. R. 350

- A13 *R v Broadland DC and St Matthew Society Limited and Peddars Way Housing Association ex parte Dove* [1998] EWHC
- A14 *Newport BC v Secretary of State for Wales and Browning Ferris Environmental Services Ltd* CoA (also submitted by Frack Free Ellesmere Port & Upton as Document R15)
- A15 *Westminster Council v Gt. Portland Estates Plc.* [1985] H.L.(E)
- A16 *People over Wind & Sweetman v Coillte Teoranta (C-323/17)* [2018] Env LR 31
- A17 Application for costs against the Council
- A18 Response to application for costs by Frack Free Ellesmere Port & Upton
- A19 Submissions in respect of *Stephenson*
- A20 Response to Council's costs application response
- A21 Appellant's closing submissions
- A22 Appellant's email response to commencement conditions dated 6 March 2019

*DOCUMENTS SUBMITTED BY FRACK FREE ELLESMERE PORT AND UPTON*

- R1** Policy Paper Clean Air Strategy issued by Defra, DoHSC, DoT, DBIS, Treasury dated January 2019
- R2** Missing pages from evidence document EP39
- R3** Schedule of suggested conditions and all parties' comments
- R4** Section 106 Agreement relating to land near Retford, Nottinghamshire
- R5** Appeal decision APP/P4415/W/17/3190843 Harthill
- R6** Appeal decision APP/X4725/W/17/3190207 Fell House
- R7** Tinker Lane Community Liaison Group Terms of Reference
- R8** Ellesmere Port 1 Lithography Log
- R9** Annotated Google Earth images of Mr Fosters' office and nearby well
- R10** Submissions supporting Rule 6 Party's conditions
- R11** *Gateshead MBC v Secretary of State for the Environment* CoA
- R12** *W E Black Ltd v Secretary of State for the Environment and London Borough of Harrow* EWHC
- R13** *The Queen (oao) Frack Free Balcombe Residents Association v West Sussex CC* [2014] EWHC 4108 (Admin)
- R14** *Felicity Norman v Secretary of State for Housing Communities and Local Government and others* [2018] EWHC 2910 (Admin)
- R15** *Newport BC v Secretary of State for Wales and Browning Ferris Environmental Services Ltd* CoA
- R16** Appeal decision APP/Z0116/W/18/3198899 Shirehampton, Bristol
- R17 *H J Banks & Co v Secretary of State for Housing, Communities and Local Government and others* [2018] EWHC 3141 (Admin)
- R18 *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)
- R19 Submissions in respect of *Stephenson*
- R20 Application for costs against the appellant
- R21 Frack Free Ellesmere Port & Upton's closing submissions

*DOCUMENTS SUBMITTED BY INTERSETSED PERSONS AFTER THE INQUIRY OPENED*

- I1** Letter dated 16 January 2019 from Dr Andrew Barendt
- I2** Letter dated 16 January 2019 from Dr Elizabeth Agnew
- I3** Email dated 18 January 2019 from Professor Andrew Badsen
- I4** Email dated 20 January 2019 from Esther Davies

### **DOCUMENTS ARISING AFTER THE CLOSE OF THE INQUIRY**

- PI1 *Net Zero: The UK's contribution to stopping global warming*  
Committee on Climate Change May 2019
- PI2 Appellant's response to Net Zero report
- PI3 Council's response to Net Zero report
- PI4 Frack Free Ellesmere Port & Upton's response to Net Zero report
- PI5 *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin):  
Sealed Order and Judge's approved note
- PI6 Appellant's response to the Sealed Order and Judge's note
- PI7 Council's response to the Sealed Order and Judge's note
- PI8 Frack Free Ellesmere Port & Upton's response to the Sealed Order  
and Judge's note
- PI9 Written Statement by Lord Bourne of Aberystwyth (HLWS1549)
- PI10 Appellant's response to HLWS1549
- PI11 Council's response to HLWS1549
- PI12 Frack Free Ellesmere Port & Upton's response to HLWS1549
- PI13 The Climate Change Act 2008 (2050 Target Amendment) Order  
2019, SI2019/1056
- PI14 Appellant's response to Climate Change Act Amendment
- PI15 Council's response to Climate Change Act Amendment
- PI16 Frack Free Ellesmere Port & Upton's response to Climate Change  
Act Amendment
- PI17 Response from Natural England to PINS request for comment
- PI18 Cheshire West and Chester Local Plan (Part Two) Land Allocations  
and Detailed Policies
- PI19 Energy Policy Update: Written Statement by the Secretary of  
State for Business, Energy and Industrial Strategy
- PI20 Appellant's response to PI18 & PI19
- PI21 Council's response to PI18 & PI19
- PI22 Frack Free Ellesmere Port & Upton's response to PI18 & PI19
- PI23 Inspector request for clarification of points in Mr Honour's Shadow  
Appropriate Assessment
- PI24 Appellant's response to PI23 dated 18 November 2019

### **PLANS**

- A** Extracts from various Council development plan policy maps  
submitted by the appellant

### **ANNEX B**

### **ABBREVIATIONS**

- AA Appropriate Assessment

BAT	Best Available Techniques
BLP	Ellesmere Port and Neston Borough Local Plan
CCC	Committee on Climate Change
DST	Drill Stem Test
EA	Environment Agency
ELP	Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies
EPDB	Ellesmere Port Development Board
EWT	Extended well test
FFEP&U	Frack Free Ellesmere Port & Upton
Framework	National Planning Policy Framework
GHG	Green House Gas
GWP	Global Warming Potential
HSE	Health and Safety Executive
IPCC	UN Intergovernmental Panel on Climate Change
LNG	Liquefied natural gas
LP	Cheshire West and Chester Local Plan (Part One) Strategic Policies
MLP	Cheshire Replacement Minerals Local Plan
NE	Natural England
OGA	Oil and Gas Authority
SOC	Statement of Case
SRF	Ellesmere Port Vision and Strategic Regeneration Framework
SPD	Supplementary Planning Document: Oil and gas Exploration, Production and Distribution
TVD	Total Vertical depth
UKOOG	United Kingdom Onshore Oil and Gas
WMS	Written Ministerial Statement

## **ANNEX C**

### **PROPOSED CONDITIONS**

- 1) The development hereby permitted shall commence before the expiration of 3 years from the date of this permission. Written confirmation of the date of commencement shall be provided to the local planning authority no later than 7 days after the event.
- 2) The development hereby permitted shall be carried out in strict accordance with the following plans and drawings except as otherwise required by any of the conditions set out in this permission:
  - Location Plan (drawing number ZG-IGAS-EP-PA-01);
  - Site Location Plan (drawing number ZG-IGAS-EP-PA-02);
  - Existing Layout Plan (drawing number ZG-IGAS-EP-PA-03);
  - Drill Stem Test and Well Completion Phase Layout Plan (drawing number ZG-IGAS-EP-PA04-ALT Rev 1);
  - Extended Well Test Phase Layout Plan (drawing number ZGIGAS-EP-PA-05-ALT);
  - Section Through Existing Wellsite (drawing number ZG-IGASEP-PA-06);
  - Section Through Drill Stem Test and Well Completion Phase (drawing number ZG-IGAS-EP-PA-07-ALT Rev 1);

Section Through Extended Well Test Phase (drawing number ZG-IGAS-EP-PA-08-ALT);  
Vehicle Access Route (with narrative) (drawing number ZGIGAS-EP-PA-09).

- 3) The development hereby permitted shall be limited to the flow testing and appraisal of hydrocarbons within the Pentre Chert formation.
- 4) The development hereby permitted shall not consist of matrix acidisation or acid fracturing, as defined by the Environment Agency in "Use of acid at oil and gas exploration sites" (January 2018).
- 5) No development shall take place until a scheme to convene and operate a Community Liaison Group has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to seek membership from the local planning authority, Island Gas Limited (or any successor operator) and the local community. The scheme shall be implemented as approved and as far as practicable, unless otherwise approved in writing by the local planning authority.
- 6) Once commenced the Drill Stem Test (DST) and Well Completion, Extended Well Test, Well Suspension and Demobilisation of Well Test Equipment phases (as identified on drawing numbers ZG-IGAS-EP-PA-04-ALT Rev 1, ZG-IGAS-EP-PA-05-ALT, ZG-IGAS-EP-PA-07-ALT Rev 1 and ZG-IGAS-EP-PA-08-ALT) shall not exceed the maximum number of days for each phase identified in Section 6 of the Planning Statement (document reference IGAS- EP1-PA-001) unless in the interests of safety, security or in emergency. Any delay, the reasons for that delay and the anticipated length of the delay shall be reported in writing to the local planning within 7 days of the delay first occurring.
- 7) The shrouded ground flare shall not exceed 12.2m in height and shall only be located within 3 metres of the position shown on the drawing entitled 'Drill Stem Test and Well Completion Phase Layout Plan' (drawing number ZG-IGAS-EP-PA-04-ALT Rev 1) submitted with the planning application.
- 8) The enclosed ground flare shall not exceed 8.2m in height and shall only be located within 3 metres of the position shown on the drawing entitled Extended Well Test Phase Layout Plan (drawing number ZG-IGAS-EP-PA-05-ALT) submitted with the planning application.
- 9) The workover rig permitted by this planning permission shall not exceed 33m in height.
- 10) No development shall take place until details of lighting proposed to minimise light spillage along the northern boundary of the site and in the interest of transitory bats, have been submitted to and approved in writing by the local planning authority. The details shall be implemented as approved.
- 11) Construction traffic shall only access the site via the approved route as set out on drawing number ZG-IGAS-EP-PA-09.
- 12) Noise levels from the development hereby approved shall not exceed the following levels, when determined as a free field measurement/assessment, at nearby Noise Sensitive Receptors between 22.00 and 07.00:

- i) Residential - 42 dB LAeq,1h at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission with the exception of the dwellings the subject of planning permission 10/02062/OUT during any of the 14 days over which the Drill Stem Testing takes place, where it shall be no louder than 45 dB LAeq,1h; and
  - ii) Offices - 55 dB LAeq,1h (free-field) (0700 to 2200) at a lawfully occupied office (defined for the purposes of this condition as a building within Use Class B1 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission.
- 13) No development shall take place until a Noise Monitoring Plan has been submitted to and approved in writing by the local planning authority. The plan shall detail the monitoring proposed to be implemented at each phase of the development, including night-time working and shall be implemented upon approval for the duration of the permission. The plan should allow for noise monitoring results to be available to the local planning authority within 72 hours of measurement, upon request.
- 14) No development shall take place until a detailed air quality monitoring plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:
- i) The pollutants to be monitored: to include NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, H<sub>2</sub>S, Benzene, Top 10 VOCs and TPH;
  - ii) The methodology for the monitoring, including the frequency and location of monitoring;
  - iii) The procedure for reporting the results to the local planning authority;
  - iv) Identification of trigger points and procedures to be followed in instances where any of the triggers identified have been exceeded.
- The development shall be carried out in accordance with the approved plan.
- 15) Any solids extracted from the well which are stored in open containers shall be covered to prevent wind transport and overflow during heavy rain.
- 16) The site shall be restored in accordance with the details shown on drawing number RSK/M/P660249/02/01/01 Rev 04 approved pursuant to condition 13 of planning permission 11/01541/DIS. Restoration in accordance with this approved drawing shall take place:
- i) within 18 months from the date on which a decision is taken by the developer to abandon the EP-1 well; or
  - ii) within five years of cessation of the drill stem test; or
  - iii) within five years of cessation of the extended well test phase, whichever is later.

## **ANNEX D**

### **FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

## Introduction

1. Article 6 of the Habitats Directive , which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (for plans and projects beyond UK territorial waters (12 nautical miles)), requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either alone or in combination with other plans and projects.
2. The appellant's application included a report entitled Report to Inform Habitats Regulations Assessment (HRA) Screening (CD2.10c), which concluded there would be no likely significant effects to relevant European designated sites. However, this report pre-dated *People Over Wind & Peter Sweetman v Coillte Teoranta* ('*People over Wind*') (A16). The *People over Wind* judgment ruled that it was not appropriate for measures intended to avoid or reduce significant effects on the designated features of a European site to be considered at the screening stage of the HRA process. It found that any such measures should only be considered as part of an AA. The appellant's conclusions in their report were predicated on the implementation of such measures. Consequently, the appellant acknowledged that in the event of the Secretary of State being minded to allow the appeal and grant planning permission an AA may be required [455].
3. To assist that exercise the appellant has prepared a 'shadow' AA (APP/KBH/3 Appendix 1). NE have given their views on this document to the appellant (A7) and to the Planning Inspectorate (PI17). I sought clarification on a number of points (PI23) to which the appellant responded on 18 November 2019 (PI24). Comment from the Council and FFEP&U on this exchange was not invited.
4. Following the convention used in the report, documents in Annex A that are referred to are shown in () while figures in [] are cross references to paragraphs in the report. Otherwise, all paragraph, table, figure and appendix references in this Annex are to content within the appellant's 'shadow' AA.

## Project location

5. The proposed development would be located at Ellesmere Port Wellside, Portside One, Portside North, Ellesmere Port, Cheshire CH65 2HQ. There are two relevant designations for the purposes of HRA located within 2km of the proposed development. The relevant sites are the Mersey Estuary Special Protection Area (SPA) and the Mersey Estuary Ramsar Site. Their boundaries are contiguous and lie some 240m north-east of the nearest appeal site boundary. A railway line, the Manchester Ship Canal and port facilities lie between the appeal site and the Mersey Estuary.
6. The qualifying features, conservation objectives and condition assessment are set out in detail at paragraphs 3.4 to 3.17. Brief details of each is set out below.

7. The Mersey Estuary SPA comprises large areas of saltmarsh and extensive intertidal sand and mud flats with limited areas of brackish marsh, rocky shoreline and boulder clay cliffs. It qualifies under Article 4.1 of the EU Birds Directive by supporting populations of Golden Plover over winter.
8. It also qualifies under Article 4.2 supporting Redshank and Ringed Plover on passage and Dunlin, Pintail, Redshank, Shelduck and Teal over winter.
9. Under the Article 4.2 'waterfowl assemblage' qualifying feature it is a wetland of international importance regularly supporting waterfowl including Curlew, Black-tailed Godwit, Lapwing, Grey Plover, Wigeon, Great Crested Grebe, Redshank, Pintail, Teal, Shelduck and Golden Plover.
10. The Mersey Estuary Ramsar Site is listed under criteria 5 and 6 of the Ramsar convention. The species with peak counts in autumn are Common Shelduck, Black-tailed Godwit and Common Redshank. Those with peak counts in winter are Eurasian Teal, Northern Pintail and Dunlin.
11. There are no formal conservation objectives for Ramsar sites but objectives for current and additional qualifying features have been set by NE. Paragraphs 3.10 to 3.12 set out the generic conservation objectives applicable to the Ramsar while the site-specific supplementary advice on conservation objectives issued by NE for the Mersey Estuary SPA are described in paragraphs 3.13 to 3.15.
12. The baseline conditions for the SPA and Ramsar sites, in the vicinity of the appeal site, have been established according to the NE condition assessment for the Mersey Site of Special Scientific Interest (SSSI); this is illustrated on Figure A3.1. Units 10 and 11 are of most relevance in this regard and have been assessed by NE as being 'favourable' (unit 11) or 'unfavourable recovering' (unit 10) although a more recent but limited survey suggests the vegetation may now be in favourable condition.

#### *Habitats Regulation Assessment of the project*

13. Table 4.1 sets out an initial assessment of the potential impacts of the development proposed. Impacts with a pathway to the designated sites are as follows:

<b>Impact</b>	<b>Potential Pathway</b>
Air quality	Short-term use of gas flares producing nitrogenous compounds
Surface water drainage	Possible route for contaminated surface water via Ship Canal which lies between appeal site and SPA before consideration of site drainage
Groundwater contamination	Possible release of fluids from well into groundwater before consideration of containment measures
Light pollution	Site will be illuminated during the night, so potential effect pathway (although distant from SPA)

Noise pollution	Operation of site involves some noise-producing activities such as flaring gas
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*Part 1: Assessment of likely significant effects*

14. Taking the impacts set out in the table above in order, impacts from changes in **air quality** are assessed in paragraphs 4.6 to 4.11. In making this assessment the air quality modelling undertaken for the purpose of the Environmental Permit variation application and the application for planning permission (CD2.4 Appendix 11) and for the purpose of the appeal evidence (APP/KEH/3 Appendix 1) is relied upon. The evidence about oxide of nitrogen levels and nitrogen deposition rates was not challenged during the Inquiry and there is no reason therefore why the Secretary of State should not rely upon it as a basis for the conclusion drawn.
15. The conclusions reached are that neither the screening thresholds nor the environmental quality standards are predicted to be exceeded for oxides of nitrogen levels or nitrogen deposition rates by the process contribution. It can therefore be safely concluded that there will be no likely significant effect on SPA qualifying features as a consequence of flare emissions (4.11).
16. Neither of the responses from NE (APP/DA/4 Appendix 1 and A7) raise any concern with regards to this conclusion. I therefore agree with the conclusion of the appellant that there would be no likely significant effect on SPA qualifying features as a consequence of flare emissions.
17. Moving now to **surface water drainage** paragraphs 4.12 and 4.13 confirm that there is no surface water hydrological connectivity between the well site and the Mersey Estuary because of the way that the existing well site has been constructed. In short, an impermeable membrane beneath the site diverts the surface water runoff into the on-site drainage infrastructure prior to periodic removal via tankers.
18. The current baseline conditions appropriately isolate surface water runoff. It can therefore be safely concluded that there will be no likely significant effect as a consequence of emissions to surface waters. This is also a conclusion which NE does not dispute (APP/DA/4 Appendix 1 and A7) and is therefore a conclusion with which I agree.
19. **Ground water contamination** is the subject of paragraphs 4.14 to 4.16. The only possible pathway to groundwater would result from the failure of the well casings that are already in place and subject to periodic monitoring in accordance with a separate regulatory regime. That regime would operate and would require the well casings irrespective of the presence of the Natura 2000 sites (4.14).
20. The appellant's conclusion is therefore that it is safe to conclude that there would be no likely significant effect.
21. While NE does not disagree with this conclusion (APP/DA/4 Appendix 1) reference is made to the well casings in the context of embedded mitigation. The appellant sets out the reasons why the well casings should not be so considered (APP/KBH/2 paragraph 5.7). These are:
- i) The well casings are currently in place, having been constructed in accordance with standard industry practice in accordance with regulations, and have been subject to maintenance inspections under a

- previous planning consent – they are therefore part of the current baseline, and do not require installation as part of the Proposed Development;
- ii) The requirement to protect groundwater is subject to additional regulatory oversight, such as the Borehole Sites and Operations Regulations, overseen by an Independent Well Examiner and a specialist HSE wells inspector; and
  - iii) The regulatory regime to prevent ingress to groundwater would operate irrespective of the presence of a European conservation site – mitigation measures are not contingent on the identification of a potential effect pathway, but could reasonably be expected to be required for any development of this nature.
22. However, the appellant also accepts that it would be prudent to assume that it does represent embedded mitigation and proceed to AA [paragraph 2 above]. In that circumstance, NE has confirmed that it would expect to be able to conclude that the proposal would not have an adverse effect on the integrity of the SPA and Ramsar site either individually or in combination with other plans or projects (APP/DA/4 Appendix 1).
23. My conclusion is that, since the well casings are already in place and will not be installed through the implementation of the appeal project, the appellant's conclusion with regard to likely significant effect and the reasons for coming to it are reasonable. However, in view of the legitimate debate as to whether or not the well casings represent embedded mitigation, following *People over Wind* a likely significant effect cannot be discounted at Part 1 assessment stage.
24. Turning now to **light pollution**. The appeal site would be illuminated throughout the night when operational. Suggested condition 10 requires a lighting scheme to be approved before development commences and implemented as approved. This is therefore a matter that is wholly within the control of the Council as planning authority.
25. The indication is that the lighting for which approval will be sought will be provided by four portable lighting towers less than 9m in height (4.17). Given the distance to the Estuary it is very unlikely that any light spillage would occur. More importantly, there is an industrial user between the appeal site and the Estuary with taller lighting columns that is much more likely to contribute light spillage reaching the SPA (4.18).
26. The appellant also refers to certain empirical evidence indicating no deleterious effect of nocturnal light on waders and waterfowl using estuarine habitats and some positive effect through extended foraging periods due to the artificial lighting (4.19).
27. In conclusion, the appellant states that it can be safely concluded that there would be no likely significant effect as a consequence of light spillage.
28. In a response to the appellant in December 2018 (APP/DA/4 Appendix 1) NE noted that it was unclear if the lighting design was required to mitigate impacts on the designated sites. In short, the appellant confirmed that it was not. Rather, it is intended to limit light spill from the appeal site in general terms (A7). NE responded to that saying that it did not consider it necessary to

- mitigate for impacts from light spill, citing both the distance and existing intervening development referenced by the appellant (A7).
29. Although it does not explicitly say so, it would be reasonable to infer from this that NE does not dispute the appellant's conclusion.
30. In my view, the lighting scheme that will be secured by condition and monitored by the local planning authority is not a measure put in place to mitigate any potential effects on the designated sites. Indeed, NE states that no mitigation for light spill is required in this case. I therefore conclude that there would be no likely significant effect as a consequence of light spillage.
31. Finally, **noise pollution**. This is addressed in detail at paragraphs 4.20 to 4.29.
32. In summary, it is considered that there would be two noise effects of concern. These are predicted noise levels generated by flaring operations during the short-term Drill Stem Test phase and sudden impulsive noise. With regard to the first, habituation is considered very likely to occur (4.21) and, in respect of the second, additional disturbance would not be likely to be caused due to habituation that would have already occurred (4.22).
33. In response to my query about the first of these two effects (4.21) the appellant has now clarified that the existing elevated noise levels experienced would not be significantly added to by the development proposed. Having regard to the conclusion drawn in the ecological report submitted with the planning application (CD2.4 Appendix 9), it is the case that birds are already highly likely to be habituated to existing noise levels (PI24 point 2).
34. The predicted noise levels on which these conclusions are based (and which are reflected in suggested condition 12 and will thus be secured by the local planning authority) incorporate noise mitigation measures. However, these are to be incorporated to reduce noise levels at residential receptors, not at the SPA. The effect of unmitigated noise levels on the SPA has not been modelled, nor is it considered to be necessary (4.23).
35. Similarly, although recognised as potentially of greater ecological importance, no mitigation measures have been proposed or are considered necessary in respect of sudden impulsive noise (4.24). The appellant has clarified (PI24 point 4) that this conclusion is based on information about the nature of the noise environment in the vicinity of the appeal site. The supplementary noise report states:

*the area surrounding the wellsite is industrial in character, including 24 hour operating factories, petrochemical plants and a small active dock/port. Although it is not feasible to directly measure the contribution of noise at the SPA from these sources, they would be expected to include significant periods where noise levels rise due to local activity, especially activity which would include some impact and impulsive noise character that would result in high maximum levels of noise as measured using the LAmax metric. Noise from canal side industrial activity in the area, reaching the SPA, is likely to generate LAeq,T ambient industrial noise levels, aside from M53 traffic noise, of 50dB or more on occasions. With typical industrial activity, the metric LAmax, values at the SPA will also on occasions be as high as 60- 70dB, or even more, depending upon the precise nature of the industrial activity (CD2.10b page 4)*

36. Paragraph 4.25 concludes that it should therefore be possible to conclude that there is no likely significant effect on qualifying features of the SPA as a consequence of noise generation. The appellant has also clarified why this conclusion is not one of 'safely conclude' as with all the other impacts. It is not caused by any uncertainty about the ecological effects of noise on the SPA qualifying species. Rather, it reflects the legitimate debate as to whether the mitigation measures set out could be considered as incorporated or embedded mitigation (PI24 point 1).
37. NE confirmed that having reviewed all the noise information provided with the planning application it was considered that the proposal would not have likely significant effects on the SPA and Ramsar site (A7). NE thus agreed with appellant.
38. To summarise on noise impacts, a conclusion that there would be no likely significant effect as a consequence of sudden impulsive noise would be justified. The level which it is predicted would not be exceeded would be within the predicted baseline. Thus, no mitigation is required or proposed. However, mitigation measures are put forward to achieve the required levels at residential receptors. Since the impacts within the designated sites without those mitigation measures in place have not been modelled or assessed a finding of no likely significant effect cannot be confirmed.
39. **In-combination effects** taking into account four other projects have also been assessed and are set out in paragraphs 4.26 to 4.29. The overall conclusions drawn are that none of these developments increase the risk of a likely significant effect with respect to noise (4.27), surface and groundwater pollution or light spillage (4.29) and that none would act in combination with the proposed development in terms of air quality due to distance separation and low stack heights (4.28).
40. NE would appear to have agreed with this assessment (APP/DA/4 Appendix 1). I conclude that there would be no likely significant in-combination effects.

*Part 2: Findings in relation to adverse effects on the integrity*

41. In the case of groundwater contamination I am content that the existing well casing provides the necessary protection for the potential pathway and its effectiveness is regulated in accordance with the Offshore Installations and Well (Design and Construction) Regulations 1996 and the Borehole Sites and Operations Regulations 1995. As the appellant points out these regulations would need to be complied with whether or not the appeal site was near to the SPA and Ramsar site. Indeed, the well was constructed in 2014 in accordance with those Regulations (APP/JF/2 paragraph 3.38) and its integrity monitored annually with no change in its condition observed (APP/JF/2 paragraph 4.12). Nonetheless, the well casing is a suitable avoidance measure preventing a potential pathway for contamination to the sites. I am content that with this measure in place there will be no adverse effect to the integrity of the sites.
42. The position with regards to noise pollution is a little less clear. Again, I am content that the conditions on a grant of planning permission will secure a scheme that limits noise to defined levels and will avoid adverse effects on the integrity of the designated sites. Included within the scheme will be certain features, modifications and additions to the ground flares. While these have

been required to mitigate the impact on residential receptors and would therefore be in place irrespective of any beneficial impact on the designated sites, what that impact may be has not been assessed. While I consider that there would be no adverse effect on the integrity of the designated sites, I do not consider that it can be clearly stated that this is not the result of mitigation measures put forward and secured by condition. That is also the view of the appellant which prompted the cautious conclusion with regard to this impact.

43. I am therefore content that these measures are required to support a conclusion of no adverse effect on the integrity of the site.

### *Conclusions*

44. For the reasons set out above I conclude on the evidence presented that for those impacts where a likely significant effect cannot be discounted (ground water contamination and noise) there would be no adverse effect on the integrity of the SPA and Ramsar site as a result of the proposed development either on its own or in-combination with other projects. This is because suitable measures are in place in order to avoid or reduce any effect from these impacts. NE has indicated in December 2018 (APP/DA/4 Appendix 1) that if consulted on the basis of the assessment in this Annex, it would expect to be able to conclude that the proposals would not have an adverse effect on the integrity of the SPA and Ramsar site either individually or in-combination with other plans or projects.



# Department for Levelling Up, Housing & Communities

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

#### Challenges under Section 288 of the TCP Act

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

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

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

### SECTION 3: AWARDS OF COSTS

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

### SECTION 4: INSPECTION OF DOCUMENTS

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