



Department for  
Communities and  
Local Government

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Our Ref: APP/A1530/A/13/2195924  
Your Ref: cc/1499

16 April 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BUNTING AND SONS  
AT LAND NORTH OF LONDON ROAD AND WEST OF THE A314, LITTLE  
HORKESELEY, COLCHESTER CO6 4AJ**

1. I am directed by the Secretary of State for Communities and Local Government (“The Secretary of State”) to say that consideration has been given to the report of the Inspector, C J Ball DArch DCons RIBA IHBC, who held an inquiry on 1-4 October 2013 into your clients’ appeal against the decision of Colchester Borough Council (“The Council”) to refuse planning permission for the change of use and development of land to form ‘The Stour Valley Visitor Centre at Horkesey Park’ comprising a country park, art and craft studios (The Chantry), public gardens, a central building complex to provide an indoor display ring, ‘Suffolk Punch Breeding Centre’, entrance building, shop, café, ‘Field to Fork’, ‘Farming through the ages’, Active Learning, ‘Nature Watch’, and retained greenhouse as a demonstration nursery and gardens, an ‘Energy Centre’, main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision at land north of London Road and West of the A314, Little Horkesey, Colchester CO6 4AJ, in accordance with planning application reference 120965, dated 30 May 2012.

2. On 4 April 2013 the appeal was recovered for the Secretary of State’s determination in pursuance of section 79 and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because the appeal involves proposals giving rise to substantial regional or national controversy.

**Inspector’s recommendation**

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given in this letter the Secretary of State agrees with the Inspector’s recommendation. All references to paragraph numbers refer to the Inspector’s report (IR), a copy of which is enclosed.

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## **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Having had regard to the Inspector's remarks at IR17, the Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the appeal.

5. The Secretary of State has had regard to the Inspector's remarks at IR4 – 8. He has taken account of the fact that, at the inquiry, the Council's witnesses, their evidence, and that of third party objectors was essentially unchallenged by the appellants and that the appellants' evidence was not tested by cross examination (IR8). Like the Inspector, the Secretary of State has given the submitted evidence the weight due in these circumstances (IR8).

6. At the Inquiry three applications for costs were submitted (IR9). These applications are the subject of separate decision letters being issued today.

## **Matters Arising Following the Close of the Inquiry**

7. On 6 March 2014, Government published new Planning Practice Guidance and, on 14 March, the Secretary of State wrote to you inviting comments from you and other parties on that Guidance and on a recent Court of Appeal judgment. On 1 April, the Secretary of State circulated the representations he had received and invited any further comments from the parties on those representations. A list of the representations received is included at Annex A. In reaching his decision on this appeal, the Secretary of State has taken account of the material considerations raised in those letters.

8. The Secretary of State is also in receipt of other representations submitted following the close of the inquiry and too late to be submitted to the Inspector. These representations are also listed at Annex A. The Secretary of State has carefully considered these representations and he does not consider that they raise any new issues which would either affect his decision or require him to refer back to parties prior to determining the appeal.

9. Copies of the representations listed in Annex A are not enclosed with this letter but may be obtained on written request from either of the addresses at the foot of the first page of this letter.

## **Policy Considerations**

10. In deciding the 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.

11. He has also had regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special regard be paid to the desirability of preserving listed buildings and their settings and any features of special architectural or historic interest they possess.

12. In this case the development plan comprises the Colchester Local Plan, which consists of the Core Strategy 2008 (CS), the Site Allocations Development Plan Document 2010 and the Development Policies Development Plan Document 2010 (DP). Like the Inspector, he considers that the policies of particular relevance to this appeal are those listed at IR25.

13. The Secretary of State has taken account of the Inspector's remarks at IR26 and IR 263 – 265 about the Council's focussed review of CS and DP policies. He sees no reason to disagree with the Inspector's analysis in those paragraphs and he too is satisfied that the weight to be accorded to the relevant policies is unaffected (IR264). The Secretary of State agrees with the Inspector that, following the revocation of the East of England Regional Strategy, the tourism aspects of the proposal can be properly assessed against current development plan and national policy objectives (IR266).

14. Other material considerations to which the Secretary of State has had regard include the National Planning Policy Framework (the Framework), the Planning Practice Guidance (the Guidance) (which cancelled previous planning guidance documents set out in the Written Ministerial Statement of 6 March 2014, including Circular 11/95: *The Use of Conditions in Planning Permission*) and the Community Infrastructure Levy (CIL) Regulations 2012 as amended. He has also taken account of the documents to which the Inspector refers at IR28.

### **Main issues**

15. The Secretary of State agrees with the Inspector (IR262) that the main considerations in this appeal fall within three broad headings:

- i. whether the site can be considered to be in a sustainable location, with particular regard to accessibility;
- ii. the impact of the proposal on the character and appearance of its rural surroundings, and in particular on the purpose, landscape character and scenic beauty of the Dedham Vale AONB; and
- iii. whether there are any other material planning considerations which might support or undermine the proposal when assessed against the adopted planning framework for the area.

### **Whether the site can be considered to be in a sustainable location, with particular regard to accessibility**

16. Having given careful consideration to the Inspector's remarks at IR267 – 270, the Secretary of State agrees with him that the Council's calculation of annual visitor numbers and modes of transport is a more realistic assessment than that of the appellants and that, even on this basis, the scheme would still generate significant traffic movement (IR270). For the reasons set out by the Inspector at IR271 – 277, the Secretary of State shares his view that the Visitor Centre would be car dependent and poorly served by the more sustainable modes of walking, cycling and public transport (IR277). He also concurs with the Inspector that, because of its remote location and poor level of access by sustainable transport, the proposal would lead to an unsustainable pattern of development and that this would be in direct conflict with national and local planning policies which seek to promote sustainable transport choice and reduce emissions from transport (IR277). The Secretary of State sees no reason to disagree with the Inspector that the scheme would conflict with CS policy SD1 and that it would not comply with CS policy CE1 and that it would not meet the policy objectives of CS policy TA1 or DP policy DP17 (IR274). In conclusion on this issue, like the Inspector, the Secretary of State concludes that the site cannot be considered to be in a sustainable location (IR277).

### **The impact of the proposal on the character and appearance of its rural surroundings, and in particular on the purpose, landscape character and scenic beauty of the Dedham Vale Area of Outstanding Natural Beauty (AONB)**

17. The Secretary of State has given careful consideration to the Inspector's comments at IR278 – 281. In common with the Inspector, he does not consider that the proposal amounts to major development in the AONB and he too takes the view that paragraph 116 of the Framework cannot be invoked (IR281). However, the Secretary of State also agrees with the Inspector that the proposal would be major development in the countryside with the site both in and near the AONB and that it thus falls within the scope of DP policy DP22 which sets out the criteria for development in such locations (IR282).

18. Having had regard to the Inspector's remarks at IR283 – 289, the Secretary of State sees no reason to disagree with that analysis. Taken on balance, he too concludes that, while the replacement of the former tomato nursery buildings would substantially improve views into and from the AONB, the combined impact of the enclosure of the parking area, the change of use of the land, the addition of the Chinese garden and the loss of tranquillity, while not dramatic, would adversely affect the special landscape character and qualities of the AONB itself (IR290). He agrees that the proposed development would not conserve or enhance the natural beauty of the landscape and that it would undermine the aim of providing quiet enjoyment of the countryside (IR290). Like the Inspector (IR290), the Secretary of State concludes that the proposal would not meet the criteria of key DP policy DP22, it would conflict with the objectives of CS policy ENV1 and would be inconsistent with the objectives of the AONB Management Plan.

**Whether there are any other material planning considerations which might support of undermine the proposal when assessed against the adopted planning framework for the area**

19. The Secretary of State has taken account of the Inspector's remarks at IR291, including the significant number of new jobs which the Visitor Centre would create, both directly and indirectly, and the increased prosperity in the local area which it would generate. For the reasons set out in that paragraph, he concurs with the Inspector that the proposal would accord with the aims of DP policies DP9 and DP10 and that it would help to support a prosperous rural economy which is a key national objective set out in paragraph 28 of the Framework (IR291). Like the Inspector (IR291), he considers that the increase in tourism, job creation and economic growth would be clear benefits of the scheme.

20. Having given very careful consideration to the Inspector's reasoning at IR292 – 299, the Secretary of State shares his view that objections on viability and deliverability grounds cannot be sustained (IR299).

21. The Secretary of State has taken account of the Inspector's advice that the grade I listed Church of All Saints and its former rectory, the grade II listed Chantry, have distinct group value and that the 2 buildings and their settings are significant heritage assets (IR300). The Inspector explains that the influx of visitors might result in more people enjoying the historic environment (IR301) and the Secretary of State observes that, in responding to his letter of 14 March 2014, the appellants and a number of the scheme's supporters pointed to the importance of increasing the number of visitors to the Church. For the reasons given by the Inspector at IR301, the Secretary of State agrees with the Inspector that, overall, the proposed development would have a neutral effect on the setting of the church so that its significance as a heritage asset would be sustained and that, in this respect, the proposal would meet the objectives of DP policy DP14.

22. The Secretary of State has had regard to the Inspector's comments at IR302-303 including his view that the proposed Chinese garden, in the context of an early 19<sup>th</sup> century neo-classical house would be entirely out of place and that such an inappropriate addition would inevitably harm the significance of The Chantry and its setting (IR303). For the

reasons given by the Inspector in those paragraphs, the Secretary of State agrees with his conclusion that the provision of a Chinese garden in this location would not preserve The Chantry and its garden setting as valuable heritage assets and that this would be inconsistent with the aims of DP policy DP14 and the Framework (IR303).

### **Obligation and conditions**

23. The Secretary of State has considered the appellants' unilateral undertaking and the Inspector's comments on this at IR23 -24 and at IR304 – 312. For the reason given by the Inspector, he agrees that the provision of funding for the Stour Valley Environment Fund does not meet the tests set out in paragraph 204 of the Framework or comply with Regulation 122 of the CIL Regulations and he gives it no weight (IR305). However, like the Inspector (IR307) he is satisfied that the remaining 4 provisions do meet the relevant tests in the Framework and comply with CIL Regulation 122.

24. The Secretary of State agrees with the Inspector's analysis at IR308 – 312. Like the Inspector he concludes that the undertaking is unsatisfactory in a number of respects and that it merits little weight as a way of overcoming the harmful impacts it is intended to address (IR312). In view of his overall conclusion on the acceptability of the appeal scheme, as set out below, the Secretary of State has decided not to pursue this matter further.

25. The Secretary of State has considered the suggested conditions set out at Annex A to the IR and the Inspector's comments on conditions at IR313. He is satisfied that the suggested conditions are reasonable and necessary and meet the tests of paragraph 205 of the Framework and the Guidance. However, he does not consider that they would overcome his reasons for dismissing this appeal.

### **Overall balance and conclusion**

26. The Secretary of State agrees with the Inspector's concluding remarks (IR314 - 319) including with regard to the significant benefits he summarises at IR314. Like the Inspector, he concludes that the scheme is in an inherently unsustainable location in accessibility terms and that it would not be consistent with national and local policy objectives intended to conserve the landscape and scenic beauty of the AONB (IR315 - 316). He further concludes that the scheme would irrevocably harm the setting of the GII listed Chantry (IR317).

27. As set out above, the Secretary of State has identified concerns with regard to the scheme's compliance with CS policies SD1, CE1, TA1 and ENV1 and with DP policies DP14, DP17 and DP22. Like the Inspector (IR319) he considers that, while job creation and economic growth go some way towards offsetting the harm which the scheme would cause, the cumulative harm in this case is such that it would clearly outweigh the benefits of the proposal. He concludes that the scheme does not comply with the development plan overall and that it would not represent sustainable development.

### **Formal Decision**

28. Accordingly, for the reasons given above, the Secretary of State hereby dismisses your clients' appeal and refuses outline planning permission for 'The Stour Valley Visitor Centre at Horkesley Park' comprising a country park, art and craft studios ("The Chantry"); public gardens; a central building complex to provide an indoor display ring; 'Suffolk Punch Breeding Centre'; entrance building, shop, café, 'Field to Fork', 'Farming through the ages', 'Active Learning', 'Nature Watch', and retained greenhouse as a demonstration nursery and gardens, and 'Energy centre', main and overflow car parks, service yard, highway

improvements, ancillary works and infrastructure provision at land north of London Road and West of the A314, Little Horkesley, Colchester CO6 4AJ, in accordance with planning application reference 120965, dated 30 May 2012.

**Right to challenge the decision**

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to Colchester Borough Council and those who spoke at the enquiry. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

**Annex A**

## Representations Received in Response to CLG Letter of 14 March 2014

Sir Bob Russell MP	MP for Colchester
Tony Collins	Collins & Coward Ltd
Karen Syrett	Colchester Borough Council
Roger Drury	Dedham Vale Society
John Alexander	Nayland with Wissington Conservation Society
Michael Roberts	Dedham Vale Vineyard and Biowatt Group
Katherine Potts	Dedham Vale AONB and Stour Valley Project
Mary George	Nayland with Wissington Parish Council
W.L.Pavry	Stour Valley Action Group
Robert Leng	Essex Chambers of Commerce
Geoffrey Baker	
Martin Heslop	
Chas Bazeley	

## Representations Received in Response to the Representations Listed Above

Karen Syrett	Colchester Borough Council
W L Pavry	Stour Valley Action Group
John Alexander	Nayland and Wissington Conservation Society
Russell Whitehair	
Tony Collins	Collins & Coward Ltd NB. A representation dated 30/3/14 from Mr Brown of Visit East Anglia was also submitted by Mr Collins

## Other Post Inquiry Representations

W.L.Pavry	Stour Valley Action Group	3 December 2013
Bernard Jenkin MP		6 January 2014



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

by **C J Ball** DArch DCons RIBA IHBC

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

Date: 12 February 2014

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Town and Country Planning Act 1990

COLCHESTER BOROUGH COUNCIL

**APPEAL BY BUNTING AND SONS  
AGAINST A REFUSAL TO GRANT PLANNING PERMISSION**

'The Stour Valley Visitor Centre at Horkesley Park'

Land north of London Road and west of the A314, Little Horkesley, Colchester CO6 4AJ

Inquiry opened on 1 October 2013

File Ref: APP/A1530/A/13/2195924

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**File Ref: APP/A1530/A/13/2195924**

**Land north of London Road and west of the A314, Little Horkesley, Colchester CO6 4AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bunting and Sons against the decision of Colchester Borough Council.
- The application Ref 120965, dated 30 May 2012, was refused by notice dated 28 March 2013.
- The development proposed is described as the change of use and development of land to form 'The Stour Valley Visitor Centre at Horkesley Park' comprising a country park, art and craft studios (The Chantry), public gardens, a central building complex to provide an indoor display ring, 'Suffolk Punch breeding centre', entrance building, shop, café, 'Field to Fork', 'Farming through the ages', active learning, 'Nature Watch', and retained greenhouse as a 'demonstration nursery and gardens', an energy centre, main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision.

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

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**Procedural Matters**

1. The inquiry sat for 4 days on 1-4 October 2013. I made unaccompanied visits to the site location and the surrounding area on 30 September and again on 2 October, when I explored Dedham Vale. I made a further visit to the site and its surroundings on 3 October accompanied by the Council, the appellants and third party objectors (*IN5*), after which as requested I made an unaccompanied inspection of the route to Colchester Zoo (*IN6*).
2. An application for a more substantial scheme was made in 2009 and was refused planning permission. The current 2012 application was intended as a response to criticism of that scheme. The application was supported by a range of technical documents, including some updated from the 2009 application. The Council refused the application, against the advice of its officers, for reasons to do with the sustainability of the location, the impact on the Dedham Vale Area of Outstanding Natural Beauty (AONB) and the deliverability of the scheme (*CD/0241*). The case was recovered by the Secretary of State as the appeal involves proposals which give rise to substantial regional or national controversy.
3. I held a pre-inquiry meeting (PIM) on 27 June 2013 and a PIM Note was circulated to all parties on 3 July (*IN1*). A further PIM Note, including an updated inquiry programme, was circulated on 19 July (*IN2*).
4. On 25 September, just prior to the inquiry, the appellants issued a statement informing me that they were unable to have legal representation and witnesses at the inquiry and that their submitted evidence should be treated as written submissions (*AP10*). They confirmed that these written submissions, together with the planning application and associated documents, amounted to the full extent of the appellants' evidence. I agreed to consider the appellants' case on the basis of their written submissions. This effectively shortened the inquiry from the 12 days programmed to 4 days.

5. The appellants attended the inquiry and were represented by their agent, Mr Collins. He read a short opening statement to explain the position (*AP11*) and confirmed that the appellants would take no further part in the evidence sessions of the inquiry, save for correcting errors of fact. Mr Collins took part in the discussions on planning obligations and conditions and made closing submissions on behalf of the appellants (*AP13*). On 4 October, the last day of the inquiry, the appellants submitted a unilateral undertaking as a deed of planning obligation in place of the Agreement originally anticipated (*AP12*). The Council raised concerns about ownership of the land. Since all the evidence had been heard I adjourned the inquiry to 29 October, with the aim of closing in writing, to allow the appellant to submit proof of title (*IN7*). In the event, following discussions with the Council, the appellants submitted an amended undertaking by the deadline (*AP20*). The Council confirmed that, although it had reservations on other matters, satisfactory proof of ownership details had been provided (*CO17*).
6. During the adjournment the Council advised me that it had received notification from English Heritage that the Secretary of State for Culture, Media and Sport had decided to add The Chantry to the List of Buildings of Special Architectural or Historic Interest (*CO12*). The Chantry was listed at Grade II. I considered this to be a material change of circumstances that should be addressed by the inquiry. Accordingly I asked the Council to give notice as required under s67 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and I invited the parties to provide written submissions on this matter (*IN8*). I subsequently received this additional evidence from main and third parties within the notice period and I closed the inquiry in writing on 14 November 2013 (*IN9*).
7. During the adjournment the appellants were placed in administration. Mr Collins was appointed by the Administrator to provide the outstanding information (*AP18*).
8. The reporting of the parties' cases is based on summarised evidence given at the inquiry, both oral and written, and edited closing submissions. Although I asked questions of and sought clarification from the Council's witnesses, their evidence, and indeed that of third party objectors, was essentially unchallenged by the appellants. The appellants' evidence was not tested by cross examination. I have given the submitted evidence the weight due in these circumstances, exercising my own judgement where appropriate. References in brackets (*CO1*) are to the documents listed at the end of this report.

### **Costs applications**

9. At the Inquiry an application for costs was made by Bunting and Sons against Colchester Borough Council; by the Council against Bunting and Sons; and by the Stour Valley Action Group (SVAG) against Bunting and Sons. These applications are the subject of a separate Report.

### **The site and surroundings**

10. The 47.4 Ha site lies in the countryside, on the edge of the Stour Valley, some 6 kilometres north of the A12 and 8 km north of Colchester town centre. Most of the site is open farmland and woodland, but it includes a range of glasshouses and other buildings which make up a former commercial tomato nursery. The nursery site occupies some 4.2 Ha and the buildings have a total ground floor footprint of 20,722 m<sup>2</sup>. The nursery use ceased in 2000 and, although the glasshouses have

been used for other enterprises, they have long been redundant. The site also includes 3 dwellings – The Chantry, Chantry Lodge and Hillside.

11. With the notable exception of the former nursery, most of the site lies within the Dedham Vale AONB. There is a network of public footpaths which cross or adjoin the site. The Church of All Saints, listed grade I, lies immediately north of the former nursery, with the churchyard adjoining the site boundary. The Chantry, the former rectory adjacent, is listed grade II. While there are scattered dwellings near the site, the nearest settlements are the villages of Little Horkesley, 0.5 km to the west, Great Horkesley, 0.8 km to the south, and Nayland (within the adjoining Babergh District), 1.5 km to the north.
12. The site lies on the A134, linking Colchester to Sudbury and beyond. Improvements to the A12 London-Ipswich road include a short link road from junction 28 (on the Colchester bypass) to the A134, due for completion in 2014.

### **Planning history**

13. A number of planning permissions were granted between 1962 and 1974 for the establishment and subsequent enlargement of the horticultural nursery. An application for a Countryside and Heritage Centre was withdrawn in 2001, as was an application for a Heritage and Conservation Centre in 2006. A detailed application for a multi-facility Visitor Centre was refused in 2009 on grounds of location, scale, content, design and deliverability as well as the impact on the countryside. The current proposal is presented as a resubmission of that scheme on a reduced scale, with less content and a major redesign of the buildings.

### **The proposal**

14. The proposal is for the change of use and development of land to form The Stour Valley Visitor Centre at Horkesley Park. The Visitor Centre would consist of:
  - o a core development of single storey buildings including a main entrance building, a courtyard animal encounter, a Suffolk Punch Breeding Centre, indoor and outdoor display rings, a Nature Watch building, a demonstration Nursery and Gardens, incorporating part of an existing glasshouse; an Active Learning building, a Field to Fork Production building, a Farming Through The Ages building, a Renewable Energy Centre, a café and a visitor shop;
  - o an area of parkland and farmland to form a country park;
  - o conversion of The Chantry to an Art Gallery and its outbuildings to creative design workshops, restoration of its gardens and the creation of a new Chinese garden;
  - o main and overflow car parking, coach and cycle parking, landscaping, highway improvements and other ancillary works.
15. The core area of built development would provide 8,950 m<sup>2</sup> of gross internal floorspace. This development, together with the associated parking provision, would occupy the site of the redundant glasshouses and other nursery buildings and would be outside the AONB boundary.
16. Three particular elements of the scheme have been identified as key attractions: the Suffolk Punch horses, the Chantry Art Gallery and the Chinese garden.

## Environmental Impact Assessment

17. The appellants carried out an Environmental Impact Assessment and submitted a detailed Environmental Statement (ES), updated from the earlier 2009 application to the 2012 application. The ES is site specific, it covers all the necessary matters and it sets out local mitigation proposals where appropriate. Consultation responses have been addressed and there is a non-technical summary. I consider that the ES meets the terms of the current EIA Regulations and provides all the data and information required to adequately assess the impact of the proposal on the environment. I heard some further evidence relating to environmental matters at the inquiry and have taken all that environmental information into account.

## Agreed matters

18. Before the inquiry the Council and the appellants submitted a statement of common ground (*IN3*). This agrees the list of core documents, the planning history of the site and the site description. It describes the proposal and sets out the relevant policy background. The statement lists the matters not in dispute, which include, subject to conditions or planning obligation, highway capacity, flood risk and drainage, noise associated with PA systems, lighting, air quality, ground conditions, utilities and service infrastructure, provision of renewable energy, retail shop and café, job creation, ecological benefit, the design of the new buildings and arboricultural matters. It recognises that Colchester underperforms as a short-stay visitor location and that the proposal would deliver a new tourist attraction which would contribute to increasing the performance of the local tourism economy. The site is adjacent to the A134 with links to the A12, A14 and A120, and local highway improvements would be required. There is a public transport service to the site and a Travel Plan would be required. Re-use of the glasshouses for horticultural purposes is not viable. The proposal would not infringe on the public's right to use the designated public footpaths.
19. Although the statement notes that there would be an acceptable impact on listed buildings and conservation area, that essentially relates to the setting of the Church of All Saints and was agreed before The Chantry was listed. The Council's position was altered by the listing as set out in supplementary evidence (*CO14*).
20. The statement notes an intention to agree a set of appropriate conditions and planning obligations.
21. The statement also helpfully sets out the matters in dispute between the parties, summarised as sustainability in terms of location and accessibility for visitors; car parking provision and the location of the overflow car park; the impact of the development on the landscape and character of the AONB; compliance with the development plan and other material planning policy considerations including the National Planning Policy Framework and the Dedham Vale AONB and Stour Valley Project Management Plan 2010-2015; the viability of the proposals in terms of the sustained deliverability of employment and economic benefits; the Chinese garden in terms of its impact on the AONB, lack of details and deliverability; The Chantry Art Gallery as a critical component of deliverability; and the overall layout of the development.
22. The appellants submitted a confidential Business Plan with the application which, although assessed by officers and external consultants, was not seen by members.

At the PIM I made it clear that I could not take into account evidence that was not available to all the parties. The appellants confirmed that they were prepared to put their Business Plan in the public domain and would aim to agree a statement of common ground, isolating the matters in dispute. They submitted a Business Plan and Sensitivity Analysis July 2013 (*CD/0034*) but, in the event, could find little to agree with the Council. At the inquiry a statement of common ground and issues between the appellants and the Council in respect of the Business Plan was submitted (*IN4*). This sets out matters of fact and identifies key issues in dispute. To assist the inquiry it confirms the key parameters in the assessment of business viability, states the appellants' and the Council's positions on each of these areas and identifies where in the evidence these matters are considered.

### **Planning Obligation**

23. On the final day of the inquiry the appellants submitted a unilateral undertaking, executed as a deed (*AP12*). This is intended to commit the appellants, if planning permission is granted, to making contributions to the Stour Valley Environment Fund; to submitting a Local Employment Plan for Construction and Operation; to submitting the Chinese Garden proposals to expert review; to submitting a Travel Plan; and to providing a permissive footpath in perpetuity.
24. The Council expressed concerns about the lack of proof of title. Since entitlement is a prerequisite of a valid undertaking the inquiry was adjourned to allow such proof to be produced. During the adjournment the appellants and the Council held further discussions. Proof of title was established to the Council's satisfaction and a mortgagee identified (*CO17*). The appellants submitted an amended undertaking, together with a letter of consent from the mortgagee (*AP20, AP21*). The amendments relate primarily to the preamble, with further definitions of terms and alterations to clauses dealing with release from liability and termination of the deed. Apart from some drafting corrections, the intended obligations outlined above remain unchanged. The Council commented on the acceptability of the undertaking (*CO17*). I consider the terms of the amended undertaking later in the report.

### **Planning policy**

25. The local development plan is the Colchester Local Plan (LP), which consists of the Core Strategy 2008, the Site Allocation DPD 2010 and the Development Policy DPD 2010 (*CD/0242, CD/0244*). Of particular relevance to this appeal are Core Strategy (CS) policies SD1 (Sustainable Development Locations), CE1 (Centres and Employment Classification and Hierarchy), ENV1 (Environment), TA1 (Accessibility and Changing Travel Behaviour) and TA4 (Roads and Traffic); and Development Policy (DP) policies DP1 (Design and Amenity), DP9 (Employment Uses in the Countryside), DP10 (Tourism, Leisure and Culture), DP14 (Historic Environment Assets), DP17 (Accessibility and Access), DP19 (Parking Standards) and DP22 (Dedham Vale AONB).
26. The Council is carrying out a focussed review of CS and DP policies (*CD/0329*) to ensure that they are consistent with the National Planning Policy Framework (the Framework), which was published in 2012. I heard that, although the wording of a few of the relevant policies might alter slightly, their main thrust would not change (*CO4.1/5.3*).

27. The East of England Regional Strategy (RS) was part of the development plan when the application was considered. Since revocation was imminent, the Council made no significant reference to its policies in considering the application. The RS was revoked on 3 January 2013 and I have not taken its policies into account.
28. Other material planning considerations relating to travel and transport, the AONB and tourism are listed at ¶5.4 of the statement of common ground (*IN3*). These include the Local Transport Strategy 2011 (*CD/0268*), the Dedham Vale AONB and Stour Valley Project Management Plan 2010-2015 (*CD/0246*), the Tourism Strategy 2012 (*CD/0253*) and the Essex Economic Growth Strategy 2012 (*CD/0241*).

## **The case for Colchester Borough Council**

### ***Evidence base***

29. The purpose of the inquiry was to enable the parties to inform the Secretary of State's decision on appeal by bringing to it evidence for presentation and testing before an independent expert Inspector so that he can report and provide a recommendation informed by evidence that has been subject to the process of examination and testing at inquiry. The Council has provided full and clear expert evidence in support of its decision notice, and made itself available for challenge upon its evidence. The Inspector has also, importantly, seen the Council's witnesses give their evidence and asked his questions arising from it. Their evidence has not been challenged by cross-examination or by any written representations submitted on behalf of the appellants. This is of particular relevance to the Council's evidence on the Chantry Art Gallery and Chinese garden proposals. It is important that the significance of the appellants' decision not to challenge the Council's evidence by either of these means be fully taken into account. The Council requests that full weight be attached to its unchallenged evidence.
30. The appellants, by contrast, have not participated in the inquiry process. Instead, they relied on their evidence as written representations. They observed proceedings, participated in the 'without prejudice' conditions/obligations session and made a final submission, but they did not call witnesses to give their evidence before the inspector and be challenged on it. Very little weight must properly attach to the appellants' written representations compared with the evidence of the Council's witnesses.
31. Those representations carry, in fact, even less than little weight when their content, or lack of it, is appreciated. The appellants' decision to give perfunctory notice of their decision to rely on written representations should not invest in them a perception of substance and evidential value that they do not have in fact. The representations addressed to sustainability and the impact on the AONB (*AP7.1, AP4.1, AP5.1*) are, in substance, no more than position statements that report and rely on the content of the application and add nothing to it in terms of evidence prepared for the inquiry.
32. The representations on viability (*AP9.1*) do not compare with the Council's evidence in terms of providing a structured explanation of the appellants' position on viability supported by a systematic and objective evidence base. The appellants' evidence does not suggest any expertise or experience in the promotion and operation of an Art gallery, or authenticity and development of a Chinese garden (*AP8.1*), in contrast with the Council's expert evidence (*CO3.2*). The appellants' representations

on 'other material considerations' (*AP1.1 & AP2.1*) provide very little content to support their case and does not clearly tackle key issues bearing on the basis upon which the planning balance is to be struck.

33. The submission that the shortening of the inquiry is not a material consideration (*TP9*) misses the point. The inquiry was shortened by a decision not to provide substantial evidence orally in support of the appeal. That decision undermines the case for granting planning permission in its entirety in the face of substantial oral evidence that permission should clearly not be granted. The effect of that decision is pervasive and profound, not isolated and inconsequential. All matters key to the determination of the appeal should be resolved in favour of the Council because the Appellants' representations carry very little weight in principle, and in fact, and because the Council's oral evidence is itself compelling.

### ***The local development plan***

34. The starting point for determination of this appeal is the local development plan. In this case that is the Colchester Local Plan, which consists of the Core Strategy 2008 (*CD/0242*), the Site Allocations DPD 2010 (*CD/0243*) and the Development Policies DPD 2010 (*CD/0244*). Policy Maps were also adopted by the Council in 2010 which identify most of the site as falling within the AONB; the remainder is unallocated (*CD/0245*). The East of England Plan was revoked on 3 January 2013. The Government announced its intention to revoke the Plan during the examination of the Colchester Development Policies and Site Allocations DPDs in May 2010. Minor changes were proposed to the documents as appropriate and the examination and, most importantly, the Inspector's decision were concluded and reached in the knowledge of revocation. There are, therefore, no policy gaps as a result of the revocation.
35. The appellants argue that the development plan is absent, silent and that relevant policies are out-of-date so that the proposal should be granted permission in accordance with ¶14 of the Framework. The Local Plan for Colchester is plainly not absent. When considering if the development plan is silent it is relevant to consider if there is a lack of policies against which to assess the proposal. There are numerous policies of relevance to the appeal, as the decision notice reflects (*CD/0241*). The appellants have relied upon the proposition that the Colchester LP has no policies to consider a regional tourism facility. Whilst the LP does not include a specific policy entitled 'regional tourism facility' it does not follow that there are no policies against which such a development can be assessed.
36. It cannot be argued that Colchester's Local Plan policies are out-of-date simply because they were adopted in 2008 and 2010, before publication of the Framework. The Council is currently undertaking a Focused Review of policies in the Core Strategy and Development Policies DPD (*CO4.1 Appendix 3*). This reflects the fact that the vast majority of the Local Plan is relevant and up to date. Where there is a limited inconsistency with the Framework, the Council is seeking to address it. Nothing in the review materially changes or affects the reasons for refusal (*CO4.1¶5.3.1*). Although there are 4 policies (SD1, CE1, DP9 and ENV1) relevant to the appeal and subject to minor change, they are not 'out of date'. The overall intent of all 4 policies, i.e. encouraging sustainable development in appropriate locations, remains the same and their application to the appeal proposal is not



affected. Numerous appeal decisions received since the publication of the Framework reinforce the Council's position (*CO4.1 ¶15.3.5–8 & Appendix 4*).

37. The development plan should therefore not be considered absent, silent or relevant policies to be out-of-date and the appeal should be determined against the development plan unless other material considerations indicate otherwise. The material considerations include the Framework and therefore both Colchester's locally adopted policies (the development plan) and any relevant paragraphs of the Framework (a material consideration) should be taken into account. The 2<sup>nd</sup> bullet point at ¶14 of the Framework is not engaged. Even if it were, footnote 9 to ¶14 explains that planning permission should not be granted where specific Framework policies indicate development should be restricted. In this case ¶116 of the Framework makes it clear that permission should not be granted for major developments in the AONB except in exceptional circumstances and where it can be demonstrated that they are in the public interest.

### ***Major development in the AONB***

38. The key point is that, rather than there being a straightforward presumption in favour of sustainable development, the starting point for major development in the AONB is that permission should be refused unless it is demonstrated to be in the public interest.
39. There is no sensible room for dispute that the proposal is for 'major development'. It has been promoted throughout the application process as a scheme of 'regional significance.' It is EIA development, it required the submission of a Travel Assessment and a Travel Plan and it clearly has the potential to have a serious adverse impact on the natural beauty of the AONB. It therefore falls within the definition of 'major development' (*CO4.2 Appendix 5*). In fact the scale of the development in terms of site area, visitor numbers, the amount of car parking and traffic generation all suggest that the scheme should be regarded as major development without relying upon a detailed assessment of their effects at this location.
40. The development site lies partly within and partly outside the AONB. The proposal should properly be viewed as a whole. Framework ¶116 applies to proposals in AONBs without a further requirement that they should be wholly so. There can be no planning merit in an interpretation of ¶116 that excludes its operation in respect of major developments where significant elements are within the AONB but other such elements are not. It makes no practical or planning sense that ¶116 should not apply in those circumstances, and this is reinforced by the fact that Framework ¶115 attaches 'great weight' to conserving landscape and scenic beauty in AONBs, i.e. without necessary reference to whether the development concerned is in or outside an AONB.
41. The appellants argue that there is no new building, i.e. operational development, within the AONB and that therefore the proposal does not amount to major development in the AONB. That is not correct, bearing in mind the requirement to erect buildings/structures in the Chinese garden and extensive fencing. Moreover, "development" includes a change of use (TCPA 1990 s55) which may also constitute "development" in the terms of Framework ¶116. It is not in any event appropriate to disaggregate the application to consider separately those parts of the

development within and outside the AONB for the purposes, in particular, of applying ¶116. It is also inconsistent to consider the proposal as a whole for the purposes of sequential assessment and other planning purposes and not also for this purpose.

42. Once it is accepted that the proposal constitutes major development in the AONB, there is a requirement to demonstrate that the proposal is in the public interest, otherwise it should be refused. That is the key to considering the planning balance. The appellants have not set out in their written representations to demonstrate that the proposal is in the public interest. They simply rely on the conclusions in the officer's report without reference to the reasoning behind it or any reasoning of their own (AP2¶5.4).

### ***Planning history and greenfield land***

43. The planning history confirms that non-agricultural uses have only been granted on a short temporary basis, restricted to two buildings, and that these have long-since expired (CO4.1.4). The redundant tomato glasshouses were in horticultural use and this falls within 'agriculture' as defined in TCPA 1990 s336. The Council has accordingly treated the site as greenfield land. This accords with the Framework glossary which excludes agricultural buildings from the definition of previously-developed land. The grant of planning permission and its implementation conjure the prospect that what is currently greenfield land could eventually be categorised as previously-developed. This lies behind the Council's concerns that planning permission should not be granted unless it has been demonstrated that the proposal would be viable and that the claimed benefits would all be realised. The core development site, including the glasshouses and currently undeveloped land, amounts to 4.2 Ha. This could accommodate over 100 houses or a community stadium and car park like that built in North Colchester. Neither of these types of development would normally be permitted on an unallocated greenfield site in the countryside. These factors further underline the need for confidence that the current proposal would be viable.

### ***Deliverability – Scenario A or B***

44. The Framework in ¶173 recognises the importance of viability and deliverability and states: '*pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking.*' This is an important material consideration because if the scheme were to proceed and quickly become unviable this may result in additional disused buildings, proposals to change the nature of the attraction, proposals for uses (eg meeting space or conferencing) and/or proposals for development in a sensitive rural location on previously-developed land (CD41.7.2.1-6).
45. The appellants contend that the proposal would attract 316,250 visitors per annum (vpa). This is Scenario A. The Council's clear conclusion is that the proposal would be likely to attract less than 150,000 vpa - Scenario B. This is substantiated by reference to vpa experienced at comparator attractions and penetration rates achieved by comparators (CO3.1). Scenario B is also supported by reference to the Visit Colchester Information Centre (CO4.1/6.4.14) and ties in with the conclusions of the Council's specialist consultant's report (CD/0306).

46. The appellants support Scenario A by reference to penetration rates that are out of line with experience elsewhere and comparisons, with Flatford Mill and Colchester Zoo, that are unreliable because one is a free attraction (car park charges only) and the other has greater attractions (elephants, giraffes etc). Second, Scenario A features a price point that is extraordinarily high compared with an average including Colchester Zoo (itself highly priced compared with the other attractions referred to). Third, the yield adopted in the Business Plan (whose source is unknown and not supported by any evidence on behalf of the appellants) is also out-of-line with what the industry would expect to achieve from an attraction as proposed. And fourthly, the appellants' sensitivity assessments are not realistic because it is illogical to assume that the same attraction attracting less than 150,000 vpa would charge the same prices and achieve the same yield as if it were attracting 316,250 vpa; making adjustments in respect of one parameter or variable alone is illogical and not realistic.
47. The Council's case is not dependent on viability findings but the unchallenged and overwhelming evidence shows that the proposal would be unlikely to attract more than 150,000 vpa even assuming, importantly, delivery of the Art Gallery & Chinese garden as successful attractions. This conclusion undermines the weight that can properly be attached to the benefits relied upon.

### ***Deliverability – The Art Gallery and the Chinese garden***

#### *The Art Gallery*

48. The provision of an Art Gallery showing significant artwork is one of the corner-stones of the project. Concerns about the deliverability of this are reflected in the decision notice. The Council's appraisal of the likelihood that this element of the scheme would be delivered is supported by reference to the Museum Service and experts from the art world (*CO4.1/6.4.17-31*).
49. The Council also sought advice from a specialist Art Historian and Curator on the suitability of the Chantry as a gallery and likely conversion work/costs; whether The Chantry could secure the necessary loan/works of art for display; and whether The Chantry would create a significant attraction for visitors. Her report confirms the unlikelihood, without a permanent collection, that the exhibitions would attract visitors in large numbers and refers to the duplication of work already undertaken by museums and galleries in the area (*CO3.4 Appendix 2*). In response to the appellants' evidence (*AP8.1, AP8.2*), the specialist confirmed her earlier conclusions (*CO3.4 Appendix 4*). The appellants' representations provide nothing of substance to suggest that the conclusions of the only expert evidence provided by either of the principal parties is not well-founded. The appellants cannot demonstrate an ability to provide the substantial visitor attraction upon which they rely.

#### *The Chinese garden*

50. The Chinese garden element of the proposal has grown in significance since the application was submitted and has come to form another corner-stone of the project. While a late plan shows its location (*CD/0336*), there is no defined size beyond references to an area of 5,000-6,000 m<sup>2</sup>. The actual size of the garden thus remains undefined. The application contains no detailed proposals at all for this important feature on its ill-defined site.

51. Concerns about the appellants' ability to deliver the garden were also expressed in the reason for refusal. The Council instructed a leading western expert on Chinese gardens to advise on the proposal. The conclusions to her first report (*CO3.4 Appendix 1*) challenge the integrity of the proposal and raise serious issues about its delivery. In commenting on the appellants' evidence she confirmed that her previous findings still stood, though the cost estimate had become more realistic (*CO3.2 Appendix 3*). Her conclusions are not surprising in light of the absence of real substance in the appellants' representations. The appellants cannot demonstrate an ability to provide this important visitor attraction.

***Whether the site can be considered to be in a sustainable location, with particular regard to accessibility***

*Site location and existing transport situation*

52. The site is remote from the urban area of Colchester, 8 km north of the town centre, reflecting its countryside location. It lies on the A134, the main road from Colchester to Sudbury and beyond. The A12 (Colchester bypass) lies between the site and the town. A new link road between A12 junction 28 and the A134 is due for completion by August 2014. The current access to the site is from London Road on its southern boundary (*CO1.1/3.2-3.3, CO1.2 Plan 2*).

53. The surrounding highway network is characterised by a lack of footway provision. Where provided, it is substandard and the highway network is generally unlit. London Road running south turns west into Fishponds Hill, which is a narrow country lane without footway provision. Fishponds Hill is identified in the LP as a Protected Lane (country lanes with considerable historic and landscape value that contribute to rural character). There are no dedicated facilities for cyclists in the vicinity of the site. Service 84 is the only bus service passing the site generally providing an hourly service between Colchester and Sudbury, daytime Monday to Saturday. There are no evening or Sunday services. The site is poorly served by the more sustainable modes of transport of walking, cycling and public transport, and cannot be considered accessible by these modes (*CO1.1/3.3-3.5, CO1.2 Plans 3-4 & Appendix 4*).

*Proposed development and transport measures*

54. Key transport related elements to the proposed development are:
- New building floorspace of 8,950 m<sup>2</sup>;
  - Total building floorspace of 11,110 m<sup>2</sup>;
  - 220 formally marked out car parking spaces;
  - An overspill area for 400 to 500 cars, thus total car parking provision for up to 720 cars;
  - 28 coach parking spaces;
  - 18 spaces for motorcycles;
  - 60 cycle spaces;
  - New main access from London Road;
  - Secondary access for coach parking and cycle stands;
  - Opening hours 1000 to 1800 in winter, 1000 to 1900 spring/autumn, 1000 to 2130 in summer (*CO1.1/4.2*)

55. The following highway and transport measures are being put forward by the appellants:
- Footway improvements on the south side of London Road, on the A134 between the site and relocated bus stops and on the east side of the A134 Nayland Road/Boxted Church Road/Tog Lane junction, and at the A134 Nayland Road/Boxted Church Road/Tog Lane junction;
  - a dedicated staff shuttle;
  - improvements to bus services between Colchester town centre and the site;
  - a hopper bus service between the development and the 'honeypots', and a hopper service link to the Dedham Vale Hopper service.
56. The S.106 Undertaking (AP20) indicates that the improvements to public transport would be provided on a demand responsive basis, subject to review, meaning the proposed improvements cannot be guaranteed (CO1.1/4.3).

*Accessibility by sustainable means of transport*

57. The Transport Assessment shows a development catchment area of 2 hours drive time. The Tourism Evaluation Report estimates that 60% of visitors would travel by car for less than 1 hour while 40% would travel for between 1 and 2 hours (CO1.1/5.1). Half hour drive time isochrones show that the car catchment area is geographically dispersed (CO1.2/Plan5).
58. It is generally accepted that a walking distance of 500m is desirable, 1 km is acceptable and 2 km is a preferred maximum, while 5 km is an acceptable norm for cycling. There is a very limited population within a 2 km catchment (CO1.2/Plan 6) so there would be negligible access to the development on foot. Similarly, there is a very limited population with a 5 km catchment area (CO1.1/Plan7). This means that there would be a minimal number of cyclists able to access the development within the 5 km catchment. Thus, despite some localised improvements, the development would not be truly accessible by walking or cycling. There would be an extremely small proportion of visitors able to access the development by these modes of travel (CO1.1/5.2).
59. The site is not well served by public transport, with just the No.84 hourly service running past the site Monday-Saturday daytime with no evening or Sunday service. The route serves a very limited area in the context of the overall 2 hour catchment area (CO1.1/Plan 4). This service provides access to Colchester station and town centre, linking to other bus services, but the need to wait at interchanges, coupled with overall journey times, would provide a strong disincentive to using public transport. While the proposed increased 15 minute frequency of service would improve waiting times, bus catchment would still be limited. On the peak day, Sunday, and on summer evenings, there would be a much reduced bus service. The remote location of the site and the dispersed nature of its catchment area involving longer journeys make it difficult to serve by realistic alternatives to the car. The development cannot be considered to be readily accessible by public transport (CO1.1/5.2-5.3).

*Transport characteristics of the development*

60. The appellants consider that the development would attract 316,250 vpa (Scenario A) while the Council calculates that there would be an upper level of 150,000 vpa (Scenario B). A breakdown of forecast monthly figures shows that, in Scenario A,

there would be a peak of 50,600 visitors in August, with 15,813 in the winter months. The corresponding figures in Scenario B would be 24,000 and 7,500 (CO1.1/6.3). These estimated visitor numbers form the basis of predicting travel mode share (CD/0040, CO1.2 Appendix 8). The appellants consider that 82% of visitors would arrive by car and 14% by coach. The remaining 4% would arrive by bus, cycle or on foot. These percentages cannot be substantiated. The car share is based on inappropriate and historic data, and there is no data to support the high coach share (CO1.1/6.4.5). Based on more up-to-date information from a range of similar developments, the Council considers that a more accurate mode share would be 90% car, 6% coach, 2% public transport, 2% walk/cycle (CO1.1/6.4-6.5).

61. The development would be heavily dependent on access by car. With the improved bus service in operation, equating to 32 bus trips over an 8 hour day, in Scenario A the level of predicted bus person trips on average would result in 1 person for every other bus Monday-Saturday (0.52 persons per bus) and less than 1 person for each bus on Sunday (0.75 persons per bus). That is clearly insufficient demand to justify the running of the increased frequency of service. In the more realistic Scenario B, the demand would be more than halved. Running the service on a demand responsive basis would mean that it would not be continued. The level of anticipated additional trips by bus would not be sufficient for the additional services being promoted by the appellant to be viable or sustainable (CO1.1/6.6). The bus services would not be provided for the lifetime of the development, in conflict with what the highway authority considers necessary to make the development acceptable in planning terms (CO1.1/10).
62. The remote location of the development with limited public transport accessibility, minimal walk and cycle accessibility, and no restrictions on staff parking will mean a high mode share by car for staff travel to the development. The wide geographic area and level of demand does not lend itself to the proposed staff shuttle bus being viable (CO1.1/6.8).

#### *Traffic impacts on the AONB*

63. The appellants' Traffic Assessment assumes that virtually all journeys to and from the development would take place on the signposted main roads A12/134. However it is likely that visitors would exhibit a degree of route choice, particularly those with local knowledge, and it is inevitable that a proportion of those on a day trip would make linked trips to other attractions in Dedham Vale and the Stour Valley. While the highway network may be able to absorb this and continue to operate satisfactorily, the increase in traffic activity within the AONB would have a detrimental impact on the tranquillity and natural beauty of the landscape (CO1.1/6.7).

#### *Travel Plan*

64. A Travel Plan's relevance to planning is the ability to which sustainable transport objectives can be met; unacceptable development should never be permitted because of the existence of a Travel Plan. In order to ensure that Travel Plans operate effectively, it is important to choose locations for development that are capable of being accessed by a range of modes of transport. The site is in an inherently unsustainable location. The fact that the applicants have submitted a Travel Plan for their development does not mean that the development would be

sustainable in transport terms. A review of the proposed Travel Plan and the measures set out in the s106 obligation shows clearly that the Travel Plan would have minimal, if any, impact in terms of reducing overall private car use, or achieving a reduction in car mode share. The various measures being proposed by the appellant would simply accommodate the various modes of transport, but would not reduce the dependence on car travel for access to the development. The Travel Plan sets no targets and provides for no sanctions, so there is little incentive for the desired outcomes to be achieved. The Travel plan would therefore fail in terms of its stated objectives (*CO1.1/7, CO1.2 Appendix 9*).

#### *Car parking provision*

65. The appellants have made no assessment of car parking demands to justify the car parking proposals for the current application, which provides up to 720 unrestricted spaces. In the absence of specific demand data it is reasonable to consider the Essex County Council Parking Standards for leisure development, which would yield a maximum provision of 556 spaces. Thus the 720 space provision considerably exceeds the maximum standard, indicating a design for a highly car dependent development. There is no restraint on parking consistent with the aspirations of the Travel plan. The level of unfettered provision is contrary to sustainable transport objectives (*CO1.1/8, CO1.2 Appendix 9, CO1.3*).

#### *Transport policy considerations*

66. The unsustainable location of Horkesley Park development runs contrary to the core objective of the Framework to secure sustainable development. It cannot be made more accessible. Because of its location, lack of accessibility and dependence on car travel, the development would not meet the economic, social and environmental objectives of the Framework, so would be contrary to the specific policies seeking to reduce the environmental impacts of transport. The proposals are also in conflict with CS policies SD1 and CE1 promoting growth in sustainable locations and with specific transport policies TA1, TA2, TA3, TA4, and TA5 the objectives of which are to encourage sustainable travel and ensure developments are accessible by sustainable transport modes. The proposals are also in conflict with the transport aspect of DP policies DP9 and DP10, and with specific transport development policies DP17 and DP19 (*CO1.1/9*).

#### *Conclusion on sustainability issue*

67. The Horkesley Park site is poorly served by the more sustainable modes of transport of walking, cycling, and public transport; it is not accessible by these modes and its remote location makes improvements in sustainable transport accessibility difficult to achieve. Improvements to sustainable transport provision proposed as part of the development would do little to enhance the overall accessibility of the development by walking, cycling and public transport. Improvements to bus services are proposed to be run on a demand responsive basis meaning no guarantee that the levels of frequency put forward will be achieved. Predictions of increases in demand from the development proposal show there is little chance of these frequencies being delivered. The proposed development would be characterised by a high car mode share and the commitments in the Travel Plan would do little to change this. The development would provide a high number of unrestricted car parking provision necessitated by

the heavily car orientated nature of the proposals. Because of its remote location and poor level of access by sustainable transport, the proposal would lead to an unsustainable pattern of development contrary to national and local spatial development policies. This would be in direct conflict with national and local planning policies which seek to promote sustainable transport choices and reduce emissions from transport. Whilst traffic impact is not a reason for refusal, the proposal would undoubtedly have an impact on the rural roads within the AONB.

***The impact of the proposal on the character and appearance of its rural surroundings, and in particular on the purpose, landscape character and scenic beauty of the Dedham Vale AONB***

*The appeal site and its surroundings*

68. The local countryside includes the Dedham Vale AONB which is nationally designated for the natural beauty of its landscape. It is considered to be one of the finest landscapes in England (CD/0246). It is generally characterised by a broad, gently undulating lowland plateau of boulder clay, into which the River Stour has cut a valley that runs eastward to the coast. Sloping valley sides rise up from the floor of the Stour valley to meet the locally elevated plateau above (CO2.3 Appendix 3A).
69. These three basic landscape types – valley floor, valley side slopes and farmland plateau - underpin local landscape character (CD/0246, CD/0326). The valley side slopes typically have a variable character with woodland and fields of pasture and arable farmland, with arable land prevalent on upper valley side slopes. The plateau landscape type is generally characterised by extensive open arable farmland with woodland; pasture is generally absent. Its relative elevation and openness provides opportunities in places for attractive panoramic or framed views across the AONB countryside (CO2.2 Appendix 2F, CO2.1 Appendices A1-A6). The tranquillity of the Dedham Vale AONB and Stour Valley area is a key part of its landscape quality (CD/0246).
70. The appeal site has a transitional location and lies mainly on the northern edge of the plateau landscape type but also on the upper slopes of the valley sides. It is in open countryside to the north of Great Horkesley village. The appeal Site includes a former tomato-growing nursery and several detached private houses including The Chantry, a late Georgian country house, now grade ii listed. These properties and a further house 'Broad Acres' are also located on the northern edge of the plateau, grouped around the medieval church of All Saints (Grade I listed). Together they form an isolated cluster of properties in the countryside that have a relatively quiet tranquil character with little movement or activity evident, despite the A134 road nearby. This character is enjoyed by walkers on the historic local network of public footpaths that converge on the Church of All Saints, and by visitors to the Church itself (CO2.1/3.3, CO2.2 Appendix 2H, CO2.3 Appendix 3B).
71. Apart from the private houses with their domestic gardens and grounds, and the Great Horkesley village cricket ground (not played on recently) that also form part of the site, the appeal site is in agricultural/horticultural use. The redundant former tomato-growing nursery includes extensive commercial glasshouses and a range of agri-industrial buildings. The appeal site includes woodland and extensive open arable farmland plus two individual fields of grassland located close to The Chantry.



72. The redundant nursery, two adjacent private houses (Hillside and Chantry Lodge), the cricket ground and two arable fields located to the south-west and north-west of the nursery site all lie outside the designated boundary of the Dedham Vale AONB. All of the remaining farmland and The Chantry property, approximately 75% of the overall appeal site, lies within the designated boundary of the Dedham Vale AONB. Public Footpaths 4 and 5 are also within the AONB, together with part of Footpath 3 (CO2.1/3.4, CO2.7).

*The proposed Stour Valley Visitor Centre*

73. The appeal proposals are presented as a single application for full planning permission. They represent 'major development' (CO2.1/4.1) and involve:
- o Change of use of land in agricultural use to recreational use as a country park, involving the conversion of arable farmland to pasture and extensive woodland and tree planting (CO2.1/4.2);
  - o Change of use of The Chantry from private dwelling to use as an art gallery, tea room and workshops with restored Georgian-style gardens and the creation of an 'authentic' Chinese garden (CO4.1/4.4);
  - o Change of use and redevelopment of the redundant nursery site and adjacent undeveloped land to create 'core facilities' for visitors including 12 permanent buildings, extensive surrounding terraces, hardstandings and gardens, a new access road and permanent parking for 220 vehicles, and overflow parking for a further 400-500 vehicles (CO2.1/4.3); and
  - o Change of use of land in agricultural use to facilitate highway improvements including road widening and the creation of new footpaths on land adjacent to London Road and the A134 Nayland Road (CO2.1/4.5).
74. The various parts of the Appeal proposals are inter-related and inter-dependent. Together they form a single development to be known as 'The Stour Valley Visitor Centre at Horkesley Park' that was conceived and would be developed and managed as an integrated whole, and should be considered in the round, not as 'deconstructed' parts. As the appeal site lies predominantly within the AONB, the appeal proposals should be regarded as major development in the Dedham Vale AONB.

*Review of the submitted Landscape and Visual Appraisal*

75. Implementation of the appeal proposals would lead to changes in the existing character of the local landscape and the visual amenity it currently provides. The appellants' Landscape and Visual Appraisal (LVA) identifies, describes and assesses the impacts of these changes during construction, in Year 1 of the Visitor Centre's operation and in Year 15 when proposed planting should be well established (CD/0075, NCD/0072).
76. The findings of the LVA are that the appeal proposals would result in moderate to minor beneficial effects on vegetation resources and minor beneficial effects on existing land use in Year 1 of operation, becoming moderate beneficial by Year 15. In terms of effects on existing landscape character, the overall judgement was minor beneficial effects in Year 1 of operation becoming moderate beneficial by Year 15. Effects on views were also assessed. The LVA concluded that for key visual

receptors and from representative viewpoints in the local (ZVI) area, the effects of change in existing views in Year 1 of the Visitor Centre's operation would be adverse and generally minor or moderate to minor in significance, generally becoming beneficial (minor significance) by Year 15 once new woodland and tree planting becomes established and helps to interrupt views of the development.

77. The Council does not agree with these findings. The LVA photographs and photomontages do not accurately represent the changes to the landscape and understate the effects of development so they do not provide reliable visual information (CO2.1/5.2). The appellants' AONB Assessment report lacks balance and is erroneous in parts (CO2.1/5.3 & 5.4).
78. The existing glasshouses and other structures on the redundant nursery site form part of the baseline against which the effects of the Visitor Centre proposal are to be assessed. The nursery site's existing buildings and structures of the former nursery are mostly glasshouses, light and impermanent in character and appearance. Together with the cluster of agri-industrial buildings on the nursery site they are clearly associated with the agricultural/horticultural use of the land and are of a type to be expected in open countryside. In contrast the proposed Visitor Centre core facility would be a permanent development of modern commercial buildings with a distinctively urban character, of a type not normally located in open countryside
79. In assessing the landscape and visual impacts of the Visitor Centre proposal, the LVA treats the existing buildings and structures on the nursery site and the proposed Visitor Centre buildings as though they are comparable forms of development when this is not the case. The LVA also fails to properly assess effects on character arising from operational changes in land use from the relatively quiet nursery that generally lacks movement and activity to a busy Visitor Centre with hundreds of people (and their vehicles) moving around the site. This has led to underestimation of the impacts of the proposal (CO2.1/5.2).

*Appraisal of the effects of the Stour Valley Visitor Centre on the Dedham Vale AONB and its rural surroundings*

80. The proposals would result in a fundamental and detrimental change in the landscape character of the appeal site. Within the main Country Park area there would be wholesale conversion of a substantial swathe of open arable working farmland, an essential component of landscape character, to permanent pasture enclosed by hedges. There would also be extensive new woodland and tree planting that would supplement existing woodland and tree cover. Although this planting is likely to be effective in the long term in screening or interrupting views of the Visitor Centre, it would not be appropriate to the established character of the plateau landscape type in particular and would result in loss of openness and of open views across the AONB landscape from footpaths 4 and 5 in particular that are important to character. Use of the land would change from farmland to recreational uses that will involve the increased presence of people and activity in the Country Park landscape, particularly during special and park-wide events (CO2.1/6.2.2-8).
81. The light and impermanent glasshouses and agri-industrial buildings would be removed and in their place would be constructed 11 permanent buildings, plus 2 refurbished greenhouses, that together with extensive terracing and forecourt

parking for 220 vehicles, and overflow parking, would form the core facilities of the Visitor Centre. The developed area occupied by the Visitor Centre core facilities would be considerably larger than is present in the existing nursery, having an urbanising effect on currently undeveloped land. In contrast to the relative quiet of the nursery site, the visitor centre would be a busy hub of activity with many hundreds of visitors likely to be present, and a distinctively urban character (CO2.1/6.2.9-14). Additional urbanising effects on the countryside would result from the highway improvements necessary for the operation of the Visitor Centre, including road widening, construction of new footpaths and the visual clutter of new road signs (CO2.1/6.2.22-15). Further changes in character are also likely to arise at The Chantry, where currently unspecified proposals for an 'authentic' Chinese garden are likely to be out of keeping with this fine Georgian property and with the wider AONB landscape (CO2.1/6.2.15-21).

82. Visitors would not be confined to the 'core facilities' but would be free to wander the Visitor Centre site, including visiting the wider Country Park and The Chantry site. Their presence in large numbers, and the presence and visibility of the visitor centre buildings, would greatly detract from the existing quiet and tranquil character of the landscape that is experienced locally, in particular when walking on public footpaths 3, 4 and 5 and when visiting the Church of All Saints.

*Conclusions on AONB issue*

83. The likely effects of the Stour Valley Visitor Centre at Horkesley Park on the existing character and appearance of its rural surroundings including the landscape character and scenic beauty of the Dedham Vale AONB have been considerably understated. The AONB Assessment report also understates the effects of the Visitor Centre proposal on the AONB.
84. The appeal proposals represent major development within the Dedham Vale AONB (CO2.1/6.3-6.5). They would detrimentally affect the special qualities of the AONB within and in the vicinity of the site through:
- a) erosion of the variations in character across the river Stour valley landscape that makes a special contribution to the AONB's natural or scenic beauty;
  - b) loss of existing open panoramic views available from public footpaths 4 and 5 across the AONB due to substantial planting of new woodland and trees;
  - c) indirect urbanising effect on character arising from the presence of core Visitor Centre facilities as a large modern built development on the edge of the AONB;
  - d) detriment to the character and sense of place of both The Chantry as a fine late Georgian house and the wider AONB due to the likely character and appearance of the proposed 'authentic' Chinese garden; and
  - e) erosion of existing tranquillity resulting from the presence of large numbers of people and the visibility of urban development which detract from perceptions of tranquillity (CO2.3 Appendix 3B).
85. Consequently the natural beauty of the Dedham Vale AONB would not be conserved and enhanced, contrary to the purpose of AONB designation. Part 11 of the Framework states, at ¶109, that the planning system should contribute to and enhance the natural and local environment by, among other things '*protecting and*

*enhancing valued landscapes.* It goes on, at ¶115, to emphasise that it is national policy that *'great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.'*

86. As major development within an AONB the appeal proposals would not accord with national policy (Framework ¶116). Nor would they accord with local plan CS policies ENV1 'Environment' and ENV2 'Rural Communities', or DPD policy DP22 'Dedham Vale Area of Outstanding Natural Beauty and DP1 'Design and Amenity', notwithstanding changes proposed to ENV2 and DP1 under the Council's focused review. It would also undermine the Vision Statement of the Dedham Vale AONB and Stour Valley Project Management Strategy Plan 2010-2015 and various management policies of the Plan, including those that seek to protect the AONB's tranquillity (CO2.1/6.6).
87. The Dedham Vale AONB and Stour Valley Project Management Strategy Plan 2010-2015 (AONB MSP) was set up in accordance with the CROW Act 2000 (CO2.4). It is intended to be used as a guiding framework for maintaining and enhancing the special qualities of the AONB (CD/0246). The MSP's Vision Statement seeks to ensure that the AONB remains a *'distinctive working landscape'* with *'viable agricultural production as its core function'*. The loss of a substantial tract of arable farmland to recreational uses would be contrary to this objective. The proposals would also have a negative impact on the setting of the AONB, in conflict with the aims of the Dedham Vale AONB Position Statement – Development in the setting of the Dedham Vale AONB August 2013 (CD/0338).
88. The creation and operation of the Stour Valley Visitor Centre as proposed would have a detrimental urbanising effect on the character and appearance of the site and its rural surroundings and is not an acceptable development in this location. Its urbanising effect would be compounded by the conversion of open arable land to pasture and woodland to create a Country Park that would not be appropriate to the established character of the landscape, and by proposals for an 'authentic' Chinese garden that is likely to be at odds with its Georgian setting at The Chantry and with the wider AONB landscape. The Visitor Centre proposal would neither conserve nor enhance the natural beauty of the Dedham Vale AONB, and as a consequence the primary statutory purpose of AONB designation would be undermined (CO2.1/6.7).

***Whether there are any other material planning considerations which might support or undermine the proposal when assessed against the adopted planning framework for the area***

*The appropriate balance & approach*

89. The proposal is in substantial breach of a raft of development plan policies. It cannot benefit from the presumption in favour of development because it is a proposal for major development in the AONB and there is therefore a requirement to demonstrate that the development is in the public interest. It also involves the development of land in the countryside that is not previously-developed. These are individually significant hurdles to the grant of planning permission; cumulatively, they are formidable. The appellants' representations have not set out at all to justify the grant of planning permission having regard to any one of these factors. They refer instead to benefits arising in terms of tourism, economic & employment

and education and suggest that these be placed more generally in the planning balance.

90. Support for the rural economy (*Framework ¶28*) does not of itself override the 'great weight' attached by Framework ¶115, the policy on major development in AONBs (*Framework ¶116*) or policy about ensuring developments that generate significant movement are located where the needs of travel will be minimised and the use of sustainable transport modes can be maximised (*Framework ¶34*). It is also important to bear in mind that throughout an appraisal of the evidence on this issue that the benefits considered below are, in the context of the unchallenged evidence before the inquiry, not likely to result.

#### *Tourism*

91. The appellants do not address tourism as a discrete topic, though there is some explicit and implicit reference to it (*AP1. 1/3*). The Council acknowledges the tourism and economic policy base, but this does not of itself confirm a requirement for, or significant benefits accruing from, the proposal. There is an absence of support for the proposal from the Council's Green Infrastructure strategies (*CD/0262, CD/0263*). The Appellants are unable to point to any specific piece of evidence supporting the view that weight should attach to this proposal so far as tourism benefits are concerned. They rely upon reference to the officer's report to committee (*CD/0273*) but do not provide any of their own evidence on tourism demand and deficiencies and how the proposal would contribute to them. Based on the Council's viability assessment, the proposal's performance would be likely to be significantly below that forecast in the Tourism Evaluation Study (*CD/0051*) and the Business Plan (*CD/0034*) such that the business would be commercially unviable and unsustainable. The proposal is unlikely to result in substantial tourism benefit in the context of the evidence before the inquiry (*CO3. 1/6.3. 13-16 & 6.4. 1-13*).

#### *Economic development and employment*

92. The appellants simply cite the consultants' reports (*CD/0039, CD/0306*) and the officer's report (*CD/0273*) in support of the economic case for permission without further argument (*AP1. 1/4*). The claim that plans to deliver 14,200 jobs 2011-21 have fallen behind schedule is incorrect, as the Council shows (*CO4.3/6*). The appellants refer to an increase in jobs, and policy to boost employment, but employment is not argued as a planning benefit, simply appearing in the planning balance as part of the tourism argument. (*AP2. 1/3, 4 & 6*). All of this reflects the Council's case that the proposal would not result in any material economic and employment benefit (*CO3. 1/6*). The appellants also refer to the merits of diversification of land use on the site (*AP1. 1/9*) but there has been no attempt to relate those merits, if any, to the nature and scale of development proposed or to argue it as a planning benefit.

#### *Education*

93. The education and training features of the proposal are described (*AP1. 1/5, AP2. 1/4*) but are not addressed in the context of the planning balance. It would thus be surprising if material weight were thought to attach to them. The appellants say that the proposal would bring 'life long learning opportunities for all ages including meeting part of the school curriculum, training opportunities such as

*apprenticeships' (CD/0309)*. The Council supports this ethos in principle, although it is unfortunate that people would have to pay an entrance fee and additional charge for clubs, workshops etc. That said, the range of learning on offer would necessitate more than just an education officer/school co-ordinator and many, if not all, of the subjects referred to are available to study elsewhere in the Borough (*CO4.1/6*).

*Impact on heritage assets*

94. The Church of All Saints, just outside the site boundary, is listed Grade I, while The Chantry (the former Rectory), within the site, is listed grade II. These 2 properties are also listed for their group value (*CO15,CO16*).
95. So far as the Church is concerned, English Heritage (EH) identifies 'limited harm' to the church's setting (*NCD/0144*). EH explains that the '*radical intensification of the use of the site, the activities associated with this and the effect of such development on the rural character of the site might be thought harmful*'. The Council agrees (*CO4.1/8*). It is also agreed that the heritage assessment did not take full account of the experience of the place which is fundamental to consideration of setting. Nonetheless, the Council's reasons for refusal do not refer to this matter and it was originally agreed as a matter not in dispute within the statement of common ground (*IN3*).
96. However, the change in circumstances introduced by the listing of The Chantry has significant planning implications on the deliverability of the proposed Art Gallery and Chinese garden as key elements of the visitor attraction, both in terms of the direct impact of the development on the fabric of the listed building and the indirect impact on the established and unspoilt setting of The Chantry. This is currently characterised by semi-parkland, pleasure grounds, outbuildings and walled gardens in the conventional English garden tradition (*CO16*).
97. The lack of any detail in terms of the scheme of conversion of The Chantry to a major Art Gallery hosting significant works of art makes it impossible for the impact of these unspecified works to be assessed in accordance with the Act and relevant planning policy. Framework ¶128 expects applicants to provide sufficient detail to enable an understanding to be gained of the potential impact of the proposals upon the significance of the asset. Inadequate information exists for an informed judgement to be made.
98. The Council's expert evidence (*CO3.1 Appendix 3*) confirms that significant alterations would be expected to facilitate the conversion of the listed building. A decision made in the absence of the requisite detail concerning the likely impact of works on the significance of the listed building would not be appropriate. The list description makes it clear that the building is both externally architecturally distinguished (historic features and composition) and retains significant internal interest extending to both the historic floor plan and internal features. All of these elements contribute to the significance and special interest of the building. In the absence of a detailed scheme of conversion or an application for listed building consent (normally considered concurrently), the uncertainty surrounding the potential deliverability of this key element of the visitor attraction makes it impossible to discharge the statutory duty imposed by s16(2) of the 1990 Act.
99. The proposal for the Chinese garden is similarly lacking in detailed design particulars. The plan, not received until August 2013, shows the close relationship

of the house to the siting of the proposed Chinese garden (*CD/0336*). The Council's expert evidence (*CO3.1 Appendix 2*) explains the scale and form of structures normally associated with a Chinese garden within the orthodox tradition, confirming the significant interventions (built forms, water and rock features and exotic planting) that would be expected as part of the erection of any authentic garden in the Chinese tradition. The absence of design details for the garden makes it impossible for an informed judgement to be made regarding the magnitude of impact in accordance with the Act and ¶133-134 of the Framework. The statutory test required by s66(1) of the Act cannot be applied on the evidence available.

100. The introduction of distinctive and substantial Chinese elements lacks any known precedent (locally or nationally) found in association with a provincial Rectory or smaller country house of the Regency period. The close physical association of the Chinese garden with The Chantry would logically suggest the potential for a significant impact on the immediate setting of the listed building. Based upon the atypical form and logical incompatibility of an authentic Chinese garden with a Regency country house, its impact would be harmful due to the contextual incongruity, although the magnitude of harm cannot be anticipated in the absence of detailed design proposals. Nevertheless, the introduction of a distinguished authentic Chinese garden (such as that which would be expected as part of a major visitor attraction) has the potential to result in significant harm (*CO14*). The proposals would conflict with policies ENV1 and DP14, intended to protect and conserve historic assets.

#### ***Overall conclusions of the Council's case***

101. The Colchester Local Plan is present, vocal (sets out relevant policies) and substantially up to date. The proposed development is in breach of each of CS policies SD1, CE1, TA1 & TA4 and DP policies DP9, DP10 & DP17 (issue 1) and CS policies ENV1 & ENV2 and DP policies DP1 & DP22 (issue 2). It is also in breach of Framework policies concerning sustainable transport, protection of heritage assets and protection of the countryside and the AONB in particular. The proposal is for major development in the AONB in respect of which planning permission will only be granted exceptionally and in the public interest.

102. The written representations produced on behalf of the appellants do not demonstrate any substantial tourism, economic development and employment or education benefits; and the Council's evidence confirms that there are none. There are, on the evidence, clearly no benefits sufficient to outweigh the substantial breaches of development plan and Framework policies. The proposals are likely to significantly harm the setting of a listed building. There is no public interest such as might exceptionally justify the grant of planning permission for major development in the AONB. The planning balance is strongly weighted against the Horkesley Park proposal.

## Other interested parties objecting to the proposal

### *The Dedham Vale and Stour Valley Project*

103. The Dedham Vale AONB and Stour Valley Project is a partnership project supported by Defra and 7 local authorities along the Suffolk/Essex border charged with conserving and enhancing the special qualities of the Stour Valley area including the Dedham Vale AONB. The Project has been in place since 1981 and is governed by a Joint Advisory Committee (JAC). The local authorities who have part of their area in the AONB have delegated the duty of producing a Management Plan for the area to the JAC. The current plan covers the period 2010-2015. (CD/0246).
104. The Dedham Vale AONB was designated in 1970, with the primary purpose of conserving and enhancing natural beauty, its secondary purposes are to meet the need for quiet enjoyment and to have regard to those who live and work there. Dedham Vale is one of the smallest of the AONBs in England, Wales and Northern Ireland at 90 square kilometres. It has had two boundary variations since designation in 1970, one in 1978 and the last in 1991. The 1991 extension took in the land that is included in the application for the Stour Valley Visitor Centre at Horkesley Park. The JAC recognises the opportunities for the growth of sustainable tourism in AONBs and the contribution tourism makes to the rural economy (TP1.1).

### *Policy context*

105. The government confirmed in 2000 that National Parks and AONBs are equal in planning terms, differing only in their core purposes of designation. The AONB designation is also of international importance -the International Union for Conservation of Nature (IUCN) has recently confirmed that AONBs in the UK meet Category V status, in common with National Parks (TP1.2, Appendix 1).
106. NPPF policies indicate that the presumption in favour of sustainable development (¶14) should be restricted in areas that need special protection, such as AONBs (¶115). Great weight is placed on conserving scenic beauty in these protected areas. ¶116 states that permission should be refused for major developments in designated areas except in exceptional circumstances that are in the public interest (CD/0249).

### *Interpretation and Visitors to the AONB*

107. The tourism volume and value studies for the Dedham Vale AONB carried out using 2006 figures, and then repeated in 2010, show an increase of £6,641,493 over that period (CD/0303). This is an increase of 16.7% which demonstrates that tourism in the area is growing. This growth is being achieved without the proposed attraction of Horkesley Park and is built on businesses at a sustainable scale in and around the AONB. There is no tourism need for the Horkesley Park development particularly since many of the elements of the proposal can already be found nearby, and many of them are free of charge.
108. Vehicle figure data at the two "honeypot" sites in the AONB, collected since March 1999 (Flatford) and January 2003 (Dedham), shows in the period 2003-2012 fluctuations between 109,964-152,498 visitors at Dedham car park and 180,555-225,741 visitors at Flatford. That compares to the 316,250 expected to be attracted to Horkesley Park.



*Impact on the Dedham Vale AONB*

109. Approximately 75% of the western and northern sides of the proposed Horkesley Park development is located in the AONB. (*TP1.2, Appendix 3*). The Chinese garden forms 4.51% of the total site area. Few details of the garden were given in the application and no details of the proposed new build structures within the AONB. This makes it difficult to comment meaningfully having regard to the statutory duties pertinent to the consideration of development under the CROW Act 2000. However any standalone new build structure of material scale in the AONB would be unlikely to enhance scenic beauty particularly if by its very nature it is overtly "exotic" in character.
110. Similarly the Chinese garden layout and style would be unlikely to be in keeping with the established and historic local character of the Vale. In the absence of even indicative design details, it is not possible to assess the visual impact on views from the public footpath or to comment meaningfully regarding impact. However, a significant landscape intervention associated with the creation of a Chinese Garden of any ambition would logically represent a material departure from the established landscape character of the site.
111. The Country Park element of the site is the largest element of the development that falls within the AONB boundary. The landscape Character Assessment for this site indicates an area of Rolling Valley Farmland (*CD/0326*). This largely describes the valley sides being of an arable nature, not the pasture that is proposed in the development. This would be a departure from the local landscape character.
112. Additionally arable fields would not have very much human scale activity in them for large parts of the agricultural year, and the footpaths would be lightly used. A country park with the visitor numbers proposed would materially change the visual amenity and tranquillity of this part of the AONB in a detrimental manner. The numbers of visitors at Flatford are far below those proposed here, and the area immediately around the National Trust property there is noticeably busy with visitors.
113. The public footpaths crossing the site are proposed to be turned into green lanes. This will reduce the amenity value in terms of the open views for users of the public footpath and visually change the views of the rights of way on the valley sides from simple cross field or headland paths to significant linear features with surfacing.
114. The car parking on the site, including in the overflow car park, would introduce a new visually intrusive element to the landscape (possible glint and glare), which would only be partially mitigated by screen planting. It would also introduce noise and movement to the landscape thereby adversely changing the character of the site.
115. With the high proportion of visitors to the proposed site coming by private car there will be an increase in car journeys through the AONB. Some of these are likely to be along small rural roads and Fishponds Hill protected lane. Many of the visitors drawn to the area are likely to want to visit the centre of Constable Country at Dedham and/or Flatford. The direct route to these places takes in some minor roads with the whole journey being within the Dedham Vale AONB (one of the smallest AONBs). These destinations already have large numbers of visitors and on busy

days the visitor infrastructure would not be able to cope. This would further impact upon the quality of the visitor experience (*TP1.1*).

*Conclusion*

116. The JAC considers that the application is not compatible with the planning policy requirements for development within the AONB. The proposal would not accord with the objectives of the Management Plan. Its scale would have a detrimental impact on the character of the Dedham Vale AONB. The harm associated with the scheme, in terms of its adverse impact upon the tranquillity and characteristic natural beauty of the Vale would have a detrimental impact on the existing tourism economy of the area which is dependent upon the high quality nationally protected landscape of the area.

***The Stour Valley Action Group***

117. This is a large or significant proposal. It involves the material change of use of approximately 47 hectares (117 acres) of agricultural land together with the erection of buildings and the use of the whole as a tourist facility. If successful it may attract a significant number of visitors each year. A very substantial development is therefore under consideration which would have severe consequences for the locality (*TP2.1*).

118. The site is both in and immediately adjacent to the AONB. This is therefore a very sensitive location where Government advises that planning permission should only be forthcoming where it has been demonstrated that there are exceptional circumstances (¶116 NPPF). The Appellant has failed to show that there is clear justification for the proposal, which would allow it to be approved as an exception.

119. The proposal must, as a matter of law, be considered against the Development Plan and any other material considerations. However, as in many planning matters, it is necessary to form a balance and in this regard both the positive and negative features of the proposal have to be considered.

*Positive features*

120. The positive features in short amount to the provision of an additional tourist facility with its various facets and, as a consequence, the generation of some employment. The proposal would therefore be likely to generate economic activity which would be an advantage. It is necessary therefore to consider what weight should be given to these factors.

121. The Appellant has not produced any detailed evidence of market research to show that the mix of alleged attractions is appropriate in this locality (*TP2.2 Appendix 6*). Moreover there is little or no actual evidence upon which to draw a conclusion that the proposed mix is required or needed. Indeed it is largely the reverse, namely that in many instances similar facilities are available elsewhere in the locality (*CD/0306*). The appellants are guilty on occasion of gross exaggeration as to the need or desirability of its proposal in order to further their case. The employment benefits will only occur if the proposal is successful and delivered, but its justification has not been proven.

122. In addition there must be real doubt as to whether the scheme is viable. SVAG has sought its own advice and also applied its mind objectively to the various

viability studies. It concludes that the scheme is unviable due largely to exaggeration of the visitor numbers, premium, gate fees and general expenditure, unrealistically optimistic estimates of margins etc. Job numbers generated would be less than a third of those predicted by the appellants (*TP2.2 Appendix 9*). None of the viability studies take any account of the cost of capital which, in SVAG's view, is completely unrealistic. Such costs would further diminish the viability and, crucially, the deliverability of the project. It is also interesting to note that whilst funds to promote the proposal have run out we are advised that funding is available for construction purposes, etc. No evidence has been produced of such funding and indeed we find the appellant's statement of sources of funding, including the statement that part of this would come from deferred payment to suppliers, to be quite incredible and without any substantive evidence in support.

123. As well as the alleged benefits from tourism and employment, there are other limbs to the appellants' case such as suggesting that the additional recreational space would be a benefit and the educational facilities for, in particular, children would also be advantageous. The evidence would appear to suggest that ample facilities for both already exist, particularly in respect of educational facilities. While the scheme may help to safeguard the future of the endangered Suffolk Punch heavy horse breed, it is not by any means near to extinction as claimed by the appellants.
124. The weight to be given to the positive features of the proposal must very much depend upon the extent to which there is actual evidence to support them. There is in fact very little and hence relatively little weight can be given to these positive features.

*Negative features*

125. The principal negative features are as follows:

1. The predominant character of the majority of the appeal site and the immediate surrounding land is open arable land (*TP2.1, Appendix 3*). In respect of much of the appeal site this would change to pasture land, with additional landscaping and woodlands necessary to integrate the proposals into the landscape. The Inquiry heard that these are features which are discordant with the overall character of this part of the AONB.
2. The introduction of so many people into this area would destroy its peace and tranquillity (*TP2.2, Appendix 5*).
3. The removal of the existing glass houses and their substitution with an array of buildings would adversely impact on the setting of the AONB.
4. The existing footpath network would be used more intensively thereby affecting the quality of it for the casual footpath walker.
5. Without full details of the proposed Chinese garden its impact cannot be assessed but it is likely to be damaging to the character of the area and expert evidence shows that, even if it could be built as an authentic Chinese Garden (which is considered very difficult), it would be an inexplicable, ill-considered and alien feature in the English countryside which defines the Dedham Vale AONB (*TP2.2 Appendix 10*). The as-yet undefined features of the Chinese garden have not been

subject to proper planning consideration. The development of buildings and other features associated with the Chinese garden are outside the provisions of Permitted Development.

6. The majority (80% plus) of visitors would travel to the facility by means of the private car. The Council's expert witness puts this at 90%.
  7. The additional traffic associated with the proposed visitor numbers would in itself have a very negative impact on the tranquillity of the area.
  8. Some of these visitors would travel into the immediate locality using narrow country lanes some of which enjoy the status of Protected Lanes.
  9. The impact of the additional traffic on the medieval village of Nayland, within less than a mile of the site, has not been properly considered.
  10. Additional lighting would have to be introduced, particularly for special events, which would be intrusive on the locality.
  11. Noise associated with special events in particular would, in reality, be difficult to control and would be intrusive on the local area.
  12. There would be vast areas of car parking sufficient for over 700 cars, which would be more appropriate for a major retail development.
126. It is important to note that, whereas there is no evidence to justify the positive features, so far as the negative features are concerned the evidence to this Inquiry has been of the highest quality. Further, even within their written statements the appellants do not come anywhere near to rebutting these harmful elements. They are therefore likely to be the reality if the proposal is permitted.

#### *Conditions and obligations*

127. It is accepted that it is customary to review planning conditions and obligations in the event of an approval being granted by the Secretary of State. However, SVAG is concerned that the amount and nature of the conditions demonstrate that the potential for harm to occur in the future would be very real, were the proposals to proceed. The conditions are unusually prescriptive and detailed and many of them may prove challenging to enforce. A judgement will have to be made on their suitability to make what is unacceptable development, acceptable. However SVAG do not accept that the conditions and obligations submitted would protect against the harm that will inevitably occur.
128. In both the conditions and obligations which have been tabled, the actual details of the Chinese garden are now it seems to be treated as a reserved matter. It is curious and unexplained why the appellants have refused to produce any details of the Chinese garden, the impact of which has been a key issue at this inquiry. Indeed the establishment of the Chinese garden is considered to be one of the key drivers of visitor attraction (*CD/0229, TP2.2 Appendix 12*). In their statement of case (para 2.19), the appellants advise that they would produce for the Inquiry, plans and other information to demonstrate the deliverability and suitability of The Chantry Art Gallery and Chinese garden. No plans or other relevant details of the Art Gallery or the Chinese garden have emerged. Furthermore, no clear commitment to the exhibition of 'Constable Country' works of art has been offered,

as promised (*TP2.1 Appendix 11*). It is SVAG's view that it is wholly inappropriate to reserve such details for further approval, when the application was submitted in full, particularly given their potential impact on the AONB. These plans and details are highly conspicuous by their continued absence.

129. There is no effective planning obligation, whether by agreement or unilateral undertaking. Both principal parties have recognised that a planning obligation is essential, but no binding obligation is available. It cannot carry weight in this decision.

*Listed buildings*

130. The Chantry is a 19th Century early Regency House. Largely through the efforts of local objectors it was listed grade II during the inquiry (*TP2.6*) The proposed Chantry Gallery with its potential to show important works of art, including original paintings by John Constable, has been identified as a key attractor of the Horkesley Park proposal. Clearly very considerable modifications would be required to the internal fabric of the building to make it suitable as a gallery to show paintings of such importance. No details are given as to how this might be achieved and listed building consent would be required prior to such changes being made (*TP2.5*).
131. The setting of the house would be severely compromised by the proximity of the proposed classical Chinese garden with its alien (as yet undefined) features of pavilions, rock structures and water. Without the necessary detailed design of the Chinese garden, which has not been made available, it is difficult to be more specific than this. The Chinese Garden in itself would be alien to the classical English landscape of the Dedham Vale AONB in which it is located and it would certainly be alien to the setting of the Grade II listed Chantry. The outbuildings associated with the Chantry are not apparently designated as being listed. However it is intended the Coach House should be converted into art/craft studios with the addition of other visitor facilities. All of these may have an impact on the setting of the listed Chantry which would need to be taken into account. Furthermore it is intended to extend the south wall of the Walled Garden which might have an impact on the setting of the Chantry.
132. The huge number of additional visitors associated with Horkesley Park would have an adverse impact on the grade I Listed Church of All Saints. They would also have an adverse impact on the setting of the grade II listed Chantry. On the basis that the Chantry Art Gallery is a key attractor for Horkesley Park, it is difficult to see how the Appeal could be upheld in the absence of details being available to address all the issues listed above.

*Overall impact*

133. The proposal is not sustainable. With so many visitors arriving by way of their private cars, the site is not in a sustainable location. The appellants, whilst alleging that their proposal is sustainable, do not justify it with cogent evidence. There is no evidence that modal shift could be achieved. Moreover, to say that the proposal, because of its nature, has to be within the open countryside is not sufficient. Even if the scheme was needed or desirable, there may be other more appropriate sites.
134. There can be no doubt that the impact of the proposal on the character and appearance of the locality would be adverse and largely irreversible.

135. While the tourism, economic, education and employment benefits may exist to a degree, they do not come anywhere close to outweighing the harm resulting from an unsustainable proposal which will cause harm to the locality. Ultimately the proposal has to be considered against the local development plan and any other material considerations including the Framework. The Council have dealt very thoroughly with the development plan and the relevant policies thereof. It has correctly concluded that this proposal is contrary to the local development plan. The material change of use is also contrary to ¶115-116 of the Framework.

***Little Horkesley Parish Council***

136. Little Horkesley is the community that would be most affected by the proposals. The village looks out on Horkesley Park, which is effectively in the heart of the village. When the greenhouse site was fully operational, apart from the extent of light pollution, the impact on the local countryside was minimal. From the late 1990s, with the greenhouses no longer in use, the structures began to deteriorate and generally became an eyesore in the countryside. In the early 2000s, after acquiring more land and buildings, the appellants proposed a 'theme park' intended to attract 785,000 visitors. A scaled down proposal to attract 485,000 was refused planning permission in 2010. This current proposal seeks an optimistic 316,000 visitors per annum. Meanwhile other smaller scale uses of the site have taken place without planning approval. By their actions the appellants have lost the support of the local community (*TP3.1*).

137. The underlying assumption of the traffic plan is that all traffic – and 82% of visitors would arrive by car – would travel on the A134. That is unlikely. Families on a day out would choose their own route, overflowing into the surrounding countryside as they seek to broaden their experience. Importantly, satellite navigation (satnav) systems provide the most direct route, and do not recognise brown tourist signed routes. The highway authority admits it took no account of satnav systems. Visitors would undoubtedly use the local roads. Many roads are single track and, in the summer, carry large agricultural vehicles adding to congestion. The village has 3 roads close to the site designated as Protected Lanes because of their historic and scenic importance. The designation seeks to ensure that no development which increases traffic on these lanes is permitted. The ancient structure and rural heritage of the community should be protected from the ravages of 21<sup>st</sup> century traffic.

138. The development seeks to 'improve access to the countryside'. That is baffling as the countryside is already open to all through the extensive network of local footpaths. Indeed, the development could reduce access, as 2 key footpaths would be enclosed by large hedges. The lanes and footpaths already used for a wide range of recreational activities by walkers, cyclists, horse riders and families on a day out, all enjoying free access to the countryside. These activities would not be compatible with any increase in traffic on the roads, so the proposal is a threat to full and free access to the countryside.

139. The Dedham Vale AONB is of national and international importance and the most precious asset of the Borough. The AONB designation seeks to protect the countryside and offer free access to all. Local people wish to see the natural beauty of the countryside continue to bring joy to many rather than be exploited for the commercial gain of a few. The presence of so many people on the site would create

unacceptable levels of noise in a quite and tranquil area. However well the lighting is designed, the site is in a hilltop location and any light spillage would have a devastating effect across the Vale. No risk should be taken on optimistic estimates of the effect of noise and light pollution on the area.

140. LHPC recognises and supports Government policy to stimulate growth through sustainable development. A theme park, in a remote rural location distanced from sustainable means of transport, and almost entirely dependent on car access, cannot be considered to be sustainable development. Moreover LHPC questions the claimed economic benefits. There is currently a healthy rural business base in the village, and the local unemployment rate is very low. The work force would have to be brought in from up to 20 miles away, further illustrating the unsustainable nature of the proposal.
141. Two key aspects of the proposal have caused bemusement in the local community – the display of Constable and Gainsborough paintings and the Chinese garden. National and local centres already display these paintings and LHPC does not believe that galleries would loan famous works of art to a theme park in an area of Dedham Vale where neither artist painted. In China, similar public gardens are in towns and are designed to give townspeople a glimpse of the Chinese countryside. Such a garden in the heart of rural England would be totally inappropriate and would strike a discordant note.
142. The beautiful grade I listed Church of All Saints would be subsumed into the theme park. The proposal does not give any details of how the grade II listed Chantry could be protected while it is converted to an Art Gallery or how the Chinese garden could be accommodated within its grounds. The application is incomplete and should be rejected.
143. LHBC has played an active role in the development of the Local Plan. In accordance with the aims of the Localism Act, LHPC aims to represent the views of the local community in the making of planning decisions. LHBC questions how the wishes of the local community, as expressed in an approved Local Plan, can be set aside for purely commercial exploitation (*TP3. 1*).

#### ***The Dedham Vale Society***

144. DVS was established 75 years ago to defend the countryside and villages of the Vale from inappropriate development such as this. In 1965 it campaigned against housing developments which would have doubled the populations of Dedham, Stratford St Mary and East Bergholt and seen the whole valley suburbanised (*TP4. 1 Appendix 1*). Its success then means that the Vale remains a special place today. The then-President of DVS, Raymond Erith, said *'If Dedham Vale is not worth keeping, then nothing is worth keeping'*. That is just as true today. Erith also said *'There is nowhere in England where the beauty of the countryside can be seen with more clarity than the Vale of Dedham.'* It is what expatriates think of when they think of home, thanks to Constable's paintings. Erith also wrote it is *'a countryside where for centuries nature has been harnessed but not exploited.'* That phrase is a clear definition of the character of the Vale (*TP4. 1*).
145. The proposal aims to exploit to an unacceptable degree, and for profit, what good people in the past fought to preserve for its own sake. As then, the proposals would overdevelop their village and the Vale would never be the same again.

Thanks to that earlier campaign, Dedham Vale is now protected as an AONB. The proposal would be inappropriate development in the AONB, incompatible with the intrinsic character of the area and the very qualities for which it was granted AONB status.

#### *Traffic*

146. Some 82% of visitors would arrive by car. This is a huge number, far too many for the area's narrow roads to cope with. The traffic analysis of the proposed development was flawed in that it only examined traffic flows on the main roads and assumed that all visitors would arrive via the signed routes. Most people now rely on satnav directions, which would bring them by the most direct route through the AONB's narrow roads. This would increase danger for other road users and seriously reduce the tranquillity of the area.
147. The Visitor Centre plans an exhibition of 'The life and times of John Constable'. To back this up the appellants plan a hopper bus service across the AONB to see the iconic places painted by Constable at Dedham and Flatford. It is highly unlikely that a family arriving by car would use this service. They are more likely to drive across the AONB to these sites on the way home. The National Trust manages Flatford Mill and seeks to control visitor numbers as the site is already overloaded. Any additional visitors would not be welcome, as they would add to the overload. These proposals are in an unsustainable location and would have an adverse effect on the AONB's primary purpose of protecting the area's rural character and tranquillity.

#### *Light pollution*

148. There is a growing trend across the UK to reduce lighting levels to preserve the view of the night sky. DVS agrees with the British Astronomical Association that the night sky is genuinely inspiring and should be protected for future generations. In common with other national parks and AONBs, both DVS and local Councils are actively seeking to reduce lighting levels in the Dedham Vale AONB below what they are today, with the aim of meeting the criteria for designation as a 'dark sky community'. This scheme would be sited on top of a hill overlooking the AONB. However well designed the lighting system may be, it would inevitably cause light pollution in the surrounding area, both from its buildings and the lights of visitors' cars. That would be wholly inappropriate for the AONB.

#### *Noise pollution*

149. The concept of an AONB denotes a peaceful, tranquil, rural environment where the intrusions of the 21<sup>st</sup> century are kept to a minimum. This proposal would entail a major car park in the AONB, with hundreds of families manoeuvring their cars and participating in outdoor tourist activities. The noise of excited crowds of all ages carries a long way and would be incompatible with the concept of tranquillity.

#### *Listed buildings*

150. The Chantry is an important building within the Dedham Vale AONB. Its use as an Art Gallery and Chinese garden would be key elements of the proposal. The building would require extensive alteration to make adequate provision for exhibiting the major works of art proposed. This is bound to affect the structure of the building but no details have been given so this can be assessed. The setting of



the Chantry overlooking Dedham Vale is an important factor in its listing. A Chinese garden in its grounds - a structure of rocks, water, limited planting and a tea room – would be totally out of keeping with the peace and tranquillity of the AONB and surrounding countryside. Without the necessary details the proposal should be rejected (*TP4.2*).

### *Conclusions*

151. The proposals are for a tourist 'honeypot' or theme park, on a considerable scale, on a hill in the AONB. The scale of what is proposed would inevitably increase noise, light pollution, traffic and visitor pressure on a nationally protected landscape. The claimed economic benefits have been shown to be unlikely and the business case unsustainable. The proposal is contrary to the NPPF, the local development plan and the adopted AONB Management Plan.

### ***The Nayland and Wissington Conservation Society***

152. The proposal would cause harm to the Dedham Vale AONB and the adjacent areas, in conflict with ¶115-116 of the Framework and development plan policies DP9, DP10 and DP22. That harm would arise from (a) the impact of increased traffic upon villages such as Nayland and upon the delightful and tranquil country lanes which play an integral part in the enjoyment of the AONB, and (b) the impact of increased visitor numbers upon the villages of the AONB, in particular the village of Nayland (*TP5.1*).
153. The increased vehicular traffic flows would cause harm to the AONB in three ways. First, visitors travelling to and from the appeal site using unapproved routes; second, visitors exploring by car the narrow lanes of the AONB following their visit to the appeal site; and third, visitors specifically driving from the appeal site to other significant locations within the AONB, eg Dedham and Flatford Mill.
154. It is recognised that the highway authority does not object to the proposal but it did not fully consider the possible impact upon the tranquillity of the lanes and congestion in the villages of the AONB. As can be demonstrated, satnav users would not be confined to the main roads – the A12 and A134 via the new Northern Approach Road – as satnav directions give the shortest and most direct route. Investigation shows that satnav and electronic mapping sites direct visitors through the minor roads and narrow country lanes, affecting villages such as Nayland in particular (*TP5.1, TP5.2 Appendices 2-5*). This would cause significant congestion and the peace and tranquillity for which this AONB is justly celebrated would be lost.
155. It is clear that visitors to the centre would be encouraged to discover the AONB. The Council's officers considered it prudent to assume 'only' a third of visitors would visit the open countryside (*CD/0230 16.10.45*). That would be potentially 105,000 people. The narrow country lanes surrounding the appeal site are entirely unsuited even to moderate traffic use. There has been no assessment of the combination of vehicles travelling to and from the site, visitors exploring the AONB and others driving to particular sites. Traffic chaos would ensue and the peaceful nature of the AONB would be destroyed (*TP5.2 Appendices 6-7*).
156. Nayland is a medieval village with close connections to John Constable. It lies close to the appeal site and is likely to be a natural destination for visitors to the

Country Park. There is no public car park or other facilities and the streets are narrow and already congested. Any significant number of visitors travelling by car would cause substantial damage to the tranquil nature of the village.

157. If permission is granted for this development the harm to the villages and lanes of the AONB would be disastrous. The unsustainable location of the appeal site would draw significant traffic, and visitors in all likelihood would seek to enjoy the Vale, using the narrow roads and lanes. The tranquillity of the Vale, and Nayland in particular, would be destroyed by the proposed Stour Valley Visitor Centre. That harm would be irreparable. Ironically the Visitor Centre would destroy the very countryside it claims to celebrate.

### ***The Colne-Stour Countryside Association***

158. Dedham Vale was granted AONB protection in 1970 because of its special unspoilt lowland rural landscape. It has been described as a rural idyll, with its rolling hills, gentle valleys, trees, riverbank willows, flood plain meadows, ancient narrow lanes, traditional villages and farm buildings, scattered churches and the meandering river. It is the quiet, timeless character of the Vale which it is so important to preserve for future generations to enjoy, largely unspoilt, as it has stood for centuries. The Dedham Vale AONB and Stour Valley Project was formed to do just this. An AONB Management Plan was drawn up to manage this process. The Project Team are best placed to oversee the conservation and enhancement of the Vale in accordance with the Management Plan (*TP6*).
159. Framework ¶115 states that great weight should be given to conserving landscape and scenic beauty in AONBs. ¶116 states that permission should be refused for major development in the AONBs except in exceptional circumstances. This is a proposal for a large scale visitor attraction designed to draw in 316,000 visitors per annum. It is undoubtedly a major development. Although an important part of the tourist centre would be outside the AONB, by far the largest area would be inside it. It should be looked at as a whole. There is no presumption in favour of sustainable development in the AONB. Even so, the site is clearly in an unsustainable location, with 82% of visitors predicted to arrive by car. It should be very rare for major development to be allowed in the countryside and rarer still for it to be permitted within and adjacent to an AONB.
160. There are no exceptional circumstances. There is no need for the centre and claimed public demand has been exaggerated. The proposal contravenes numerous development plan policies, including CS policies SD1, CE1 and TA1: DP policies DP1, DP9, DP10, and DP17; and Environment policies ENV1 and ENV2. Policy DP22 states that development will only be supported in or near to the AONB if (i) it does not adversely affect the character, quality, views and distinctiveness of the AONB or threaten public enjoyment of these areas, including by increased vehicle movement; and (ii) supports the wider environmental, social and economic objectives of the AONB Management Plan. This proposal would not meet a single one of these criteria and would conflict with the objectives of the Management Plan. A theme park such as this would be incompatible with the intrinsic character and beauty of the AONB.
161. There is no tourism need for this centre, certainly not in and adjacent to the AONB, and many of the proposed features are already available elsewhere in the

locality. There is no reason for any of them to be in the AONB, rather than a more sustainable location, other than the appellants happen to own land there. There is already good public access to the Vale. With its many lanes and footpaths the public are able to enjoy the Vale in its natural state, free of charge, not as a fenced off private theme park and retail centre. Although the new buildings to replace the greenhouses may be seen as an improvement, given their current state, there is no good reason why this site cannot be put back into some form of agricultural related use. It is significant that all those closely involved with caring for the Dedham Vale, including the local communities, are resolutely opposed to these proposals.

### ***Local covenanting families***

162. During the 1960s Dedham Vale was threatened with major housing development. Recognising the value of preserving this exceptional lowland landscape, several local families voluntarily covenanted land to the National Trust in order to prevent any change of use. This led to AONB status in 1970. Since then voluntary societies and statutory bodies have worked with landowners to maintain the delicate balance between keeping the AONB accessible to the public while ensuring its unspoiled pastoral character is not overwhelmed by sheer weight of numbers. The valley now attracts thousands of visitors every year from every part of the globe, making a significant contribution to the local economy. Through careful management these have been successfully accommodated without eclipsing the rural idyll for which the valley is famous (*TP7*).
163. The attempt to commercially exploit the vale on the scale envisaged would make it impossible for those involved to maintain the balance, thereby jeopardising the goodwill of the valley's inhabitants and destroying the future equilibrium of the AONB. The development's stated aim is to draw large numbers of local and regional visitors into an area that is world renowned for its tranquillity. Crowds, traffic congestion, queues, shops and noise are precisely the urban elements that people visit the countryside to get away from. The presence of these urbanising elements would directly conflict with the benefits to well-being and quality of life that all can freely enjoy in the Dedham Vale.
164. The pressures on Dedham Vale are considerable. Colchester is a fast growing town and recent changes to planning laws are putting the countryside under pressure as never before. It is vital to guard AONBs from erosion and incremental destruction. Areas where the rural idyll and people's pastoral roots can still be discovered are profoundly important. It is for precisely this reason that AONBs were specifically excluded from the recent relaxation of planning laws.
165. The scheme's economic and ecological sustainability is questionable. Core elements of the scheme such as the Chinese garden, the Art Gallery and the Suffolk Punches have no direct relevance to Dedham Vale and could equally well be sited anywhere in the region. The scheme may turn out to be a commercial success but equally it may fail, leaving more than 100 acres of Dedham Vale reclassified from Agricultural to D2 Leisure use and vulnerable to inappropriate development. But there is no doubt that, succeed or fail, the proposal would irreparably damage an AONB recognised the world over as an irreplaceable and priceless example of the English countryside.

### ***Nayland with Wissington Parish Council***

166. The parish is divided by the A134 and borders the proposed Horkesley Park development to the north and east; it is also entirely contained within the Stour Valley AONB. Historically a centre of commerce, the economic growth of Nayland clearly took place long before the advent of the motor car and is now a statutory Conservation Area of national significance with 110 listed buildings - the heart of the village has changed little in 200 years.
167. Nayland, along with the whole of the Dedham Vale and the Stour Valley AONB, is free for everyone to enjoy across its footpaths, cycle routes and the River Stour itself, and is more accessible now than it would have been 200 years ago thanks to a universal appetite to increase public access and enable us all to be part of this unique and beautiful space. This proposed 'attraction' is the equivalent of building an aquarium on top of the Great Barrier Reef and charging an entrance fee. The unplanned and unspoilt nature of this area is the attraction – it requires no explanation, embellishment or need for a 'Dedham Vale experience'.
168. Commercial activity is an essential part of village life providing goods and services and helping to maintain the infrastructure upon which all the residents depend. Horkesley Park is not free and offers nothing of any significant historical interest but expects visitor numbers in excess of 300,000 per annum. This begs many important questions as to the viability of this project and the remaining legacy should it fail to deliver on its bold estimates for visitor numbers. Nevertheless, of particular interest to the residents of Nayland and Wiston is how these visitors would travel to Horkesley Park, how many extra car journeys would be generated and of those how many will pass through the narrow streets of Nayland.
169. From any town north and east of Horkesley Park, planning a route to this new attraction using satnav or 'AA route planner', drivers would be routed directly through all of the Suffolk villages contained within the Stour Valley; from Higham to Thorrington Street to Stoke-by-Nayland and finally through Nayland. From destinations as far afield as Cromer and around the coast to Felixstowe taking in Norwich and Ipswich, almost the entire population of Norfolk and Suffolk, (presently 1.5M people) would be routed down Nayland High Street, which, at its narrowest point constitutes a width of just 3 metres. Journey studies within the application fail to recognise this.
170. If 90% of visitors commute by car as predicted with 2 passengers per car that amounts to more than 150,000 car journeys per annum or an average of 500 per day 6 days a week; this takes no account of the 176 staff and daily delivery lorries.
171. At present the village faces traffic gridlock every morning and afternoon when 225 pupils, many of whom live in the village and walk to school, arrive and depart the Primary School. Unlike Horkesley Park with its proposed 220 car parking spaces (+ 500 overspill) and 28 coach parking spaces, this medieval village has no off street parking – if just 10% of Horkesley Park visitors follow their satnav from Ipswich that is an additional 50 cars a day clogging the village, blighting the lives of villagers, endangering the lives of school children and polluting the environment. The narrow streets also have to accommodate overspill parking from the doctor's surgery and 11 public bus services.

172. The current traffic congestion has not been considered properly by either Essex or Suffolk County Councils. The extra traffic that will be generated if this application is approved would inevitably result in gridlock, structural damage, noise and CO2 pollution and damage the quality of life that residents of Nayland came here to enjoy.

***Tim Yeo MP***

173. MP for South Suffolk and local resident who has lived nearby on the edge of Dedham Vale at East Bergholt for the last 30 years. Although this proposal is for a project located in Essex a very big part of its impact will be felt in Suffolk.

174. Occasionally there are proposals for development whose effects are unusually far reaching, proposals which would inflict great harm on a local community, on a cherished landscape, on a tranquil area; proposals which unite local people in concerted, sustained and justified opposition. Even in its revised and slightly reduced form this is one such proposal. Those most affected by this proposed development are very fortunate to live in an area of truly exceptional environmental quality. The area, which includes the Dedham Vale AONB, possesses a great many cultural and historic assets. Enjoyment of these by large numbers of tourists takes place at present without undue impact on or damage to local residents. That is the background to this proposal. It is one of the reasons why a major new development in the valuable open countryside of the type now under examination is completely unjustified.

175. The objections can be summarised under four headings. First this proposal completely fails the test set in the National Planning Policy Framework. ¶115-116 in the Framework which refer explicitly to AONBs. ¶115 says "*Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas....*". ¶116 says "*Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:*

*- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*

*- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and*

*- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."*

176. Giving permission for this project would drive a coach and horses right through these sections of the Framework. This objection based on national policy for AONBs is matched by a similar local concern. Babergh DC, which covers the part of my constituency most affected by the proposal, is a participant in the Dedham Vale AONB and Stour Valley Project. This has been set up to establish policies for the management of the AONB and the proposal is contrary to many of these policies.

177. Secondly the traffic consequences of the proposal would be extremely damaging and totally unacceptable. The secondary roads in the part of Suffolk likely to be most affected, a particularly unspoilt area, are adequate for their current purpose and usage even though they have scarcely been improved in the last thirty years but they are wholly unsuited to taking significantly increased traffic. Clogging the Colchester and other exits from the A12 north of Colchester with additional volumes of traffic would be disastrous for road users, both for visitors and for local residents. The damage this would do would adversely affect local business. It would also raise the blood pressure of many drivers as they wait for the very few passing opportunities on these roads.
178. To take just one specific example, the road from Stratford St Mary to Higham and on by Stoke-by-Nayland to Nayland is an attractive one but very narrow at several points and with very few straight sections. Usage of this road has already increased recently because of the closure of the central reservations between Stratford St Mary and Capel St Mary. The signposted route off the A12 to Stoke-by-Nayland now goes through Stratford St Mary. It would inevitably be a popular cut through for visitors to the proposed development. The village of Nayland itself would be very badly affected. It is impossible to pass through this exceptionally attractive village without at some point negotiating a single track section of road.
179. Thirdly the claimed economic benefits are exaggerated. The net impact of the proposal could even be negative. The appellant is claiming that as many as 170 jobs will be associated with the project. As it happens the area enjoys employment levels which are far above the national average so job considerations are much less important here than in many other parts of the country. Colchester Council's consultants advise that a realistic appraisal of likely visitor numbers puts the figure at only 50 anyway.
180. The fear is that the damage caused by permitting this development would impact negatively on the merits of other tourists attractions in the neighbourhood and that the overall effect therefore could even be negative. There is also a major concern that if visitor numbers fall well below the appellant's expectations, then the project would not be viable financially. The appellant believes that more than 300,000 visitors would be attracted, a horrendous thought. The likely number would be less than half that. Pressure would then mount for an increase in the retail element on the site, thus aggravating the problems which would already have resulted from granting planning permission.
181. It is a familiar tactic of some developers to use the failure of the business model on which an initial development has been predicated as an excuse to enlarge it in a way which, had it been mooted at the outset, would have guaranteed its rejection at every level.
182. Fourthly and finally the appellants have completely failed to demonstrate any need for this project. It contains no features, apart from the alien Chinese garden, which are not available elsewhere in East Anglia. There is no shortage of existing attractions to draw tourists into the area. Saturation point has been reached at one of the area's leading attractions, Flatford Mill. In this part of East Anglia there is already a very thriving tourist trade which supports a large number of jobs in the excellent pubs, restaurants, hotels, shops and other services in the area. Indeed the danger now is that this new project will lead to such traffic problems that in

future visitors might be deterred from coming to the neighbourhood rather than being drawn to it.

183. Rejecting this proposal would ensure the preservation of those features which make this historic and beautiful part of England so very special.

***Bernard Jenkin MP***

184. This is not an appropriate development for this site and the Council rejected it for good and sound reasons. Seven points can be made relating to the potential impact on the Dedham Vale AONB, which is of great concern to many (*TP10*).
185. First, the proposed 316,250 visitors per annum would detract from the AONB's peace and tranquillity. Tranquillity was recognised at the time of designation as one of the reasons this particular AONB was designated in the first place. A recent local campaign succeeded in diverting CAA proposals for aircraft stacking over the Stour Valley on the grounds of preserving this tranquillity. The pressure of visitors and traffic threatens the tranquillity of the AONB. It should be noted that the National Trust, responsible for key visitor sites in the AONB, would not welcome an increase in visitor numbers in Dedham Vale. The area is unsuitable for large numbers of visitors.
186. Second, AONBs are protected by policies set out in the Framework. These are reflected in the local development plan. Their whole purpose is to address proposed development such as this. Policy DP22 of the Local Plan demonstrates the importance placed on the protection of the Dedham Vale AONB. It is hard to see how the proposed development meets the criteria of policy DP22 or the other policy protections.
187. Third, although at committee stage the proposal was supported by the Council's planning officers, it is clear that it was opposed by the Council's Strategic Policy and Regeneration Department. At a guess, it was they who wrote policy DP22. Equally, the Dedham Vale AONB and Stour Valley Project, which the Council helps to sustain, considers that the proposal conflicts with the adopted AONB Management Plan. These are compelling considerations.
188. Fourth, the boundary of the AONB at the site is something of an anomaly. It excludes the greenhouses but, if they were not there, the natural geographical boundary of the AONB would include the greenhouse site. The natural boundary of the AONB would have precluded this application, a factor that cannot be ignored. Why the boundary was drawn as it is can only be speculated upon but, whatever case was made at the time, the possibility of a massive visitor attraction on the site could not have been imagined.
189. Fifth, the impact of traffic on small roads and on the surrounding villages is a matter of great local concern. The traffic reviews failed to address the impact on secondary roads in the area. There is no obvious route for traffic to take from the A12 (*TP10 Appendix*). Visitors to the development would increase the flow of traffic on local roads, around and through the AONB. The A134 is already a notoriously dangerous road, and increased traffic can only lead to increased accidents. The proposal does not meet the aims of national or local policy in respect of traffic and transport issues. Local people are all too aware how a few cars, unfamiliar with

local roads, can cause inconvenience and danger to local traffic, walkers, cyclists and horse riders.

190. Sixth, the economic viability of the proposal is suspect. This undermines the economic case in favour of the development. To many, an overriding consideration is the creation of jobs but this is a start-up enterprise; how the business develops is highly unpredictable. The number of visitors, and thus the number of jobs created, is likely to be very much less than predicted.
191. Seventh, the questions over viability raise concerns about how the site might be exploited in future, with an established change of use. It could be attractive to a retail buyer. It would be difficult to resist further and supplementary applications for more changes of use to make the scheme viable, making the same case for preserving jobs and making the best use of the new buildings.
192. Finally, the appellants may cherish Dedham Vale but that cannot justify a scheme to attract 316,000 visitors per year, supported by an Art Gallery to celebrate an Artist whose original paintings are already on display locally and a Chinese garden whose relevance to Suffolk Punches, or to John Constable, or to Dedham Vale is utterly baffling. The number of people and organisations against this scheme is overwhelming.

***Cllr Nigel Chapman***

193. It is good to see education as part of the ethos of the proposed Centre. There is a further range of activities that is suggested would happen if the appeal is successful but much of that would cost the participants their entrance fee. Horkesley Park claims that they would provide a 'quality interpretation centre giving open access to the countryside'. But so many things are already going on in our communities and schools in the Stour Valley at the present time. The appellants appear totally unaware of the many educational opportunities available to all age groups currently in the Valley. For example, a large number of primary schools in the area have their own gardens for the children and most undertake activities beyond the school gates. They have ownership of these gardens, experiencing, visiting them almost regularly –they do not just drop in two or three times a year, by coach, to see a plot tended by hundreds of other kids as well as themselves.
194. The Dedham Vale AONB Project supports a range of projects, many of them educational. For example, it has funded the Stour Valley Educational Network. This is a group of 17 outdoor learning providers who meet to discuss ways of supporting schools and each other in the Stour Valley. A Project officer is involved in activities in numerous primary schools in the area – these range from participating in assemblies, providing advice for sustainable school gardens and arranging trips to a local community woodland. The Project also funded an event at the Sir Alfred Munnings Art museum working with 3 local schools, 2 secondary and 1 primary, and 2 residential care homes on art and rural activity days relating to the changing farming and rural landscapes. The Project has a large Volunteer Group that undertakes conservation and other activities in the valley.
195. A very popular project called 'Managing a Masterpiece', carried out with Access Cambridge Archaeology from Cambridge University, is just coming to an end. It conducted community digs and test pitting in several villages. Its aim is to 'understand, conserve and celebrate the masterpiece' that is the Stour valley. Local



people live in and, therefore, access the countryside without the need for an interpretation centre. Nor does the Centre need to be sited in this rural area to provide training and educational opportunities for those people who live beyond the immediate area; it could be in a more sustainable location (TP11).

**Mrs G Francis**

196. The appellants refer to the historic and future benefits of stewardship of the land. While the appellants have owned the core buildings for generations, the 47 Ha of agricultural land, which would become the country park, has only recently been acquired for the purposes of this development. It has not been in their stewardship for very long. There is also a question of a 1970s covenant requiring the greenhouses to revert to farmland if unused.<sup>1</sup>

**Written objections**

197. In response to notification of the appeal, 185 letters and emails were received before the inquiry objecting to the proposals (WR1). In summary, these refer generally to an adverse impact on the countryside, villages and lanes of the AONB; direct conflict with Local Plan policies and the widely agreed aims of the AONB Management Plan; the unsustainability of the location and the lack of public transport; traffic congestion; light and noise pollution and the effect on the tranquillity of the AONB; the impact on listed buildings; the inappropriateness of the Chinese garden, the unlikely claims for the Art Gallery; concerns about non-viability and the potential for a more harmful future use; and the strength of local community objection.

198. Bernard Jenkin MP (WR4) sets out his principal concerns about the harmful effect on the AONB, traffic impact and the question of economic viability. These were enlarged upon in the oral evidence given to the inquiry, summarised above.

**The case for Bunting and Sons**

199. First it is important to recognise the exhaustive pre- and post-application process where the Council's officers, having considered all the material in great detail, recommended approval.

200. The starting point is the local development plan. The Officers' Report to Committee summarised the application as follows (CD/0230.p254): *The application clearly complies with several of the relevant policies in the development plan and the Framework but is potentially in conflict with others including relating to the scale of the development in the rural area and to sustainable travel. One key area of compliance with the Framework is in respect of new economic development, job creation and benefits to Colchester as a tourist attraction. Horkesley Park also accords with policies in both the development plan and the Framework to enhance landscape character and biodiversity. The main area of conflict is with policies that promote sustainable travel modes and require developments that generate significant vehicle movements to be located where the need to travel is minimised and sustainable transport modes maximised. Due to the scale of the development significant vehicle movements will be generated which will be car dominated and do*

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<sup>1</sup> Mr Collins indicated that the title documents show no such covenant.

*not give priority to sustainable travel modes. However as the proposal is for a major rural attraction which cannot be located in an urban area this conflict with policy is inevitable.*

201. Although the Report found the application was not in accordance with some of the development plan policies, it did comply with other key objectives and it was found that on balance other material considerations made the proposal acceptable. The Council's main concern was sustainable travel. However, it was the highway authority's statutory duty to consider that matter and advise the Council. Essex County Highways did so raising no objection and agreeing a Travel Plan for sustainable travel. The proposal can therefore be considered on balance to accord with the development plan as a whole (AP2. 1).

***Whether the site is in a sustainable location***

202. The Stour Valley Visitor Centre at Horkesley Park would be a countryside visitor centre situated in a rural location. This is entirely appropriate. The very nature of the development, as an attraction with the vision of 'Celebrating the English Countryside' means that the development is not suitable for a town centre or urban location, it has to be in a rural location (AP7. 1, AP9. 1). Tourism is a vital part of the local economy. Policy objectives to reduce car travel are not conducive to rural tourism so a balanced view has to be taken. A choice of other means of transport would be provided but car travel would be likely to be the main mode of travel to the site. The highway authorities accept that (AP9. 1).

203. Because the proposal contains deemed town centre uses, a sequential test was submitted with the application. The Council's consultants confirmed that no other sequentially preferable site exists closer to the town centre that is suitable, viable and available for the proposed tourist attraction (CD/0230.p175). The scheme would have no adverse impact on Colchester town centre; indeed as a result of increased visitor numbers it would benefit (AP2. 1). No other more accessible or sequentially preferable site has been identified by any party.

204. The Council acknowledges that the highway authority, Essex County Council, is responsible for highways and sustainability matters (CD/0230.p237). Their role is to ensure a proposed development is accessible by more sustainable modes of transport such as public transport, walking and cycling. The location of the site on the A134 requires a Travel Plan. The highway authority has agreed to the package of sustainable transport measures, to be delivered by the appellants' Travel Plan (AP2. 1, AP7. 1). There would be an increase in vehicular movement but this is accepted by the highway authorities.

205. The site is ideally suited as a Visitor Centre for the Dedham Vale AONB and Stour Valley. It is on an A class road. The highway authorities accept the proposals. There could be no other more accessible and sustainable site for a countryside rural tourism visitor centre.

***The impact on the AONB***

206. The core development site is outside the AONB. It is self evident that the proposed development does not constitute major development in the AONB, as the Council and others argue, and therefore paragraph 116 of the Framework does not apply.

207. The Council's officers assessed the impact of the proposal on views and visual amenity, landscape and natural beauty, trees, light pollution, noise (including traffic) and raised no objection to the application subject to mitigation proposals (*CD/0230.pp85-86,228*). There would be no visual harm arising from the development in views either into or from the AONB (*AP4. 1*).
208. Because it lies adjacent to the A134 the site is located in the least tranquil part of the AONB as measured on the CPRE Tranquillity Map. The officers' view was that impacts on tranquillity would be most likely to occur from extra road traffic. At less than 3dB, this would have a negligible impact on the existing noise environment (*AP4. 1*). Activity within the Horkesley Park site itself, if controlled by appropriate conditions and/or planning obligation, would be unlikely to have significant adverse impacts on tranquillity (*CD/0230.p228*). There would be no material impact on the AONB road network, any increase being well within the normal daily variation (*AP7. 1*). 90% of visitor traffic would use the principal road network – the A12 and A134 (*A4. 1*). This would be encouraged by brown tourist signed routes. The website would inform satnav users to follow the brown sign routes, common practice by many rural attractions (*AP7. 1*).
209. An important consideration in respect of impact on the AONB is the design of the development. The existing buildings are something of an eyesore and would be demolished to make way for the new. All the new buildings and parking areas would be outside the AONB, with less than half the footprint of the existing buildings (*AP4. 1*). The development would replace the existing industrial buildings and most of the glasshouses, with new smaller single storey buildings that would be more sympathetic to the landscape context (*AP5. 1*). The design retains some of the glasshouses and, adopting the "grain" of the structures, would create a complex of buildings, interspersed with open space, gardens and courtyards on the existing developed nursery site (the core development area)(*CD/0172*). The parking provision of 220 spaces would be supplemented by a grassland overspill car park of up to 500 spaces to cater for peak visit days. Landscaping would integrate it into the surrounding countryside (*AP5. 1,AP7. 1*).
210. The design of the buildings themselves, their interrelationship, the interplay between parkland and the wider countryside of the AONB beyond has been sensitively handled with new extensive planting enhancing the quality of the parkland setting and increasing biodiversity and habitat formation (*AP6. 1*). The buildings would only be visible from a limited area within the wider countryside, including the AONB. Where they are visible, the buildings would have less visual impact than the existing nursery buildings (*AP5. 1*). The Council agrees that the application complies with the design policies in the Council's development plan and Framework objectives (*CD/0230.p198,IN3*).
211. The design of the Visitor Centre has been undertaken by world renowned and critically acclaimed architect Sir Michael Hopkins (*AP6. 1*). A great deal of emphasis has been placed on maintaining the character of the site and taking into account the sensitivities of the AONB and the Church of All Saints (*AP1. 1,AP6. 1*). The Council does not object to the design of the new buildings (*IN3*). In conserving and enhancing the natural beauty of the landscape the proposal would comply with the statutory objectives of AONB designation and meet the objectives of the AONB management Plan (*AP2. 1*). The proposed development would bring benefits to the AONB and would not in any material way impact adversely on it (*AP4. 1*).

## ***Other material considerations***

### *Viability*

212. Viability is not a material planning consideration where it is dealing with cash flows and variables. These are matters of commercial risk and competition to be judged by the appellants (*AP2.1*). The Council's concerns seem to reflect a fear of failure, and what might happen to the site in future if that occurs. A robust Business Plan has been produced for Horkesley Park, which takes into account peaks and troughs in business and factor in sufficient variables to ensure that the proposed Visitor Centre will be both viable and sustainable (*CD/0034*). The proposals have been vigorously tested and the appellants and their advisers are confident that the Business Plan for Horkesley Park is robust and the proposals are both viable and sustainable long term (*AP8.1*).
213. Horkesley Park would be an all year round attraction, with peaks expected in July and August. It is expected to attract 316,250 visitors per annum (*AP1.1*). Detailed analysis of the range of viability factors substantiate the attendance estimates and shows it would be realistic. The Council's consultants consider that visitor numbers would be in the region of 150,000. Even so, when sensitivity analysis has been carried out on the Business Plan, it has been verified that Horkesley Park would still be viable with that number of visitors (*AP9.1*).
214. The Council has sought to justify its numeric analysis on the basis of delivery of the public benefits. This is a matter for conditions and obligations and these confirm that the development cannot open until it is provided in its entirety. The appellants have development funds available which, if planning permission is granted, will be released to develop the Visitor Centre as a whole. The Visitor Centre would be successfully delivered as planned and all the public benefits would be delivered (*AP8.1*).
215. If viability is a material consideration in this appeal then the Council's officers and consultants concluded that the Visitor Centre could be delivered and would be viable with a lower number of visitors if all elements proceeded at the same time (*CD/0230*). That would be ensured by conditions.

### *The Chinese garden*

216. The Chinese garden was included in the Horkesley Park proposal at the suggestion of Essex County Council to help strengthen cultural exchange and consequently increase trade between China and the UK, particularly between the Province of Jiangsu and the County of Essex, which are twinned. During the Georgian period the first Chinese gardens were introduced into England and, although very few have survived, it is fitting to have one at The Chantry. The garden would be designed by Chinese accredited experts. (*AP8.1, AP8.2*).
217. The Chinese garden does not constitute major development in the AONB (*CD/0230.p220*). It would be domestic in scale, related to the house itself, and would have no impact on the wider landscape (*AP4.1*). Its design would be secured through the Unilateral Undertaking (*AP20*). A plan shows the extent and location of the Chinese garden (*CD/0336*). It would be created in the existing garden of The Chantry, between the existing high walls of the walled garden and the established tree and screen planting area of the existing garden. There the authentic Chinese

garden, including the tea pavilion, would be hidden from external view. It is entirely appropriate to create a Chinese garden in part of the existing gardens of The Chantry. In doing so it would enhance The Chantry gardens and assist with the delivery of other Horkesley Park benefits for the area, including economic benefits. This Chinese garden would be a regional attraction and a significant public benefit (*AP8. 1*).

#### *The Chantry Art Gallery*

218. The creation of an Art Gallery within the Dedham Vale AONB to display original works of artists of the region (including John Constable) in or near to the area in which they were created, featuring particularly those which have strong connections with the Stour Valley, would represent a major coup for the Borough of Colchester (*AP8. 1*). Indeed at application stage the Council considered that the Art Gallery would have the potential to be a regional attraction (*AP2. 1*).
219. The gallery would celebrate cultural expressions of the English landscape with particular focus on the local area. The exhibition programme would include past, modern and contemporary responses to the land, including farming activities, animals, fauna and flora, etc., through a variety of media, including but not limited to, painting, sculpture, photography, print making and craft. Exhibitions would come from a range of sources. Agreements are in place with numerous private individuals and other collectors, as well as galleries, to loan to The Chantry Art Gallery (*AP8. 1*).
220. The Chantry is a handsome house, built for the incumbent of All Saint's Church in 1803. It has the scale and proportion of a modest country house – light and airy, with interconnecting principal rooms suitable for the display of paintings and other artefacts. It is perfectly feasible to introduce environmental control and security systems to bring the standards of the Chantry up to that of a modern receiving gallery. At present a change of use only is proposed from residential to gallery, with public access. The detail is to follow on, as the building exists and no significant change to the exterior is proposed. Curatorial input is required for the development of the interior space. While no detail has yet been developed, with the right curatorial expertise the exhibition of C19 and C20 paintings, in a quasi domestic furnished setting, would be very successful. Limited changes to the small Coach House, nearby, would be made in connection with their change of use to studios (*AP6. 1*).

#### *Suffolk Punches*

221. The heavy horse display was identified by the Council's consultants as one of the three key attractors to Horkesley Park with the potential to be a regional attraction. The Suffolk Punch Breeding Centre at Horkesley Park would be sufficient in size and capability to play a vital part in helping to pull back the Suffolk Horse breed from near extinction. The Suffolk Horse is classified as a critically endangered rare breed and as the number of experienced heavy horsemen with knowledge of keeping, breeding and working Suffolk Punches decreases, the future of the breed is precarious. The primary aim of the Suffolk Punch Breeding Centre is to significantly increase the population and ensure the continuation of the traditional skills and knowledge required to support these indigenous heavy horses. The Appellant has guaranteed that eight Suffolk Punches would be present at all times when the

Visitor Centre is open to the public, although the intention is to have many more Suffolks both as part of a breeding program and working across the site in roles from grass cutting to conveying visitors (AP1.1).

#### *Heritage assets*

222. The late listing of The Chantry requires no change to the proposals, which seek only planning permission for a change of use of the building and the garden. The use of The Chantry would be for the display of art, the outbuildings for creative design workshops and the gardens for the inclusion of an authentic Chinese garden. The use of listed buildings as an art gallery is not uncommon and the Council advances no reason why the building would be unsuitable. There is no objection in principle and the details would be subject to conditions and obligations. A similar approach has been adopted for the outbuildings. Any physical works of alteration necessary would be subject to listed building consent, and approval would only be granted if the details were acceptable.
223. The same applies to the Chinese garden. It would not have been uncommon to find Chinese gardens in listed Georgian/Regency period properties throughout the UK, although few survive today. The details of the Chinese garden would be reserved by condition and obligation, including the appointment of an expert to advise the Council. Again approval would only be granted if the details were acceptable.
224. The Council has failed to properly assess the proposals as required under s66(1) of the Act. It has failed to identify any harm to the heritage asset other than by non-specific generalisations which are wholly inappropriate when assessing the impact of development on heritage assets. It has not had regard to, or considered any aspect of, ¶131 of the Framework. The change of use would assist in the conservation of the heritage asset by promoting a viable use, would contribute to the economic vitality of the locality and make a positive contribution to the visitor centre and the group of local buildings including the grade I listed church. The further need for listed building consent, and the detailed conditions and obligations, together would ensure that the heritage asset is protected and preserved. No harm would arise to the heritage asset if planning permission is granted for the visitor centre (AP19).

#### ***The benefits of the Visitor Centre***

225. Horkesley Park would create a new quality venue for tourism, culture and leisure. Featuring the strong agricultural and artistic traditions for which East Anglia is famous, the Visitor Centre would be "A Celebration of the English Countryside" dedicated to the themes of Agriculture & Food, Art & Culture, and Countryside & Conservation. The ticketed cultural countryside visitor attraction consists of a variety of elements appealing to all ages and interests, from education to recreation (AP1.1). The Visitor Centre would be an asset for the Borough of Colchester, an amenity for local people and a draw for tourism, providing a quality interpretation centre and giving open access to the countryside, benefiting bio-diversity and habitats and providing a large number of jobs.
226. The Officers' Report summarises the appellants' view, stating: *if successful and deliverable the proposals would deliver a number of benefits which would help to meet the objectives of national and local policy. The proposals would, in particular,*

*deliver a tourist attraction; contribute to increasing the performance of the local tourism economy; would improve inclusive access to the countryside; would allow visitors to gain greater education and knowledge of food growing, and would provide additional employment in the local economy both on and off-site. These benefits would help to achieve the economic and social objectives of the Framework (CD/0249.p192).*

227. The unique all year round destination visitor centre would deliver high quality educational, cultural, recreational and informal countryside leisure facilities to meet the needs of the Region's rapidly expanding population and the development of sustainable tourism as an important generator of employment and wealth. Horkesley Park would complement existing attractions in and near Colchester. This would contribute towards creating a critical mass of attractions that will encourage visitors to stay longer, thereby increasing the number of overnight visitors staying in the area.
228. Horkesley Park would be an important source of ongoing rural employment. Once fully operational, it is expected that 106.5 Full Time Equivalent jobs would be created on the site. A Local Employment Plan would operate and it is expected that most of the staff would be drawn from the local area. Further jobs would be created in the local economy during the construction phase of the new development, through a Local Sourcing Scheme and through off-site spending of both employees and visitors in the local economy. Horkesley Park is expected to generate over 200 jobs (part time and full time) both on and off site (AP1. 1).
229. The Visitor Centre, set in a large country park, would conserve and enhance the natural beauty of the area allowing access to and enjoyment of a quality environment. It aims to be an exciting and innovative leading example of sustainability with the aim for the whole scheme to be as near as possible carbon neutral. Horkesley Park would help conserve, restore, protect and enhance natural features and other elements, including biodiversity, that create the historic character of the landscape and provide a focal point for a deeper understanding of the Stour Valley landscape and its rural resources - providing a sustainable "gateway" to the Stour Valley.
230. Horkesley Park would have education at its heart – with all forms of learning from early years to lifelong learning, both formal and informal. Education is inextricably interlinked with all of the elements, facets and interests related to the Visitor Centre, from farming and fine art to gardens and renewable energy. Formal education would include a workshop and educational programme. Horkesley Park by its very nature would deliver an informal learning experience inspiring visitors about the wonders of the natural world, the English countryside, heritage, culture, conservation, food production, traditional skills, sustainability, etc. Opportunities would be available for apprenticeships, work experience and other training opportunities (AP1. 1). The educational opportunities for adults as well as for children would encourage lifelong learning. Horkesley Park would be much more than a traditional farm visit.
231. The intense visitor pressures on Dedham Vale currently have to be absorbed by a very limited number of attractions, these being essentially confined to Dedham, Flatford and East Bergholt. Off-road sites within the Vale where easily accessible viewpoints and open space can be enjoyed are virtually non-existent. Public

footpaths compensate to some extent for this but they are in the main only used by a small minority of visitors. Existing visitor attractions, especially at Flatford, are often over capacity and regularly experience overcrowding, especially at peak times during good weather. This supports the need for additional facilities within the area. Horkesley Park would make a very positive contribution in respect of Colchester's expanding population and the need for recreational outlets close to the main housing growth and regeneration areas. Horkesley Park will also help compensate for the current limitations on access to the open countryside. Separated from the main tourist venues, it will provide a unique experience of the countryside whilst fulfilling wider aims in relation to conservation and landscape management. The creation of an Art Gallery within the Dedham Vale AONB to display original works of artists of the region (including John Constable) in or near to the area in which they were created, featuring particularly those which have strong connections with the Stour Valley, would further enhance the tourist offer for the Borough of Colchester.

### ***Appellants' conclusions***

232. The Council accepts that the site as a tomato nursery is not viable (*IN3*). Other uses have also proved unviable. The glasshouses are seriously dilapidated. The appellants need to diversify and the proposals for Horkesley Park make good use of a redundant site (*AP1.1*). It would be a much better neighbour to the AONB than the existing site (*AP6.1*).
233. Tourism is a key element of the local economy and is currently underperforming (*IN3*). The wide range of benefits Horkesley Park would deliver ranges from improved access and educational opportunities through to socio-economic benefits, from job creation to the development of cultural exchange and enterprise that will help to increase understanding and trade between the province of Jiangsu and the County of Essex. This would encourage inward investment from China. If it is considered that the appeal proposals do not accord with the development plan, it is the Appellant's submission that other material considerations show such benefits as to warrant a recommendation to grant permission with the agreed conditions and obligations (*AP13*).

### **Other interested parties supporting the proposal**

#### ***Sir Bob Russell MP***

234. The proposals for Horkesley Park are fully in accord with the Government's planning objectives for sustainable development, where the presumption should be for approval unless there are strong reasons to the contrary. There are no strong reasons which override such a presumption of consent. Significantly, Great Horkesley Parish Council does not object – their concerns have been addressed – and the Council's own planners recommended approval (*TP9*).
235. Colchester Zoo is celebrating its 50<sup>th</sup> anniversary. If the objections to Horkesley Park had been made against the Zoo in 1963 it would never have been established. Today it is the biggest tourist attraction in Essex, with 2-3 times the number of visitors projected for Horkesley Park. It provides employment and is an economic generator for the Colchester economy. The Zoo is located on a 'B' road; by contrast Horkesley Park would be served by the A134. The Inspector is invited to compare the access route to the Zoo with the access route to Horkesley Park.



236. The venue for the 'Thursford Christmas Spectacular' in North Norfolk is accessed by narrow country roads and attracts audiences totalling 100,000 in just a few weeks. If the country roads there can handle such huge numbers then clearly the superior road system of the A134 would comfortably handle the traffic generated by Horkesley Park.
237. The countryside has evolved over the centuries. What is proposed for Horkesley Park is part of the continuing evolution. It would not destroy the countryside. The village of Nayland may retain its physical characteristics but it too has changed. There has been new housing development on green fields and it is more of a commuter village than the agricultural village it used to be. Few now work in agriculture. Horkesley Park, with its agriculture-related jobs, would add variety and vibrancy to the countryside and rural economy.
238. The arrival of the Bunting glasshouses and chimney stack made more of a visual impact on the countryside than what is now proposed. The scheme would have a smaller footprint than the existing buildings. The countryside of Great Horkesley itself has changed in more obvious ways than is now proposed, with new housing estates at Horkesley Heath and the loss of orchards as part of the changing pattern of agriculture and horticulture in the UK.
239. The proposals for Horkesley Park would not destroy the countryside as objectors claim. Nor as claimed can it be both too ambitious and not economically viable. Either way it is private investment so in the unlikely event of failure there would be no cost to the public purse. The scheme would add to the tourist mix of those visiting Colchester and the surrounding area. The economy of the area would be boosted, with more jobs available to local people.
240. A significant feature of the proposal is the Chinese garden. These were introduced to country houses in the Georgian period so such a garden in the grounds of The Chantry would be a perfect example of this part of the country's history. The Chinese garden would provide an excellent and permanent location for cultural exchanges with the County's twinning partner, the Chinese Province of Jiangsu. This would be a significant attraction to Chinese visitors. With the Chinese economy growing, there are likely to be many more Chinese visitors to the UK. The Horkesley Park Chinese garden would ensure they are attracted to Colchester, which would then benefit from the revenue injection into the local economy. There is already a significant Chinese student population in Colchester and a Chinese garden would also be attractive to them and visiting relatives.

***Geoffrey Baker***

241. The scheme should be supported, especially as the appellants have a history of carefully considered works with negligible visual impact. With regard to the listed All Saints church, having the development nearby would help to ensure the continuity of the life of the church. It would enable it to open more often and would enhance security for the building, to the benefit the local community. Most obviously the scheme would provide employment in the local and wider areas, bringing business and tourism which would benefit the local economy (*TP12*).

***Michael Roberts***

242. The glasshouses, when no longer viable for tomato growing, were used to develop natural pests. This became a very successful business and is illustrative of the appellants' skill and approach. The nursery site is outside the AONB, adjacent to a major road. Re-use of this site would not harm the countryside.
243. The proper custodians of the countryside are its farmers. The character of the landscape is due to their stewardship and range of agricultural skills. It would not exist unless farmed and tended. This scheme would ensure that the countryside is cared for in an appropriate way. The Visitor Centre would provide a platform to pass on and develop rural skills and educate the public on agriculture and the countryside. The appellants have been involved with farming for generations and their knowledge is a vital resource. A use has to be found for the site and this latest iteration would allow that reservoir of vital knowledge to be shared.

***Robert Leng on behalf of Essex Chambers of Commerce***

244. The proposal would bring substantial investment to the local economy, create employment, enhance the local tourism offer and conserve country skills. It would also preserve the nature of the area, man-made as it is, for the foreseeable future. The Council appears to be complacent to both the creation of jobs and the issue of tourism. Both are crucial to the economic well-being of the town. While employment levels may be high in the Borough, there are high levels of unemployment in the surrounding areas. This proposal would address the call for more jobs in those areas (*TP13*).
245. Colchester is growing fast, with a new house building programme and land available for commercial development. The jobs topography of the town has changed radically, with large employers replaced by smaller enterprises. They need to be encouraged. One of the main growth areas should be tourism and leisure but the Council acknowledges that this area is not meeting its potential. Visitor numbers have fallen and tourism revenue has decreased. There are a lot of day-trippers to the area but much more has to be done to expand the more lucrative longer stay market.
246. Horkesley Park Visitor Centre would generate employment from the start, eventually providing some 150 jobs on site. Many more would be created in other areas, with local businesses benefitting from the spin-off and increased local trade. The attraction would make a significant contribution to the town's tourist package. The rural economy is in decline. Horkesley Park would have a local employment plan to deliver jobs to local people. Education and training at Horkesley Park would keep countryside skills alive.
247. If visitor numbers are lower than forecast, fewer jobs would materialise. However, all employment is valuable. A smaller operation would still be viable, and Horkesley Park has the potential to become a quality attraction that would add to the list of reasons to visit the Colchester area. It would fill a tourism need. The site, once a vibrant working area, is no longer viable for its original purpose. The question of its future arises and what would be an appropriate use. Issues of access have been satisfactorily addressed and the venture is considered viable, even with reduced visitor numbers. If it were to fail, any different use would require planning permission, a safeguard to those who see the centre as a Trojan horse. The

Chambers of Commerce believe that the proposal is right for the location and will be of economic, educational and social benefit to the borough.

***Martin Heslop***

248. It is a clear government objective to increase tourism. Its importance to the UK economy is often underestimated – it is our 3<sup>rd</sup> highest export earner and the 5<sup>th</sup> or 6<sup>th</sup> biggest sector of our economy. The national policy aim is to increase tourist spend substantially, creating many new jobs across the country. There is a need for all-weather attractions based on our strengths – our heritage and our countryside. This proposal would provide exactly that, helping to meet that need. Unsubstantiated subjective opinion is at the root of many local objectors' concerns about traffic impact. The A134 is already a busy and noisy route through the AONB and this will markedly increase when current road improvements are completed. As the clear EIA report shows, the Visitor Centre would have virtually no impact at peak traffic flows and be hardly noticeable at other times. The views of the responsible highways authorities should not be ignored or set aside. With decreasing funds available for environmental projects, tourism will be the only driver to maintain our beautiful countryside for future generations. This regional attraction, managed by a local family dedicated to protecting our heritage, is one that would be appreciated for years to come (*TP14*).

**Written support**

249. In response to notification of the appeal, 75 letters and emails were received before the inquiry supporting the proposals (*WR2*). In summary, these refer primarily to the opportunities for rural employment and revitalisation of the rural economy; the benefits of increased tourism; education and training opportunities, particularly in relation to food production and rural skills; informed access to the countryside; and recovery of the endangered Suffolk Punch heavy horse breed.

250. Keith Brown CEO Visit East Anglia (*WR5*). The East of England is one of the fastest growing regions in terms of tourism income, reflecting the increasing popularity of the wide variety of natural and built heritage, broad cultural offer and other locally distinctive visitor experiences. Tourism spend is increasing above the national average, reflecting the Region's growing appeal. Taking that into account, Visit East Anglia confirms that there is strong consumer appeal for a high quality rurally focused attraction in the area and the appellants' anticipated visitor numbers are realistic. The development would create important indirect tourism income for other destinations, attractions, hotels and other hospitality businesses in the wider area as a result of visitors staying longer and looking for a range of experiences to enjoy. The development would create much-needed employment in the area and would also sustain jobs in those businesses that take advantage of visitor spend in the wider area. The development would help the Region attract more international visitors who want to experience 'rural England' whilst here. Visit East Anglia is fully supportive of the proposal.

251. Mr T Shain (*WR6*). The owners would not spend all that money on a rural visitor centre and then destroy the countryside it depends on as claimed. If the proposal meets the planning criteria it should be allowed. As regards The Chantry, there is no logic in listing a building for its national heritage value and then seeking to

deprive the population from having the chance to visit it. As a private residence it is not available for the public to visit so it is not clear who it is being preserved for.

### **Obligations and Conditions**

252. The appellants' unilateral undertaking, made as a deed of planning obligation under s106 of the Act, is intended to bind them should planning permission be granted to making contributions to the Stour Valley Environment Fund; to submitting a Local Employment Plan for Construction and Operation; to submitting the Chinese Garden proposals to expert review; to submitting a Travel Plan; and to providing a permissive footpath in perpetuity (*AP20*).
253. These 5 provisions were agreed by the Council to be necessary. The Council confirmed satisfaction with the proof of title and, while the appellants do not own all of the land over which it is proposed to provide the permissive footpath, the Council is also satisfied that they have the legal right to pursue a Footpath Creation Agreement under s25 of the Highways Act 1980 (*CO17*). The site is subject to a Bank mortgage. While taking a neutral view on the planning application, the Administrators have no objection to the appellants entering into the undertaking. The Bank mortgagee gives provisional consent to the undertaking and its registration as a land charge (*AP21*).
254. The Council considers the submitted undertaking to be unacceptable. The Bank mortgagee has not signed the undertaking and so would not be bound by its provisions or be liable for any breach while the site is in its possession. The Council also argues that clause 7.2 of the undertaking is badly worded and would allow any new purchaser who buys the site prior to the grant of planning permission to escape all the planning obligations given in the deed. Clause 10.1(4) is also vague as the grant and implementation of any new planning permission on the site, however small, could allow the undertaking to cease to have effect. The appellants argue in response that the Bank's letter of consent is common practice and should be acceptable. The definitions and intentions of the 2 clauses are clear and they would not prejudice the undertaking (*CO17*).
255. The appellants further respond by pointing out that, while the appellant company is in administration, the Bank mortgagee will not provide more than the letter of consent already submitted. However, the appellants indicate that they expect administration to be brought to an end well before the Secretary of State is due to make a formal decision. They suggest that, should the Secretary of State be minded to allow the appeal, in order to avoid the need for a further application the deed of undertaking could be quickly amended to include the Bank, or any other relevant party, as signatories and to revise as necessary the clauses cited by the Council (*AP22*).
256. The list of agreed conditions was reviewed at the inquiry with the active participation of the Appellants' agent (*CO7*). As well as the standard time limit and compliance conditions, there are crucial conditions requiring completion of the whole of the approved attractions before the site is open to the public and for the Visitor Centre to be a gated facility only accessible by ticket. This is to ensure that the development is operated as a single entity, given the ancillary nature of the otherwise town centre uses, and to ensure the delivery in full of the public benefits associated with the tourist attractions.

257. Conditions restricting the hours of use, other leisure uses and the frequency and timing of additional annual events are intended to protect the tranquillity and rural amenities of the area. Full details are required for approval before commencement of the Art Gallery strategy, the Chinese and other garden areas and the Suffolk Punch Centre. This is to ensure that key elements are satisfactorily delivered to operate as part of the single entity. Conditions controlling retail sales and farmers' markets are to ensure that the retail elements of the scheme remain ancillary to the tourist attraction.
258. A Design Code is to be agreed which, together with the submission of architectural details and signage for approval, should ensure an appropriate quality of design in this rural location. The provision of parking areas is to be phased and reviewed so the level of provision is justified in the interests of sustainability. Refuse, recycling and litter management details are required to ensure satisfactory provision. Evidence that the development attains BREEAM 'Good' rating is to be provided in the interests of sustainable development. The requirement for full details of the protection, provision and management of landscape works should ensure the integration of the developed site into the surrounding landscape. A number of highway improvements are proposed and requirement for submission of details for approval would protect highway efficiency and safety.
259. There is some indication of archaeological features in the vicinity so a watching brief would enable the proper inspection and recording of any finds. Acoustic barriers are required to the overflow car park and the outdoor display ring which, together with appropriate surface treatment and control of engine idling, are intended to protect residential areas and the AONB from undue noise emission. For the same reason all buildings would require appropriate sound insulation. The use of the coach house at the Chantry is restricted to studio purposes so that the overall Art Gallery use would not be compromised. Details of an external lighting strategy would need to be submitted to ensure adequate safeguarding of local amenity and light pollution in the AONB.
260. Conditions requiring details of kitchen extract systems, grease traps, oil interceptors, groundwater protection and oil storage are necessary to prevent air and water pollution. The core area of the site has been subject to intensive horticultural methods, with the potential for contamination. Conditions requiring details of the site characterisation in this respect, any remediation scheme, its implementation, management and validation are necessary to minimise the risks from contamination. At construction stage, a Code of Practice is necessary to prevent undue disturbance to the local area. A Construction Travel Plan is required to ensure access to the site by operatives is available by sustainable means of transport. A Coordinator is to be appointed to manage both the Construction and Operational Travel Plans to ensure effective operation.
261. A detailed scheme of footway and cycleway improvement is to be submitted for approval to make the site more accessible by these more sustainable forms of transport. A condition is necessary requiring adequate measures to be taken to protect the habitat of Protected Species on the site. Conditions restricting the hours of construction work and the timing of deliveries would protect the amenity of the local area and the AONB. In order to maximise the benefits to the local rural economy, a Local Sourcing Scheme is required. An area for the proposed location of the Archery school is to be agreed in order to protect this sensitive countryside

location. The existing accesses to the site would be kept for a farm access only, with no public access, for highway safety reasons. Measures are to be taken to ensure that noise emitted by equipment on the site, including PA systems, is not audible at sensitive boundaries, to protect the surrounding area from undue noise emission. Permitted development rights would be removed to ensure the development is only used for the purposes approved and no temporary uses or structures, means of enclosure, alterations or extensions can take place. This would protect residential amenity and the AONB from unforeseen visual intrusion and human activity, and the potential for noise and disturbance and light pollution.

## Conclusions

*The following conclusions are based on my report of the oral and written evidence submitted to the inquiry and on my inspection of the site and its surroundings. The numbers in square brackets [78] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.*

262. The main considerations in this appeal fall within 3 broad headings:

1. whether the site can be considered to be in a sustainable location, with particular regard to accessibility;
2. the impact of the proposal on the character and appearance of its rural surroundings, and in particular on the purpose, landscape character and scenic beauty of the Dedham Vale AONB; and
3. whether there are any other material planning considerations which might support or undermine the proposal when assessed against the adopted planning framework for the area.

### ***Policy background***

263. The local development plan is the Colchester Local Plan (LP), which includes the Core Strategy 2008 (CS) and the Development Policy DPD 2010 (DP). The Council is carrying out a focussed review of CS and DP policies to ensure that they are consistent with the Framework, which was published in 2012. In written evidence the appellants originally argued that, because its policies were under review, the local development plan is out of date so that a grant of planning permission under ¶14 of the Framework is invoked. This gives a presumption in favour of development unless any adverse impacts outweigh the benefits of the development.

264. I heard that, although the wording of a few of the relevant policies could alter slightly, their main thrust would not change [26,36]. While I note that there might be some limited inconsistency relating in particular to the Framework's policies on sustainable economic growth, I consider that this does not critically undermine the overall consistency of the relevant policies with the Framework and in particular the presumption in favour of sustainable development. In my view, they are not critically out of date and the weight they carry as development plan policies is unaffected.

265. I therefore find no justification for the appellants' argument. In any event, the greater part of the site lies within the Dedham Vale AONB and, as the footnote to ¶14 makes clear, this provision does not apply where other specific Framework policies indicate development should be restricted, such as policies relating to land designated as an AONB [37,40,106,118,152,159,175,206]. I note that, in closing, the appellants made no reference to their initial argument; instead they argued that on balance the proposal complied with the development plan [201]. I take this to be an acceptance that the local development plan is not out of date.

266. The East of England Regional Strategy (RS) was part of the development plan when the application was considered. The RS was revoked on 3 January 2013 and I have not taken its policies into account [27,34]. The appellants cite the evidence

base for RS policy C2, a criteria-based policy which referred to regionally significant tourism facilities. That evidence base supports the provision of new large-scale tourist attractions, exceptionally on a rural site, although any proposal would still be required to meet sustainable development objectives. While the Council agrees in principle that the proposal would deliver a significant new tourist attraction, which would improve the under-performance of the local tourism economy, sustainability remains an issue [18,91,201]. While the LP has nothing similar to policy C2 at local level, it does contain appropriate tourism policies and I am satisfied that the tourism aspects of the proposal can be properly assessed against current development plan and national policy objectives [35].

***Whether the site can be considered to be in a sustainable location, with particular regard to accessibility***

267. The Framework makes it clear that the primary purpose of the planning system is to contribute to the achievement of sustainable development. One of the core planning principles set out in ¶17 is to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. There is no doubt that the proposal would be significant development [39,117,159,163,174].
268. CS policy SD1 directs new development to sustainable locations, following a hierarchy of defined housing, employment and growth sites. Although the Framework acknowledges in ¶29 that opportunities to maximise sustainable transport solutions will vary from urban to rural areas, it makes clear in ¶34 and ¶35 that developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Developments should be located and designed where practical to give priority to pedestrian and cycle movements and have access to high quality public transport facilities.
269. The site is in the countryside, some 8 km from Colchester town centre. The appellants consider that the Visitor Centre would attract some 316,250 visitors annually from a geographically dispersed catchment area of 2 hours drive time (Scenario A) [45,213]. That would translate into a peak monthly figure of 50,600 in August, falling to 15,800 in the winter months [60]. The appellants calculate that the overwhelming majority of visitors, up to 82%, would arrive by car, 14% by coach, with only perhaps 2% by bus and 2% walk/cycle [60,207]. By any measure that is significant traffic movement.
270. However, the Council considers these figures to be over-optimistic, calculating that annual visitor numbers would be no more than 150,000 (Scenario B) [45,47]. That would equate to 24,000 visitors in August and an average of 7,500 in the winter months [60]. The Council also considers that the percentage breakdown of transport modes cannot be substantiated. Based on more up-to-date information from a range of comparable attractions, the Council considers that a more accurate modal share in this location would be 90% car, 6% coach, 2 % bus and 2% walk or cycle [60]. Although a controversial matter, Scenario A could not be tested at the inquiry. On the other hand, the Council's Scenario B was not challenged [8,30]. Since it is substantiated by reference to annual visitor numbers and penetration rates at comparable attractions, I consider that Scenario B is a more realistic assessment of likely visitor numbers and modes of transport. Even so, at less than



half the Scenario A visitor numbers, it would still generate significant traffic movement [170].

271. There is an hourly bus service between Colchester and Sudbury passing the site but this does not run in the evenings or on Sundays, potentially a peak day. Most visitors from further away would have to change at least once, making this a time consuming and unattractive form of travel. The footway provision near the site is substandard; there are no dedicated facilities for cyclists in the area; and there is in any event little population within reasonable walking and cycling distance [58]. As it stands the site is poorly served by alternative means of transport.
272. So could the location be made sustainable? A detailed scheme of improvement of footways and cyclepaths is the subject of an agreed condition [261]. However, since they would serve so few people, that would have little practical effect. The appellants' also undertake to provide and operate a Travel Plan, intended to encourage the use of more sustainable forms of transport [64,204,252]. That would include the funding of an extended bus service between Colchester town centre and the site to provide an average 15 minute frequency during opening hours. On the face of it, that would give access to high quality public transport facilities, providing 32 bus trips over an 8 hour day. But with only 2% of visitors expected to travel by bus, on average that would equate to about 1 person for every other bus Monday-Saturday and less than 1 person per bus on Sundays in Scenario A, and less than half that in the more realistic Scenario B [61]. This level of demand would mean that the extra buses would not be a viable proposition and, since their provision would be subject to annual review, they would be unlikely to be provided over the long term [62]. In practice these measures would have a negligible impact on making the location sustainable.
273. There is no doubt that, for almost all visitors, the remote countryside location of the Visitor Centre would generate a need to travel, whatever the means. That alone undermines a key tenet of sustainable development policy. The proposal would be heavily dependent on access by car, made easier by direct A-road access from the A12 and by the availability of on-site parking to more than meet maximum demands [52,62,65,205]. By contrast, few visitors would arrive by more sustainable means of travel, a situation unlikely to change. The site is not located where the need to travel would be minimised and where the use of sustainable transport modes could be maximised.
274. The proposal would therefore not be consistent with core Framework sustainable development policy objectives. It would not be in a sustainable location, in conflict with CS policy SD1. There would be some substantial employment and rural economic benefits but, because of its high travel needs, the proposed development would not comply with CS policy CE1, intended to prevent substantial traffic-reliant development in the countryside. The site is not in an accessible location, being almost entirely dependent on travel by car, and the Travel Plan would do little if anything to change travel behaviour towards more sustainable modes of transport. The proposal would not therefore meet the policy objectives of CS policy TA1 or DP policy DP17.
275. The appellants argue that, as the proposal is for a rural Visitor Centre, it has to be in the countryside and, since rural tourism is dependent on travel by car, this justifies its unsustainable location [202]. While the Framework does indicate that

some allowance can be made for rural areas, this proposal would be almost entirely reliant on car travel and would generate a very large number of journeys. Given the scale of traffic movement involved, I do not consider that national policy objectives promoting sustainable travel can so easily be set aside.

276. Furthermore the development would contain a number of town centre uses [203]. Both Framework and CS policies require a sequential test for such uses. Clearly, taken as a whole, the Visitor Centre is not a main town centre use but, even when considering out of centre proposals, preference should be given to accessible sites that are well connected to the town centre [67]. Given the mix of retail and countryside uses, that suggests a site on the edge, or close to the edge, of town on a major transport corridor. No one argues that this is such a site. Although no other site has been identified, since the appellants have been trying to develop the appeal site for at least 12 years I am not convinced that any search for other more suitable sites would have been much more than cursory [161]. This somewhat undermines the appellants' claim that there could be no other more accessible and sustainable site for a countryside rural tourism visitor centre [203]. In terms of its accessibility I see no justification for the remote rural location of the Visitor Centre site other than ownership.
277. The Visitor Centre would be car-dependent. It would be poorly served by the more sustainable modes of walking, cycling and public transport. The remote location of the site makes any improvement in sustainable transport accessibility difficult to achieve. The Travel Plan would do little to change travel behaviour. Because of its remote location and poor level of access by sustainable transport, the proposal would lead to an unsustainable pattern of development. This would be in direct conflict with national and local planning policies which seek to promote sustainable transport choices and reduce emissions from transport. I conclude on this issue that the site cannot be considered to be in a sustainable location.

***The impact of the proposal on the character and appearance of its rural surroundings, and in particular on the purpose, landscape character and scenic beauty of the Dedham Vale AONB***

278. Dedham Vale is considered to be one of the finest landscapes in England, characterised by the valley cut by the River Stour into a broad and gently undulating lowland plateau. The sloping valley sides rise from the floor of the valley to meet the locally elevated plateau above. The valley and its slopes have a variable character with woodland and fields of arable and pasture land. The upper slopes and the elevated plateau have more open arable land, interspersed with woodland, allowing framed panoramic views across the countryside. The Vale is said to be the epitome of the farmed English landscape [68,69,144,158,162].
279. The site of the proposed Country Park Visitor Centre lies in a transitional location on land encompassing both the upper slopes of the valley side and open plateau land to the North of Great Horkesley [70]. It includes extensive open arable farmland, areas of woodland and a couple of fields in pasture. The boundary of the AONB crosses the site, although the characteristic arable landscape of the higher plateau land continues beyond the boundary of the Vale [188]. The redundant nursery buildings lie just outside the AONB boundary. In terms of area, the large majority of the site is within the AONB. However almost all the new development would take place on the nursery site, outside the AONB [41,109,118,159,206,242].

280. The Council argues that the proposal represents major development in the AONB and that, since there are no exceptional circumstances to justify it, it should be refused planning permission as indicated in ¶116 of the Framework [42].
281. The proposed development would include the erection of 8,950 m<sup>2</sup> of new buildings and the change of use of some 42 ha of agricultural land to country park. It is intended to attract more than 300,000 visitors every year from across the region and more specifically from China. It would by any measure be a major development [10,39,117,159,163,174]. However, the new buildings would occupy the site of the redundant nursery, outside the AONB [15,206]. They would form the major part of the new development. While there would be the creation of the Chinese garden, the erection of fencing and the change of use of land within the AONB, these are relatively minor elements of the scheme in terms of development. The proposal cannot with any factual accuracy be described as major development in the AONB, so in my view ¶116 of the Framework cannot be invoked.
282. Nonetheless, the proposal would be a major development in the countryside, with the site both in and near the AONB. It thus falls within the scope of DP policy DP22, which sets out the criteria for development in such locations. I go on to consider the proposal against these criteria.
283. As it stands, the existing industrial scale agricultural buildings on the site are something of an eyesore [136,209]. As I saw on my site visit, while the glasshouses are largely screened in longer views from the AONB, the boiler house chimney in particular is very prominent. In closer views from public footpaths in the AONB, and in wider views outside it, the full extent of the somewhat utilitarian structures is evident. I consider that, notwithstanding their agricultural use, the group of existing buildings on the nursery site currently has a harmful visual impact on the character of their rural surroundings.
284. As land occupied by agricultural buildings, the nursery site does not fall within the definition of previously-developed land. It is agricultural land but, since it has been built on, I do not accept the Council's argument that it should be treated as greenfield land [43]. That assumes open fields but the existing buildings are likely to remain, redundant and unused, becoming increasingly more dilapidated. The proposed redevelopment of the nursery site has been very carefully considered and would see the existing structures replaced by a group of low-key, high quality buildings, appropriate to their context, and overall of less site coverage, less built volume and lower height [209]. The Suffolk Punch Breeding Centre building and its accompanying training ring would extend onto land currently not built on, but that land is clearly a functional part of the former tomato nursery operation and, in terms of the overall layout, I see no objection to its use as part of the visitor centre. I consider the skilful design of the new visitor centre to be exemplary, representing a significant improvement in terms of the visual quality and character of the area. The proposal would thus be in line with the building design criteria of DP policy DP1.
285. The new buildings would be set well back from London Road, providing forecourt parking. Since this part of the site is currently occupied by the most industrial of the nursery buildings, and the parking area would be screened by new landscaping, this arrangement would contribute to the improvement in visual quality. However, coach parking and an extensive area of overflow car parking would be located in a corner of a large arable field, adjacent to the built up area of the former nursery, on

- the small part of the field outside the AONB. Footpaths crossing the open field mark the boundary of the AONB and the extent of the parking areas. The car and coach parks would be enclosed by substantial tree planting against the AONB boundary, intended to screen views from the AONB of parked vehicles. In time that might succeed but the enclosure of part of the field, the change of the remainder of it to pasture land and the introduction of essentially woodland planting would distinctly change the nature of this area of arable land [73,80,111,125]. Although some other parts of the site farmland would be devoted to 'heritage farming', most of it would become recreational parkland in pasture.
286. While I saw some enclosed grazing fields, associated with a local dairy farm, they form part of the valley slopes landscape. The visitor centre land lies primarily within the typically more open landscape of the elevated plateau, where such fields are uncharacteristic [69]. It is true that changes in agricultural practices can lead to changes in the landscape [237], but a key objective of the AONB MSP is to ensure that the AONB remains a distinctive working landscape with agricultural production at its core [87]. The proposed changes to recreational use would be contrary to this objective.
287. The distinctive character of the AONB is not solely derived from the natural environment. The traditional buildings of the area contribute no small part to the special character of the AONB landscape. A fine example is The Chantry, a country Rectory set in carefully laid out lawns and gardens, The proposed Chinese garden would be located in the grounds of The Chantry, within the AONB [41,109]. A detailed design has not been provided but it is intended to replicate a classical 17<sup>th</sup>/18<sup>th</sup> century private Chinese garden. References show that the garden would contain rock structures, ponds and streams, walkways and bridges, a tea pavilion and typically Chinese planting [50,217,240]. The appellants argue that Chinese gardens were created in Georgian country houses from about 1750 and, as very few have survived, it would be fitting to create one at The Chantry [217]. No surviving example has been referred to.
288. In fact the neo-classical early 19<sup>th</sup> century Chantry was built after the decline of Chinese influence on design in England, indeed 'chinoiserie' was seen as the very antithesis of the neo-classical approach to design. While there are undoubtedly some Regency gardens that have Chinese features, I am not at all convinced by the evidence before me that the inclusion of a full-blown classical Chinese garden has ever been part of English garden design. Nor would such a garden be consistent with the age and design of the Chantry [125,131]. In my view, the incongruous imposition of a Chinese garden in this location would detract from the special character of the AONB.
289. The visitor centre would bring a considerable number of cars and people to the area. It is anticipated that most people would stay within the range of buildings but some would undoubtedly explore on foot the land associated with the visitor centre and use the public footpaths to explore further afield. There are strong concerns that satnav directions would bring cars through narrow local roads [137,146,169,208]. In my experience, the default satnav setting is normally the quickest route, and that is by the main roads. I consider that, when the A12-A134 link road is complete, coaches and cars would be most likely to travel by the main roads. Nonetheless, some visitors might choose to travel through the local roads in the Stour valley, or use their car to further explore 'Constable Country' in association

with a trip to the visitor centre [82,115,125,137,155,160,178,189]. The Council accepts that, in operational terms, the local highway network could absorb this degree of additional traffic [208]. However, it seems to me that the attraction of so many visitors to the area, and the increase in pedestrian and vehicular movement on footpaths and local roads, to some extent would threaten the tranquillity and quiet enjoyment of the AONB.

290. Taken on balance I consider that, while the replacement of the former tomato nursery buildings would substantially improve views into and from the AONB, the combined impact of the enclosure of the parking area, the change of use of the land, the addition of the Chinese garden and the loss of tranquillity, while not dramatic, would adversely affect the special landscape character and qualities of the AONB itself. The proposed development would not conserve or enhance the natural beauty of the landscape, the primary purpose of AONB designation, and would undermine the aim of providing quiet enjoyment of the countryside. The proposal would not meet the criteria of key DP policy DP22, it would conflict with the objectives of CS policy ENV1 and would be inconsistent with the objectives of the AONB Management Plan.

***Whether there are any other material planning considerations which might support or undermine the proposal when assessed against the adopted planning framework for the area***

*Tourism and the rural economy*

291. It is agreed that Colchester underperforms as a visitor location and that this proposal would provide a new tourist attraction that would improve the performance of the local tourism economy [18,225,233,248]. It would be likely to increase the number of longer stay visitors, thus bringing increased business to local hotels, guest house, pubs and restaurants [227]. That in turn would promote the retention and development of local services and community facilities. The Visitor Centre would create a significant number of new jobs, both directly and indirectly, and would generate increased prosperity in the local area, including the development of rural skills [120,226,228,246]. This would support economic growth and help to sustain a strong rural economy [239,244,250]. The proposal would accord with the aims of DP policies DP9 and DP10 and would help to support a prosperous rural economy, a key national objective set out in ¶28 of the Framework. The increase in tourism, job creation and economic growth would be clear benefits of the scheme.

*Deliverability/viability*

292. The Council argues that the visitor centre would not attract anything like the numbers claimed, that key attractions would not be fully deliverable and that, as a consequence, concerns about viability undermine the weight to be attached to the benefits of the scheme [47]. Other objectors consider that the proposal is simply not viable [122,151].

293. Behind the viability concerns lie fears that allowing this scheme, should it fail, would result in a transformation of agricultural land to previously-developed land, open to another use [43,165,190,247]. The Council accepts that the use of the glasshouses for horticultural purposes is not viable [18,232]. I heard no suggestion that another agricultural use for the site could be found but, in that event, it would be difficult to resist the replacement of the glasshouses by far more visually

- intrusive farm buildings [161]. It is most unlikely that the nursery buildings would be demolished and the land returned to fields. Far more likely is that they would continue to deteriorate, with parts of the site as now in a series of temporary uses, becoming more and more of an eyesore. That would not be in the best interests of the AONB. I have to consider this proposal on its own planning merits against the policies of the local development plan. Should in future another use be proposed, whether or not it is promoted as a re-use of previously-developed land, to succeed it would have to comply with the local development plan in force at the time [247]. That decision would be within the Council's control.
294. The Council's Decision Notice makes it clear that, while not a reason for refusal, viability concerns informed its judgement that the proposed development would not be commercially viable or sustainable, and therefore not deliverable. In particular the Council considered that 2 major attractions, the Chantry Art Gallery and the Chinese garden, could not be delivered [49,51].
295. The commercial viability of a proposed development on its own is not a material planning consideration, being more a matter of judgement for the developer [212]. In support of its stance, the Council's reference to ¶173 of the Framework in this respect is somewhat disingenuous [44]. While ¶173 requires careful attention to viability and costs in decision-taking, it goes on to make it clear that this advice relates to ensuring that sites and development are not subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. That is a very different matter.
296. In terms of deliverability, the appellants claim that the proposal would attract up to 316,250 visitors every year – Scenario A. The Council considers that there would be no more than 150,000 – Scenario B [45]. This was a matter of dispute at application stage and at the inquiry. The Council argues that the appellants' claims are based on out of date, inappropriate and unrealistic assumptions [48]. It was not possible to test the robustness of the appellants' claims at the inquiry [8,29]. On the balance of the evidence before me, I lean towards the Council's assessment. Even so, the appellants consider that the proposal would still be viable with that number of visitors, provided all the elements were in place [213]. An effect of Scenario B would be that approximately half the number of visitors, travelling in far fewer cars, would have a significantly less harmful impact on the AONB.
297. It comes down to whether the key attractions would be delivered. In that respect, the agreed conditions precedent [256] require, before any development can take place, the submission for approval of:
- o details of an Art Strategy, to include the conversion of the Chantry and substantive evidence of its proposed contents. That would have to include listed building consent for works to The Chantry (see below).
  - o a detailed landscaping scheme, including a fully detailed Chinese garden layout.
  - o a Suffolk Punch Strategy, giving details of stabling, a breeding programme, show-ring display and other entertainment and educational programmes.
298. Thus the development of the site could not start until the Council is fully satisfied that these attractions would be provided in acceptable form. A further condition requires that the whole of the development, including these 3 attractions, should be

completed in its entirety before the development is open to the public and that all the elements of the scheme should be kept open during opening times.

299. These conditions have been designed to ensure that no development could take place until detailed schemes have been agreed and that all the key elements of the scheme would be in place before the proposed Country Park Visitor Centre could operate. The key attractions would have to be delivered before the Park could open to visitors. For these reasons I do not consider that objections on viability and deliverability grounds can be sustained.

*Impact on the historic environment*

300. The medieval Church of All Saints lies within its churchyard in a relatively isolated location. The site adjoins the churchyard on 3 sides. This important church is listed grade I and part of its special interest is its place in the landscape. While the immediate setting is screened by mature tree planting, the tower is visible in views across the countryside. The Chantry is the former rectory to the church. Dating from the early 19<sup>th</sup> century, it is listed grade II. Its setting is provided by its screened pleasure grounds and gardens, which make a very positive contribution to the rectory's special interest. The church and its associated rectory have distinct group value and the 2 buildings in their settings are significant heritage assets [94].

301. The dilapidated existing tomato nursery buildings lie close by. They would be replaced by a group of well-designed new buildings, with an overall reduction in built development on the site. The new buildings would be screened from the immediate churchyard setting and, if anything, would have a beneficial impact on longer views of the tower. The influx of visitors would lead to a dramatic increase in activity in the locality, but this might also result in more people enjoying the historic environment [251]. Overall I consider that the proposed development would have a neutral effect on the setting of the church so that its significance as a heritage asset would be sustained. In this respect the proposal would meet the objectives of DP policy DP14.

302. The scheme includes the conversion of The Chantry to an Art Gallery and its Coach House and stables to creative design studios and workshops [14,130]. No details have been provided [97]. Alterations to the fabric of The Chantry and its outbuildings to form the Art Gallery and studios would be subject to listed building consent. There is no doubt that these could be viable uses consistent with the conservation of these buildings and there is no reason in principle why a sympathetic conversion should not be possible [220,222]. However, without details, that remains to be seen. At this stage I cannot conclude that such a conversion would be acceptable.

303. The provision of a Chinese garden is a key element of the scheme [50,216]. The garden would be constructed in a rough U-shape between the walled kitchen garden and the screened boundary of The Chantry grounds. Again, no details have been provided but there is a clear indication given of what is proposed [217,240]. As I have already found, such a Chinese garden, in the context of an early 19<sup>th</sup> century neo-classical house, would be entirely out of place. While without detail it is difficult to be precise, it seems to me that such an inappropriate addition would inevitably harm the significance of The Chantry and its setting of pleasure grounds and gardens in the distinctive English garden tradition. The provision of a Chinese

garden in this location would not preserve The Chantry and its garden setting as valuable heritage assets. This would be inconsistent with the aims of DP policy DP14 and Framework guidance.

### **Obligations and conditions**

304. The appellants' unilateral undertaking sets out 5 planning obligations [252]. First, the undertaking would oblige the landowners to pay an initial sum of £18,000 to the Council to be used for the Stour Valley Environment Fund (SVEF), followed by annual payments into the SVEF of £1,000 for 5 years and thereafter on a discretionary basis. These contributions would be made on the basis that the funds are ring-fenced and used for a specific activity/project rather than added to the general fund. The SVEF was established by the Dedham Vale AONB and Stour Valley Project and is managed by the Essex Community Foundation to support charities and voluntary groups working to enhance the environment in the Stour Valley.
305. Such contributions may assist the Dedham Vale AONB and Stour Valley Project in achieving this objective, and at the inquiry I heard that this contribution was intended to ensure the integration of the development into the wider countryside of the AONB. However I heard no evidence to show a policy requirement for such contributions to be made to the SVEF, and no specific activities or projects were identified. Mitigation of identified environmental impacts, including those on the countryside and landscape, would be carried out as part of the development. For these reasons I cannot conclude that this provision of the undertaking is necessary to make the development acceptable in planning terms, or that it is directly related to the development, or that it relates to it in scale and kind. This provision does not meet the tests set out in ¶1204 of the Framework or comply with Regulation 122 of the CIL Regulations. I therefore give it little weight.
306. Provisions requiring the submission of a Local Employment Plan and an Operational Travel Plan would comply with policy objectives to promote local employment and sustainable travel. The provision of a footpath to the north of the site would provide a new pedestrian access, making the site more accessible on foot from that direction. Details of the Chinese garden were not provided with the planning application so, since the authenticity of the design is a key factor in the attractiveness of this important element of the proposal, it is necessary for the detailed design proposals to be subject to expert review to ensure that the Chinese garden is properly designed and constructed.
307. I consider that these 4 directly related provisions are proportionate and necessary in planning terms. They meet the Framework ¶1204 tests and comply with CIL Regulation 122. In principle, potentially harmful impacts would be satisfactorily overcome by these binding planning obligations.
308. The effectiveness of the undertaking depends on the clarity of its terms and the ability to enforce its provisions. In Clause 7.2, the intention is not to bind any purchaser until planning permission has been granted but the effect of the wording, as the Council points out, would be to allow any new purchaser who buys the site prior to the grant of planning permission to escape all the planning obligations given in the deed [254]. It also appears to conflict with Clause 2.5, intended to bind successors in title. This lack of clarity is clearly unsatisfactory.



309. Clause 10.1 sets out the provisions for termination of the deed, including (1) expiry, (2) revocation, (3) withdrawal and (4) implementation of a new permission. 'New permission' is defined in the deed as a planning permission authorising the development of the land in such a manner which would, if such development were to take place, cause the landowners to be in breach of all or any of the provisions of the undertaking [...]. Whatever the scale, it would be evident whether any new proposal would entail a breach of planning obligation. The grant of such permission would be entirely within the Council's control. While it might be better worded, I do not consider that clause 10.1(4) would fatally undermine the purpose of the undertaking.
310. The Council argues that there is no provision for dispute resolution. Some details would also have to be submitted under planning condition, so the appellants would have a right of appeal and such matters in dispute could be resolved at that stage. However, it is difficult to see how other disputes might be resolved.
311. Bank of Scotland plc (BoS) is a mortgagee with a charge over the site. For the unilateral undertaking to be effective, it is necessary that all those who might need to be directly involved in complying with its provisions – that is, all those with a legal interest in the land, including mortgagees – have entered into it. While BoS has given consent to the undertaking - on the basis that it will itself incur no liability for any breach of the obligations – it is not a signatory. In circumstances where, for example, BoS became the mortgagee in possession, it would not be possible to enforce the planning obligations. The appellants' undertaking could not therefore be relied on to deliver what it seeks to achieve.
312. For these reasons, as it stands, the undertaking is unsatisfactory. Since there are circumstances in which it might become unenforceable, I can give it little weight as a way of overcoming the harmful impacts it is intended to address.
313. With regard to conditions, a critical consideration is the assurance that all the local benefits of the scheme would be provided in order to balance the harm it would cause. To this end, it is vital that full details of all the key attractions are provided and approved before commencement and that the scheme is completed in its entirety before opening to the public. Key conditions would ensure that. I consider that all the other agreed conditions are reasonable and necessary to the grant of planning permission. I have slightly reworded and re-ordered some of the conditions in the interests of clarity and to accord more with Circular 11/95. A list of suggested conditions is set out in Annex A.

### **Overall Conclusions**

314. The proposal is for a substantial new tourist attraction which aims to celebrate the English countryside, in particular the natural beauty and cultural significance of 'Constable Country'. It would address the underperformance of the area as a tourist destination and provide a welcome boost to the local tourism economy. It would create a significant number of new jobs, both on site and in the surrounding rural area, generating increased business and prosperity to the benefit of the rural economy. The Chinese garden might well attract visitors from China and help promote an exchange of trade. All these would be significant benefits. The proposal would meet a number of key policy objectives intended to increase tourism, promote job creation and support economic growth.

315. Against that, the site is in an inherently unsustainable location in accessibility terms. The proposed Country Park would be remote from any population centre so would generate a need for virtually all its visitors to travel. The overwhelming majority would travel by car. There would be little use made of other more sustainable means of transport and, because of the remote location, any significant improvement in sustainable transport accessibility could not readily be achieved.
316. The replacement of the dilapidated tomato nursery buildings by the well-designed visitor centre would improve views of and from the AONB. However, the incursion of parking provision into open countryside (albeit outside the AONB), the change of use of farmed landscape to recreational use and the creation of a Chinese garden together would cause significant damage to the special landscape character of the AONB. The likelihood of the Country Park attracting no more than 150,000 visitors would reduce the impact originally feared by local residents. Nonetheless, even that reduced number of visitors would to some degree threaten the tranquillity of the AONB, one of its special features. The proposal would not be consistent with national and local policy objectives intended to conserve the landscape and scenic beauty of the AONB.
317. The garden setting of The Chantry, a typical country Rectory, would be irrevocably harmed by the creation of an incongruous Chinese garden within its grounds. The setting of this important listed building would not be preserved.
318. Appropriate conditions would ensure that the key attractions would be delivered. However, the appellants' unilateral undertaking is in places poorly drafted and there could be circumstances in which it could not be enforced. The planning obligation cannot be relied on to overcome the harmful impacts it is intended to address so it carries no real weight.
319. Overall I conclude that, having in mind the NPPF's definition of sustainable development in its paragraph 7, while job creation and economic growth are powerful factors in favour of the proposal, and would go some way towards offsetting the harm it would cause, on balance the extent of the harm caused by the locational unsustainability of the site, the impact on the AONB and the effect on an important heritage asset together would be such that it would clearly outweigh the benefits of the proposal. It would not therefore represent sustainable development and I do not consider that the suggested conditions could overcome the harm I have identified.

### **Recommendation**

320. I recommend that the appeal be dismissed.
321. Should the Secretary of State be minded to allow the appeal it would first be necessary to obtain an amended unilateral undertaking, signed by all interested parties, to overcome the objections outlined above [255]. Any grant of planning permission should be subject to the conditions listed at Annex A.

*Colin Ball*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel	Instructed by Karen Syrett for the Council.
He called:	
Christopher Hargreaves	Managing Director Vectos (North) Ltd.
BE(Hons) MSc(Eng)	
Susan Dodwell MA	Director, Woolerton Dodwell Associates Ltd
BSc(Hons) CMLI	
Jill Britton	Partner, Britton McGrath Associates.
Karen Syrett BA(Hons)	Place Strategy Manager, Colchester Borough
MRTPI	Council.

### FOR THE APPELLANTS:

Tony Collins MRICS MRTPI MCIT MILT MEWI	Director, Collins and Coward Ltd
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### FOR THE DEDHAM VALE AONB AND STOUR VALLEY PROJECT:

Katherine Potts	Manager, Dedham Vale AONB and Stour Valley Project.
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### FOR THE STOUR VALLEY ACTION GROUP:

David Whipps	Solicitor, Holmes and Hills LLP
He called:	
Will Pavry MA MBA	Chairman, Stour Valley Action Group.

### FOR THE LITTLE HORKESLEY PARISH COUNCIL:

Steve Clarke	Chairman.
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### FOR THE DEDHAM VALE SOCIETY:

Charles Clover	Chairman.
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### FOR THE NAYLAND AND WISSINGTON CONSERVATION SOCIETY:

John Alexander	Chairman.
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### FOR THE COLNE-STOUR COUNTRYSIDE ASSOCIATION:

Charles Aldous QC	Chairman
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### FOR THE LOCAL FAMILIES WHO COVENANTED LAND TO THE NATIONAL TRUST:

Chas Bazeley	Local Resident.
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### FOR THE NAYLAND WITH WISSINGTON PARISH COUNCIL:

Matthew Pescott Frost	Parish Councillor.
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**OTHER INTERESTED PERSONS:**

Sir Bob Russell MP	MP for Colchester.
Tim Yeo MP	MP for South Suffolk.
Bernard Jenkin MP	MP for Harwich and North Essex.
Cllr Nigel Chapman	Colchester Borough Councillor for Fordham and Stour Ward and Chair of the Joint Advisory Committee of the Dedham Vale AONB and Stour Valley Project.
Geoffrey Baker	Local resident.
Michael Roberts	Local resident.
Robert Leng	Representing Essex Chambers of Commerce.
Martin Heslop	Local resident and highways engineer.
Mrs G Francis	Local resident.

**CORE DOCUMENTS**

*The Council provided an extremely comprehensive list of core and noncore documents. These are set out in Document CO/CD. While they are all relevant to the appeal I list below the documents that I consider to be the key references in the matters before the inquiry. I have retained the Council's numbering.*

**A: Policy documents**

CD/0242	Colchester Borough Council Local Development Framework Core Strategy Adopted December 2008
CD/0243	Colchester Borough Council Local Development Framework Site Allocations Adopted October 2010
CD/0244	Colchester Borough Council Local Development Framework Development Policies Adopted October 2010
CD/0245	Colchester Borough Council Local Development Framework Proposals Maps
CD/0329	Local Plan Focused Review Submission Document August 2013
CD/0330	Local Plan Focused Review Issues and Options March 2013
CD/0331	Local Plan Focused Review Issues and Options – Summary of Consultation

**B: Other material considerations**

CD/0246	Dedham Vale AONB and Stour Valley Development Management Plan 2010 to 2015
CD/0249	National Planning Policy Framework
CD/0251	Good Practice Guide on Planning for Tourism
CD/0252	Government Tourism Policy 2011
CD/0253	Tourism Strategy 2012
CD/0256	Colchester 2020 Sustainable Community Strategy
CD/0263	Colchester Green Infrastructure Study 2011
CD/0264	Essex Car Parking Standards SPD
CD/0265	Colchester Cycling Strategy SPD 2012
CD/0267	Essex Cycle Strategy 2012
CD/0268	Essex Local Transport Plan 2011

CD/0269	Essex Walking Strategy
CD/0271	Financial Viability in Planning (RICS) 2012
CD/0275	RICS Guidance Note Financial Viability in Planning and Profit Rate Note
CD/0276	Tourism South East 'Economic Impact of Tourism' Colchester Borough 2011 results
CD/0301	Visitor Data for Constable Country 2011
CD/0302	Coach Audit 2005
CD/0303	Dedham Vale AONB 'Economic Impact of Tourism' 2010
CD/0304	Choose Suffolk Dedham Vale AONB and Stour Valley Project 2009 Survey Report
CD/0326	Landscape Character Assessment of Colchester Borough
CD/0327	Essex Economic Growth Strategy 2012
CD/0338	Dedham Vale AONB Position Statement September 2013

### **C: Application documents**

CD/0036	Non Technical Summary June 2012
CD/0038	Schedule of Planning Application Documents June 2012
CD/0175	Correspondence October 2012 Letter from Applicant enclosing Design and Access Statement and Revised Plans
CD/0176	Schedule of Drawings October 2012
CD/0177	Supplemental Design and Access Statement October 2012
CD/0230	CBC Report to Planning Committee 120965 28 February 2013
CD/0241	Decision Notice 120965 dated 28 March 2013
CD/0273	CBC Report to Planning Committee 120965 28 March 2013
NCD/0272	Minutes CBC planning committee 120965 28 February 2013.
NCD/0274	Minutes CBC planning committee 120965 28 March 2013.

### **D: Application plans**

CD/0019	Existing and Proposed Site Elevations 1510 A
CD/0028	Proposed View 1530 A
CD/0029	Application Site Boundary 2362-01
CD/0170	Proposed Site Plan 1502 B revised October 2012
CD/0172	Proposed Masterplan Ground Floor Layout 1506 A revised
CD/0336	Chinese Garden Plan Received 29.8.13

### **E: Supporting documents**

CD/0039	Volume 2 of ES Addendum Technical Appendices 10.1 Social Economic Impact Assessment June 2012
CD/0040	Volume 2 of ES Addendum Technical Appendices 11.1 Supplementary Transport Assessment June 2012
CD/0041	Volume 2 of ES Addendum Technical Appendices 11.2 Supplementary Travel Plan June 2012
CD/0051	Volume 2 of ES Addendum Technical Appendices 9.1 Tourism Evaluation Report June 2012
CD/0052	Volume 3 Supporting Documents Justification Statement June 2012
CD/0053	Volume 3 Supporting Documents Mitigation and Management Plan May June 2012

CD/0054	Volume 3 Supporting Documents Planning Policy Statement June 2012
CD/0055	Volume 3 Supporting Documents Supplemental Statement June 2012
CD/0059	Volume 4 Supporting Documents AONB Report June 2012
CD/0061	Volume 4 Supporting Documents Sustainability
CD/0063	ES Addendum Volume 1 May 2012
CD/0095	Comparison of Floor Areas between Existing and Proposed Buildings 2012
NCD/0072	Volume 2 Environmental Statement 5.1 Technical Appendix LVA
CD/0334	Chinese Garden Additional Information and Images January 2013
CD/0335	Chinese Garden – information for Committee Report January 2013

## **F: Reports and responses**

CD/0204	Independent Project Review Britton McGrath Associates November 2012 (unredacted version)
CD/0305	Vectos Report November 2012
CD/0306	Nathaniel Lichfield and Partners Horkesley Park Planning Appraisal November 2012
CD/0206	Responses and Answers to Britton McGrath Associates Second Report January 2013
CD/0207	Responses and Answers to Britton McGrath Associates Report of November 2012
CD/0208	Responses and Answers to Nathaniel Lichfield and Partners Report of November 2012
CD/0209	Responses and Answers to Vectos Report of November 2012
CD/0213	Addendum 1 to Independent Project Review Britton McGrath Associates January 2013 (unredacted version)
CD/0214	Addendum 2 to Independent Project Review Britton McGrath Associates January 2013 (unredacted version)
CD/0034	Business Plan July 2013
CD/0337	Appellants Variations in Business Plan August 2013
CD/0344	Expert statement on Chinese Gardens
CD/0345	Expert statement on viability of Art Gallery

## **H: Consultations - statutory**

NCD/0142	General comment 6 August 2012 English Heritage
CD/0220	Consultation response 11 January 2013 CBC Planning Policy

## **INQUIRY DOCUMENTS**

IN1	Inspector's note of pre-inquiry meeting.
IN2	Inspector's further pre-inquiry meeting note.
IN3	Statement of common ground between the Council and the appellants.
IN4	Statement of common ground and issues in respect of the Business Plan.
IN5	Site visit itinerary and plans.
IN6	Suggested route to Colchester Zoo.
IN7	Inspector's email dated 8 October 2013 confirming adjournment.
IN8	Inspector's email dated 14 October 2013 relating to The Chantry listing.
IN9	Letter dated 14 November 2013 closing the inquiry.

## **THE COUNCIL'S DOCUMENTS**

CO/CD	Council's list of core and noncore documents.
CO1.1	Mr Hargreaves' proof of evidence.
CO1.2	Plans 1-7 and appendices 1-11 to Mr Hargreaves' proof of evidence.
CO1.3	Mr Hargreaves rebuttal proof and appendices.
CO2.1	Ms Dodwell's proof of evidence
CO2.2	Appendices 2A-2H to Ms Dodwell's proof of evidence
CO2.3	Appendices 3A-3C to Ms Dodwell's proof of evidence
CO2.4	Extract from the Countryside and Rights of Way Act 2000.
CO2.5	Extract from the Causeway Coast AONB Management Plan 2013-2023 (draft).
CO2.6	Errata in CO2.1
CO2.7	Definitive Footpath Map and Statement.
CO3.1	Ms Britton's proof of evidence and appendices 3.2-3.3
CO3.2	Ms Britton's rebuttal proof and appendices 1-4.
CO4.1	Ms Syrett's proof of evidence.
CO4.2	Appendices 2-11 to Ms Syrett's proof of evidence.
CO4.3	Ms Syrett's rebuttal proof and appendix.
CO4.4	Draft conditions and Heads of Terms.
CO4.5	Amended draft conditions and Heads of Terms.
CO5	Mr Pickles' opening statement
CO6	Agreed list of drawings.
CO7	Agreed list of suggested conditions.
CO8	Mr Pickles' closing submissions.
CO9C	Council's reply to the appellants' skeleton claim for costs.
CO10C	Council's response to the appellants' claim.
CO11C	Council's claim for costs against the appellants.
CO12	Council's email 10 October 2013 advising notification of listing of The Chantry.
CO13	Copy of the notice required under s67 of the Planning (Listed Buildings and Conservation Area) Act 1990.
CO14	Ms Syrett's supplementary proof of evidence relating to The Chantry.
CO15	Appendix to Ms Syrett's proof showing list entry details.
CO16	Copy of English Heritage Advice Report.
CO17	Council's comments on the amended unilateral undertaking.

## **THE APPELLANTS' DOCUMENTS**

AP1.1	Ms Bunting's proof of evidence.
AP2.1	Mr Collins' proof of evidence.
AP2.2	Appendices 2.2-2.20 to Mr Collins' proof of evidence.
AP4.1	Prof Tregay's proof of evidence.
AP5.1	Mr Mattinson's proof of evidence.
AP6.1	Sir Michael Hopkins' proof of evidence.
AP6.2	Appendices 6.2-6.23 to Sir Michael's proof of evidence.
AP7.1	Mr Stacey's proof of evidence.
AP8.1	Mr Bunting's proof of evidence.
AP8.2	Appendices 1-6 to Mr Bunting's proof of evidence.
AP9.1	Mr Sykes' proof of evidence.
AP10	Mr Collins' email dated 25 September 2013 and Statement regarding the inquiry.

- AP11 Mr Collins' opening statement.
- AP12 Copy of Unilateral Undertaking dated 4 October 2013.
- AP13 Mr Collins' closing submissions.
- AP14C Appellants' skeleton claim for costs against the Council.
- AP15C Appellants' detailed claim against the Council.
- AP16C Appellants' rebuttal of Council's claim for costs.
- AP17C Appellants' rebuttal of Stour Valley Action Group's claim for costs.
- AP18 Confirmation of Mr Collins' appointment by the Administrator.
- AP19 Mr Collins' supplementary proof of evidence relating to The Chantry.
- AP20 Copy of amended Unilateral Undertaking dated 25 October 2013.
- AP21 Letter of consent dated 25 October 2013 from the mortgagee.
- AP22 Appellants' email dated 12 November regarding the terms of the Unilateral Undertaking.

### **THIRD PARTY DOCUMENTS**

- TP1.1 Ms Potts' proof of evidence on behalf of DV&SVP.
- TP1.2 Appendices 1-4 to Ms Potts' proof of evidence.
- TP2.1 Mr Pavry's proof of evidence on behalf of SVAG.
- TP2.2 Appendices 2-12 to Mr Pavry's proof of evidence.
- TP2.3 Mr Whipps' closing submissions.
- TP2.4C SVAG's claim for costs against the appellants.
- TP2.5 Mr Pavry's supplementary proof of evidence on behalf of SVAG relating to The Chantry.
- TP2.6 Appendix to Mr Pavry's supplementary proof.
- TP3.1 Cllr Clarke's statement on behalf of LHPC.
- TP3.2 LHPC comments relating to The Chantry.
- TP4.1 Mr Clover's statement on behalf of DVS.
- TP4.2 DVS comments relating to The Chantry.
- TP5.1 Mr Alexander's proof of evidence on behalf of NWCS.
- TP5.2 Appendices 2-7 to Mr Alexander's proof of evidence.
- TP6 Mr Aldous' statement on behalf of CSCA.
- TP7 Mr Bazeley's statement on behalf of the covenanting families.
- TP8 Cllr Pescott Frost's statement on behalf of NWPC.
- TP9 Statement of evidence from Sir Bob Russell MP.
- TP10 Statement of evidence from Bernard Jenkin MP.
- TP11 Cllr Chapman's statement.
- TP12 Mr Baker's statement.
- TP13 Mr Leng's statement.
- TP14 Mr Heslop's statement.

### **WRITTEN SUBMISSIONS**

- WR1 Bundle of 185 letters of objection in response to notification of the appeal.
- WR2 Bundle of 75 letters of support.
- WR3 Bundle of 4 neutral comments.
- WR4 Letter of objection dated 23 September 2013 from Bernard Jenkin MP.
- WR5 Letter of support dated 2 October 2013 from Keith Brown, Chief Executive of 'Visit East Anglia'.
- WR6 Letter of support dated 23 October 2013 from Mr T Shain.



## **ANNEX A: SUGGESTED CONDITIONS**

List of suggested conditions to be attached to a grant of planning permission for the change of use and development of land to form 'The Stour Valley Visitor Centre at Horkesley Park' comprising a country park, art and craft studios (The Chantry), public gardens, a central building complex to provide an indoor display ring, 'Suffolk Punch breeding centre', entrance building, shop, café, 'Field to Fork', 'Farming through the ages', active learning, 'Nature Watch', and retained greenhouse as a 'demonstration nursery and gardens', an energy centre, main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision:

### **1. Time Limit**

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

### **2. Development to Accord With Approved Plans**

The development hereby permitted shall be carried out in accordance with the approved plans listed in Document CO6 - Agreed List of Plans.

### **3. Completion of Attraction**

The development shall not open to the public until it has been completed in its entirety in accordance with the approved drawings and all other approved details, including landscaping. All the elements of the approved scheme (including the Chinese Garden, Chantry Gallery, Suffolk Punch Breeding Centre and Country Park) shall be open to the general public for the duration of the approved opening times unless otherwise previously agreed in writing as a variation under condition 5 - annual events programme.

### **4. Ticketing**

The Horkesley Park Visitor Centre shall be a gated facility, to which general public entry shall be by admission ticket only. Entrance to the attraction shall be only by an all-in-one ticket that enables open access to the visitor centre. All tickets shall at no time include or entitle the bearer to a refund or discount against purchases that may be made on the site either in the café/s or in the visitor shop. Use of the parking areas (for all forms of motorised vehicles and cycles) shall be included in the ticket admission charges. The parking areas shall be for the use of visitors and staff only.

### **5. Hours of Opening and Annual Events Programme**

No development shall take place until details of the proposed hours of opening have been submitted to and approved in writing by the local planning authority. The development shall not be open to the public outside the approved hours. The hours of opening shall be reviewed annually by the local planning authority as part of the annual events programme. Details of all extraordinary events (park wide, seasonal and evening) and events not open to the general public shall be submitted to the local planning authority as part of an annual events programme calendar to be submitted by

the 31 December of the preceding year and agreed in writing by the local planning authority. The details to be submitted shall include dates, hours of opening and location within the site. The agreed evening events shall not finish after 9.30pm and the car park/coach park shall be locked by no later than 10.00 pm. Requests for variations shall be submitted in writing and subject to a minimum period of 40 days advance notice. Park wide events shall be limited to no more than 12 in number in any one calendar year. Evening events and events not open to the general public shall be limited to a combined total of no more than 10 occasions in any one calendar year.

## **6. Archery School Details**

No development shall take place until details of the area for archery demonstrations and tuition have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The archery school details shall be reviewed as part of the Annual Events Programme calendar.

## **7. Restriction on Uses**

Notwithstanding the provisions of The Town and Country Planning (Use Classes) Order or any subsequent amendment or re-enactment the Country Park shall be used only for parkland pasture, lakes, woodland and agriculture and not for any other leisure purpose other than special events previously agreed as part of the Annual Events Programme. The use of each building and land within the site and the extent of that use shall be restricted to that specified on the submitted drawings. All uses shall be ancillary to the primary use of the site as a tourist attraction and shall not operate separately or independently at any time. The approved uses shall not be changed otherwise than in accordance with a subsequent planning permission. Any exhibition/s and demonstration/s shall be restricted in nature and content directly to themes and subjects that are closely related and ancillary to the project vision as defined in the applicants submitted document titled:- Stour Valley Visitor Centre at Horkesley Park – "A Celebration of the English Countryside" May 2012.

## **8. Art Strategy**

No development shall take place until details of an Art Strategy have been submitted to and approved in writing by the local planning authority. The Art Strategy shall thereafter be implemented strictly in accordance with the approved details. The Art Strategy shall include the layout of all rooms within The Chantry, staffing levels dedicated to this element of the scheme including curatorial expertise, a scheme setting out the exact description together with supporting evidence of the pictures or other artefacts to be displayed in the Chantry Art Gallery during the initial 5 years that the Chantry Art Gallery is open to the public and information as to how the pictures are to be sourced, the authenticity of the pictures and to have substantive evidence of a binding commitment to provide the pictures. The Art Strategy shall be reviewed on a five year basis and any revised strategy shall be submitted to and agreed in writing by the local planning authority prior to implementation.

## **9. Chinese and Other Garden Areas**

No development shall take place until a detailed Garden Landscaping Scheme and implementation timetable has been submitted to and approved in writing by the local planning authority. The Scheme shall be carried out in accordance with the approved details. The Garden Landscaping Scheme shall be a fully detailed landscaping plan for the Chinese garden and other garden areas to include full details of all hard and soft landscaping on the site and a maintenance management programme. The details to be submitted shall include full topographic details, details of all water features, buildings, structures and landscape features (including materials and finishes) together with a detailed planting schedule (species, size and numbers). The period for determination of details submitted in discharge of this condition shall be extended to 3 months having regard to the specialist nature of this design element.

## **10. Coach House Use**

Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Amendment) Order 2005 the Coach House to The Chantry shall be used for B1 studio purposes only and shall not be used for any other purpose.

## **11. Suffolk Punch Centre**

No development shall take place until details of the Suffolk Punch Strategy (SPS) have been submitted to and approved in writing by the local planning authority. The SPS shall be implemented in accordance with the approved details. The SPS shall include, but not be limited to, details of the numbers of Suffolk Punch horses to be permanently stabled within the facility and a breeding programme, details of the daily events to be provided for the entertainment/education of visitors together with details of educational/ interpretational material to be provided as part of the facility. The Suffolk Punch Strategy shall be reviewed on a 5-year basis and the revised strategy shall be submitted to and agreed in writing by the local planning authority and thereafter implemented strictly in accordance with the agreed details. The development shall maintain a minimum of 8 Suffolk Punch horses on the site at all times

## **12. Sales**

No goods shall be sold to the public other than from the visitor shop. The only goods sold shall be those that are thematically closely linked to the activities and displays on the site. The retail development areas shall not open to the public unless the Chantry Art Gallery, the Suffolk Punch Breeding Centre and the Chinese garden are also open to the public. A schedule of goods to be sold within or from the site shall be submitted to and agreed by the local planning authority prior to the initial opening of the site. The goods offered for sale shall thereafter be restricted in scope to the agreed schedule, unless agreed by the local planning authority in writing as a variation. Such requests for variations to the agreed schedule shall be submitted at not less than twelve-month intervals.

### **13. Farmers Market**

The location of the Farmers Markets shall be agreed in writing 28 days prior to the commencement of Farmers Markets within the site. Farmers Markets shall not be permitted within the Country Park. The number of Farmers Markets shall be restricted in number to one per calendar month. The range of merchandise shall be restricted to the selling of local produce by local growers and producers that is grown, raised, baked, caught, shot or made by hand within a 50 mile radius of the site, unless otherwise agreed in writing by the local planning authority. The range of goods shall fall strictly within the agreed schedule of goods.

### **14. Design Code**

No development shall take place until a written Design Code has been submitted by the applicant and approved in writing by the local planning authority. Detailed design and development shall be carried out in accordance with the approved Code. The Design Code shall among other things require:

- o Hopkins Architects or other named architectural practice as agreed in writing by the local planning authority to be retained to provide prior to commencement; detailed design drawings for all the buildings to be submitted to and approved by the local planning authority and to supervise the implementation and construction of all the buildings
- o A written commitment to the delivery of quality design, detailing, materials and landscaping which will be worked up into appropriately scaled drawings and specifications in conformity with the Design and Access Statement supporting the application.

### **15. Architectural Detail**

No development shall take place until large scale architectural drawings for each new building at a scale of 1:20 or 1:5 of the proposed eaves, verges, ridges, valleys, plinths, rainwater goods, flues and extract terminals, reveals, sill and lintels, together with elevations and sections of all external joinery and glazing systems have been submitted to and approved in writing by the local planning authority. Samples of all external materials and a schedule of proposed finishes shall also be submitted to and agreed in writing by the local planning authority prior to the commencement of all development. Sample panels 1 metre square of proposed facing brickwork, timber cladding and entrance canopy material shall be set out on site for the written approval of the local planning authority prior to development and thereafter so retained until the initial occupation of the development. The development shall be carried out in accordance with the approved details.

### **16. Signage Strategy**

No development shall take place until details of all signage, including a brown tourist sign strategy, have been submitted to and approved in writing by the local planning authority and as necessary the Highway Authority and the Highway Agency. The development shall not be open to the public until all signage work has been carried out

in accordance with the approved details. The brown tourist sign strategy shall include, but shall not be limited to, the A12. Additional signage, and during busy times stewards, shall be used to direct visitors arriving and departing the Horkesley Park Site.

## **17. Parking Areas**

Notwithstanding the details shown on the submitted drawings, the main car park and overflow car parks shall be provided in phases in accordance with a phasing plan. No development shall take place until the phasing plan has been submitted to and approved in writing by the local planning authority. The parking provision shall be implemented in accordance with the approved phasing plan and the plan shall be subject to annual review.

## **18. Non-Residential BREEAM (Part 1)**

No development shall take place until evidence has been submitted to the local planning authority that the development is registered with a BREEAM certification body and that a pre-assessment report (or design stage certificate with interim rating if available) indicates that the development can achieve a final BREEAM rating level of at least Good.

## **19. Non-Residential BREEAM (Part 2)**

Within 3 months of the occupation of the development, a final Certificate shall be submitted to the local planning authority certifying that BREEAM rating Good has been achieved for this development.

## **20. Refuse and Recycling Facilities**

The development shall not be occupied until refuse and recycling storage facilities have been provided. Such facilities shall thereafter be permanently retained in good order.

## **21. Litter**

The development shall not be occupied until equipment, facilities and other appropriate arrangements for the disposal and collection of litter resulting from the development have been provided. All such equipment, facilities and arrangements shall thereafter be permanently retained in good order.

## **22. Tree and Hedgerow Protection**

All existing trees and hedgerows shall be retained, unless shown to be removed on the approved drawings. All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the local authority's guidance notes and the relevant British Standard. The extent of the required tree/hedgerow protection shall be agreed with the local planning authority prior to commencement. All existing trees shall be monitored and recorded for at least 5 years following contractual practical completion of the approved development. In the event that any trees and/or hedgerows (or their replacements) die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, by the

local planning authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

### **23. Full Landscape Proposals**

No development shall take place until full details of all landscape works for the whole site have been submitted to and agreed, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the local planning authority. The submitted landscape details shall include proposed finished levels or contours or other earth works; all means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); any mobile structures such as kiosks; shepherds huts; proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features; proposals for restoration; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation timetables and monitoring programs.

### **24. Landscape Management and Maintenance Plan**

No development shall take place until a landscape management plan to secure the long term management of the landscape within Horkesley Park has been submitted to and approved, in writing, by the local planning authority. The management plan shall identify management objectives to be achieved and should include details of initial plant establishment, arrangements for plant protection, replacement of dead/dying/diseased plants (incl. eventual replacement of aging poplar screen), heights at which hedges/tree screens to be maintained, protocols for maintenance of key views, for pruning/lopping/topping of trees and hedges, the maintenance of footpaths, fencing and gates. Any works to the landscape fabric of the Country Park and core area should be strictly in accordance with the Management Plan, which should be the subject of review/revision at 5 yearly intervals to reflect establishment/growth of planting.

### **25. Highway Works**

No development shall take place until detailed drawings of the following highway improvements have been submitted to and approved in writing by the local planning authority. The highway improvements shall be carried out in accordance with the approved details before the development is first open to the public:

- A right turn lane at the A134 Nayland Road/London Road junction with central islands, the southernmost one being a pedestrian central island.
- A minimum 120 x 4.5 x 120 metre visibility splay maintained clear to the ground at all times at the A134 Nayland Road/London Road junction.
- Widening of the London Road carriageway between the A134 Nayland Road/London Road junction and a suitable point west of the proposed site access

- A priority junction with right turn lane in London Road to provide access to the proposal site with a minimum 120 x 4.5 x 120 metre visibility splay maintained clear to the ground at all times. Right turn lane shall have 2 no. pedestrian central islands.
- A minimum 2 metre wide footway along the south side of London Road between the A134 Nayland Road and the westernmost pedestrian access to the proposed site.
- A minimum 2 metre wide footway along the west side of the A134 Nayland Road between London road and the bus stop mentioned below.
- A minimum 2 metre wide footway along the east side of the A134 Nayland Road between the A134 Nayland Road/London Road junction right turn lane pedestrian central island and the footway which currently terminates at the 'Rose & Crown' Public House access. Footway shall include a link to the bus stop mentioned below.
- New and improved footway along the east side of the A134 Nayland Road/Boxted Church Road/Tog Lane junction.
- Relocation and improvement to current Essex County Council specification (to include but shall not be limited to real time passenger information) of the two bus stops nearest the A134 Nayland Road/London Road junction. Relocation shall be agreed with the local bus service operators.

Any gates proposed adjacent to the existing or proposed highway shall open towards the development site only.

## **26. Bus Stop Design**

Any bus stops proposed within the application site shall be provided in accordance with current Essex County Council specifications (to include but not be limited to real time passenger information).

## **27. Archaeological Watching Brief**

No development shall take place until details of a watching brief to be carried out by a suitably qualified archaeologist (during construction works) have been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with these agreed details. In the event that any significant archaeological features or remains are discovered which are beyond the scope of the watching brief (and require fuller rescue excavation) the construction work shall cease immediately and shall not recommence until a revised programme of archaeological work including a scheme of investigation has been submitted to, and approved in writing, by the local planning authority.

## **28. Noise Barrier**

No development shall take place until detailed drawings of a noise barrier to reduce the impact of vehicle noise on the AONB have been submitted to and approved in writing by the local planning authority. The barrier shall be erected along the north and west boundaries of the overflow car park. It could be a combination of bunding and planting in accordance with a scheme devised by a competent person. The submitted details shall include the location, extent, design and timetable for the erection of the barrier. Before the development is open to the public, the approved barrier shall be erected in

its entirety in accordance with the approved timetable and shall thereafter be so retained

### **29. Surface Materials**

No development shall take place until details of the surface material for the on site road surfaces and main car park surface have been submitted to and approved in writing by the local planning authority. The surface shall comprise noise absorbing materials in accordance with a scheme devised by a competent person. The development shall be carried out in accordance with the approved details and shall thereafter be retained as such.

### **30. Acoustic Barrier**

No development shall take place until full design details of a 2m high acoustic barrier to be installed on the North and North East sides (facing the AONB) of the outdoor display ring have been submitted to and approved in writing by the local planning authority. The scheme shall be devised by a competent person and shall include a timetable for its construction. The barrier shall be erected in accordance with the approved details prior to the initial opening of the attraction to the public and shall thereafter be retained in its entirety.

### **31. Engine Idling**

The development shall not be open to the public until details of 'No idling of engines' signs have been submitted to and approved by the local planning authority and the signs have been erected in clear view of the coach park in accordance with the approved details.

### **32. Sound Insulation**

No development shall take place until a detailed scheme of sound attenuation for noise generated within the proposed buildings, designed by a competent person, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first use or occupation of the development and thereafter so retained.

### **33. Light Pollution**

No development shall take place until a lighting strategy for the whole site has been submitted to and approved by the local planning authority. The lighting strategy shall include details of all external lighting fixtures/fittings. The lighting installation shall be carried out in accordance with the approved strategy and shall thereafter be retained and maintained as agreed therein. No other external lighting shall be installed without the written consent of the local planning authority. Prior to the first use of the development hereby permitted, a validation report shall be submitted to and approved by the local planning authority. The report shall be undertaken by competent persons and shall demonstrate that all lighting of the development (including resultant sky glow, light trespass, source intensity and building luminance) fully complies with the



standards specified in the current 'Institution of Lighting Professional Guidance Notes for the Reduction of Obtrusive Light' (GN01:2011) for zone E1 AONB.

#### **34. Food Premises (Control of Fumes and Odours)**

The development shall not be occupied until a scheme for the control of fumes, smells and odours has been submitted to, and agreed in writing by, the local planning authority and such control measures have been installed in accordance with the approved scheme. The scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. The approved control measures shall thereafter be retained and maintained to the agreed specification and working order.

#### **35. Grease Traps**

The development shall not be occupied until any foul water drains serving the kitchen have been fitted with grease traps that shall at all times thereafter be retained and maintained in good working order in accordance with the manufacturer's instructions.

#### **36. Oil Interceptor**

Prior to being discharged into any watercourse, surface water sewer or soakaway all surface water drainage shall be passed through an oil interceptor designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor.

#### **37. Groundwater Protection**

There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways.

#### **38. Storage of Oils**

Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls where the volume of the bund compound shall be at least equivalent to 110% of the capacity of the tank. If there is multiple tankage, the compound volume shall be at least equivalent to 110% of the capacity of the largest tank or 110% of the combined capacity of any interconnected tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses shall be located within the bund and the drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

#### **39. Contaminated Land (Site Characterisation)**

No development shall take place until, in addition to any assessment provided with the planning application, a written report of the findings of an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site, and

has been approved, in writing, by the local planning authority. The investigation and risk assessment must be undertaken by competent persons. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'

#### **40. Contaminated Land (Submission of Remediation Scheme)**

No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared, and has been approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

#### **41. Contaminated Land (Implementation of Remediation Scheme)**

No development, other than that required to carry out remediation, shall take place until the approved remediation scheme has been carried out in accordance with the details approved, unless otherwise agreed, in writing, by the local planning authority. The local planning authority shall be given 2 weeks written notification of commencement of the remediation scheme works. Within 3 months of the completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be submitted to the local planning authority. The development shall not be occupied until the report has been approved.

#### **42. Contaminated Land (Reporting of Unexpected Contamination)**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 39, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 40, which is subject to the approval in writing of the local

planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition 41.

#### **43. Contaminated Land (Long Term Monitoring and Maintenance)**

The development shall not be occupied until a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 3 years, and the provision of reports on the same must be prepared, have been submitted to and approved, in writing, by the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

#### **44. Contaminated Land (Validation Certificate)**

The development shall not be occupied until the developer has submitted to the local planning authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 39, 40 and 41.

#### **45. Code of Construction Practice**

No development shall take place until a written scheme defining a Code of Construction Practice (CoCP) has been submitted to and approved in writing by the local planning authority. The CoCP shall include, but not be limited to

- Preparation works - working times, duration of works, details of location, erection and maintenance of security hoardings.
- Demolition of buildings, working times for these works and disposal/re-cycling of materials on site
- Details of measures to ensure no mud and/or debris is deposited on the public highway, including wheel washing facilities, to be provided and retained
- Construction activity – exact location on site, duration at different locations, use and storage of plant and machinery, loading and unloading, number of employees, parking for operatives and visitors, working times, delivery times, temporary roads, demolition and other works.
- measures to deal with noise and vibration, dust and air pollution, waste management and light pollution

The approved CoCP shall be adhered to throughout the construction programme.

#### **46. Construction Travel Plan**

At least 3 months prior to commencement of construction, a Construction Travel Plan (CTP) for the development shall be submitted to CBC and ECC, for approval in writing. The CTP shall include:

- Plans for construction shall be in accordance with Construction Travel Plan principles and shall include proposals to minimise the impact of vehicular traffic on the local highway network by contractors and their employees during construction.
- The Construction Travel Plan shall include but not be limited to: the scope and programme of construction and a Construction Method Statement; details and estimates of the workforce; estimated traffic flows associated with construction, deliveries and monitoring; mitigating methods (traffic routing, recruitment of local workforce, transportation of workforce, car sharing schemes, etc.); and measures to minimise construction traffic (local sourcing of materials, soil transfer, deliveries, waste minimisation).

The approved Construction Travel Plan shall be adhered to throughout the construction programme.

#### **47. Construction & Operational Travel Plan Co-ordinator**

No development shall take place until details of a Construction Travel Plan & Operational Travel Plan (CTP/OTP) Co-ordinator who shall be appointed to manage the implementation and review of the CTP and OTP have been submitted to and approved in writing by the local planning authority. The role of the CTP/OTP Co-ordinator will include:

- liaising with local planning and highway authorities;
- implementation and promotion of transport measures to minimise traffic impact; and
- organisation of car sharing schemes (including incentives for those participating).

No development shall take place until the CTP and OTP have been submitted by the CTP/OTP Coordinator to and approved in writing by the local planning authority. Development shall be carried out strictly in accordance with the approved Plans.

#### **48. Construction Works**

No vehicle connected with the construction works shall arrive on site before 07:30 or leave after 19:00 (except in the case of emergency). Working hours shall be restricted to between 07:30 and 18:00 Monday to Friday and 07.30 and 13:00 on Saturday. No power tools shall be operated or noisy process carried out exceeding 5dBA above background noise levels outside the hours of 09:00 to 17:00 Monday to Friday, with no working of any kind permitted on Sundays, Saturday after 13:00 hours, or any Public/Bank Holidays. The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228: 1984. The use of barriers to mitigate the

impact of noisy operations shall be used where possible. This may include the retention of part(s) of the original buildings during the demolition process to act in this capacity. Plant to be resident on site during the works shall be fitted with non-audible reversing alarms (subject to HSE agreement). Prior to the commencement of any piling works that may be necessary, an agreed method of installation which minimises noise and vibration to nearby residents shall be agreed in writing with the local planning authority in consultation with Environmental Control.

#### **49. Deliveries**

No deliveries during the construction period shall take place outside the following times;

Weekdays: 07.00-18.00

Saturdays: 07.00-13.00

Sundays and Bank Holidays: At no time

No deliveries post-construction shall take place outside the agreed opening times.

#### **50. Footways & Cycleways**

No development shall take place until a detailed scheme providing for the improvement of footpath/cycleways has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the initial opening of the attraction to the public and shall include:

- Entrance signs, finger posts and interpretation/information boards to be provided relating to the Stour Valley.
- Details of leaflets and a proposed dissemination strategy to be distributed along with other publicity material to provide improved footpath information and information on the wider network (as part of strategy to improve ease of access, through improved linkages, to the PROWs and footway/bridleways).
- A distribution strategy for the leaflets along with other publicity material to provide improved cycle route information and information on the wider network (as part of strategy to improve cycle routes in the area and harmonise promotions and signage).
- the public footpaths on the west of The Nursery Site to be improved by incorporating them (without altering their position or accessibility in any way), within a 6m wide grassed track flanked by an indigenous mixed hedgerow of 1m in width with stock proof fencing (hard up against the hedge the field side), which will thereafter be maintained to a height of 1.4m to ensure views across the valley are maintained.
- new permissive footpath(s) that shall be provided on land owned by Bunting & Sons to link Horkesley Park, and its adjoining existing Public Footpaths (3, 4, 5 and 48) with existing Public Footpath No.1 (by Water Lane, 150 metres south of the river Stour, being the Essex/Suffolk border), linking to the Stour Valley Path/St Edmund Way/E2 European Long Distance Route.
- Any proposed traffic calming that shall be laid out and constructed after consultation with the emergency services and bus operators.

## 51. Protected Species

The development shall be implemented in accordance with the proposals and recommendations of the Bat Activity Survey dated May 2011 Rev A, Great Crested Newt Survey May 2011 Rev C, Phase 1 Habitat Survey May 2011 Rev D The Stour Valley Visitor Centre at Horkesley Park Mitigation and Management Plan May 2012 the Environmental Statement Addendum May 2012 Ecology chapter and the Vole and Badger Survey May 2011 rev E.

## 52. Local Sourcing Scheme

No development shall take place until details of a Local Sourcing Scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The Scheme shall include but not be limited to the following elements;

- it shall be prepared and implemented to procure the use of local suppliers and/or services and/or distributors during the construction and operation of Horkesley Park. The Local Sourcing Scheme shall include a pre-agreed criteria for sourcing suppliers with:
- sustainability ethos e.g. relating to the use of traditional materials, recycled products, reduced packaging; and codes of conduct relating to animal care and food production.
- Horkesley Park shall give priority to local producers and suppliers. Horkesley Park shall work with such producers and suppliers to source its range of requirements, from woodchip supplies for the biomass boiler to animal feed and merchandising items.

Horkesley Park buyer(s) responsible for the foregoing will be required to give priority to:

1. liaising with local and regional producers and suppliers to build relationships and negotiate terms, etc.;
2. promoting to visitors the supplier sourcing requirements such as sustainability, e.g. recycled products, minimal packaging, low food miles, local produce;
3. liaising with local suppliers regarding transport with a view to establishment of shared transportation for deliveries;
4. promotion at Horkesley Park of local producers as part of show case demonstrations to help build brand recognition in the wider area;
5. assisting and working with wider initiatives which may be promoted by ECC and lpa such as "buy local";
6. liaising with local businesses including hotels and B&Bs; and
7. co-ordinating supplier network service.

### **53. Existing Access**

All existing vehicular accesses to the Horkesley Park Site shall be maintained for existing farming and domestic purposes and shall be made secure to prevent access by the general public, other than persons specifically attending All Saints' Church and/or the adjoining churchyard who will be able to freely do so via the Chantry Drive. No development shall take place until details of the vehicular accesses to the proposed site have been submitted to and agreed in writing by the local highway authority. Development shall be carried out in accordance with the approved details.

### **54. Noise**

The development shall not be occupied until an assessment of the rating level of noise emitted from the site's plant, equipment and machinery has been submitted by a competent person to, and approved in writing by, the local planning authority. The assessment shall include the café and the cook school refrigeration and extraction and any heating and cooling plant noise levels shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises and the AONB. The assessment shall be made in accordance with the current version of British Standard 4142 and the confirmed findings shall be adhered to thereafter. PA systems within buildings shall have the volume set so it is inaudible outside the building.

### **55. PA Systems**

No development shall take place until details of a PA system devised by a competent person have been submitted to and approved, in writing, by the local planning authority. Development shall be carried out in accordance with the approved details. All PA systems/all speakers are to be directional and the noise generated shall not exceed 0dBA at the boundary with the AONB. No fixed or mobile PA systems shall be used or installed within the part of the site designated as AONB.

### **56. Removal of Permitted Development Rights**

Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (as amended) or any subsequent statutory instrument or re-enactment including Schedule 2 Part 2 Classes A, B, D, Part 3 Classes A, B, M, Part 4 Classes A, B, Part 5 Class A, B, Part 6 Classes A, B Part 42 Class A, B C of the Order; the proposed buildings shall be used strictly for the purposes specified in the application and no temporary uses, temporary structures, means of enclosure, alterations nor extensions to the approved buildings shall be implemented otherwise than in accordance with a subsequent planning permission.

## **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: ENFORCEMENT APPEALS**

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

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

### **SECTION 3: AWARDS OF COSTS**

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 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the 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.