



## Department for Communities and Local Government

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Our Ref: APP/F0114/A/13/2199958

Your Ref: CIR.H.0346

5 March 2014

Dear Madam

### **TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 LAND OFF STOCKWOOD LANE, WHITCHURCH, SOMERSET APPLICATION REF: 12/04597/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mike Robins MSc BSc (Hons) MRTPI, who held a public local inquiry on 22 – 25 October 2013 into your client's appeal against the refusal of Bath & North East Somerset Council ('the Council') to grant outline planning permission for: residential development (up to 295 dwellings) including infrastructure, ancillary facilities, open space, allotments and landscaping, and construction of two new accesses from Stockwood Lane, in accordance with application ref: 12/04597/OUT, dated 14 May 2013.
2. On 18 June 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for significant development in the Green Belt.

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

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

### **Procedural matters**

4. An agreed Statement of Common Ground, dated July 2013, with an amendment, dated 1 October 2013, was submitted in relation to planning matters. That amendment set out the consultation carried out by the appellant regarding their intention to reduce the scheme from its original 295 dwellings to up to 200 dwellings.

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The Secretary of State notes that a revised indicative Concept Masterplan was provided as part of this consultation, and the appellant confirmed that they wished the scheme to be considered on this basis. The Secretary of State is satisfied that a proper level of consultation was carried out such that no party would be disadvantaged by consideration of the proposal on the basis of up to 200 units, to be controlled through condition, and the Secretary of State has considered the appeal on that basis (IR3-5).

## **Policy considerations**

5. In determining this appeal the Secretary of State has had regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Bath and North East Somerset Local Plan 2007. The Secretary of State considers that the development plan policies most relevant to the appeal are those noted by the Inspector at IR12-15.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework); Circular 11/1995: Use of Conditions in Planning Permission; the Community Infrastructure Levy (CIL) Regulations 2012 as amended; the Written Ministerial Statement on Planning and Travellers of 1 July 2013; and the Written Ministerial Statement on the Green Belt of 17 January 2014.
7. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that that guidance has not yet been finalised, he has attributed it limited weight.
8. The Secretary of State has also had regard to the Council's emerging Core Strategy (IR16-17), but as it has yet to be adopted and is still subject to change, he affords it little weight.

## **Main issues**

### Housing land supply and need

9. The Secretary of State notes that the Council agreed that they cannot currently demonstrate a five year housing land supply (IR26). Consequently he agrees with the Inspector that significant weight should be given to the current housing need in the district in favour of the proposal (IR233).

### The effect of the proposed housing development on the Green Belt and openness

10. For the reasons given at IR185-204, the Secretary of State agrees with the Inspector that the proposed development is inappropriate development in the Green Belt that would materially impact on the openness of the site, which is an essential characteristic of Green Belts. He agrees that the proposal would harm national purposes in relation to urban sprawl and countryside encroachment, and the local purpose, in relation to the separate character of villages. He also agrees that the proposal would therefore conflict with the Framework as well as development plan

policy in this regard. Accordingly he agrees that substantial weight should be given to harm to the Green Belt, as set out in the Framework (IR205).

#### The effect on the character and appearance of the area

11. For the reasons given at IR206-211 the Secretary of State agrees with the Inspector that the impacts on the appeal site would be significant for local users of the footpaths and would fundamentally change the nature of a well-used area. However he agrees that the effects would, for the most part, be localised and consequently of only moderate significance. He agrees too that development of the site would also contribute to the erosion of the separation between the village and Bristol and would have a notably detrimental impact on the character and setting of the village (IR212). He agrees that the proposal would conflict with Local Plan Policy GB2, which seeks to protect the Green Belt from development that would be visually detrimental, as well as the Framework, which states that development should take account of the role and character of different areas, recognising the intrinsic character and beauty of the countryside. In light of the moderate significance of the site, the Secretary of State agrees with the Inspector that moderate weight arises against the proposal in regard to impacts on the character and appearance of the area (IR213).

#### The effect on highway safety and traffic

12. Turning to the traffic issue, the Secretary of State agrees with the Inspector's reasoning at IR214-218 and agrees with his conclusion that the improvements facilitated by the s.106 Obligation would mitigate the impact of the proposal (IR219). In regard to safety, the Secretary of State agrees with the Inspector that there is no reason to find that the proposed accesses would not provide a safe means of access to and egress from the site (IR220).

#### Whether very special circumstances exist in this case

##### *Housing need*

13. The Secretary of State agrees with the Inspector's assessment of housing need at IR223-230 and he agrees that there is a significant and acknowledged shortfall in the 5 year housing land supply, contrary to the Framework's ambitions to boost significantly the supply of housing. He agrees, therefore, that the present local housing policies should not be considered up-to-date. The Framework's presumption in favour of sustainable development applies, although the footnote to paragraph 14 in the Framework is engaged (IR231).

14. In this context, the Secretary of State agrees with the Inspector that the absence of a 5 year housing land supply cannot be considered determinative, and that the very substantial weight arising against development by reason of harm to the Green Belt is such that the absence of a 5 year housing land supply could on its own amount to very special circumstances (IR232).

##### *The locational suitability of the appeal site*

15. For the reasons given by the Inspector at IR234-248, the Secretary of State agrees with the Inspector that the proposed site has some benefits over others in the wider area, but also has some comparative drawbacks. He agrees with the Inspector's conclusion that the location suitability of this site is neutral, and limited weight arises in favour of the proposal as a result (IR249).

### *The inevitability of Green Belt incursions*

16. The Secretary of State agrees with the Inspector's findings at IR250-254 and agrees with his conclusion that moderate weight arises in favour of the proposal due to the inevitability of some Green Belt release in the district over the plan period (IR254).

### *The deliverability of the appeal proposal*

17. The Secretary of State agrees with the Inspector that the appeal site could be considered deliverable, and with the exception of the Horseworld site, there are no other development sites in the local area that could be similarly considered deliverable to meet housing need. Like the Inspector, the Secretary of State affords moderate weight in favour of the proposal in this respect (IR255-256).

### *Economic benefits*

18. With regard to the economic benefits in relation to construction, the New Homes Bonus and others that would arise from a housing development of this scale, the Secretary of State agrees with the Inspector that such benefits would arise irrespective of where development occurs. Nonetheless, he agrees that economic benefits would be an outcome of this scheme and that moderate weight arises in favour of the scheme accordingly (IR257).

### *The failure of the forward planning process*

19. For the reasons given by the Inspector at IR258 – 260, the Secretary of State agrees that although there are objections to the housing need figures and challenges over the inclusion of Green Belt allocations, there is a strong national drive and support to bring the forward planning process to an early conclusion. In this matter, like the Inspector he does not find the circumstances in this appeal differ substantially from those in the Thundersley decision (IR261).
20. He agrees too that, setting aside the matters at contention, the site appears to have no other overriding constraints, and it is highly likely that were permission to be granted, it would bring development forward faster than awaiting allocation through the Core Strategy (IR262). The Secretary of State also notes the Inspector's view that a small amount of additional weight therefore arises in favour of the scheme in relation to the timing of the delivery of new housing locally (IR262).

### *Other Considerations*

21. The Secretary of State notes the reasoning at IR263 and the Inspector's view that significant weight should be attached to the affordable housing benefits, despite the Council's concerns regarding design standards and the provision of affordable rented over social rented (IR264). However, as the appeal scheme would do no more than comply with existing development plan policy on the provision of affordable housing, and as the affordable housing provision would not be significantly greater than requirements in the emerging Core Strategy, the Secretary of State considers that the affordable housing contribution cannot be said to add additional weight to the arguments relating to housing need generally.

### *Conclusion on very special circumstances*

22. The Secretary accepts the Inspector's conclusion that there is inevitability to some Green Belt land release in Bath and North East Somerset in the near future. However,

like the Inspector, he considers there is insufficient evidence to conclude that this site would necessarily be among the favoured options. As the Inspector found, there is tension between landscape and visual harm, and harm to the Green Belt purposes around Whitchurch. The Secretary of State agrees that whilst there are some positive elements of the scheme, this must be weighed against the substantial harm to the Green Belt identified by the Inspector (IR266).

23. The Secretary of State agrees with the Inspector that significant weight should be attached in favour of the development regarding the current housing land supply position in Bath and North East Somerset, as well as moderate weight arising in terms of the inevitability of Green Belt land release, the deliverability of the site and the economic benefits. Nonetheless, he does not consider that together these would be sufficient to outweigh the substantial harm arising in terms of the Green Belt and other harm, including that to the character and appearance of the area. He therefore agrees with the Inspector's conclusion that very special circumstances do not exist to justify a grant of planning permission in this case (IR267).

### **Other Matters**

24. With regard to the significant increase in the scale of the village that would arise from this proposal, the Secretary of State agrees with the Inspector that Whitchurch retains a village character and it clearly has a strong community with its own primary school, community hall, health centre and a small range of shops (IR268). As regards extra residents increasing the pressure on services and facilities, the Secretary of State agrees that the new residents could equally be considered to provide an additional customer base to support the viability of certain services and retail provision in the village (IR269).
25. Turning to concern about the impact on wildlife and flood risk, the Secretary of State is satisfied that the reports prepared on ecology properly addressed concerns regarding wildlife, and that suitable mitigation would be provided subject to condition. Similarly, he agrees with the Inspector that a drainage scheme could be secured by condition to address the risk of increased run-off from the site (IR270).

### **Conditions**

26. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions at IR151-157. He agrees with the Inspector that conditions 1 – 25 as set out in Annex A of the IR meet the tests of Circular 11/95 and paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for dismissing the appeal.

### **Obligations**

27. The Secretary of State has considered the Inspector's assessment at IR158-181 of the provisions in the four unilateral undertakings, submitted after the close of the inquiry. He is content that the Undertakings would accord with the CIL Regulations and the tests in paragraph 204 of the Framework. However, for the reasons set out above, he does not consider that the Undertakings are sufficient to overcome his reasons for dismissing the appeal (IR182).

## **Overall balance and conclusion**

28. The Secretary of State recognises that there would be undeniable benefits in the provision of 200 new homes in a district with a past record of undersupply and a lack of a demonstrable five year housing land supply, but concludes that this does not, on its own, represent a consideration of sufficient weight to outweigh the substantial Green Belt harm that arises from inappropriate development, harm to openness and other harm, such as to the character and appearance of the area (IR271).
29. The Secretary of State agrees with the Inspector that some further weight arises in favour of the scheme from the inevitability of the release of some Green Belt land, the deliverability of the scheme and its economic benefits, but considers that these matters are also insufficient to clearly outweigh the identified harm, even when added to the other benefits (IR272). The Secretary of State concludes that the proposal would therefore conflict with Local Plan Policies GB1 and GB2, as well as the Framework (IR273).

## **Formal Decision**

30. 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 outline planning permission for residential development (up to 295 dwellings) including infrastructure, ancillary facilities, open space, allotments and landscaping, in accordance with application reference 12/04597/OUT and considered on the basis set out at paragraph 4 of this letter.

## **Right to challenge the decision**

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

Yours faithfully

**Julian Pitt**

Authorised by Secretary of State to sign in that behalf



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

by Mike Robins MSc BSc(Hons) MRTPI

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

Date: 17 December 2013

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## **TOWN AND COUNTRY PLANNING ACT 1990**

### **APPEAL BY ROBERT HITCHINS LTD**

**RESIDENTIAL DEVELOPMENT (UP TO 295 DWELLINGS) INCLUDING  
INFRASTRUCTURE, ANCILLARY FACILITIES, OPEN SPACE, ALLOTMENTS  
AND LANDSCAPING. CONSTRUCTION OF TWO NEW ACCESSES FROM  
STOCKWOOD LANE.**

**LAND OFF STOCKWOOD LANE, WHITCHURCH, SOMERSET**

Inquiry held on 22 - 25 October 2013

Land off Stockwood Lane, Whitchurch, Somerset

File Ref(s): APP/F0114/A/13/2199958

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**File Ref: APP/F0114/A/13/2199958**

**Land off Stockwood Lane, Whitchurch, Somerset**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Robert Hitchins Ltd against the decision of Bath & North East Somerset Council.
- The application Ref 12/04597/OUT, dated 11 October 2012, was refused by notice dated 14 May 2013.
- The development proposed was residential development (up to 295 dwellings) including infrastructure, ancillary facilities, open space, allotments and landscaping. Construction of two new accesses from Stockwood Lane.

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

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**Procedural Matters**

1. The inquiry sat between the 22 and 25 October 2013, with an accompanied site visit on the 24 October. As requested by parties, an unaccompanied visit was made to Maes Knoll, a hill fort and Scheduled Ancient Monument, on the 25 October 2013.
2. This appeal was recovered under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeal involves proposals for significant development in the Green Belt. The application was made in outline, with all matters other than access reserved for future determination.
3. An agreed Statement of Common Ground (SoCG), dated July 2013, with an amendment, dated 1 October 2013, was submitted in relation to planning matters. The amendment set out the consultation carried out by the appellant regarding their intention to reduce the scheme from its original 295 dwellings to up to 200 dwellings.
4. The level of consultation has been assessed, including the list of people notified, both local residents and Councillors, the newspaper advertisements and the leaflet drop to some 450 neighbouring properties. It would appear that interested parties had the opportunity to comment on this amendment. At the Inquiry this was confirmed by the local residents present, and many of the submitted written representations included reference to both schemes, or indeed were responses specifically to the amended scheme. Such amendments generally refer to the case of Wheatcroft<sup>1</sup>, which, in essence, sets out the principles of whether a change to a development is so substantial as to lead to prejudice to any party.
5. A revised indicative Concept Masterplan<sup>2</sup> was provided as part of this consultation, and the appellant confirmed that they wished the scheme to be considered on this basis. I am satisfied that a proper level of consultation was carried out such that no party would be disadvantaged by consideration of the proposal on the basis of up to 200 units, to be controlled through condition. I recommend that the appeal is considered on this basis.
6. Notwithstanding this, there was some concern raised at the start of the Inquiry regarding the extent of public consultation on the overall scheme, particularly in

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<sup>1</sup> Wheatcroft (Bernard) Ltd v. Secretary of State for the Environment and Harborough DC [1982] P&CR 233

<sup>2</sup> Plan no. H0402\_01D

relation to properties within the Bristol City Council area to the north. I took the views of both main parties on this matter. Public notices were visible on at least two points of entry to the site, the Council had provided a list of notified parties<sup>3</sup> and I had received over 330 written responses to this scheme, including one from the local Member of Parliament. I appreciate that the traffic impacts may be felt at a wide distance from the site, but I note that residents along the neighbouring part of the Bristol City Council area had been properly notified, as had Bristol City Council themselves. On balance, I am satisfied that notification of the proposal, and the Inquiry had been properly carried out.

7. In the SoCG, the Council confirmed that their original three reasons for refusal remained, albeit there had been some resolution on highway matters. To this extent an agreed Highways, Traffic and Transport SoCG was submitted, dated September 2013. This confirmed agreement on the nature of traffic flow increases and the impacts on local junctions, as well as an agreed amount for the level of contributions to address sustainable transport improvements. As a result, highway and transportation matters are agreed between the Council and the appellants; this agreement was based on up to 295 dwellings. Despite this, considerable concern remained for local residents regarding potential traffic increases and I have addressed this below.
8. Four draft Unilateral Undertakings (UU) were submitted to the Inquiry, relating to Education, Public Open Space (POS), Highways and Affordable Housing. Despite the amount sought for contributions being agreed in principle, agreement had not been reached on the mechanisms set out in the UUs to secure the contributions. A session was held at the Inquiry trying to resolve outstanding matters, and areas of continued disagreement were identified. These matters are set out in the Report and a period of 14 days was granted after the Inquiry closed to allow for submission of new undertakings. This was complied with, and Unilateral Undertakings, signed and dated 8 November 2013, were submitted by the appellant under the provisions of the Town and Country Planning Act 1990.

## **The Site and Surroundings**

9. The appeal site lies entirely within the Green Belt. It is of approximately 13.4 Hectares, with the village of Whitchurch to the south and the southern extent of Bristol to the north. The A37 Bristol Road lies a short distance to the west, while the eastern boundary of the site runs adjacent to Stockwood Lane. The site is currently used for grazing and is relatively flat with a gentle slope from the high point to the northeast down towards the west. A number of hedgerows cross the site and there are four existing public rights of way (PRoW). These are mostly well signposted with gated access onto the site. A cycle path runs immediately to the west of the site.
10. The site's northern boundary represents the edge of the administrative boundary between Bristol City Council and Bath and North East Somerset (BANES) Council areas. The village of Whitchurch itself does not lie within the Green Belt, which extends from the appeal site to the south, west and east. Immediately to the south of the site lies Orchard Park, comprising mobile homes occupied on a permanent residential basis. There are playing fields to the east across Stockwood Lane.

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<sup>3</sup> In Questionnaire and Inquiry Document 8

11. The village is centred around the Staunton Lane and Bristol Road junction where there is a large public house and St Nicholas Church. The village extends out along these routes and offers a number of shops and services. Heading towards the appeal site there are a number of older properties and the character becomes increasingly rural towards the junction with Sleep Lane, beyond which lies Stockwood Lane and the Horseworld Site, a charitable visitor attraction and horse rescue/rehabilitation centre. Further north, where Stockwood Road turns back into Bristol, there are further shops and services a short distance to the north of the appeal site.

## **Planning Policy**

### The Adopted Local Plan

12. A comprehensive list of policies that may be relevant is set out in the SoCG. However, the Council's reasons for refusal refer to Policies GB1, CF3, IMP.1, T24 and T25 of the adopted Bath and North East Somerset Local Plan (the Local Plan). An Order to revoke the Regional Strategy for the South West came into force in May 2013. The Order also revokes all directions under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 preserving policies contained in structure plans in the area. Neither of the main parties sought to rely on the related policies.
13. The Local Plan was adopted in 2007, and comprises the development plan for the area, albeit it only deals with the way the District will develop up to 2011. Local Plan Policy GB1 addresses the strict control of development within the Green Belt. The purposes of the inclusion of land in the Green Belt are set out in Table 10. These purposes tend to reflect, with local references, those originally set out in Planning Policy Guidance Note 2 – *Green Belts*, and now set out in the National Planning Policy Framework, (the Framework). However, in addition to reflecting the five purposes in the Framework, the Local Plan includes a sixth purpose:

*To preserve the individual character, identity and setting of Keynsham and the villages and hamlets within the Green Belt.*

Whitchurch is identified as a village in the Local Plan.

14. In written representations and at the Inquiry, local residents, including representatives from the Whitchurch Village Action Group, the Orchard Park Residents Association and the Parish Council, raised, among other matters, further concerns regarding traffic. Local Plan Policy T24 addresses these matters in terms of highway safety and access, while Policy T25 addresses the need for a transport assessment and measures to reduce the impact of traffic and improve access by alternative means.
15. Policies IMP.1 and CF3 refer specifically to the necessity for contributions for community facilities and other harm associated with the development in order to make it acceptable.

### The Emerging Core Strategy

16. The Council's Core Strategy is currently undergoing examination. This has been a protracted process to this point. The draft Core Strategy was originally submitted in May 2011, but the examination was suspended in September 2012. Examination recommenced in September 2013, with a number of changes made responding, in

part, to interim conclusions and recommendations by the examining Inspector. This was to consider the Council's Proposed Changes to the Submitted Core Strategy, March 2013<sup>4</sup>, but since then there have been a number of further modifications to both the strategic approach and the housing need figures.

17. These await a revised programme of Hearings to take place, which is likely to be in 2014<sup>5</sup>. The Council have accepted the principle of the release of Green Belt sites to meet their housing requirements, and a proposed policy, RA5, sets out the provision of 200 houses in the Green Belt near Whitchurch. Evidence documents have been produced, which include assessments of the area around Whitchurch, which were to inform future allocations in a Placemaking Plan. Shortly before this Inquiry, the Council confirmed that they were considering bringing forward the allocation of Green Belt sites, through revision to the Green Belt boundary, within the Core Strategy, and not the Placemaking Plan.

### National Policy

18. Relevant national policy is contained in the Framework, published in March 2012. Paragraph 6 states that the purpose of the planning system is to contribute to the achievement of sustainable development. The policies set out in the Framework itself constitute the Government's view of what sustainability means in practice. The Framework includes an implementation period in relation to development plan policies. While the starting point for determination of any appeal remains the development plan, Paragraphs 214 and 215 indicate the importance of consistency with the Framework up to, and now following the 12 month implementation period. I have taken this into account in this Report.
19. Relevant policies include paragraph 14, which states that there is a presumption in favour of sustainable development. Where the development plan is absent, silent, or out-of-date, the presumption means that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or unless specific policies in the Framework indicate that development should be restricted. Examples of such policies, set out in the footnote to this paragraph, specifically include the Green Belt.
20. Core planning principles are set out at paragraph 17. These include the need for the system to be plan-led, empowering local people to shape their surroundings, taking account of the different roles and character of different areas, promoting the vitality of main urban areas but protecting the Green Belts around them. However, another of these key principles is that every effort should be made to objectively identify and meet the housing and other needs of an area, and to respond positively to opportunities for growth.
21. With regard to housing, paragraph 47 states that the aim should be to boost the supply of housing significantly. Paragraph 49 sets out that if a 5 year supply cannot be demonstrated, local housing policies should not be considered up-to-date. Section 9 deals explicitly with Green Belt areas, setting out the five purposes:
- to check the unrestricted sprawl of large built up areas;
  - to prevent neighbouring towns merging into one another;

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<sup>4</sup> Core Document and Core Document 37

<sup>5</sup> Mr Metcalf's PoE, Appendix III – Core Strategy Inspector's note ID41

- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

22. While the fifth purpose applies across all Green Belt areas, it was commonly accepted by the main parties at the appeal, that it was the first and third purposes that were principally engaged in this case.
23. The Framework sets out that local planning authorities should only alter established Green Belt boundaries in exceptional circumstances, through the preparation or review of the Local Plan. Paragraph 89 indicates development that could be considered exceptions to inappropriate development. In this case, the main parties agreed that housing was not an exception and the proposal should be considered as inappropriate development in the Green Belt. Paragraph 87 explicitly states that inappropriate development is, by definition, harmful and should not be approved except in very special circumstances (VSC).

### **The Proposal**

24. The original scheme sought to provide up to 295 dwellings in a development that would fill the majority of the appeal site. An area of POS was identified through the centre of the site running west to east, with a further playing pitch and POS to the western edge adjoining the woodland area and cycle path. Some realignment of the PRow that runs from the southwest to the northeast corner would be necessary.
25. The amended scheme of up to 200 dwellings would concentrate the housing to the southern part of the site. As a result the northern field would be left open, with residential development across the central and southern parts, extending across the width of the site. Public open space would be created to the east and west of the site, with the footpaths also requiring realignment. The access proposals would be the same as for the original scheme.

### **Other Agreed Matters**

26. The Council agreed that they cannot currently demonstrate a five year housing land supply (HLS), and that limited weight can be given to the Core Strategy policies relating to spatial strategy and housing for which there are unresolved objections.
27. Proposed Changes to the Core Strategy, considered by the Council in March 2013, identify Whitchurch as a general location for 200 dwellings, under Policy RA5.
28. The main parties agree that, subject to legal agreement, 35% affordable houses are offered, which is in line with Council policy, and POS can be secured on site. The Council and the Environment Agency are reported to have accepted that the proposed development would not increase the risk of flooding on or off-site.

## The Case for Robert Hitchins Ltd

29. When the factual context for the determination of this appeal is correctly understood it comes down to a macro decision between two very important considerations in the planning system. Against the proposal is the fact that it would represent inappropriate development in the Green Belt. In favour of the proposal is that it would provide a land resource, which is immediately available to meet a chronic deficiency in housing land.
30. It is not a simple balance of one consideration against another. The appellant concedes that Green Belt policy in the Framework tilts the balance in favour of the Green Belt and therefore against the grant of consent. This is given effect by requiring the identification of VSCs, which clearly outweigh the harm by reason of inappropriateness and any other harm.
31. The central contention here is that the harm, when it is correctly understood in the spatio-temporal context of this administrative area, is slight, while the public benefits are very considerable.
32. Before addressing the VSCs it is necessary to consider a matter of law. A Ministerial Written Statement was published on 2 July 2013<sup>6</sup> and the Council contended it has the effect of ruling out the possibility that any consent may be granted for a proposal based solely on demand. The Council would appear to approach the statement on the basis that "*demand*" should be read interchangeably with "*need*". That approach is wrong for a number of reasons:
- In Tesco v. Dundee CC [2012 UKSC 13]<sup>7</sup>, the Supreme Court held that a statement of policy must be read and understood objectively and in accordance with the language used; the policy cannot be made to mean whatever the Council would like it to mean. The interpretive approach of the Council described above is in conflict with this;
  - It would represent a fundamental change in Green Belt policy, which has applied in this way for three generations. A change of this magnitude would not appear without consultation in a statement made by a Junior Minister principally dealing with gypsy sites; and
  - In any event, the factual circumstances here exceed the boundaries of the Minister's Statement as pointed out in evidence<sup>8</sup>:

*"I note that reference is made to housing demand and not need (or requirements); I also note that the Secretary of State refers to this as being the single issue. Clearly there are cases, such as the appeal site, which contain other matters which need to be weighed in the balance. Not the least of these is the degree to which the Forward Planning process is performing its proper role in meeting the housing needs of the area and weighing up the Green Belt policies with housing need."*

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<sup>6</sup> Mrs James PoE Appendix 3 – DCLG –*Planning and Travellers* – Brandon Lewis MP

<sup>7</sup> Inquiry Document 22

<sup>8</sup> Mr Dobson PoE paragraph 5.14

### Very Special Circumstances

33. The appellant identifies the following considerations:

- Housing need;
- The locational suitability of the appeal site to meet that need;
- The inevitability of Green Belt incursions to meet housing need;
- The deliverability of the appeal proposals over a short time horizon;
- Economic benefits; and
- The failure of the forward planning process to make any housing land available within a reasonably foreseeable time scale.

### Housing Need

34. This issue has been over-analysed and misunderstood by the Council and this has led to a situation in which they have advanced mutually inconsistent propositions in the evidence and tried to simultaneously assert the truth of both. The Council agreed (Mr Metcalf in cross-examination) that there were five separate statements in the Council's evidence in which it was asserted that they were unable to identify a five year supply of deliverable housing land. Those statements appeared in the SoCG, the Opening Submissions, the Proof of Ms Newcombe-Jones and the Proof of Mr Metcalf.
35. Mr Metcalf said in evidence that those statements continued to apply and the Council could not identify a five year supply against the adopted development plan. The matter was then complicated by the reliance the Council placed on a new figure, which appeared for the first time in Mr Metcalf's supplementary proof, of 8,637. His Table SM1<sup>9</sup> applied this figure and found a 5.5 year supply. This obviously conflicts with the repeated assertion that the Council is not able to demonstrate a five year supply of deliverable housing land.
36. This conflict in the Council's position turned out to be more apparent than real. A great deal of time was spent in examination-in-chief explaining the derivation of the 8,637 figure by reference to BANES 48<sup>10</sup> which, in turn, relied on unexamined figures from recent census data. Mr Metcalf agreed, in cross-examination, that the 8,637 figure was simply the Council's subjectively assessed need and that other Core Strategy participants had suggested higher figures, that the Core Strategy was the correct venue for examining and resolving those questions and that until that process has occurred, the 8,637 figure simply represents one side of an unexamined argument.
37. This is very important because the judgment in Hunston Properties Ltd v. SOSCLG [2013] EWHC 2678<sup>11 12</sup>, makes clear that a VSC case can only be considered in the

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<sup>9</sup> Mr Metcalf Supplemental PoE 2.1.17

<sup>10</sup> Core Document 61

<sup>11</sup> Mr Metcalf Supplemental PoE – Appendix SM/1

<sup>12</sup> St Albans District Council's appeal to the Supreme Court on this matter has recently been dismissed – 12 December 2013 - Case No: C1/2013/2734

context of "...the full objectively assessed needs for market and affordable housing..." (see paragraph 28).

38. It follows that the 8,637 figure, and the 5.5 year supply which arises from it, are legally immaterial to the determination of this appeal. This point was recognised, and very properly conceded by the Council, in Closing Submissions<sup>13</sup>, where it was made clear that the Council's requirement figure would be advanced as 12,700.
39. The Council cannot demonstrate a 5-year supply with a requirement of 12,700. It follows that, with regard to housing need, the only remaining point of contention is the scale of the deficit. An Inspector, in a decision at Honeybourne<sup>14</sup>, paragraph 34, set out the position as follows:
- "I note that the council prefers to rely on the housing provision figures in the emerging SWDP. In my view there are fundamental problems with this. Firstly, it is not yet "objectively tested" in the context of the NPPF. Secondly, it relies upon figures to which unjustified adjustments have been made. Thirdly, the SoS places importance upon tested figures. This was confirmed in a recent decision in Saltford."*
40. The Council accepted (Mr Metcalf in cross-examination) the appellant's position that the draft RSS remains the most recent housing target for BANES which has been independently examined. Thus, applying the policy of the SoS's previous decisions and the principle of law in Hunston Properties, relating to the most up-to-date, objectively addressed figures, the draft Regional Spatial Strategy (RSS) figures should be considered as the only ones which represent the "objectively assessed housing needs".
41. The figures themselves appear in Table 3 and Table 4 of Mr Dobson's Proof of Evidence (PoE), appendix 7, and they show a range of between 1.7 and 3.3 years. The difference is accounted for by deciding whether 13,950 or 19,170 is the correct figure and by assessing the differing judgments of the main parties as to whether, or at what speed, individual sites may come forward. There is no point spending time debating those matters. If every determination is made in favour of the Council, they are able to demonstrate only a 3.3 year housing land supply. On any view, this represents a very serious shortfall when assessed against national housing policy.
42. Thus, the first consideration contributing to VSC identified by the appellant is the agreed existence of a serious shortfall in deliverable housing land in BANES.

#### Locational Suitability

43. A great deal of work has been carried out in the Core Strategy process to identify the most appropriate locations for releasing land from the Green Belt to meet housing needs. Core Document 37A is a reflection of the work carried out at a strategic level on such locations. The review (agreed by Mrs James in cross-examination) appeared to take account of social, economic and environmental constraints and, having done so, suggested a capacity figure for Whitchurch of 500 in Table 7. This was then reduced to 200 because the initial target in Section 4.0 was identified as being only 1,870. Clearly, if the 1,870 figure increases there is capacity around Whitchurch for the 200 figure to also increase. This explains why the Council stated that the 200

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<sup>13</sup> Inquiry document 20

<sup>14</sup> Mr Dobson PoE – Appendix 6, APP/H1840/A/12/2171339



figure was neither a floor nor a ceiling, and it could go up or down<sup>15</sup>; this was agreed by Mrs James in cross-examination.

44. The Council have adopted the figure of 200 in their Core Strategy in Policies RA5 and DW1 and, despite objections, continue to argue that it is appropriate to find land in the Green Belt around Whitchurch to accommodate that figure. The appeal site is land in the Green Belt around Whitchurch. In that sense, the appeal site is in the correct location to meet the objectives of emerging policy.
45. This leads to the first important factor that distinguishes this case from the SoS's decision at Thundersley, Essex<sup>16</sup>. In that case, the SoS gave weight to the fact that the Council had carried out a search and had found "strategic sites" that were preferable to the site advanced in that case "*... for sound planning reasons*" (paragraph 26 of that decision). In short, the proposal at Essex sought to contradict and override the work which the Council had already carried out in the emerging local plan. The Council agreed the opposite was true here (Mr Metcalf in cross-examination); the appeal proposal builds upon and advances the work already carried out in the Core Strategy process.
46. Any land in the Green Belt around Whitchurch is potentially capable of being described as locationally suitable, but there must be sites which have to be excluded because they have site specific characteristics that preclude their development. It follows that if there is other available land at which the identified need could be met and which is conspicuously superior to the appeal site, then this consideration is weakened. That, however, is not the position here.
47. The Council agreed that the indices by which competing alternatives should be measured are, availability, deliverability, landscape impact and Green Belt purposes (Mr Metcalf in cross-examination). Mrs James, in cross-examination, added sustainability to this, but could think of no others. Even if there are others, they do not affect the appeal site as it is capable of being developed straight away.
48. The appeal site is both available and deliverable, and it therefore scores highly against the indices of comparison. The Council suggested the Horseworld site is also available and deliverable but, at 125 units, it does not fulfil all of the need around Whitchurch, even on the Council's artificially constrained figures, and it is not conspicuously superior to the appeal site in any event. It follows that even if it comes forward it does not displace the need for the appeal site. Aside from Horseworld, the Council witnesses both agreed they had not identified any other sites around Whitchurch that were available and deliverable. This is very important in a case where, it is said, the appeal site is in the correct location to meet a chronic need which exists now. It is very significant that the Council cannot point to another site where the present need may be fully satisfied.

#### Landscape

49. The Council agreed that harm to the character and appearance of the Green Belt around Whitchurch was necessary, inevitable and therefore acceptable because it was a natural consequence of meeting housing needs (Mr Metcalf and Mrs James in cross-examination). It follows that simply saying this proposal will cause harm to

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<sup>15</sup> Mrs Newcombe-Jones PoE

<sup>16</sup> Mr Dobson PoE - Appendix 11 - APP/M1520/A/12/2177157

the character and appearance of the Green Belt in this location provides no meaningful information to the decision maker. The exercise at this stage is necessarily comparative. The question is whether the development of the appeal site will cause more harm than development elsewhere, such that the need should be met on a different site or sites.

50. The Council have been aware of this point and have done considerable work in assessing different locations around Whitchurch at which housing development might be acceptable. All impacts are negative, but the search has been on for "*the least worst*" site. The ARUP concept report<sup>17</sup> considered these options. The Council agreed they all included some development on the appeal site (Mr Sharland in cross-examination), which, by itself, is a ringing endorsement of the comparative suitability of the site.
51. That work was then refined in the Stage 2 report<sup>18</sup>, which continued to support Cell F as an appropriate location for development. That work culminated in the August 2013 landscape and visual appraisal<sup>19</sup> with the coloured plan and table. The appeal site appears in yellow along with the rest of Cell F. The Council accepted that yellow was the designation of land with the highest capacity for receiving new development (Mr Sharland in cross-examination). The objective evidence reveals no rational basis for preferring one yellow area over another. Thus the appeal site, with other land, is in the best location for receiving housing development in the Green Belt around Whitchurch. There is no superior location on this index of measurement.

#### Green Belt Purposes

52. It is agreed there are only two Green Belt purposes engaged by the appeal site. The other three Green Belt purposes have not been overlooked. The ARUP Stage 2 Report discounts the fifth as it applies everywhere and does not therefore distinguish one site from another. The other two Green Belt purposes have been examined and found not to apply to Cell F. On this basis alone it may be concluded that Cell F has a light impact on the Green Belt and is therefore a preferable location to other areas that engage the other two purposes and therefore have a greater negative impact.
53. The appellant contends that the scheme for 200 units has an extremely modest impact on those two purposes in a decision-making context, which recognises those sorts of impacts are necessary and therefore acceptable. The Council reluctantly accepted that Stockwell Lane provides a firm, linear and defensible boundary on the ground to the east of the appeal site (Mr Sharland in cross-examination). The northern boundary will be heavily contained by structural planting. The former railway and Whitchurch contain the development to the south and west. In no sensible use of language could this be described as "*unrestricted sprawl*". The emerging development plan promotes and requires encroachment into the countryside in the Green Belt around Whitchurch. There is no sense in which the encroachment here is more than is necessary to give effect to emerging policy.
54. The Green Belt purposes receive a light and minimal impact around Whitchurch from this development proposal, and lighter and more minimal than any other area which must come forward to address existing housing needs. The Council raised

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<sup>17</sup> Core Document 40

<sup>18</sup> Core Document 47

<sup>19</sup> Core Document 48

sustainability as a relevant index of assessment, but then immediately conceded the appeal site is in a sustainable location.

55. The conclusion the appellant invites from this discussion is that the location of the appeal site is congruent with the Council's work in identifying suitable areas for Green Belt release. Further, that upon considering all of the areas around Whitchurch against a number of different indices of measurement, it is reasonable to conclude the appeal site is amongst the most superior locations for accommodating new residential development. The locational suitability of the appeal site is the second consideration contributing to VSC, which supports the grant of consent.

#### Inevitability

56. The Council agreed the release of Green Belt land around Whitchurch to accommodate future housing needs is inevitable. The sanctity of Green Belt is one of the strongest policy considerations in the planning system and the proposed introduction of housing in the Green Belt would normally receive a fierce and unequivocal rejection. That "*normal*" approach is misapplied in the Green Belt around Whitchurch, because this form of development, in this location, is agreed to be both necessary and inevitable. This amounts, by itself, to a consideration contributing to VSC in support of the appeal proposals.

#### Deliverability

57. The Council agreed there is no point in granting consent in the Green Belt for housing development to meet an identified need unless there is confidence that the land will be brought forward quickly to address that need (Mr Metcalf in cross-examination). It is an agreed fact, in this case, that the appeal site is deliverable. There are no physical, financial or ownership constraints to the immediate development of the appeal site. The public benefits upon which this appeal depends will be provided expeditiously. The confidence in achieving those benefits in a short time is a consideration contributing to VSC in support of the appeal.

#### The Forward Planning Process

58. There has been a dramatic change in the Council's approach to bringing forward their Core Strategy, which has strong implications for the VSC case advanced by the appellant at this Inquiry. Previously, the Council were content to take a leisurely approach, which involved the preparation and adoption of two development plan documents that were consecutive to each other. First there was a Core Strategy and then, after that had been finally adopted, a Placemaking Plan would be published, to allocate particular sites in accordance with the conclusion of the Core Strategy.
59. The Council have now, implicitly agreed that the time taken to bring forward land through that process would be unacceptably long, having regard to the pressing need, especially for housing land, which exists now. This led to a dramatic development. In September 2013 the Council published a paper that revealed its intention to accelerate the release of Green Belt land for housing development in order to partly address the acknowledged shortfall. For reasons discussed below this attempt will fail, but the thinking underlying the attempt to do so is very important and it is this which constitutes the final consideration contributing to VSC.
60. It is clear that the Council have now accepted that it is essential to bring forward Green Belt land as soon as possible to meet housing requirements. This is the thinking which provides the basis for their sudden change. There are two ways to

achieve that objective: by accelerating the Core Strategy process in the way now suggested by the Council; or by the release of housing sites through the development control process.

61. The SOS has expressed an understandable preference for Green Belt sites to come forward through the forward planning process, but that assumes both routes will achieve this objective in about the same time frame. This is not the position here. The appeal site will come forward straight away, if planning permission is granted following this appeal. In contrast, the Council's approach involves fundamentally changing the nature and character of the Core Strategy, from a general principles document to a site specific allocations document. The Core Strategy Inspector expressed severe reservations about this approach at the Hearing<sup>20</sup>. The appellant, on advice of an experienced planning agent, said that this approach "*... is fraught with potential procedural problems regarding consultation, S.E.A.S. etc.*"<sup>21</sup>
62. The Council are looking for a "quick fix" to the problem and the appellant has great sympathy with the Council's intention in this regard, but contends that the mechanism adopted is highly unlikely to meet this objective. In contrast, it was agreed and asserted that the grant of consent through this appeal would succeed in addressing this problem in a short time frame (Mr Metcalf in cross-examination).
63. Mrs James expressed a different view on this subject, which was that it was preferable to bring forward Green Belt land through the forward planning process, so as to enable a comparative assessment to be made about the most desirable locations. As an abstract consideration there is force in that point, but it does not apply to the particular circumstances of this appeal. That is because land around Whitchurch has already been the subject of exhaustive consideration by independent consultants, as discussed above. The appeal site consistently emerges through those comparative discussions as the "least worst" location for making Green Belt incursions. There is therefore no value in deferring the site selection to the forward planning process since we already know that the appeal site is highly likely to emerge as one of the preferred locations.
64. Both of the arguments set out under this section provide an important distinction to the position at the Thundersley appeal. In that appeal, the SoS concluded the development plan could come forward "quickly and easily". The Council concluded that neither proposition could be applied in this case (Mr Metcalf in cross-examination). The appellant agrees. Furthermore, the Secretary of State noted that the appeal proposal in the Essex case was inferior to other locations that the Council had identified for Green Belt release. The objectionable feature of that case was that the proposal tried to override the plan-making process by advancing a site which had been rejected for sound planning reasons. The very opposite applies here.
65. The appellant also draws attention to the economic benefits of the appeal proposals as a further consideration contributing to VSC.

### Harm

66. There is nothing complacent about the appellant's approach to understanding and dealing with the policy prohibition of causing harm to the Green Belt. However, the

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<sup>20</sup> 17 September 2013

<sup>21</sup> Mr Dobson PoE

appellant contends that an important distinction must be drawn between a situation in which harm can be avoided and a situation in which it cannot be avoided.

67. In the first situation, harm by reason of inappropriateness is a very strong consideration against the grant of consent because to say "No" is to avoid the harm altogether. In the second situation, different considerations apply. To say "No" does not avoid harm, but simply defers the point in time at which that harm will arise. The second situation is very different from the first in terms of attaching weight to harm.
68. The Council agreed that harm to openness and permanence were a natural and inevitable concomitant of accommodating housing needs in the Green Belt (Mr Metcalf in cross-examination) and with regard to landscape, visual and character impacts (Mr Sharland in cross-examination). It is only if those impacts were conspicuously greater than would occur elsewhere that this point gains traction. The discussion above indicates that is not so.

#### Overall

69. There is clearly a balance of interests to be struck in this case. The appellant contends that, for the reasons discussed above, the balance is struck in favour of granting consent for this proposal.

#### Other Matters

70. There is great public interest in this case and a large number of representations have been made both orally and in writing. All of those concerns have been read and carefully assessed by the appellant and the Council, and a series of conditions and s106 contributions have been agreed to address them. The appellant has explained the position as to highways, and it is significant to refer to the SoCG on highways as the undisputed professional consensus as to the acceptability of the development against that index of consideration.

#### Overall Conclusion

71. The appeal must be determined by reference to the statutory development plan. It is time expired and no longer meets the development requirements of this area. Local Plan Policies GB1 and GB2 reflect Framework advice but the plan must be read as a whole. When approached in this way it becomes clear that GB1 and GB2 are out-of-date because they seek to constrain the Green Belt, in conflict with the Council's recognition that land must be taken from the Green Belt in order to meet housing need.
72. The S38(6) approach requires the initial view that the proposal is in conflict with the development plan. The VSC test in Green Belt policy is much harder to satisfy than the material consideration test in S38(6). If the former is overcome, then the latter must also be overcome. It follows that, as a matter of legal theory, the decision must be made in accordance with the statutory approach required by S38(6). As a matter of practice, the development plan question is subsumed within the policy question of the VSC. The circumstances described above satisfy both.
73. For the reasons set out above, the appellant invites a conditional grant of consent for the modified proposal of up to 200 dwellings.

## **The Case for Bath and North East Somerset Council**

74. The issue in the current appeal is whether the appellant is able to show that the harm to the Green Belt is clearly outweighed by other considerations that amount to very special circumstances.
75. There is no doubt that new residential development in the Green Belt is inappropriate development as a matter of proper consideration of the meaning of paragraph 89 of the Framework. The assessment of harm to a Green Belt site is an exercise in the assessment of harm to the individual site; it is not at this stage of assessing harm, a comparative exercise (Mr Dobson in cross-examination).

### Openness

76. For the purposes of the proper application of Green Belt policy, openness should be understood as meaning an absence of physical development. The revised scheme entirely changes an open site to one which has up to 200 houses, estate roads and a building to accommodate educational requirements. This will make use of approximately 5.5 ha of a 13 ha site which is currently open, simply to accommodate the development shown on the revised plan. The effect on openness is accordingly profound. Whilst the appellant did not concur with that weighting, it was accepted that the effect on openness would be significant (Mr Dobson in cross-examination).

### Permanence

77. The site is in the Green Belt, and has been designated as Green Belt with permanence in mind. The Bristol and Bath Green Belt has existed since the mid 1950s. This land has never been white land, and there has been a longstanding local 6<sup>th</sup> purpose for the Green Belt:

*" to preserve the identity and existing character of the towns, villages and hamlets within the Green Belt"*<sup>22</sup>

78. The fact that land comes under pressure for development is not a reason to diminish the importance attached. There is a lot of pressure on Green Belt land around major conurbations, and Bristol is no exception.

### Inappropriate Development

79. The development of this Green Belt land amounts to inappropriate development as a matter of policy, pursuant to paragraph 89 of the Framework. The evidence of Mr Harris did not appear to apply this test properly<sup>23</sup>. This confusion, between assessment of landscape impact and harm to the Green Belt, was shown in cross-examination. Pursuant to paragraph 88 "substantial weight" must be given to any harm to the Green Belt. Accordingly, the present application for inappropriate development in the Green Belt starts from that position. The appellant acknowledged that the words of the Framework require the decision maker to assess harm to the Green Belt in relation to the appeal site. However, having conceded "substantial weight" by reason of inappropriateness (Mr Dobson in cross-examination), it is also clear that in determining additional weight to be added to

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<sup>22</sup> Core Document 38 pp9-11, Core Document 6 - Local Plan pp148

<sup>23</sup> Mr Harris PoE, paragraph 6.2

that, consideration has to be had to the harm to openness and the Green Belt purposes.

#### To Assist in Safeguarding the Countryside from Encroachment

80. It should be noted that the countryside being referred to is not subject to the proviso that it is "open countryside". This cannot be read into the policy. This is not a purpose that requires the land to be in a particular use, or that the land has a particular intrinsic quality. Nonetheless, the land use of the site itself is consistent with countryside uses, being essentially in agricultural or equestrian use<sup>24</sup>. There is misplaced reliance on the fact that the countryside to the east is in use for sports and recreation<sup>25</sup>. This is a land use that is acknowledged to be consistent with Green Belt status and it can be seen that the land retains its openness to the east.
81. Moreover, it is significant that Mr Harris provides evidence to the Inquiry in his proof that there is no harm to this purpose, only to accept in cross-examination that he was wrong, and that he was seeking to look at it in a landscape and visual sense. He accorded greater weight to the Arup Stage 2 report than his own assessment (in cross-examination), and his original assessment reveals a lack of proper appreciation of Green Belt policy. This must reduce the weight that can be attached to his composite opinion when he purports to take Green Belt impact and landscape and visual impact into account. Accordingly, it is clearly the case that the appeal site plays an important role in assisting in safeguarding the countryside from encroachment and that a loss to development will significantly harm this purpose. This further actual harm is substantial.

#### To Check the Unrestricted Sprawl of Large Built-Up Areas

82. The conurbation of Bristol is a large built up area, which would have been materially added to by the original scheme for 295 dwellings. The revised scheme would bring the built up area closer to the village of Whitchurch by adding to it, and will have the effect of increasing the perception of sprawl. Accordingly, whilst there may be some modest improvement, compared with the original proposal, this purpose will be undermined in a material way. It can be seen from the revised plan that rather than the present, more open rural context, the space between the existing built up area of Bristol and the extended village of Whitchurch would be seen as a narrow space of the type which might typically be found within continuous urban areas. The perception of sprawl will be very real, and this purpose will be harmed to a significant degree. This is consistent with the Arup Stage 2 report<sup>26</sup>.

#### 6<sup>th</sup> Local Purpose: Effect on Preserving the Character, Identity and Setting of the Village Of Whitchurch

83. It is clear that the site plays a key role in maintaining the physical separation of the village of Whitchurch from the adjoining suburb of Stockwood. It is an open landscape traversed by historic PRowS dating back to the 19th Century, and the existing landscape contributes to providing a separate identity to the settlement of Whitchurch. The result of the proposal would be to squeeze the green gap and substantially urbanise what remains of the open landscape. There would be

<sup>24</sup> Mr Harris PoE Appendix E Figure 4 – Landscape Character Types

<sup>25</sup> Mr Harris PoE – paragraph 3.12

<sup>26</sup> Core Document 47, pp 48/49

significant harm to this purpose for all of the reasons set out in the Council evidence, and quite clearly foreshadowed in many studies (accepted by Mr Harris in cross-examination). These include the Concept Options Report<sup>27</sup>, which notes a *“key value of this area is as an open green partition between Stockwood and the old village of Whitchurch”*, as stated in the 2006 Capacity Study to inform the RSS<sup>28</sup>, which also identified that the impact of development *“would be moderate to high”*.

### Other Harm

84. The appellant's evidence is that *“the development of the appeal site would have **minimal** effects on landscape and visual amenity”*, in the context of the application for 295 dwellings<sup>29</sup>. The assessment of the revised scheme is that the effects would be *“broadly similar or slightly improved”*<sup>30</sup>. This written response is not much different to the assessment given by the Council on the differences between the two schemes (Mr Sharland, in cross-examination, stood by that assessment). That assessment simply cannot be consistent to the allegation put to Mr Sharland that the differences were substantial and his assessment was undermined by his failure to appreciate it.
85. The Council evidence identifies significant differences between the landscape experts in relation to the Landscape and Visual Impact Assessment (LVIA) supporting the original scheme<sup>31</sup>. From this, it can be seen that the appellant's evidence significantly underestimates the impacts on landscape character and resources, some of which are simply not assessed, trees are an example. The Council did not take overall issue with the methodology of the LVIA, but there were important omissions (Mr Sharland indicated in cross-examination). The assessment of the impact on hedgerows, significant extents of which are removed, and a large element of which is rendered vulnerable by being placed in residential gardens, simply cannot give rise to a positive impact.
86. At the level of the individual scheme, the appellant reports effects well below the broader cell based assessment of medium impact<sup>32</sup>, whilst the Council reports effects somewhat above, on the basis of their landscape expert's assessment of the individual scheme.
87. The Council recommends their evidence for a number of reasons:
- Mr Harris's evidence displayed a poor understanding of Green Belt;
  - Evidence<sup>33</sup> was submitted as a properly informed and explained judgement providing the green light to development (Mr Harris evidence in chief). This was not an appropriate methodology, nor did it explain through any narrative what it purported to summarise. It was not an LVIA, and it was accepted that, like the Council, they did not do an LVIA for alternative options (Mr Harris in cross-examination). If it were, it would defy the advice in the LVIA Guidelines<sup>34</sup>. As a

<sup>27</sup> Core Document 40 - pp 13, 21, 29

<sup>28</sup> Mr Harris PoE - Appendix F pp 20

<sup>29</sup> Mr Harris Summary PoE 1.13

<sup>30</sup> Mr Dobson PoE - Appendix 1 (iv) MHP landscape Statement

<sup>31</sup> Mr Sharland PoE section 7.1

<sup>32</sup> Mr Harris Summary PoE 1.13

<sup>33</sup> Mr Harris PoE Appendix G Table 1.

<sup>34</sup> Core Document 51 3rd Edition pp 138/39



piece of work it was poorly conceived and no weight can be attached to any judgement simply inserted into a table by way of an adjective. Insofar as it purported to evaluate the studies stated, it is meaningless. It is necessary to go to those source studies to understand what they set out; and

- the appellant understated the key value of the “open” green partition, repeatedly referred to in many studies, and failed to ascribe proper weight to that key, and easily understood, quality from within the site.

88. Visual effects have been similarly understated. The Council considered that the revised scheme would have a greater impact on views from the PRoWs than the original, and this was accepted by the appellant (Mr Harris in cross-examination). In respect of landscape resources, the Council accepted there would be a modest improvement in respect of the hedgerow. In terms of overall significance, a finding of medium to high negative impact on the landscape and a range of assessments of visual effects with particular importance being placed on the historic PRoWs (medium - high negative) should be found. This is much more consistent with other available evidence. The weight to other harm is accordingly significant and far removed from “*minimal*”.

#### Consideration of Alternatives by the Landscape Experts

89. Neither party carried out an LVIA of alternative options. The appellant’s assessment in Appendix G is not an LVIA. The Council have made clear (in Mr Sharland examination in chief and cross-examination) that they strongly disagreed with the tables presented by the appellant within Appendix G, and on the robustness of the methodology, including by reference to the double counting of visual effects. Moreover, it is the most up to date source material and, in particular, the Stage 2 Arup report<sup>35</sup> and the summary of landscape assessment<sup>36</sup>, which should carry greatest weight.
90. The Council makes the clear point that the fact that an area serves a greater number of purposes does not mean that the Green Belt harm is greater; it is the strength of the appeal site in serving purposes that makes the comparative harm greater than sites within Area E, such as the Horseworld site. For the appeal site, the Stage 2 Report Tables<sup>37</sup> show strong impact on two Framework purposes and the Local Plan sixth purpose.
91. A similar point arises on landscape and visual harm. Having conducted an LVIA of the appeal site, the Council placed the harm higher than moderate for the specific development proposal. It was made clear in evidence that, whilst an LVIA of the alternatives had not been conducted, there are other areas which are less harmful in those terms, albeit the Whitchurch LVIA summary study places the cell relevant to the appeal site at the lowest category of moderate alongside others of a similar level.
92. In terms of the examination of alternatives, the residential element of the Horseworld site has much less impact on openness (agreed by Mr Harris in cross-examination to properly be understood as freedom from development), as a significant proportion of that site has already been built upon. The enabled

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<sup>35</sup> Core Document 47

<sup>36</sup> Core Document 48

<sup>37</sup> Core Document 47, pp 48/49

development of the relocated charitable leisure business to the east was founding its case, in terms of the desirability of that relocation, as the VSC<sup>38</sup> (Mrs James examination in chief). This was not a case which received a recommendation for approval based on VSC by reference to land supply, nor the factors relied on by the appellant in this Inquiry. Little weight was attached to the Core Strategy proposed change to release Green Belt in this area.

#### Paragraph 14 of Framework and the Green Belt

93. The appellant's Planning Statement in support of the application does not accurately record the contents of footnote 9 to paragraph 14, and omits the all important reference to the designation of land as Green Belt. This takes such land outside the operation of the presumption in favour of sustainable development arising from decision taking being made in accordance with the first indent to the second bullet under paragraph 14 of Framework. This is land upon which the specific policies in the Framework indicate that development should be restricted. This error was properly acknowledged in cross-examination, as was the position with regard to paragraph 14. The meaning of sustainable development for the Green Belt is led by Part 9 of the Framework.

#### The Release of Land from the Green Belt

94. The appellant's evidence, on occasions, referred to the appeal proposals in the context of a "release of land" from the Green Belt. The planned release of housing sites in the Green Belt is for the plan making process, as is made clear by paragraph 83 of the Framework. The current proposals are for a substantial housing estate in the Green Belt by way of an urban extension to a village.

#### Very Special Circumstances

95. The appellant relies on the shortage of housing and the absence of a 5 year HLS as the main component of their case for justifying development in the Green Belt. The appellant accepted that the VSC being relied upon were housing related points (Mr Dobson in cross-examination). The case presented sought to go into contextual matters around that need and how it is being addressed, but the fact remains that the grounds of the VSC case, as distinct from Horsecworld, are essentially founded on that need.

#### Housing Land Supply

96. The SoCG records agreement that the Council cannot currently show a 5 year supply of housing land against an adopted Local Plan. The evidence for the appellant is that the range of supply lies between 1.8 and 4 years.

97. It can be seen from the appellant's evidence<sup>39</sup>, that the lower figures are premised on an acceptance that the targets should be generated by reference to either the submitted draft RSS or the draft RSS SoS Proposed Changes. This lower range of figures should not be accepted for a number of very good reasons:-

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<sup>38</sup> Inquiry document 2

<sup>39</sup> Mr Dobson PoE Appendix 7 p19

- The evidence base to determine housing land supply is to be “adequate, up to date and relevant”<sup>40</sup>. The evidence base “tested” at examination for the then emerging RSS was tested in an entirely different context in 2003/2004, as can be seen from the Appeal Report on Tetbury, with which the SoS agreed<sup>41</sup>;
- There is no development tier for regional planning in the current development plan. RPG 10 has been revoked. The process of emergence of RSS 10 did not proceed, and an evidence base to meet a tier of planning now actually removed from the planning lexicon needs to be approached with caution. In no sense does it now truly remain “in place” ;
- This is particularly the case in the context where South East Bristol, including the Whitchurch area, had an emerging Regional Strategy requirement to accommodate 6,000 or 8,000 dwellings;
- That the Framework was intended to be a departure from RSS is abundantly clear and is made all the more so by the Judge in the Hunston Properties case<sup>42</sup>;
- The Hunston case itself recognised that more up to date Department for Communities and Local Government (DCLG) figures warranted more careful consideration in terms of measuring “full objectively assessed needs”. These have not been presented by the appellant, but have been presented by the Council within their evidence on housing land supply and these inform the Council’s 12,700 figure;
- The Tetbury decision of SoS and the Inspector’s Report accept an approach of considering the supply of housing land supply by reference to the “lowest credible” figure<sup>43</sup>. In that case, the DCLG figures showed a much higher level of housing requirement than those taken from the evidence base for the RSS. This case is the direct opposite as the appellant accepted (Mr Dobson in cross-examination); and
- The evidence base for the RSS is even less relevant now that the examining Inspector on the Core Strategy has ruled that the Housing Market Area (HMA) for BANES is compliant with the Framework<sup>44</sup>.

98. The alternative presented by the appellant is reliance on the Core Strategy figure of 12,700. Against that measure, excluding the Green Belt sites, the current supply is 3.6 years. As indicated, it was accepted that for the present purposes, the most credible figure against which the housing land supply figure is assessed is that of 12,700. In a note, the examining Inspector observed that “*many decision-makers are currently basing their assessment of a Council’s 5 year supply on emerging evidence of household projections etc.*”<sup>45</sup>. It is a figure underpinned by the most recent DCLG figures and it is given some encouragement by the Examining Inspector’s comments, based as it is on the Framework compliant Strategic HMA.

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<sup>40</sup> Framework paragraph 158

<sup>41</sup> Mr Dobson PoE, Appendix 4 - APP/F1610/A/12/2173305

<sup>42</sup> Mr Metcalf PoE Appendix SM/1 - Hunston Properties Ltd v. SOSCLG [2013] EWHC 2678 - paragraph 29

<sup>43</sup> Mr Dobson PoE, Appendix 5 – SoS Decision, paragraph 13, Inspector’s Report, paragraphs 14.8-14.17

<sup>44</sup> Core Document 49 - ID39

<sup>45</sup> Core Document 50 - ID40 paragraph 14

99. The Council, at the Local Plan Examination, reserve their position that the five year HLS will be measured against an evidence base, which objectively shows that this gross figure includes a surplus of supply of market housing, set against need. They will also show that the five year HLS is healthier, and indeed will be shown to be present, in the examining process; however, this is a matter for that process to take forward, not the current Inquiry. The Council will plan to address their shortfall, but accepts that, for the present purposes, there is a shortfall of the order of 1.4 years worth of supply, generated by reference to the figure of 12,700. The evidence shows that this amounts to a deficit of 1,569 (5,567-3,998) over five years.
100. The appellant's evidence<sup>46</sup> removes a proportion of the Council's supply on account of reservations on deliverability. The Council consider their Strategic Housing Land Availability Assessment (SHLAA) sites to be robust and reflect the approach contained in footnote 11 to paragraph 47 of Framework. In respect of the appellant's opinions set out within their evidence: -
- The discount of 10% for small sites with planning permission is arbitrary and without justification;
  - The criticisms on other modest sites show a nit-picking approach;
  - The criticisms on larger sites shift delivery back based on a different view of timescales to overcome constraints. The commentary does not show that the current assessment is unrealistic even if it differs; and
  - The Council accepted that the single Keynsham site, ref. K4 - 60 units, was properly to be removed, but gave evidence that the rest were reasonable and realistic, this was not challenged in cross-examination.
101. The Council accept that the Green Belt sites do come out of the calculation<sup>47</sup>, which reduces the supply by 400 units, with a further 60 from site K4. This is taken into account in the previously identified shortfall.
102. The Council have accepted that they cannot currently demonstrate a five year HLS against up to date policy. Within the context of the Core Strategy they have accepted that they are a 20% authority, and they have accepted they are required to address the previous Local Plan shortfall of 1,167 within the relevant first five years. It has accordingly been accepted that considerable weight can be attached to the present level of need for open market and affordable housing.
103. However, the Council are addressing housing need through the examination process. Whilst limited weight remains to be attached to the Core Strategy policies in respect of housing land supply, due to the significant number of objections, the resolution of the single HMA issue<sup>48</sup> does represent progress in respect of a pivotal issue for many objectors.
104. The appellant expressed the view that it would be an error of law, by reference to paragraph 28 of the Hunston Appeal, to look at the lower figures, 8,637, being promoted by the Council for consideration at the Core Strategy examination, and that that approach was driven by environmentally constrained assessment. Given

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<sup>46</sup> Mr Dobson Appendix 7, pp 7.22

<sup>47</sup> Core Document 46 – BNES/47

<sup>48</sup> Core Document 49 - ID39

the acceptance of the 3.7 years for the purposes of the present appeal this point is no longer relevant. Moreover, in the Hunston Appeal, as in the Tetbury Appeal, the Council was hanging on to an old and obviously out-of-date figure rather than looking at more recent data; that is not the position here. The environmental constraints were not being used to restrict the level of need in Core Document 37a (suggested in Mr Sharland's cross-examination) rather they are being used to inform the process of how the previously identified need will be met. This can be seen from a proper reading of paragraph 4.1 of that document.

### Affordable Housing

105. There is a level of affordable housing need. Submitted information shows a need for 20 units in Whitchurch<sup>49</sup>. This underscores that Whitchurch is not Bristol and has local needs, which are more limited than those emanating from a larger settlement. However, the Council made clear that the building of affordable units at Whitchurch would service the wider need within the immediate locality (Mrs James examination in chief). This is a benefit that has been weighed by the Council, but does not amount to a VSC.

### Other matters

#### The Framework

106. Contrary to the appellant's evidence<sup>50</sup>, Paragraph 14 of the Framework does not define sustainable development, it explains how the presumption works; this was accepted (Mr Dobson in cross-examination). In the Green Belt, sustainable development is that which meets the policy in Part 9 of the Framework.

107. Paragraph 85, whilst providing relevant advice does not provide criteria for defining Green Belt boundaries as suggested by the appellant<sup>51</sup>. The Plan making role in defining the boundaries is clear from paragraph 83.

108. Paragraph 86 of the Framework is policy to inform whether land within a village is included or washed over when setting the Green Belt. The current appeal is not for development in a village, and there is no question of land within a village having been included in the Green Belt. The appeal site is Green Belt outside the village. Green Belt policy is being properly applied by the Council.

#### The Development Plan

109. The appellant's positions on the currency of Local Plan Policy GB1 and the status of the Green Belt were confused and wrong. The policy is a saved policy. It is a policy which protects Green Belt in a manner that accorded with PPG 2 and now accords with the Framework. The land is in the Green Belt. This is acknowledged and is common ground. To the extent that it is now suggested that Policy GB1 is out-of-date because it forms part of an out-of-date plan cannot be right. This is an attempt to bring the presumption in favour of sustainable development in through the back door, when the footnote in paragraph 14 closes it outright.

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<sup>49</sup> Mr Dobson PoE – Appendix 9

<sup>50</sup> Mr Dobson PoE – paragraph 4.6

<sup>51</sup> Mr Dobson PoE – paragraph 4.20

110. The fallacy of this argument was shown when the appellant indicated that this means that less weight should be accorded to the Green Belt harm (Mr Dobson examination in chief). This is either Green Belt, to be accorded full weight in terms of its status, or it is not. There is no middle ground and it would be a serious error to agree with this argument, which finds no place in the Framework and misreads policy.

#### Whitchurch Studies

111. A considerable amount of recent and more historical data has been placed before the Inquiry in terms of studies in respect of land around Whitchurch. From the appellant's point of view, the aim of this exercise was to show that the appeal site is the best place for development within a wider cell. In short, the Council do not agree with that analysis, nor does the Council consider that the material is being correctly interpreted to show that claimed outcome. The context and role of any individual document should be properly understood before deploying it or attaching considerable weight to the conclusions.
112. The Concept Options report<sup>52</sup> was relied on. This is a document which is explained, on page 5, to have "no planning status". It should be understood as a document informing the process of considering land parcel options, and was not intended to provide the "further detailed site work" identified in the report, page 5, or the "further detailed assessments" mentioned in the capacity appraisal, page 6. Inclusion of a site within the report is not an indication of suitability. The amount of development being considered at the time of the report was higher than being considered within the emerging Core Strategy, 2968 rather than 395, which inevitably meant that development was being considered in more sensitive locations.
113. This work to explore the feasibility options against a higher level of development must give way to the more detailed and relevant work comprised within the Arup Stage 1<sup>53</sup> and Stage 2<sup>54</sup> Reports and the Whitchurch Landscape and Visual Assessment Summary<sup>55</sup>.
114. Reliance was also placed on assessments<sup>56</sup>, which were to inform the then emerging RSS process, in terms of looking for housing levels of between 6,000 and 8,000 units. Even in that context, the area to which the appeal site relates, 4c, was acknowledged to have environmental impact, page 6, and was not in the area considered to have the most overall capacity for development, page 18. In particular, on pages 20/21, the role of the "open green partition between Stockwood and the old village of Whitchurch" is the key value. This is reflected in the Council's evidence, but not that of the appellant<sup>57</sup>. The vegetated areas form part of the green tongue, but so do the lost open areas, which have been undervalued by the appellant in their assessment.
115. The appellant sought to make the case that the appeal site in itself does not have an open characteristic and that the setting of Whitchurch is also not so

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<sup>52</sup> Core Document 40

<sup>53</sup> Core Document 38

<sup>54</sup> Core Document 47

<sup>55</sup> Core Document 48

<sup>56</sup> Mr Harris PoE Appendix F

<sup>57</sup> Mr Harris PoE – Paragraph 4.7

characterised. This assessment is not that of the Council, who considered the site to have characteristic openness important to the setting of the settlement. There is a difference between an assessment partly focussed on the setting of a distant ancient monument, and deducing from the absence of much harm in that heritage respect, an absence of an open landscape characteristic. The evidence that the Council offered was consistent with a proper understanding of the evidence base. The Arup Stage 2 report<sup>58</sup>, relevant to the appeal site, considers harm to Green Belt at page 49, and finds substantial actual harm to Green Belt consistent with the Council evidence to the Inquiry.

116. In assessing landscape harm, as distinct from Green Belt harm, the appellant suggests that the LVIA summary report<sup>59</sup> supports the contention that the appeal site is the least constrained. This was a study that was not considering a development proposal, and the Council have explained why they view the level of harm to be medium/high. However, there are other areas around Whitchurch, which a proper reading of the study shows are of equal or greater harm in landscape and visual terms, particularly elements of Area E (Mr Sharland PoE and examination in chief). In terms of Green Belt, the position is that the appeal site performs strongly in terms of openness, two purposes and one local purpose.

#### Other Issues of Balance

117. In light of the Council's officer report for the Horsecworld site<sup>60</sup> there is a strong likelihood of permission being granted elsewhere, which will make a contribution of 125 units towards the HLS, even if generated by VSCs not led by those considerations. On the basis of 3.6 years supply, there is time for the Core Strategy to proceed to adoption and for the release of land from the Green Belt to be provided in the manner indicated by paragraph 83 of the Framework. Moreover, the timescale towards delivery of the appeal site now reveals that the proposed development will not make a contribution until the latter part of the 5 year period, and that even in doing so, the development could come forward in two or three phases.
118. If, as suggested in cross-examination to the appellant's planning witness, optimism bias was shown and the trajectory were to slip, it is perfectly reasonable to observe that of the order of half of these units may not come forward within the five years. Mr Dobson conceded this may be in the last 2½ years, in relation to the suggestion of 2 years in cross-examination, and, he suggested, 50-70 units a year. On this evidence, the supply would be coming forward in April 2016, by which time there is a reasonable likelihood there would be an adopted Core Strategy and Placemaking Plan. The level and urgency of the shortfall is not such, combined with the other associated arguments, that the need should be found to amount to considerations contributing to VSC.
119. The consideration of the VSC case presented really does amount to a case based on housing need, although the appellant accepted in Inquiry opening that unmet need and the fact that this is part of a continued pattern does not in itself amount to VSC<sup>61</sup>. However, this position was reformulated in questioning on the now six, formerly four, candidates for VSC in examination in chief (Mr Dobson). The Opening

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<sup>58</sup> Core Document 47

<sup>59</sup> Core Document 48

<sup>60</sup> Inquiry Document 2

<sup>61</sup> Inquiry Document 6, paragraph 11

Statement acknowledges that need alone is not enough, and that this, combined with failures over time to meet it, including the forward planning process, does not cross the threshold. Particular attention should therefore be given to what remains.

120. The inevitability of Green Belt release generally is not a consideration contributing to VSC. Whilst the Council have, for clear and identified reasons, proposed changes to the Core Strategy, this will have the effect of changing the boundaries of the Green Belt through the plan making process in accordance with paragraph 83 of Framework. This is the place for such an approach. The housing development so built will not be built in the Green Belt because the boundaries will have been changed to release the land from the Green Belt. This is not the same as finding VSC, as the Horseworld application and recommendation perfectly demonstrates.
121. Moreover, the fact that some release is being planned for is not a signal for developers to make speculative applications in the Green Belt through the section 78 procedure. In this respect, the Council's position (Mrs James, examination in chief) is that they do not accept the evidence previously given by a Council policy officer to the Salford Inquiry<sup>62</sup>. This position was also argued at that Inquiry and is right. Little weight was attached to the proposed changes to the Core Strategy in the Horseworld application. The position of Green Belt releases generally cannot materially add weight to the VSC case.
122. This is also true in relation to the proposed change to the residual figure of 200 proposed around Whitchurch. This is a matter of acknowledged limited weight. The SoCG records this at paragraph 6.3 and this agreed position cannot be a proper basis for finding considerations contributing to VSC.
123. The locational suitability of the area around Whitchurch is not a consideration justifying VSC and planning permission on this site. The residual figure of 200 could go up or down. The majority of the proposed Green Belt releases are around the spatially preferred areas around Bath or Keynsham. Moreover, the evidence has shown that this site is not the most preferable location in Green Belt terms within the Whitchurch cell. The Horseworld site is within this area. The appeal site is also not the most suitable site in landscape and visual terms (Mr Sharland PoE and examination in chief).
124. The appellant's fourth and final VSC identified in opening was the deliverability of the appeal site. This site, just as the Horseworld site, is deliverable in the general sense. It is not a suitable site pursuant to paragraph 47 of the Framework unless the SoS finds this proposal to represent VSC; the Council do not consider that VSC has been shown. The Horseworld site does not have planning permission. However, given that the Council find this to result in the VSC necessary, in that sense there is suitability. It is submitted that the principle of deliverability does not amount to a consideration contributing to VSC.
125. The appellant did not include the economic benefits of this housing scheme within the list of VSC in Opening. This is understandable, as such benefits flow from all housing development (Mr Dobson in cross-examination). Although these were returned to in examination in chief (Mr Dobson), they are weighed within the housing need, which was conceded to not, in itself, amount to VSC.

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<sup>62</sup> Inquiry document 10 - APP/F0114/A/13/2195351 - Rebuttal PoE, Neil Best, paragraph 5.20 page 11



### Proposed Unilateral Obligations

126. If the appeal proposals had fully met the issues to be addressed by way of obligations under section 106 of the Town and Country Planning Act 1990, the appellant would be in a position to say that mitigation and contributions had been secured, which met the tests of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010. Consequently, this could have resulted in the Council's reasons for refusal 2 and 3 having been overcome. The unilateral undertakings contain clauses which give rise to issues of real concern to the Council. In relation to such reasons, the Council has suggested wording, which they consider would overcome those reasons. It is now accepted that the highway reason for refusal has been overcome by the wording of the relevant transport undertaking. However, for other matters, they are capable of being overcome, but have not been. This is now a matter for the SoS.
127. The retention of the wording of the undertakings as proposed is accordingly a matter of further other harm in relation to the proposals which add to the Green Belt matters in this case.

### Conclusion

128. The substantial harm by reason of inappropriateness is supplemented by the significant actual harm by reason of loss of openness, which, in terms of degree, the Horseworld site perfectly illustrates is not inevitable in the Green Belt generally or in this land cell. Added to this significant harm must be the considerable harm to the purpose of safeguarding the countryside from encroachment. Further significant harm is added by virtue of the harm to the purpose of preventing sprawl. Again there is further actual and substantial harm to the sixth local purpose. Under other harm, there is the moderate/high harm to the landscape and visual quality of the area, which again is a point of considerable harm to weigh.
129. Thereafter there is harm, to the extent to which the proposals do not fully and properly mitigate their effects by securing before the SoS entirely acceptable planning obligations in respect of affordable housing, POS and education contributions. These deficiencies weigh in the balance against the proposals. Otherwise, these matters are neutral with the exception of affordable housing, which is viewed as a positive contribution to the meeting of housing needs to the extent to which this is properly secured.
130. It is accepted that considerable weight can be attached to the meeting of housing needs, both market and affordable, and the associated benefits to growth that housing development is acknowledged to bring. It is not accepted that the remaining contextual matters relied upon by the appellant come close to amounting to VSC that clearly outweigh the harm previously identified. The proper application of development plan policy for the Green Belt, and the application of saved Local Plan Policy GB1 in particular in terms of section 38(6), leads to that conclusion.
131. This is equally true in relation to the proper application of the advice comprised within the Framework, in particular paragraphs 79, 80, 83 and 87 to 89. When properly applied this should clearly result in a recommendation to the Secretary of State to dismiss this appeal, and a decision by the Secretary of State to refuse planning permission.

## Case for Interested Persons

### Mr Williams – Local Resident.

132. There is a concern that the traffic impacts will be felt beyond the site and into the Bristol City Council area. In particular, the amount of cars using Stockwood Lane, especially during peak periods in the morning and afternoon. This amounts to “many thousands of cars”, so many that the road infrastructure cannot cope.
133. Having lived on Stockwood Lane for 48 years, it has changed from a quite local lane to a rat run, following the change to Keynsham Road. The lane leads to Staunton Lane which is also very congested with traffic, pedestrians and school children. Improvements have been sought but there is no money for them.
134. The situation means that residents cannot exit from their houses, without needing additional people to look for traffic. There are accidents on this stretch on a “weekly basis” due to the volume and speed of the traffic, with cars travelling up to 60 mph. This scheme would add to the traffic, and it is only one of a lot of schemes, including another at Chancy Farm on Stockwood Lane.

### Mr Broad – representing Whitchurch Parish Council<sup>63</sup>

135. Residential development would be inappropriate and harm the Green Belt, and would affect the openness and the individual character, identity and setting of Whitchurch Village. The proposal would nearly double the size of the village, where the residents’ wish for the village is to keep its own identity and not be merged with Bristol.
136. The A37 is already heavily congested, and the volume of traffic passing through roads in the village has been a big problem for many years, and becoming increasingly so. The local primary schools are at full capacity and the development would result in an increase in primary and secondary school places. The village is poorly served by public transport, with no bus currently running from the village to Stockwood, Keynsham or the new hospital in South Bristol. The shops in Stockwood would be a considerable walk for anyone carrying shopping and there is only one small shop in the village. It would therefore result in unsustainable transport movements by private car.

### Mr Goodwin – Local Resident

137. There are significant traffic problems in the area. Bristol City Council is rolling out parking zones in the city and trying to encourage more public transport use. This will result in a significant increase in the use of the park and ride services and traffic in his area.

### Mrs Walsh – Local Resident, representing Whitchurch Village Action Group (WVAG)<sup>64</sup>

138. This site is a ‘golden nugget’ of Green Belt, and these are the last fields to stop sprawl; they need to be saved for future generations. Developers have been allowed to build in and around the village for years; the group is not against housing, but wish this small part of the village to be left alone.

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<sup>63</sup> Inquiry Document 5

<sup>64</sup> Inquiry Document 12

139. There always seems to be a lot of For Sale signs around the village, so there is a turnover of houses. The population is aging.

**Mr Rosenthal** – Local Resident, representing Orchard Park Residents Association<sup>65</sup>

140. Representing the people living adjacent to the site, Manor Farm barns, Craydon Grove and Orchard Park. Orchard Park is a small community of park homes, not caravans. Most gardens open onto the land and many have windows and patio doors which look out onto these green fields which abound with wildlife.
141. While a lot has been said about landscape and visual evidence, nothing has been said about the present residents' views. From their homes, they can see most of Bristol, including the Clifton Suspension Bridge and in the far distance the hills of Wales. This is a major reason to live here, all of which would be lost if building takes place.
142. People have been in contact, concerned that they were unaware of the Inquiry and asking that comments, as outlined in the local paper, are put forward.

### **Written Representations**

143. The appeal questionnaire includes written representations from a very considerable number of local residents. As a result of notification of the appeal, and the proposed amendment, approximately 330 written responses were received. In addition to those from individual local residents, these included responses from :
144. **Bristol City Council**, who maintained objection to the proposed and amended schemes, noting the resolution of the Council's Development Control (South and East) Committee. This set out concerns regarding: inappropriate development in the Green Belt; prematurity, pending full appraisal of the strategic options for delivering additional housing as part of BANES Core Strategy examination; the infilling of an important break between Stockwood and Whitchurch Village; unacceptable impact on traffic congestion; and inadequate contributions towards mitigation of the adverse impact of the development on highways, recreation facilities, open space, education and community facilities. Their response further indicated that significant development within the Whitchurch area would be inconsistent with specific Bristol Core Strategy objectives.
145. **Whitchurch Parish Council**, whose objections are set out above.
146. **Keynsham Town Council**, whose objection noted the site is Green Belt, and an area that forms part of a nature conservation site, which is not included in the Local Plan. Concerns were raised in respect of the envisaged increased traffic on Stockwood Lane into Keynsham, and from Staunton Lane onto Charlton Road.
147. **Local Residents**. The principal themes arising from the responses dealt with concerns regarding the Green Belt, the separation of the village, highways, pressure on infrastructure, including education and health services, countryside protection, wildlife and the need for local decision making.
148. A petition, highlighting these matters, was also submitted and signed by 286 people. The local Member of Parliament, Jacob Rees-Mogg, wrote, initially

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<sup>65</sup> Inquiry Document 16

expressing his objection to the scheme, and also in forwarding a letter from a local resident regarding the amendment to 200 houses.

149. Finally, a written response was handed into the Inquiry by a local Councillor<sup>66</sup>. This referred to a delegation of BANES shadow cabinet members who visited Westminster to meet with the local MP and the Parliamentary Under Secretary of State, Nick Boles, MP. This reported that at that meeting, the government policy on Green Belt protection was made clear, that building would only be allowed in exceptional circumstances.
150. The response further considered the land to be Green Belt with no special circumstances existing. At the local MP's surgery, the application was discussed. The MP was reported to be fully supportive of the objections and confirmed that he had written requesting the scheme to be called in by the SoS.

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<sup>66</sup> Inquiry Document 14

## Conditions

151. A list of agreed draft conditions was made available at the Inquiry<sup>67</sup>. I have considered them in light of discussions at the Inquiry and in the context of Circular 11/95 – *The Use of Conditions in Planning Permissions*. The appellant's requested amendment was addressed through the inclusion of a condition restricting the development to 200 dwellings. Some minor changes to wording and the simplification of conditions relating to surface water drainage and contamination were discussed and agreed with the main parties. A condition relating to noise was included by the Council, but in light of the findings of the appellant's noise assessment, such a condition is not necessary and I have not included it.
152. With regard to the conditions associated with grant of an outline planning permission, conditions 1, 2 and 3 are standard implementation conditions. Condition 4 responds to the appellant's amendment to the scheme.
153. Although landscaping is a reserved matter, its delivery and implementation are important elements of assimilating any scheme into this landscape. Accordingly conditions have been set out to secure the required elements and implementation (5, 6). Similarly, the layout of the roads and other infrastructure within the site has been addressed, and implementation secured through conditions (7, 8). For reasons of highway safety appropriate accesses need to be secured and implemented through condition (9).
154. To address potential flood risks on and off site, a sustainable drainage scheme needs to be delivered (10). In light of the historic landscape elements potentially within the site, it is necessary to secure a programme of archaeological investigation and protection (11, 12, 13). Former uses on the site are not detailed, nonetheless, in light of the proposed use of the site, it is appropriate to impose conditions relating to the investigation and remediation of any contamination (14, 15, 16).
155. With residential dwellings to the edge of the site, and a somewhat constrained road network, it is necessary to secure a Construction Management Plan to address the living conditions of neighbouring occupiers (17). To protect the character and appearance of the area, the Council have sought samples of external materials. This is a matter to be addressed in reserved matters, and the condition is referenced accordingly (18).
156. To protect the existing wildlife, habitats and the general appearance of the area, it is necessary to impose conditions relating to a Wildlife Management and Enhancement Scheme, lighting, protective fencing and ground levels (19, 20, 21, 22). To ensure delivery of all development objectives, a parameters plan needs to be submitted and approved prior to progression on reserved matters (23). Finally, to support and encourage adoption of the Travel Plan and a move away from the private car, a travel welcome pack needs to be secured through condition (24).
157. Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans. In the event of the appeal succeeding, a schedule of conditions is included and annexed to this Report.

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<sup>67</sup> Inquiry Document 17

## Obligations

158. Four Unilateral Undertakings, signed and dated 8 November 2012, were submitted after the close of the Inquiry. These set out the developer's commitments to matters relating to transport, education, POS and affordable housing. These undertakings bind the appellant, who is the owner of the land with title absolute.
159. At the Inquiry, it became apparent that there were two farm business tenancy (FBT) agreements also associated with the land, one to a tenant and one sublet by that tenant. At my request, a note was prepared by the appellant, and subsequently accepted by the Council, which details the relevance of these to interest in the land. The FBTs, both set at a period of less than two years, would end automatically at the end of their fixed term period. Thus these FBTs are due to expire on the 30 November 2013 and the 29 November 2013 respectively. Neither hold a right of renewal, and I am satisfied that there is no substantive interest in the land requiring the tenants' inclusion in the undertakings.
160. Two matters need to be considered; whether the amounts and facilities sought by the Council in relation to contributions are in accordance with the tests set out in the Framework, paragraph 204, and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010, and whether the submitted undertakings would deliver the relevant mitigation and affordable housing.
161. The Council submitted specific evidence on the educational needs and the transport infrastructure contributions. The local primary school is located to the west of the site beyond the old railway line. It is reported to be approaching capacity and other nearby schools in the Bristol City Council area are also reported to be at capacity. The development would introduce an estimated 62 new primary aged pupils. The implication is that very close to the time the school is projected to reach capacity, the proposal would introduce a significant additional number of pupils.
162. It would be unlikely that these could be accommodated within the existing school buildings, leaving the current play area and hard court space to the rear as the only space available for extension. As a result, I am satisfied that there is a need for both the direct contributions. The sums are set out but await calculation based on the housing mix proposed at reserved matters stage, and the proposed playing fields with improved access from the school to the site.
163. The proposal also needs to cater for early years provision. Currently there is only a limited, shared pre-school facility in Whitchurch, and there is reported to be no 0-3 year provision, with little opportunity for cross-border provision. I am therefore satisfied in the need for the provision of the early years facility on the site, set out at 150 sqm.
164. The contribution to youth services would be in accordance with the Council's Supplementary Planning Document (SPD) – *Planning Obligations*, adopted 2009<sup>68</sup>. Provision of contributions to support youth organisations in the area was set out in the Council evidence.
165. To conclude on education contributions, I consider that these would be necessary, reasonable and related in scale and kind to the development. They would accord with Local Plan Policies IMP1 and CF3, which set out that contributions may be

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<sup>68</sup> Core Document 57

sought to mitigate otherwise unacceptable impacts from development, including the provision of community facilities related in scale and kind to the new development.

166. The sustainable transport contributions were based on an agreed review of routes for pedestrians and cyclists in the area, and on improvements to local public transport. They include the improvements to the footpath link via The Witheys, which connects to the primary school. A national cycle path runs along the western side of the site, and various footpath enhancements and crossing points have been identified and costed. Public transport elements were agreed and although two alternative schemes were proposed, either would represent an appropriate response to enhance public transport use related to the new development; the agreed sum comprises £107,400.
167. I am satisfied that these also comply with the CIL and Framework tests, and accord with the Local Plan Policy IMP1 and SPD in this regard.
168. POS contributions are in part related to the provision of the playing pitch for the school, but include on site POS provision as well as an ecological contribution. The Council report a general deficiency in POS in the area and there will be additional needs arising from the site. In terms of the ecological contribution, there are two adjacent sites immediately adjoining the appeal site, the Staunton Road Site of Nature Conservation Interest (SNCI) and the Stockwood Open Space SNCI. I observed that these are immediately accessible from surrounding residential areas and local footpaths, and they are reported to be under significant pressure. The contribution, £43,600, has been calculated on the provision of infrastructure for access, waste bins and interpretation panels to assist in managing increased visitor pressure.
169. Overall, I am satisfied that the POS contributions, with the amount set at 5.1 hectares and with commuted sums to be calculated based on the reserved matters application, accord with the statutory tests and the Framework, and accord with the Local Plan policies in this regard.
170. Affordable Housing: The appellant undertakes to provide 35% of the total residential units on the site as affordable housing. The affordable units will comprise 75% social and/or affordable rented and 25% intermediate housing<sup>69</sup>, albeit the definitions list affordable housing as comprising affordable rented housing and intermediate housing<sup>70</sup>. This undertaking, accords with Local Plan Policy HG.8. There is an identified and undisputed need for affordable housing in the area. The obligation is directly, fairly and reasonably related to the scale of the development.
171. Turning to the deliverability of the undertakings, it is disappointing that agreement had not been reached on this matter prior to the Inquiry. A very significant number of matters remained outstanding<sup>71</sup>. During a session at the Inquiry to consider these matters, a significant number were resolved, either through consensus, the incorporation of a parameters plan in conditions or the appellant's agreement on revised wording. However, some remained, and the appellant was granted a short period post-Inquiry to provide final versions.

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<sup>69</sup> Inquiry Document 24 – Affordable Housing undertaking Schedule 1

<sup>70</sup> Inquiry Document 24 – Affordable Housing undertaking Interpretation and Definition 1.1

<sup>71</sup> Inquiry Document 18

172. These were provided with an explanatory note<sup>72</sup>, which indicated some further agreement with the Council, but some matters remaining. I note that matters relating to timing of contributions, the offer of the early years facility to a private provider, timings in relation to the delivery of the pitch and its maintenance have been addressed. I consider that the risk is small that there will be a need for playing field provision prior to it being made available. Matters relating to POS transfer and remediation clauses are appropriately addressed in the undertakings, both in terms of timescales and maintenance responsibilities.
173. The Council raised specific concerns regarding the affordable housing undertaking, and refer to the Procedural Guide for Planning Inspectors, 3 October 2013. These concerns relate to securing affordable housing in the long term, and the design standards for the affordable housing. There was initial concern over the lack of a clear provision for the social rented sector rather than affordable rent. It was accepted there was a difference between the SPD aspiration and the acceptance in the Framework bringing the two together in the definition. The Council considered that, as a result, the affordable housing contribution should carry less weight, but accepted that it did not affect the validity of the undertaking.
174. The undertaking establishes a cascading offer for the affordable housing, initially to three Registered Providers (RP), or additional ones to be agreed with the Council. If no offer is received then the process is to be repeated with two further providers nominated each by the appellant and the Council. Only if there is still no offer would the houses become available to the Owner, but even then prices would be restricted to 60% of the open market value. It would appear the Council concerns focus on whether the RP are prevented from selling the properties on into the open market.
175. I accept that Clause 3.5 would appear to exclude the chargee of any RP from the obligations; however, RPs must be registered with the Homes and Communities Agency (HCA), who are the regulator of social housing, which includes the overseeing of standards relating to economic viability. On the evidence before me, I am satisfied that the undertaking would meet the expectation of ensuring the delivery of the affordable housing, and the arrangements are sufficient to secure a RP.
176. The Council then sought a negatively worded clause to ensure that the affordable housing was provided before open market housing was completed and occupied. In this, the undertaking seeks all reasonable endeavours linking the delivery of the affordable housing to completion of the open market units. I accept that 'reasonable' implies an element of flexibility, but do not consider that it would absolve the owner from his responsibilities. With the onus on the RP to deliver housing and ensure occupation, some part of the process is out of the hands of the owner, and an element of flexibility is acceptable.
177. The Council raised concerns regarding the delivery of expected design standards set out in the SPD. Design standards are addressed in Schedule 1 of the undertaking<sup>73</sup>. These require the affordable provision to be of no less a standard than the open market units, and, if agreed, to standards set by the HCA, such as the Housing Corporation Design and Quality standards. The Council's SPD requires

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<sup>72</sup> Inquiry Document 23

<sup>73</sup> Inquiry Document 24 – Affordable Housing undertaking 1.1 and 1.3



compliance with Lifetime Homes standards, although it also refers to the HCA standards in Appendix B to that document.

178. The Framework also requires such considerations and seeks mixed housing that responds to the needs of different groups. Nonetheless, the undertaking allows for agreement with the Council over compliance with the HCA standards. The lack of a direct commitment to standards beyond those of the open market units may limit the weight arising in favour of the scheme somewhat, but does not invalidate the undertaking. In relation to the clustering of the affordable housing, I am content that despite the guidance in the SPD, clusters of up to 16 units would be acceptable in a scheme this size; I note that they are non-contiguous.
179. Finally, the Council indicated that the undertakings should reflect the Council's reasonable legal costs arising from involvement and negotiation concerning the undertakings, as well as their monitoring costs.
180. In terms of reasonable legal costs, this is sought by the SPD, in relation to agreements, along with administration and monitoring costs<sup>74</sup>. While I was provided with a reference to an appeal decision<sup>75</sup>, I have no evidence that there was a SPD in that case, and the costs referred to are only for monitoring and administration costs. Nonetheless when considering the requirements set out by s106 of the Act, I do not consider that legal costs are a necessary requirement set out in the purposes there. Particularly, as in this case, where the obligations are addressed by undertaking and not agreement. I appreciate the Council may have had to engage with the appeal in terms of defending their position regarding their reasons for refusal, but this is not substantially different from the engagement of officers in the appeal process generally.
181. The Council also sought contributions towards its monitoring costs as referred to in the SPD. However, I consider that the contributions listed above are predominantly for wider public use. It strikes me that the cost of subsequent maintenance and other recurrent expenditure associated with a developer's contributions should normally be borne by the Council. Accordingly, I consider that, in the particular circumstances of this case, the costs of monitoring the terms of the undertakings essentially relate to the Council's statutory duty to ensure development is carried out in accordance with planning permissions. In absence of specific evidence to support exceptional monitoring requirements, I conclude that the administration and monitoring costs fall within recurrent expenditure and should not be recouped from the appellant.
182. In conclusion on the undertakings, I am satisfied that the contributions sought, and the undertakings as set out, are necessary to make the proposal acceptable in planning terms and are fairly and reasonably related in scale and kind to it.

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<sup>74</sup> Core Document 57 - Paragraph 1.3.10

<sup>75</sup> APP/C3105/A/13/2189896

## Conclusions

183. The following conclusions are based on the oral and written evidence given to the Inquiry, and the accompanied and unaccompanied inspections I made of the site and its surroundings. The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

184. Taking account of these matters the main considerations are:

- The effect of the proposed housing development on the purposes of the Green Belt and its openness;
- The effect on the character and appearance of the area;
- The effect on highway safety and traffic; and
- Whether any harm to the Green Belt by reason of inappropriateness, or any other harm, is clearly outweighed by other considerations, so as to constitute the very special circumstances needed to justify development in the Green Belt.

### **Consideration 1: The effect of the proposed housing development on the purposes of the Green Belt and its openness**

185. Before addressing this issue, the applicant's assertion that the Green Belt policies of the Local Plan are out-of-date must be considered. This is a long established area of Green Belt, approved by Ministers in 1966. In evidence, the Council confirmed that the sixth purpose, addressing specifically the settlements to the south of Bristol, had been consistent in policy terms since then, and responded to the original designation. This purpose remains within the emerging draft Core Strategy. [78]

186. The appellant suggests that although Policy GB1 would appear to be in accordance with the Framework, it should be considered out-of-date as a consequence of the acknowledged need for the Green Belt boundaries to change, and with the Local Plan and its housing policies being out-of-date. The implications would be that although the Framework's protection of Green Belt areas would continue to apply, slightly less weight, in terms of Green Belt harm, should be applied (Mr Dobson in examination in chief, cross-examination and in reply to Inspector's questions). [72]

187. In the appellant's closing statements, this argument was summarised as that the Local Plan Green Belt policies were out-of-date because they seek to constrain the Green Belt, in conflict with the Council's recognition that land must be taken from the Green Belt in order to meet housing need. I have considered this carefully and do not consider that the policies are out-of-date. Large parts of the plan have been saved, including the Green Belt policies, and while the accepted HLS position, which I deal with below, indicates that policies relevant to the supply of housing are out-of-date, in accordance with paragraphs 47 and 49 of the Framework, this cannot be applied across the plan as a whole. Policy GB1 sets out the restrictions and exceptions for development and while Policy GB2 deals with visual detriment to the Green Belt, neither are housing policies. Policy GB1 is consistent with the Framework. I also consider that the sixth purpose, set out within the plan itself, provides a local criterion consistent with the purposes set out in the Framework, and remains directly relevant to this case. [72, 78]

188. In light of the revocation of the Joint Replacement Structure Plan, a consequence of Green Belt policies being found out-of-date would be that the Green Belt in this

area would not be defined. In fact, the policies have been saved and they are consistent with the Framework. This matter therefore does not go to the heart of whether the proposal would be in conflict with the Development Plan. The only implication is that the extent of the Green Belt boundary is likely to change as part of the emerging Core Strategy. I address this later under other considerations and the case progressed by the appellant on the inevitability of Green Belt land being required for new housing over the plan period. [110]

189. The main parties agreed that while the Green Belt purpose of assisting in urban regeneration would apply equally to all potential Green Belt housing sites, the two purposes specifically engaged by this site are the first and third. These are to protect the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. Under this consideration, it is also necessary to consider the effect on the sixth local purpose set out in the adopted Local Plan, and on openness, which is clearly defined as an essential characteristic of the Green Belt. [52, 77]

### Inappropriate Development

190. It is common ground that the proposal represents inappropriate development in the Green Belt. In accordance with the Framework, inappropriate development is by definition harmful to the Green Belt, and should not be approved except in VSC. [29, 80, 136, 145]

### To check the unrestricted sprawl of large built up areas

191. The appeal site is located immediately to the south of Bristol and the district of Stockwood. It separates this urban area from the village of Whitchurch. The proposal for 200 dwellings would occupy a considerable portion of the central and southern part of the site, but would leave an area of open ground adjacent to the Stockwood boundary formed by the housing along Craydon Grove. [83]
192. The Council have assessed the Green Belt area around Whitchurch. In their Stage 1 review<sup>76</sup>, the area, including the appeal site, was noted as of particular importance for preventing the sprawl of Bristol into open countryside. The Stage 2 report<sup>77</sup>, assessed particular cells against Green Belt purposes. The role of this site in relation to urban sprawl is reported as strongly serving this purpose. [83, 116]
193. The appellant suggests that due to the constrained and enclosed nature of the site, the proposal would have only a modest impact on Green Belt purposes generally. I disagree; although Stockwood Lane runs to the east of the site, it is a rural road with open land extending to open countryside to the east and the appeal site to the west. The western boundary is formed by the cycleway, the line of the old railway and a local site of nature conservation interest, all contributing to a finger of green land that extends north in towards the centre of Bristol. [53, 54]
194. There is a relatively clearly defined boundary to Whitchurch, although, apart from along that section adjacent to Orchard Park, this is softened by the presence of relatively large garden areas of mostly detached properties. To the north there is a clear boundary defining the southern extent of Bristol, with the row of mostly terraced housing along Craydon Grove. [53]

<sup>76</sup> Core Document 38 pp 27/28

<sup>77</sup> Core Document 47 – pp 48/49

195. In this context, the site provides an important check to the southerly expansion of the Bristol urban area. Although a small gap would be retained, the perception of the site from footpaths, housing adjacent to the site, long distance views from Maes Knoll and from Stockwood Lane would all be of relatively continuous urban character, not just on the appeal site itself, but encompassing Whitchurch village. While the proposal for 200 houses would be an improvement from the original scheme, the result would still be urban sprawl of the type Green Belt policy seeks to prevent. [129, 139]

196. Very significant weight therefore arises against the proposal in this context.

To assist in safeguarding the countryside from encroachment

197. The site is currently used for the grazing of horses on a farm tenancy agreement. It is mostly open with some dividing hedgerows and characteristic of an agricultural landscape. While its extent southward is limited by Whitchurch Village, it connects across Stockwood Lane to the nearby playing fields and on into the countryside. [81]

198. As the Stage 2 report notes, the land is relatively level and encroachment would not be masked by the topography. The site also helps maintain the green link between open countryside and the tongue of green which extends into Bristol. However, the appellant draws comparison between the site and the countryside to the south of Whitchurch, suggesting that it is physically separated from the actively farmed landscape there. [55, 81, 82]

199. While I accept that there is greater containment here than the more expansive countryside landscape to the south, the conclusion reached by the appellant in their landscape evidence<sup>78</sup>, that the appeal site does not contribute to protecting the countryside from encroachment, is not supported. This position was later accepted to have been based more on landscape rather than Green Belt purpose assessment, and some harm was accepted. The scale of the site is sufficient for it to provide a countryside element in its own right, as perceived by local residents and users of the footpath network. The playing fields to the east form an accepted element of Green Belt use. The value placed on the site by local residents and the role it plays in defining the separate, rural character of the village of Whitchurch, are also strong elements supporting its role as countryside. [81, 82, 137]

200. In this context the loss of this land to development would represent encroachment of the type Green Belt policy seeks to prevent. Significant weight therefore arises against the proposal.

To preserve the individual character, identity and setting of Keynsham and the villages and hamlets within the Green Belt

201. This is the sixth purpose set out in the Local Plan. Notwithstanding the appellant's conclusion that the character and setting of Whitchurch Village relies not on the physical separation, but on visual separation through screening by local vegetation, I consider that this purpose has a particular resonance at this site. Despite some erosion of the village's separation through linear development along the A37, the centre of the village, at the crossroads with Staunton Lane and the A37, and particularly the southern and eastern parts of the village, retain a strong rural character. Outward views, albeit limited from the roads, encompass Maes Knoll to

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<sup>78</sup> Mr Harris PoE pp 9

the south and the appeal site to the north, as well as long distance views across Bristol. [84, 142]

202. Views into and across the site are readily available from many points around it, both on the road, on footpaths and from houses bordering the site. In views from the footpaths to the north, and from the high ground to the south, this separate identity is established by the appeal site, and the local vegetation is limited, other than the hedgerows. There are trees to the west and forming a significant feature to the southeast, but otherwise the site is relatively open. For those using the cycleway and footpath link to the west of the site, or approaching the village along Stockwood Lane, there is currently a clear and distinct separation between urban area and rural village.[84, 145]

203. In this context the appeal site plays an important role in this purpose, and significant weight therefore arises against the proposal.

#### Openness

204. The appeal site is currently undeveloped, and the absence of built form can be considered as a key element of openness. The proposal would introduce housing and other built form onto a large part of the site. The actual harm to openness would therefore be significant. [69, 77]

#### Conclusion on Green Belt Purposes and openness

205. The proposed development is accepted as inappropriate development. It would materially impact on the openness of the site, which is an essential characteristic of Green Belts, and would harm national purposes, in relation to urban sprawl and countryside encroachment, and the local purpose, in relation to the separate character of villages. The proposal would therefore conflict with the Framework as well as the development plan and Policy GB1 in this regard. Accordingly substantial weight is given to harm to the Green Belt, as set out in the Framework. [117, 129]

### **Consideration 2: The effect on the character and appearance of the area**

206. The appeal site sits on the transition from the urban areas of Bristol to the open countryside of the Dundry Plateau Character Area. It has value both in its own right and as part of the setting of the urban edge of Stockwood and the village of Whitchurch. Both the Council and the appellant produced LVIAs for the appeal site. In addition, supporting the evidence base for the emerging Core Strategy, the Council commissioned the Stage 1 and Stage 2 Green Belt assessments, and a further Landscape and Visual Assessment Summary for Whitchurch<sup>79</sup>. This reported an overall moderate significance for landscape and visual effects. [50, 51]

207. The two main party's LVIAs differed from this conclusion. The Council's assessment of the specific development proposal, initially the 295 dwelling proposal, but also the 200, was that there were some elements of higher significance, most particularly in relation to the sensitivity of the site in maintaining the character and separation of the village and in its value as a green link connecting Bristol to the wider countryside. The appellant's LVIA generally found some elements were of lower significance, and, although plans had changed from the earlier assessment,

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<sup>79</sup> Core Document 48

indicated that strategic gaps were left in the Masterplan to allow for mitigation of any impacts. [55, 85, 87, 92]

208. The Council criticised the appellant's failure to consider the impact on trees and the wider landscape area. However, I find some reference to trees in the Appellant's LVIA, and neither of these would be determinative in the overall assessment of impacts here. Particular differences were identified in relation to hedgerows, but on visual effects the findings were similar. [86]
209. Although the proposal is in outline, the amended scheme concept Masterplan shows the 200 dwelling scheme with housing focused to the central and southern parts of the site. Other than the direct loss of hedgerow associated with the large proposed junction to the eastern boundary, the plan indicated that most hedgerows would be retained, and the appellant indicates that they could be strengthened through additional planting. I accept that some risks would arise where the hedgerows are shown to be incorporated into domestic gardens, for example on the southern boundary; nonetheless, I accept that some benefit to others could arise through landscaping, controlled through conditions. [86]
210. In terms of the area of the site itself, despite being in private ownership, this is clearly a well used area as a result of the footpaths that cross and pass alongside the site. It has a real value to local residents, as demonstrated by the considerable objections to its potential loss. The development would have immediate impacts for users of these footpaths, and despite the retention of an open area to the north, the rest of the site would become urbanised or considerably more managed, as playing fields or POS. Although this change would be noticeable to users of Stockwood Lane, and would have immediate impacts on the view from homes along the southern boundary, it would be relatively localised. Overall, I find the impact on the site itself would be of medium significance. [88, 89]
211. The site does play a role in the setting of the village, and I have addressed this above under the local sixth Green Belt purpose. Although the appellant suggests that the separation is not strongly perceived, I was able to view the site from Maes Knoll. It is at some distance, but the village is clearly visible with the appeal site forming the principal separation from Bristol. The impact on the landscape significance of Maes Knoll would be limited, but it shows the important part the site plays in the current setting of the village of Whitchurch. [116]
212. In conclusion, I consider that impacts on the appeal site would be significant for local users of the footpaths, and would fundamentally change the nature of a well-used area readily available to residents of Stockwood and the village. Nonetheless, the effects would, for the most part, be localised, and can be considered to be of only moderate significance. The development of the site would also contribute to the erosion of the separation between the village and Bristol and would have a notably detrimental impact on the character and setting of the village. [117, 129]
213. The proposal would conflict with Local Plan Policy GB2, which seeks to protect the Green Belt from development that would be visually detrimental, as well as the Framework, which states that development should take account of the role and character of different areas, recognising the intrinsic character and beauty of the countryside. In light of the moderate significance of the site, I consider that moderate weight arises against the proposal.

**Consideration 3: The effect on highway safety and traffic**

214. The application was accompanied by a Transport Assessment (TA) and further assessment and modelling was required in light of the acknowledged transport congestion associated with a number of junctions in the surrounding area. The Council have accepted the appellant's assessments as properly reflecting their initial concerns, and the Transport SoCG concludes that there were no outstanding issues on these matters. However, I am conscious of the considerable concerns of local residents on this matter, in particular in relation to potential increased traffic flows contributing to the existing problems within the village and on the A37 leading into Bristol, as well as on increased flows to and from the north and east, particularly along Stockwood Lane. [71, 137, 145]
215. The appellant does not dispute that traffic levels are high in the area, and this concurs with my own observations at the evening peak period. The studies and assessments carried out also confirm that there is currently queuing at the local junctions. Regarding Stockwood Lane, I was also able to observe the levels of traffic passing along this road. In terms of the junctions, the increase in traffic flows that would be associated with the proposal has been shown to have some impact on these queue lengths. The question is whether the capacities of these junctions would be compromised; accepting that at peak periods there would be queuing. The Council have accepted that the junctions would not reach saturation, and I see no reason to disagree with this assessment. [137, 138, 145]
216. In relation to the specific concern regarding Stockwood Lane, the proposal would clearly contribute some additional traffic. The current houses have short drives that exit directly onto the inside of a bend and some have no turning spaces. This results in an access that on occasions would be difficult to exit in light of the current traffic flows on this road, and I can well understand that at times the residents would have to take considerable care. However, the road speed is limited to 30 mph, and visibilities for approaching vehicles are of the order of 30 to 40 metres, albeit parked cars, despite the yellow line, may restrict this at times. [133, 134, 135]
217. I noted the difficulties regarding Sleep Lane to the south of the site. The current restriction means that traffic is slowed considerably and delays are likely to occur. The TA indicates approximately 10% of the site traffic may use this route. I consider this a reasonable estimate, as while it provides a link to the south of Whitchurch, the majority of traffic is likely to be heading north into Bristol or east towards Keynsham. Again, these delays may well be slightly exacerbated by the proposal.
218. In mitigation for some of the impacts that would be associated with the development, road crossing and footway improvements, along with additional public transport improvements, have been proposed. These would be secured through legal agreement and conditions. The appellant has also agreed to support a Travel Plan and public transport incentives for the site. [71]
219. In conclusion, it is accepted that there are existing traffic queues associated with the main junctions in the area. There would be extra flows from the site and this would add to the existing congestion in and around the Staunton Lane junction in particular. Nonetheless, the evidence does not suggest that flows would become saturated such that congestion would extend significantly beyond the peak hour periods. In light of the improvements, which would be facilitated by the S106 Obligation, I am satisfied that the impact of the proposal would be mitigated.

220. Overall, I have no reason to disagree with the Council and the appellant's professional advice that the proposed accesses would provide a safe means of access to and egress from the site. There is therefore no conflict with Local Plan Policies T24 and T25, which, taken together, seek to ensure that development is acceptable in highway terms. Nor would there be conflict with the Framework, paragraph 32, which seeks that development only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

#### **Consideration 4: Very Special Circumstances**

221. The appellant accepted that there would be harm to the Green Belt from this development. It was also accepted that the preferred method to deal with the release of Green Belt land is the Local Plan process. However, a number of material considerations were put forward, which the appellant considers would clearly outweigh this harm and result in the VSCs necessary to justify the development of land in the Green Belt, as well as to justify a permission on this site prior to any amendment of the Green Belt through the forward planning process. [31, 62, 70, 96]

222. These included: housing need; the locational suitability of the appeal site to meet that need; the inevitability of Green Belt incursions to meet housing need; the deliverability of the appeal proposals over a short time horizon; economic benefits; and the failure of the forward planning process to make any housing land available within a reasonably foreseeable time scale. [33]

#### Housing Need

223. The Council accepted that, for the purposes of this appeal, they could not identify a five year HLS. Although they presented evidence that, on other measures, they could, and implied that the issue would soon be resolved through the Core Strategy process, their position was helpfully summarised in their closing statement<sup>80</sup>. In this it was accepted that, on the basis of the currently proposed housing need figure produced for the Core Strategy, 12,700, there was a 3.6 year supply. This was based on a five year requirement, including the previous shortfall and a 20% buffer, of 5,567 against which there was a supply of 3,998. [26, 34, 35, 36, 38, 97, 99, 103]

224. The appellant considered that the shortfall is much greater. Two components are needed to establish the 5 year HLS figures, the housing requirements and the housing supply. The appellant questions both elements of the Council's calculations. In relation to the requirement, the appellant highlights that the dRSS figures should be used, as they are the latest figures that were tested through consultation and examination. Reference was made to previous Inspector and SoS decisions, which have supported this approach, including that at Honeybourne<sup>81</sup>. [39, 40, 98, 99]

225. With the revocation of Regional Strategies, the draft Regional Spatial Strategy for the South West (the dRSS), cannot be adopted. Nonetheless, the evidence base that underpins the housing requirements it set out is capable of being a material consideration. The weight that can be given must, over time, erode as more recent growth projections, housing needs and community planning initiatives influence the

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<sup>80</sup> Inquiry Document 20

<sup>81</sup> Mr Dobson PoE – Appendix 6, APP/H1840/A/12/2171339



understanding of housing requirements. However, the dRSS provides the only publicly tested figures before me. [39, 40, 98, 99]

226. In this particular case, I do give the Council's own figures informing the Core Strategy some additional weight as the dRSS figures were based on the West of England Strategic Housing Market Area (SHMA). The Council have pursued a new SHMA, based on work defining two HMAs for the district. With one of these covering approximately 80% of the district, the Council are now pursuing a district only SHMA<sup>82</sup>. Although this approach can only be found sound through the examination, it has nonetheless been accepted by the examining Inspector as compliant with the Framework. Notwithstanding this, in light of the stage reached in the process, and the outstanding objections, this weight must still be limited. [98, 104]
227. Turning to supply, the appellant highlights a number of sites where they consider there are questions over deliverability such as to reduce the Council's figures. Although the Council conceded that one site was unlikely to progress, and that Green Belt sites should not be included, they considered the figures to be generally robust. While the differing figures do alter the calculations, they would not be determinative in demonstrating a five year HLS. Accordingly, I have included them to inform the range of supply calculations<sup>83</sup>, but have drawn no specific conclusion on these matters.[41, 101, 102]
228. I accept that decision makers must consider the objectively assessed housing needs, but the Framework is clear that these should be based on data that is adequate, up-to-date and relevant. However, it is not for me to reach final judgement on these matters in this case, or indeed to assess in detail whether the figure in the emerging Core Strategy is sound, or the projected supply promoted is robust. What is necessary for me to consider is the weight in favour of the scheme from the Council's acceptance that they cannot demonstrate a five year HLS. [41, 104]
229. This is not a simple case of choice between the dRSS and the emerging Core Strategy. The recent Hunston case highlights this. Although clear distinction can be drawn between that case and the circumstances associated with the emerging Core Strategy here, as the RS figures in that case were based on a policy of constraint, which would have depressed them below objectively assessed needs, it does highlight the necessity of considering up-to-date projections.[40, 98, 105]
230. The dRSS figures provide a conservative approach to ensuring the adequate provision of housing, but I must give some weight to the emerging evidence base in light of its more up-to-date projections and the extent of the more local assessment of needs.
231. On the evidence to this Inquiry, even on the Council's best options, there is a significant and acknowledged shortfall in the 5 year HLS, contrary to the Framework's ambitions to boost significantly the supply of housing. Its absence confirms that the present local housing policies should not be considered up-to-date. The Framework's presumption in favour of sustainable development applies, although both parties acknowledged that the footnote to paragraph 14 is engaged. [41, 94, 100]

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<sup>82</sup> Core Document 49

<sup>83</sup> Simple calculations are set out in Annex 2 to this Report

232. In this context, the absence of a 5 year HLS cannot be considered determinative. The very substantial weight arising against development by reason of harm to the Green Belt is such that I do not consider this consideration could on its own amount to VSC. This position is consistent with the recent SoS decision at Thundersley, Essex and with the recent Ministerial statement<sup>84</sup>, made initially in the context of traveller cases, but explicitly also referring to conventional housing. While this statement dealt with housing demand and not need, it emphasised concern that the Green Belt had not been given sufficient protection.[32, 120, 131]

233. Nonetheless, the current housing need in the district is a consideration of significant weight in favour of the proposal. [42, 103, 131]

#### The locational suitability of the appeal site

234. The Council have agreed that land will have to be found within the Green Belt to meet housing needs. In this, the appeal is similar to that at Thundersley<sup>85</sup>. However, the appellant suggests that it differs in two important elements, firstly that this site is within the areas preferred by the Council for future release, whereas, in the Thundersley case, other sites were preferred for 'sound planning reasons'. Secondly, it was suggested that the SoS considered that a new Local Plan could come forward easily and quickly for Castle Point Borough Council, a situation the appellant suggests does not apply to BANES; this matter is addressed later.[45, 56, 65, 121, 122]

235. In seeking to address the release of Green Belt land, initially via a Placemaking Plan to follow the Core Strategy and now promoted by the Council through the Core Strategy itself, a number of assessments have been developed. Although initially the area to the south of Bristol was considered for a very significant level of urban extension, up to 3,000 houses, evidence to the Inquiry suggested that transport capacity limits this to a maximum of 800 and other constraints may limit it to 500<sup>86</sup>. Despite this, the Council have reflected on their strategic priorities and overall constraints to development here and set a residual figure of 200 dwellings for the broad area of Green Belt around Whitchurch. As part of the proposed changes to the Core Strategy, this led to the inclusion of Policy RA5 for this number of dwellings to be provided around Whitchurch. [27, 43, 44, 58, 60, 113]

236. In light of the progress of the Core Strategy examination, with outstanding objections remaining to the overall housing strategy and assessment of need, and with consultations on the proposal to identify allocations within the Green Belt not yet begun, I can give little weight to this policy or the conclusion that there would be 200 dwellings delivered in this area. Nonetheless, it is a clear indication of the Council's approach, and if this site were shown to be preferable to others in the area, this would significantly increase the weight arising in favour of the scheme. [44, 123]

237. The Council accepted that the appeal site was within the broad area identified, and the assessments have all included the appeal site in their appraisal of the area. The appellant has drawn on elements of these in concluding that the site is among the 'least worst', accepting that any Green Belt loss would result in harm. [50, 64, 112]

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<sup>84</sup> Core Document 55

<sup>85</sup> This decision is currently subject to a High Court challenge

<sup>86</sup> Core Document 37A

238. Of these assessments, the five referred to are the Land at Whitchurch Concept Options Report, the SHLAA, the Stage 1 and Stage 2 Green Belt Reviews and the Whitchurch Landscape and Visual Assessment Summary. These were produced in March, June, April, September and August 2013 respectively. However, there are some elements of inconsistency, between the areas assessed and sometimes between the conclusions based on landscape and visual effects and those based on Green Belt harm. [50, 51]
239. The Concept Options Report, for example, included the appeal site, or part of it, in all of the options it assessed. This study drew on previous studies such as the BANES RSS Urban Extension Environmental Capacity Appraisal<sup>87</sup>, where the conclusion for the appeal site area was for 'questionable development', rather than 'potential development' for the site to the south. The Report refers to the previous study as noting that:
- "Although the land between Whitchurch and Stockwood is not of high quality in itself, it has a key value as an open green partition between the settlements, protecting the integrity of the village."*
- However, the Report goes on to suggest that:
- "it may be beneficial to develop this land in preference to land further south into the countryside."* [113, 115]
240. In assessing impact on the Green Belt, the Concept Options Report identifies the northern and western part as of high importance, while Green Belt to the southern part is of lower importance. This simple assessment was repeated in the Stage 1 Green Belt Review<sup>88</sup>. The Concept Options Report, which, in its introduction, distanced itself from having any planning status, considered options of up to approximately 3,000 dwellings. It did set out the cells A to F, F being roughly the appeal site, which were further used in the Stage 2 Report and Landscape Summary. [50, 114]
241. The Stage 2 Report referenced the proposed Policy RA5, and considered the Green Belt purposes against each of the cells. The appellant draws a conclusion that, as the cell comprising the appeal site, Cell F, bears on only two Green Belt purposes it could be considered to have a more limited impact than areas which bear on a greater number. This has only limited possible relevance here, as Green Belt purpose 4 is not relevant around Whitchurch, and Green Belt purpose 1 is shown to only apply to parts of Cells A and E. In a number of cases in these assessments, there are marked variations across the cells, notably, in this case, the southern part of Cell E would appear to have a diminishing influence on Green Belt purposes. Furthermore, the local sixth purpose bears strongly on Cell F, but not all others. Nonetheless, I found this a simplistic approach with little merit, as it is the importance of the site in relation to any, or all of the purposes, that is relevant. [51, 117]
242. Turning to the Landscape Summary<sup>89</sup>, this includes a table and a plan showing the relative landscape and visual significance of each cell. In simple terms this confirms

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<sup>87</sup> Core Document 40 pp13

<sup>88</sup> Core Document 38 pp27

<sup>89</sup> Core Document 48

that the site performs at the lowest level of impact, along with parts of Cells A and E. The areas of highest significance were generally those towards Maes Knoll. [51]

243. In the absence of an LVIA for each separate cell, or proposed development area around Whitchurch, which both parties acknowledged had not been done, the appellant sought to draw conclusions together in summary tables, which included information from the SHLAA<sup>90</sup>. The conclusion was that the appeal site was the best in landscape terms, a green cell, whereas for Green Belt purposes, Cells B, C and D, denoted as green, had a weaker function than the appeal site, denoted as amber, but Cell E was indicated to serve the strongest function, denoted as red. In this case, I consider that the assessment, while accepted to be the judgement of a qualified landscape architect, is too coarse to properly reflect the situation with some of the cells. This is a problem with the large cells as set out from the Concept Option Report onwards, in particular A and E, where there are very significant differences across the cells. This comparison also excluded the relevant local sixth Green Belt purpose. [90]
244. The Council maintained that in considering the Green Belt purposes and other harm, there were better potential areas for development than the appeal site. In particular they noted the Horseworld site, and the proposed development set out in three applications, recently recommended for approval by officers<sup>91</sup>, but not, at the time of this Inquiry, considered formally by the Council. This proposal does not rely on the HLS issue, but instead considerations relating to the continuation of the charitable, employment and recreational elements of the enterprise. [91, 96, 117]
245. I saw on my formal site visit that the Horseworld site has a number of buildings on it for horses, reception and play areas, relating to the former farm use and more recent charitable use. The housing development would utilise this area in part, including the retention of some of the older buildings. As a consequence, the impact on Green Belt openness would be less than development on the appeal site. [93]
246. I also concur with the Council in terms of the impact on the character of the village. There is no doubt that the Horseworld proposal would increase the scale, but it would continue the historic extension of the village along Staunton Lane, and would not compromise its individual identity in relation to Bristol. [118]
247. As the appellant pointed out, this is a comparative exercise, but full assessment of other sites has not been completed in as much detail as is presented for this appeal on this site. Nonetheless, although the Horseworld site awaits a final decision from the Council, it is nonetheless indicative that there are sites which may represent lesser Green Belt harm than the appeal site and comparative or even lesser harm in terms of landscape and visual impact. I accept that the Horseworld site is currently only for 125 dwellings. [46, 47, 48, 91, 117, 124]
248. As a comparative exercise it strikes me that there are conflicting pressures on the area around Whitchurch. In simplistic landscape and visual terms, the northern part may be preferable to the southern in light of the open countryside and Dundry Hills, and if heritage elements are included, this is strengthened, particularly regarding the Scheduled Ancient Monuments of Maes Knoll and The Wansdyke, and the conservation area of Queen Charlton.

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<sup>90</sup> Mr Harris PoE Appendix G

<sup>91</sup> Inquiry Document 2

249. However, in Green Belt terms, my own appraisal along with previous assessments and studies would indicate that relevant purposes are most strongly served in the northern and western parts, in preventing the spread of Bristol and encroachment into the countryside. It is a balance that should properly be assessed in the forward planning process, but in terms of this Inquiry, I find that the site has some benefits over others in the wider area, but also some comparative drawbacks. I consider that the locational suitability of this site is neutral, and limited weight arises in favour of the proposal as a result. [91]

#### The inevitability of Green Belt incursions

250. As has been set out, the 200 dwelling figure is a residual one in a plan that can only be given limited weight. While Green Belt land is likely to have to be released for housing need in BANES, the strategic preference would be around the larger settlements of Bath and Keynsham. Only following the completion of the Core Strategy process could the figure for this area be confirmed and it may result in an increase or a decrease in this figure. [123, 124]

251. The appellant points to the Council's recent proposal to bring Green Belt allocations into the Core Strategy, rather than leaving them for a later Placemaking Plan. This, they suggested, is an indication of the inevitability of changes to the Green Belt and pressure to deliver housing in advance of completion of the forward planning process. At the same time, the appellant suggests that this process cannot succeed and delays will inevitably occur, increasing the pressure and need for development within the Green Belt. [58, 59, 60]

252. Irrespective of what may have been said or heard at a Hearing, the examining Inspector set out a clear response to the Council on this matter<sup>92</sup>. In it, he noted the benefit of bringing sites forward in terms of compliance and successful contribution to the five year HLS. Furthermore, he set out matters that would need to be addressed in any consultation necessary on such a change. It strikes me that were this change to be so fundamental, the examining Inspector would not have countenanced it, indicated steps needed to enable it, or accepted the delay implicit in bringing it about. [62]

253. I have established that there is an urgent need for housing to come forward in this district. The Council have accepted that this will involve the release of some Green Belt sites, and this new approach would appear to be a positive move to release such sites through the most appropriate route, as recommended by the Framework paragraph 83, and strongly supported by the SoS in the Thundersley decision. The procedural challenges will be significant, but I do not consider that the proposed change should be considered undeliverable, and, in terms of the overall process, would be preferable. [62, 63, 64, 95, 121]

254. However, it is clear that some Green Belt land will need to be released, and that there is a need for sites to be brought forward within the next five years. While the weight that can be given to the figure of 200 dwellings is limited, the principle that there will be some release around Whitchurch is, in my opinion, of greater weight. Overall, I consider that there is moderate weight arising in favour of the proposal from the inevitability of some Green Belt release in the district over the plan period. [44, 56, 124]

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<sup>92</sup> Core Document 50

### The deliverability of the appeal proposal

255. Subject to the grant of permission there would appear to be no particular restrictions on the early delivery of this site. Estimates set out in evidence would indicate units coming to market approximately 2½ to 3 years from permission with a build rate of 50-70 dwellings a year. This would provide, if not all 200 units, a significant additional element to the housing need over the next 5 years. [57, 62, 119]
256. Subject to a positive decision, the appeal site could be considered deliverable, and while the Council consider that the Horsecworld proposal is in a similar position, they were unable to confirm any other development sites in the local area that could be similarly considered deliverable to meet the housing need. Accordingly, I afford moderate weight in favour of the proposal in this respect. [125]

### Economic benefits

257. It is acknowledged that economic benefits in relation to construction, the New Homes Bonus and others would arise from a housing development of this scale. However, such benefits would arise irrespective of where such development occurs, locally and will be a function of the Council's necessary approach to resolve identified housing need. Nonetheless, economic benefits would be an outcome of this scheme, and moderate weight arises in favour of the proposal accordingly. [66, 126]

### The failure of the forward planning process

258. The protracted nature of the Council's progress towards a new Local Plan is acknowledged, as is the procedural concern regarding the relatively late change to include Green Belt allocations in the emerging Core Strategy. Varying estimates were given as to when an adopted Core Strategy may be expected. If the Core Strategy were to be followed by a Placemaking Plan, it is possible that this may not be in place until summer 2015 or later. The Core Strategy itself is now subject to delays, notably as a result of the change to include Green Belt allocations. Thus the appellant considered the earliest adoption could be the end of 2014. [65]
259. The Council accepted that this could not be considered as an easy or quick process, and the appellant notes that it therefore differs from the circumstances in the SoS's decision at Thundersley. Furthermore, it was considered that it reinforces the urgency to bring sites forward through the development control approach, that is the finding of VSCs in favour of a site in the Green Belt, rather than the forward planning approach of a formal release of particular Green Belt land. [65]
260. I do not have sufficient evidence on the progress of the Castle Point Borough Council Local Plan to pronounce on its likely delivery, but note that there are some similarities between the two Councils' planning histories, in terms of under delivery and environmental constraints on housing land. However, the SoS does not conclude that the Local Plan there will come forward quickly and easily, only that this history does not mean that the task of preparing the new Local Plan cannot be accomplished easily and quickly. In considering the earlier comment in that Decision<sup>93</sup>, the reasons behind this are shown to relate to the publication of the Framework and the resultant drivers within it. This factor is common to both Councils. [65]

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<sup>93</sup> Paragraph 20

261. Thus, although there are objections to the housing need figures and challenges over the inclusion of Green Belt allocations, there is a strong national drive and support to bring the forward planning process to an early conclusion. In this, I do not find the circumstances in this appeal to differ substantially, on the evidence before me, from those in the Thundersley decision. [119]
262. Other than the matters at contention, the site appears to have no other overriding constraints, and it is highly likely that were permission to be granted, it would bring development forward faster than awaiting allocation through the Core Strategy. A small amount of additional weight therefore arises in favour of the scheme in relation to the timing of the delivery of new housing locally. [57, 61, 62]

#### Other Considerations

263. The Council have accepted that weight arises in favour of the scheme as a result of the policy compliant provision of affordable housing, at 35% of the overall development. The Council's Homeseach data indicates that, as of August 2013, there were 20 households on the waiting list indicating a preference for Whitchurch<sup>94</sup>. This is lower than the proposed component in the development, but, as accepted by the Council, provision in Whitchurch could also help meet the needs of the smaller rural villages in the wider local area. [106]
264. I accordingly assign significant weight to the affordable housing benefits, despite the Council's concerns regarding design standards and the provision of affordable rented over social rented [127, 177, 178].

#### Conclusion on Very Special Circumstances

265. The appellant's contention that the above considerations clearly outweigh the harm to the Green Belt and any other harm, and therefore together result in VSC needed to justify the appeal is based on two main strands. Firstly, that as a release of Green Belt land is inevitable in this area, any harm that would arise from this development must be set against the harm that would arise from any future allocation and subsequent development. Secondly, that there is sufficient evidence to show that this site is favourable among those around Whitchurch, such that it could be considered as a positive step to bring it forward and assist in meeting the housing need in BANES earlier than would otherwise be the case. [56, 67, 68, 69]
266. There is an inevitability to some Green Belt land release in BANES in the near future. However, I do not consider that there is sufficient evidence to conclude that this site would necessarily be among the favoured options. There is tension between landscape and visual harm, and harm to the Green Belt purposes around Whitchurch, such that whilst there are some positive elements of the scheme, this must be weighed against the substantial harm to the Green Belt I have identified. [124]
267. I have noted significant weight arising in favour of the development regarding the current HLS position in BANES, and the provision of affordable housing, as well as moderate weight arising in terms of the inevitability of Green Belt land release and the deliverability of the site. Nonetheless, I do not find that together these would be sufficient to outweigh the substantial harm arising in terms of the Green Belt and other harm, including that to the character and appearance of the area. I therefore

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<sup>94</sup> Mr Dobson PoE - Appendix 9

conclude that very special circumstances do not exist to justify a grant of planning permission in this case,

### **Other Matters**

268. Local residents also raised particular concerns with regard to the significant increase in the scale of the village that would arise from this proposal. I have already noted that Whitchurch retains a village character and it clearly has a strong community with its own primary school, community hall, health centre and a small range of shops. [136, 137, 148]
269. However, while I understand concerns that the increase in residents could increase pressure on services and facilities, it could equally be considered to provide an additional customer base to support the viability of certain services and retail provision in the village. Contributions, along with specific additional community facilities, such as educational and POS provision within the scheme, would address the increased pressure on services introduced by the proposed housing.
270. I note some local residents' concerns regarding the impact on wildlife and flood risk. I am satisfied that the reports prepared on ecology, including the assessment (October 2012) and further information (February 2013) properly addressed concerns regarding wildlife and suitable mitigation would be provided subject to condition. Similarly, I consider that a drainage scheme, the principle of which was assessed in the Flood Risk Assessment (October 2012) which can be properly secured by condition, would address the risk of increased run-off from the site. [148]

### **Overall Recommendation**

271. I have considered the scheme against the main issues set out in this case. Although there would be undeniable benefits in the provision of 200 new homes in a district with a past record of undersupply and a lack of a demonstrable five year HLS, this does not, on its own, represent a consideration of sufficient weight to outweigh the substantial Green Belt harm that arises from inappropriate development, harm to openness and other harm, such as to the character and appearance of the area.
272. Some further weight does arise in favour of the scheme from the provision of affordable housing, the inevitability of the release of some Green Belt land and the deliverability of the scheme, but these matters are also insufficient to clearly outweigh the harm I have identified, even when added to the others.
273. The proposal would therefore conflict with Local Plan Policies GB1 and GB2, as well as the Framework, in this regard. I conclude and recommend that the appeal should be dismissed and that planning permission should be refused.
274. In the event that the SoS disagrees, I have set out, in the attached Annex A, conditions that I recommend should be attached to any grant of outline planning permission.

*Mike Robins*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Gary Grant of Counsel He called	Instructed by the Solicitor for Bath and North East Somerset Council
Mr Sharland BA DipLA CMLI	Senior Landscape Architect – Bath and North East Somerset Council
Mr Metcalf MRTPI	WYG – Planning consultant (Replacing Ms Newcombe-Jones)
Mrs James BA MSc MRTPI	Senior Planning Officer – Bath and North East Somerset Council

### FOR THE APPELLANT:

Mr Anthony Crean QC He called	Instructed by Pegasus Group
Mr Harris BA DipLA CMLI	Landscape consultant – MHP Design Ltd
Mr Dobson MA MPhil MRTPI MRICS	Planning Consultant – Pegasus Group
Mr Finlayson BSc CEng MICE MIHT MCIWEM	Transport Consultant – PFA Consulting Ltd

### INTERESTED PERSONS:

Mr Williams	Local resident
Mr Broad	Whitchurch Parish Council
Mr Goodwin	Local resident - Friends of Stockwood Open Spaces
Mrs Walsh	Local resident – Whitchurch Village Action Group
Mr Rosenthal	Local resident - Orchard Park Residents Association

## **DOCUMENTS**

- 1 Council's questionnaire, including letters and e-mails of representation (Blue Document Folder)
- 2 Statement of Common Ground – Planning and Highways
- 3 Interested parties written representations to the Inquiry (Red Folder)

### **Proofs of Evidence and Appendices**

For the Council  
(File)

- 4 Mr Sharland's Proof of Evidence and Appendices
- 5 Mrs James's Proof of Evidence and Appendices
- 6 Ms Newcombe-Jones's Proof of Evidence and Appendices
- 7 Mrs Metcalf's Proof of Evidence and Appendices
- 8 Mrs Hoynes's Proof of Evidence
- 9 Mr Hornes's Proof of Evidence and Appendices

For the Appellant  
(Green Document Folder)

- 10 Mr Harris's Proof of Evidence and Appendices
- 11 Mr Dobson's Proof of Evidence and Appendices
- 12 Mr Finlayson's Proof of Evidence and Appendices

### **Appellants Supporting Information**

(Box)

- 13 Design and Access Statement; Planning Statement; Pre-application Consultation; Statement of Community Involvement; Green Infrastructure Strategy; Landscape and Visual Impact Assessment; Ecological Assessment; Transport Assessment, Modelling report and Interim Travel Plan; and Heritage Statement; Noise Assessment; Air Quality Assessment; Geo-environmental Report; Flood Risk Assessment; Sustainable Construction Checklist; Waste Management Plan.
- 14 Plans

### **Core Documents:**

- |      |  |
|------|--|
| CD1  | RPG10- Regional Planning Guidance for the South West - September 2001                                      |
| CD2  | Draft RSS - Draft Regional Spatial Strategy South West – 2006  |
| CD3  | RSS - Secretary of State's Proposed Changes to the RSS - July 2008   |
| CD4  | SWRA Strategic Green Belt Report - Strategic Green Belt Report Buchanan - February 2006                    |
| CD5  | National Planning Policy Framework, (the Framework) - DCLG National Planning Policy Framework - March 2012 |
| CD6  | Local Plan - Adopted Local Plan including minerals and waste policies. - 18 October 2007                   |
| CD7  | Core Strategy - Spatial Options Consultation - October 2009  |
| CD8  | Topic Paper 1 - Core Strategy Preparation Process - May 2011   |
| CD9  | Topic Paper 2 - Overall Strategy - May 2011  |
| CD10 | ID/1 - Inspector's Preliminary Comments and Questions (1) - 3 June 2011                                    |

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CD11	ID/4 - Inspector's Further Preliminary Comments and Questions - 12 July 2011
CD12	ID/8 - The Inspector's Note on the duty to cooperate - Not dated
CD13	BNES/4 - Council Response to the Inspector's Questions on Compliance with Statutory and Regulatory Requirements (ID/7) - Not dated
CD14	BNES/36 - Duty to Co-operate - Not dated
CD15	BNES/40 - The Council's response to ID/31 - Not dated
CD16	BNES/41 - The Council's response to ID/32 - Not dated
CD17	BNES/1 - Council Response to Inspector's Preliminary Comments & Questions (ID/1) - 18 July 2011
CD18	ID /2 - Note on the Progress of the Examination (refer to the Council's letter of 18 July 2011 and the attached detailed response (BNES/1) to some of the issues raised in my note of Preliminary comments and Questions (ID/1)) - 22 July 2011
CD19	BN ES/3 - Council Response to the Inspector's Note on the Progress of the Examination (ID/2). Please note that due to accommodation difficulties the hearings started on 17 January 2012 - 26 July 2011
CD20	BNES/2 - Council Response to Inspector's Preliminary Comments & Questions (ID/1, ID/4 and ID/4a) - 26 September 2011
CD21	BNES/16 - Statement of Common Ground between B&NES and Robert Hitchins Ltd: Major Alternative Sites in the Green Belt - 13 December 2011
CD22	BN ES/21 - The Council's response to Pegasus Planning submission of a legal opinion on Section 110 of the Localism Act and SEA - 12 January 2012
CD23	ID/15 - The Inspector's note on the implications of s112 of the Localism Act - 12 January 2012
CD24	BNES/22 - The Council's response to ID/15 - 12 January 2012
CD25	ID/20 - Issue 3: Green Belt. This session took place on 26/01/12 - 16 January 2012
CD26	BNES/23 - The Council's response to Ian Dove QC, on behalf of Robert Hitchins Ltd produced a note on Section 110 and 112 of the Localism Act - 18 January 2012
CD27	ID/23 - The Inspector's note on the Duty to Cooperate (Section 110 of the Localism Act) - 23 January 2012
CD28	BNES/29 - Responses to issues raised at the Green Belt Hearing Session - 26 January 2012
CD29	ID/26 - Duty to Co-operate. This session took place on 15 March 2012 - 24 February 2012
CD30	ID/28 - The Inspector's Preliminary Conclusions on strategic matters and the way forward - 21 June 2012
CD31	BNES/39 - The Council's response to ID/28 - 12 July 2012
CD32	ID/29 - The Inspector's note agreeing to Suspend the examination - 17 July 2012
CD33	ID/30 - The Inspector's Preliminary Conclusions on other matters (those not covered by ID/28) - 30 August 2012
CD34	ID/31 - The Inspector's note on the Consultation on the Proposed Changes to the Submitted Core Strategy - 25 March 2013
CD35	ID/32 - The Inspector's note on the Strategic Housing Market Assessment and consultation - 21 June 2013
CD36	Composite Plan - Proposed Changes to the Bath and North East Somerset Submitted Core Strategy - March 2013
CD37	Proposed Changes - Schedule of Proposed Changes to the Submitted Core Strategy - March 2013
CD37A	Annex 1 - Changes to Policies on Housing Requirement and Housing Land

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	Supply*
CD38	Green Belt Review - Stage 1 Report, Ove Arup & Partners Ltd - April 2013
CD39	SHLAA - Strategic Housing Land Availability Assessment: Findings Report - June 2013
CD40	Arup - Development Concept Options Report – Land at Whitchurch - April 2013
CD41	ID/36 - The Inspector's note in relation to evidence on the strategic locations and questions on Green Belt Matters. - 29 July 2013
CD42	BNES/46 - The Council note to the Inspector regarding publication of further evidence studies. - 6 August 2013
CD43	ID/37 - The Inspector's response to BNES/46 on 9 August. The Inspector agreed that the evidence studies listed in the table in BNES/42 should be published together on 13 September. Please note that his response also includes a provisional programme for any further hearings beyond 17 September 2013. - 9 August 2013
CD44	Green Belt Review Assessment - Stage 1 Green Belt Review Assessment of Potential Extensions to the Green Belt - August 2013
CD45	ID/38A - this replaces ID/38 - The Inspector has issued a draft programme for Examination Hearings in November/December 2013 and in January 2014. Please note that these dates are provisional and will be confirmed at a later date. - 11 September 2013
CD46	BNES/47 - The Council has written to the Inspector responding to ID/36. - 13 September 2013
CD47	Green Belt Review - Stage 2 Green Belt Review - Appraisal of Land Cell Options for Development - 13 September 2013
CD48	Landscape Assessment - BANES Whitchurch Landscape and Visual Impact Assessment and summary - 13 September 2013
CD49	ID 39 - Following the Hearing Session on 17 September - the Scope of the SHMA - 23 September 2013
CD50	ID 40 - Inspector's response to BNES 47 –Green Belt matters and Possible Further Changes - 24 September 2013
CD51	GLVIA - Guidelines for Landscape and Visual Impact Assessment Third Edition - Landscape Institute & Institute of Environmental Management & Assessment - 3 April 2013**
CD52	Planning Inspectorate Guidance - Planning Inspectorate Guidance Note 9 re Wheatcroft Conditions - February 2011
CD53	House of Commons Library - House of Commons Library Note – Green Belt - 4 September 2013
CD54	BANES - Placemaking Plan – Launch - July 2013
CD55	Ministerial Statement - Ministerial Statement on the Green Belt – Brandon Lewis MP - 2 July 2013
CD56	BANES SHLAA - Report of Findings Appendix 1 South East Bristol Site Assessments - June 2013 / March 2013
CD57	B&NES Planning Obligations Supplementary Planning Document (SPD) - Adopted 2009
CD58	Core Strategy/Placemaking Plan Additional Evidence Heritage Asset – Study – Appendix 5 Whitchurch (Land Use Consultants, BaRAS & Conservation Studio) - September 2013
CD59	County of Somerset District Plan Bristol and Bath Green Belt - Written Statement, Amendment No. 12 1966, Somerset County Council
CD60	Core Strategy Sustainability Appraisal Core Strategy Proposed Changes - Appendix L
CD61	BNES48 - due 2nd October 2013

- CD62 Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment SPD - April 2003
- CD63 B&NES Green Infrastructure Strategy - March 2013
- CD64 Guidelines for Landscape and Visual Impact Assessment - 2nd Edition 2013
- \* Document submitted at the Inquiry by the Council to add to Core Documents
- \*\* Document not supplied with Core Documents

### **Inquiry Documents:**

(Green Document Folder)

ID1	Mr Metcalf – Supplementary Proof of Evidence	Submitted by: Council
ID2	Committee Report – Horseworld – 13/02180/FUL	Council
ID3	Plan showing Horseworld and Appeal Site	Appellant
ID4	Photographs – Mr Williams	Local Resident
ID5	Parish Council Statement	Parish Council
ID6	Opening Submissions - Appellant	Appellant
ID7	Opening Submissions - Council	Council
ID8	Application notification details	Council
ID9	SHLAA Tables – Appendix 2 to CD39	Council
ID10	Council rebuttal evidence – Inquiry APP/F0114/A/13/2195351	Appellant
ID11	Plans for Horseworld Application	Council
ID12	Mrs Walsh - Statement	Local Resident
ID13	Appellant response to Mr Williams' statement	Appellant
ID14	Councillor Statement	Councillor
ID15	Appeal referred to supporting Unilateral Undertakings	Appellant
ID16	Mr Rosenthal - Statement	Local Resident
ID17	Draft Conditions	Council
ID18	Unilateral Undertaking negotiations and points of contention	Main Parties
ID19	Farm Business Tenancies	Appellant
ID20	Closing Submissions - Council	Council
ID21	Closing Submissions - Appellant	Appellant
ID22	Tesco Stores v Dundee City Council (2012) UKSC13	Appellant
ID23	Notes accompanying final Unilateral Undertakings *	Main Parties
ID24	Final Unilateral Undertakings – dated 8 November 2013 *	Appellant

\* submitted after the Inquiry

## Annex A

### List of agreed planning conditions

- 1) The development, (or any phase of the development), hereby permitted shall not be commenced until details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters"), (for the development or any phase of the development), have been submitted to and approved in writing by the local planning authority. The development (or phase of development) shall be carried out as approved.
- 2) The development hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the latest.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 4) The residential component of the development hereby approved shall comprise no more than 200 dwellings.
- 5) No development, or any phase of the development, shall be commenced until a hard and soft landscape scheme (for the development or phase of development) has been first submitted to and approved in writing by the Local Planning Authority, such a scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of all new walls, fences and other boundary treatment and finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.
- 6) All hard and/or soft landscape works, for each phase, shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of that phase of the development, or in accordance with the programme agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.
- 7) The proposed estate roads, footways, footpaths, verges, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, (other than that detail where specifically permitted by application reference 12/04597/OUT), shall be constructed and laid out in accordance with details to be submitted to and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

- 8) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly bound and compacted footpath and carriageway to at least base course level between the dwelling and existing highway.
- 9) The development hereby permitted (or any phase of that development for which reserved matters approval has been granted) shall not be occupied until the proposed means of access onto the existing highway and within the development (for each reserved matters phase) including visibility splays, has been laid out and constructed to the satisfaction of the Local Planning Authority and in accordance with plans that have been submitted to and approved in writing by the Local Planning Authority.
- 10) No development shall take place (or any phase of that development for which reserved matters approval has been granted) until a surface water drainage scheme for the site, or phase of the development, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall include design, layout, implementation, adoption and maintenance requirements. The scheme shall subsequently be implemented in accordance with the approved details before the development (or any phase of the development) is completed.
- 11) No development shall take place (or any phase of that development for which reserved matters approval has been granted) until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a controlled excavation of all significant deposits and features, which are to be disturbed by the proposed development, and measures to ensure their long term protection, and shall be carried out by a competent person(s) and completed in accordance with the approved written scheme of investigation. Thereafter, the building works shall incorporate any building techniques and measures necessary to mitigate the loss or destruction of any further archaeological remains.
- 12) No development shall take place (or any phase of that development for which reserved matters approval has been granted) until temporary fencing has been erected, for the development or that phase of it, in a manner to be agreed in writing with the local planning authority. The fencing shall be around approved areas of open space containing important archaeological features; and no works shall take place within the area inside that fencing without the consent of the local planning authority.
- 13) The development (or any phase of development for which reserved matters approval has been granted) shall not be brought into use or occupied until the applicant, or their agents or successors in title, has secured the implementation of a programme of post excavation analysis for the development (or phase of development) in accordance with a publication plan which has been submitted to and approved in writing by the Local Planning Authority. The programme of post-excavation analysis shall be carried out by a competent person(s) and completed in accordance with the approved publication plan.

- 14) No development (or any phase of development for which reserved matters approval has been granted) shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development or phase of development begins.
- 15) If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development, or phase of development, begins.
- 16) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 17) No development shall take place (or any phase of the development), until a Construction Management Plan (for the development or phase of development) has been submitted to and approved in writing by the Local Planning Authority. This shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management and control of dust from the site.
- 18) Details submitted in accordance with Condition 1, shall include samples of the materials to be used in the construction of the external surfaces (for the development or phase of development), including roofs, to be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out only in accordance with the details so approved.
- 19) No development shall take place until full details of a Wildlife Management and Enhancement Scheme have been submitted to and approved in writing by the local planning authority. These details shall include:
  - i) details of findings of pre-commencement checks for protected species such as badgers;
  - ii) details of exclusion zones and fencing for protection of retained habitats such as hedgerows;
  - iii) proposals for wildlife-friendly landscaping, seeding and planting, and detailed method statements for creation of new or protection of retained habitats including grasslands and native hedgerows; details of replacement native planting;
  - iv) management specifications for all new and retained wildlife habitats including native hedgerows and areas of wildflower grassland;
  - v) pre-commencement and post-development measures to prevent harm to protected species including badger, bats and reptiles; and
  - vi) details of additional features and measures to provide ecological enhancements.

All works within the scheme shall be carried out prior to the occupation of any part of the development in accordance with the approved details.



- 20) Prior to the commencement of construction of the development (or any phase of the development), details of a proposed lighting scheme shall be submitted to the LPA for approval in writing. The scheme shall:
- i) provide plans including lux level contour plans showing lamp locations and specifications and predicted lux levels across the site;
  - ii) define the areas that shall be completely unlit to provide sufficient dark corridors across the site for use by bats and other wildlife whilst also sufficiently retaining existing dark corridors so as not to inhibit bat activity;
  - iii) define the times for use of lighting, ensuring lighting is off when not required; and
  - iv) demonstrate how light spillage beyond the operational areas and into the sky will be minimised.
- Upon approval in writing, the details shall be implemented and thereafter the development shall be operated in accordance with the approved details
- 21) No site works or clearance of the development (or any phase of the development for which reserved matters approval has been granted) shall be commenced until protective fences which conform to British Standard 5837:2005 have been erected around any existing trees and other existing or proposed landscape areas in positions indicated on the approved plans. Until the development has been completed, these fences shall not be removed and the protected areas are to be kept clear of any building, plant, material, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for approved arboricultural or landscape works.
- 22) No development within any phase shall take place until a plan showing existing and proposed ground levels for the development (or any phase of the development) and details of slab levels for the dwellings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) Prior to the submission of reserved matters, a parameters plan shall be submitted to and approved in writing by the local planning authority. This shall identify:
- i) the extent of the residential housing;
  - ii) the on site public open space and allotment provision (to be provided in accordance with the Councils adopted Supplementary Planning Document –*Planning Obligations, 2009*);
  - iii) the area of land to be formally laid out within the site for the school playing field provisions; and
  - iv) the location of the site for the early years provision.
- 24) Before the first occupation of any dwelling, a Welcome Pack for new residents shall be issued to purchasers. The contents of such packs shall be submitted to and approved in writing by the local planning authority. The pack shall include information on current bus and train timetables, giving examples of fares and ticket options, cycle routes, a copy of the Travel Smarter publication (or any document that replaces it), car share and car club information, together with complimentary bus tickets for each household member to encourage use of public transport.

- 25) The development hereby permitted shall be carried out in accordance with the following approved plans: H0250\_02-05, H0402\_01D and H370/4.

**ANNEX B****Calculations of appellant and Council derived Housing Land Supply Figures**

Method	dRSS	dRSS Proposed changes	dRSS	dRSS Proposed changes	Council eCS
	Appellant's supply	Appellant's supply	Council's supply	Council's supply	Council's supply
Figures: Requirement – Supply -	6,695 3,238	9,132 3,238	6,695 3,998	9,132 3,998	5,567 3,998
Years Supply	2.4	1.77	3	2.2	3.6

<b>Annex C</b>	<b>Abbreviations used in this Report</b>
The Council	Bath and North East Somerset Council
The appellant	Robert Hitchin Ltd
SoS	Secretary of State
SoCG	Statement of Common Ground
UU	Unilateral Undertaking
POS	Public Open Space
PRoW	Public Rights of Way
BANES	Bath and North East Somerset
The Framework	National Planning Policy Framework
The Local Plan	The Bath and North East Somerset Local Plan, adopted 2007
VSC	Very Special Circumstances
DCLG	Department for Communities and Local Government
SHLAA	Strategic Housing Land Availability Assessment
HLS	Housing Land Supply
PoE	Proof of evidence
HMA	Housing Market Area
HMA	Strategic Housing Market Area
CIL	The Community Infrastructure Levy Regulations, 2010
WVAG	Whitchurch Village Action Group
TA	Transport Assessment
dRSS	Draft Regional Spatial Strategy for the South West
RP	Registered Providers
DAS	Design and Access Statement
PCPA	Planning and Compulsory Purchase Act 2004
HCA	Homes and Communities Agency
CIL	Community Infrastructure Levy
LVIA	Landscape and Visual Impact Assessment



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

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

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

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

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

#### **SECTION 2: AWARDS OF COSTS**

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

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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