



Department for  
Communities and  
Local Government

7 August 2013

Mr Fraser Littlejohn  
Montagu Evans  
4<sup>th</sup> floor, Exchange Tower  
19 Canning Street  
Edinburgh EH3 8EG

Our Ref: APP/E3715/V/12/2179915  
Your Ref:FL/SV8500/49

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY WILLIAM KENDRICK & SONS LIMITED – LAND AT STRETTON  
CROFT, BURBAGE LE10 3JB: APPLICATION REF: R11/0239**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil Dip TP MRTPI FRSA, who held a public local inquiry on 8 January and 2-5 and 12 April 2013 into your client's outline application for a mixed use development comprising Class A3 restaurant, Class B1 business, Class C1 hotel development, Class D2 assembly and leisure and associated car parking and landscaping in respect of planning application Ref. R11/0239 dated 1 February 2011.
2. On 12 July 2012, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, Rugby Borough Council. The reason for making the direction was that the proposal may conflict with national policies on important matters.

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

3. The Inspector recommended that the application be approved and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. The Secretary of State notes that the applicant has advised that the A3 use would be ancillary to the proposed hotel (IR1.12). He has also had regard to the illustrative plans and other documents referred to at IR1.13-1.16 and, as these were available at

the time of the inquiry, he is satisfied that no interests have been prejudiced by his taking them into account.

5. For the reasons set out in IR1.17 and IR8.6, the Secretary of State agrees with the Inspector that the application proposal is not Environmental Impact Assessment (EIA) development and does not require the submission of an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### Policy considerations

6. In deciding this application, 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.
7. In this case, following the revocation of the Regional Spatial Strategy for the West Midlands and the saved policies in the Warwickshire Structure on 20 May 2013, the development plan comprises the adopted Rugby Local Development Framework Core Strategy (2011) (RBCCS) together with relevant saved policies of the Rugby Borough Council Local Plan (RBCLP) (2006). The Secretary of State is satisfied that the revocation of the RSS does not raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. He also agrees with the Inspector that that the RPCCS policies most relevant to the application are those set out at IR1.20-1.25; and that the development plan for Hinckley and Bosworth Borough Council, which includes the Hinckley Core Strategy (2009) and the Hinckley Town Centre Area Action Plan (AAP) (2011), is a material consideration (IR1.18).
8. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (the *Framework*); *Technical Guidance to the National Planning Policy Framework*; *Planning for Town Centres – Practice guidance on need, impact and the sequential approach (2009)*; Circular 11/1995: *Use of Conditions in Planning Permission*; and *the Community Infrastructure Levy (CIL) Regulations 2010 (as amended)*.

### Main Issues

#### Development plan and sustainable development

9. For the reasons given in IR8.8-8.44, the Secretary of State agrees with the Inspector's overall conclusion at IR8.45 that the proposal would accord with a very wide range and large number of development plan policies and objectives even though it would not be consistent with a strict interpretation of Policy CS1 of the RBCCS and Saved Policy LR10 of the RBCLP. With regard to that, he agrees with the Inspector's conclusion that this can be accounted for by the fact that those policies are designed to meet the needs of Rugby, which this proposal is not; and he considers that to be an important material consideration in favour of this scheme. He also agrees with the Inspector that the proposal would be well related to the principles of the development plan, and would accord with the 3 dimensions to sustainable development set out in paragraph 7 of the Framework (IR8.45). Furthermore, while the Secretary of State

agrees with the Inspector (IR8.36) that the site does not fall within the definition of previously developed land in the Framework, he also agrees that it would be in the spirit of paragraph 111 of that document in securing the beneficial recycling of land which cannot otherwise be put to use.

### Vitality of town centres

10. For the reasons set out in IR8.46-8.67, the Secretary of State agrees with the Inspector's conclusion at IR8.68 that the proposal passes the sequential test in Section 2 of the Framework with regard to ensuring the vitality of town centres and that it would not have an adverse impact on the vitality and viability of Hinckley town centre. In coming to this conclusion, the Secretary of State agrees with the Inspector in particular that the need in this case is not just a generic need for office development but for a site which is capable of satisfying the requirement for a business park for Hinckley (IR8.47). He therefore also agrees (IR8.48-8.49) that it is appropriate, in applying the sequential approach, to take account of the market which the developer is seeking to serve and to examine suitability in relation to the needs of a business park development. Following from this, he agrees with the Inspector that a business park style office development cannot be disaggregated if it is to meet the need the applicant has identified (IR8.50), so that there are no sequentially suitable sites of the size and type required available in Rugby or Leicester (IR8.52). He also agrees (IR8.53-8.66) that no evidence was put forward at the inquiry to demonstrate a sufficient supply of suitable, viable and available town centre sites in Hinckley.

### Sustainable Transport

11. For the reasons given in IR8.69-8.74, the Secretary of State agrees with the Inspector's conclusion at IR8.75 that the proposal would be consistent with Government advice on promoting more sustainable transport (IR8.75). In coming to this conclusion, he has taken account of the proposed bus service improvements and the proposed junction improvements which would not only foster the use of walking and cycling but also resolve existing highway safety issues.

### Biodiversity

12. For the reasons given in IR8.76-8.77, the Secretary of State agrees with the Inspector that the proposal, together with the proposed ecological mitigation, would comply with the policies in the Framework, particularly in relation to protected species and to biodiversity interests within the wider environment; and that it would provide a significant benefit in nature conservation terms (IR8.77).

### Conditions and planning obligation

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR8.78-8.79. He is satisfied that the conditions proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.

14. The Secretary of State also agrees with the Inspector's reasoning and conclusions on the S106 planning obligation (IR8.80-8.81). He agrees with the Inspector that all of the provisions of the S106 planning obligation are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and

reasonably related in scale and kind to the development; and can therefore be regarded as complying with Regulation 122 of the CIL Regulations, Policy CS10 of the RBCCS, and paragraph 204 of the Framework (IR8.81).

## **Overall Conclusions**

15. The Secretary of State concludes that the applicants have demonstrated a definite need for additional office floor space in the form of a business park of the kind proposed. He is satisfied that no other site has credibly been suggested as being suitable or available to meet that need, and that the proposal would not undermine the spatial strategy for Hinckley or the vitality of Hinckley town centre. He considers that the proposal would contribute to the economic prosperity of the area and that it would create a high quality built environment while securing overall biodiversity enhancements. Overall, he concludes that, to the extent that there is conflict with the development plan, this is clearly outweighed by other material considerations.

## **Formal Decision**

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission in respect of application Ref. R11/0239 dated 1 February 2011 for a mixed use development comprising Class A3 restaurant, Class B1 business, Class C1 hotel development, Class D2 assembly and leisure and associated car parking and landscaping, subject to the conditions listed at Annex A to this letter.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

18. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

19. 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.

20. A copy of this letter has been sent to Rugby Borough Council, Hinckley and Bosworth Borough Council, Burbage Parish Council and others who appeared at the inquiry.

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

### Conditions

- 1) Application for approval of the reserved matters specified in Condition 3 below, accompanied by detailed plans and full particulars, must be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The development hereby permitted must be begun not later than the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) Details of the following reserved matters shall be submitted to and approved in writing by the Local Planning Authority for each plot before any part of the development of that plot is commenced and shall be implemented as approved:
  - (a) - Layout,
  - (b) - Scale,
  - (c) - Appearance,
  - (d) - Access and
  - (e) - Landscaping
- 4) The development hereby permitted shall not be carried out except in broad accordance with the details shown on the submitted plans and documents, as detailed below:

<u>Plan/Document</u>	<u>Reference</u>	<u>Date received</u>
Location plan	KDSC-PL02	7 February 2011
Illustrative Master plan for Commercial Development	KDSC-PL01/D	4 July 2011
Site Plan, Elevation A, Elevation B and Perspectives	-	31 March 2011
Proposed Levels	KDSC-PL04	4 March 2011
Master plan with Ecological Areas Identified	KDSC-SK102	26 January 2012
Illustrative Landscape Proposals	11-19-01/C	26 January 2012
Illustrative Ecology Mitigation Proposals	11-19-02/B	26 January 2012
Existing Site Survey Plan	KDSC-PL03	7 February 2011
Junction Improvement A5 Watling St/Wolvey Road	3839.001/E	14 March 2012

### Visual Amenity

- 5) The development shall comply with the following requirements:
  - (i) the hotel shall not exceed 100 bedrooms nor 2,787 sq ms.
  - (ii) the buildings to be used for B1 use shall not exceed 3,716 sq ms.
  - (iii) the buildings to be used for D2 use shall not exceed 3,252 sq ms.
  - (iv) the A3 use shall be ancillary to the hotel,
  - (v) no building shall exceed 16m in height above the existing ground level.
- 6) No development shall commence on any building unless and until full details of the colour, finish and texture of all new materials to be used on all external surfaces, for that building, together with samples of the facing materials and roof tiles have

been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

- 7) No development shall commence on any building, unless and until full details of the siting, design and materials of the proposed bin and cycle stores for that building have been submitted to and approved in writing by the Local Planning Authority. The bin and cycle stores shall be provided, in accordance with the approved details before the first occupation of that building and shall be retained thereafter.
- 8) No development shall commence on any building unless and until details of all proposed walls, fences, railings and gates for that building have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
- 9) No development shall commence on any building unless and until full details of finished floor levels of that building and ground levels of all access roads, parking areas and footways associated with that building have been submitted to and approved in writing by the Local Planning Authority. Development shall not be carried out other than in accordance with the approved details.
- 10) The landscaping details required by condition 3 shall include an 8m wide planted buffer zone on land in the ownership of the Applicant situated between the northern boundary of the application site and the residential properties to the north of the site. This buffer zone shall be provided no later than the first planting season following first occupation of the development and shall be retained for the life of the development.

### **Trees, Landscaping & Ecology**

- 11) The landscaping scheme, as required by condition 3, shall be implemented no later than the first planting season following first occupation of the development. If within a period of 5 years from the date of planting, any tree/shrub/hedgerow is removed, uprooted, destroyed or dies, (or becomes in the opinion of the Local Planning Authority seriously damaged or defective), another tree/shrub/hedgerow of the same species and size originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variations.
- 12) No retained tree as shown on the Tree Survey plan within the Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011 shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS5837:2005 (Recommendations for Tree Work) and should be carried out before the commencement of any works.
- 13) No development shall commence unless and until details of the location of 2 replacement Lime (*Tilia cordata*) trees, as detailed in the Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011,

have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the 2 semi-mature replacement Lime trees (18-20cm circumference and 5-6m in height) have been provided in the approved locations. If within a period of 10 years from the date of planting, either replacement Lime tree is removed, uprooted, destroyed or dies, (or becomes in the opinion of the Local Planning Authority seriously damaged or defective), another tree of the same species and size originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variations.

- 14) The development shall not be carried out other than in accordance with the approved Tree Survey received by the Local Planning Authority on 31 March 2011, Arboricultural Report received by the Local Planning Authority on 6 June 2011 and Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011. All tree protection measures contained within these reports shall be implemented prior to the commencement of development and in accordance with the written approval of the Local Planning Authority.
- 15) No development, including site clearance, shall commence unless and until a combined ecological and landscaping management scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all aspects of environmental enhancements and landscaping and details of species to be planted, timing of works, programme of implementation and future management with monitoring if deemed necessary by the Local Planning Authority. The agreed scheme shall be implemented in the first planting season following the first occupation of the development and shall be thereafter retained.
- 16) No development shall commence unless and until an Environment Protection Plan for Construction has been submitted to and approved in writing by the Local Planning Authority. This shall include:
  - details concerning working practices and safeguards for wildlife to be employed whilst works are taking place on site,
  - details of the protection of species and habitats to be retained on site,
  - a timetable of works,
  - details of the proposed supervision,
  - any necessary translocation, protection and mitigation measures.

The agreed Environment Protection Plan for Construction shall thereafter be implemented in full.

## **Highways**

- 17) No development shall take place until a scheme of highways improvement in accordance with Drawing Number 3839.001 Rev. E, including the approval of necessary departures from standard, has been fully implemented and is constructed and open to traffic.
- 18) No building shall be first occupied until access, loading areas, car and cycle parking serving it have been provided in accordance with the approved plans and shall be thereafter retained.

## **Drainage**

- 19) The development shall not be carried out other than in accordance with Flood Risk Assessment reference w1101-111005 received by the Local Planning Authority on 17 October 2011.
- 20) No building hereby permitted shall be occupied until foul and surface water drainage works have been implemented for that building in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - (i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - (ii) include a timetable for its implementation; and
  - (iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 21) The development hereby permitted shall not be first occupied until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to, and approved in writing by, the Local Planning Authority. The development shall not then be occupied until the scheme has been implemented.

## **Sustainability**

- 22) Prior to the first occupation of any building, details of water efficiency measures to be incorporated into the design of that building to meet the equivalent of the BREEAM (Building Research Establishment Environmental Assessment Method) Very Good water conservation standard shall be submitted to and approved in writing by the Local Planning Authority. These approved measures shall then be incorporated into the design of each building prior to their first occupation and then retained in working order in perpetuity.
- 23) Details shall be provided, concurrently with the reserved matters required by condition 3, of technology to be incorporated into the design of the buildings to achieve a 10% carbon emissions reduction efficiency, this shall include the submission of an Energy Performance Certificate. No development shall commence until these details have been approved in writing by the Local Planning Authority. The approved efficiency measures shall be implemented in accordance with this approval and shall be retained in working order in perpetuity.

## Environmental Protection

- 24) No development shall take place on any building, until a Construction Method Statement for that building has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (v) wheel cleaning facilities;
  - (vi) measures to control the emission of dust and dirt during construction;
  - (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - (viii) measures to control noise during construction;
  - (ix) a signage strategy for construction traffic.
- 25) No external construction works or related deliveries shall take place outside 0800 to 1800 hours on Mondays to Fridays or 0800 to 1300 hours on Saturdays not at any time on Sundays or Bank and National Holidays except in an emergency.
- 26) No artificial lighting shall be installed unless full and precise details of the lighting scheme have been submitted to and approved in writing by the Local Planning Authority. This shall include:
- (i) A statement setting out why a lighting scheme is required, and the frequency and length of use in terms of hours of illumination throughout the year.
  - (ii) A site survey showing the area to be lit relative to the surrounding area, the existing landscape features and proposed landscaping features to mitigate the impacts of the proposed lighting.
  - (iii) Details of the make and catalogue number of any luminaires/floodlights.
  - (iv) Size, type and number of lamps fitted within any luminaire or floodlight.
  - (v) The mounting height of the luminaires/floodlights specified.
  - (vi) The location and orientation of the luminaires/floodlights.
  - (vii) A technical report prepared by either a qualified lighting engineer or the lighting company setting out the type of lights, performance, height and spacing of lighting columns. The light levels to be achieved over the intended area, at the site boundary and for 25 metres outside it.

The lighting shall be constructed and installed in full accordance with the approved details and shall thereafter be maintained in full accordance with the approved details.

- 27) No development shall commence unless an air quality assessment, by a suitably qualified consultant, has been submitted to and approved in writing by the Local Planning Authority, in consultation with Hinckley and Bosworth Borough Council. This assessment shall include an assessment of traffic flow and background air quality and an assessment of the impact of the proposed highway alterations,

changes to traffic flow and B1 uses of the site on air quality and any mitigation required. This should assess the impact on sensitive receptors within Rugby Borough Council and Hinckley and Bosworth Borough Council's administrative areas. Any mitigation identified shall be carried out before the occupation of the development and be thereafter retained.

- 28) No development shall commence until a noise mitigation scheme designed to minimise the impact from traffic on Wolvey Road South such that the noise levels within the dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 29) Development shall not commence on any phase approved under condition 3 of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.



The Planning  
Inspectorate

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

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

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

Date: 29 May 2013

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**Town and Country Planning Act 1990**

**Application by William Kendrick & Sons Limited**

**Local Planning Authority: Rugby Borough Council**

Inquiry held on 8 January, 2-5 and 12 April 2013

Land at Stretton Croft, Burbage LE10 3JB

File Ref: APP/E3715/V/12/2179915

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## Inspector's Report

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**File Ref: APP/E3715/V/12/2179915**  
**Land at Stretton Croft, Burbage LE10 3JB**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 12 July 2012.
- The application is made by William Kendrick & Sons Limited to Rugby Borough Council.
- The application Ref R11/0239 is dated 1 February 2011.
- The development proposed is for a mixed use development comprising Class A3 restaurant, Class B1 business, Class C1 hotel development, Class D2 assembly and leisure and associated car parking and landscaping in outline.
- The reason given for making the direction was that the Secretary of State considers that the proposals may conflict with national policies on important matters.

**Summary of Recommendation: That the application be approved and planning permission granted subject to conditions.**

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**1. BACKGROUND AND PROCEDURAL MATTERS**

1.1 I held an Inquiry at the Town Hall, Rugby, into an application by William Kendrick & Sons on 8 January and 2 - 5 and 12 April 2013. I made accompanied site visits on the 8 January to the application site and to alternative sites which were suggested as sequentially superior to the application site. I held a Pre Inquiry Meeting in connection with this Inquiry to discuss procedural and administrative arrangements. The Pre Inquiry Meeting was held at Rugby Town Hall on 1 October 2012.<sup>1</sup>

1.2 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the Secretary of State (SoS) needs to be informed for the purpose of his consideration of the application:

- (a) the extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*
- (b) the extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres;*
- (c) the extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (Section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car;*
- (d) the extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF);*
- (e) whether any permission should be subject to any conditions and, if so, the form these should take; and*

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<sup>1</sup> INQ4

*(f) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.*

- 1.3 At the Inquiry, a library of Core Documents was provided jointly by the Applicant, Rugby Borough Council (RBC) and Hinckley and Bosworth Borough Council (HBBC). The SoS has been supplied with all of these documents. They include details of the application, regional guidance, local plan policies and specific technical information. There is a Statement of Common Ground, (SoCG),<sup>2</sup> a Section 106 Unilateral Undertaking<sup>3</sup> and a List of Suggested Conditions.<sup>4</sup> The Applicant, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The library of Core Documents and the other document lists are set out at the end of this report.

### **The Site and Surroundings**

- 1.4 The application site is located to the south of Burbage, adjacent to Junction 1 of the M69 motorway where it crosses the A5. The application site extends in total to some 3.047 hectares. The triangular shaped site is bounded to the north by land owned by the Applicant and the A5 is beyond this. To the west the site is bounded by Wolvey Road and to the south by the M69 motorway. The entire application site is in the ownership of the Applicant. A plan is attached to the SoCG at Appendix 1 which identifies the application site edged in red.<sup>5</sup>
- 1.5 The land outside of the immediate application site and forming part of the wider site area traverses the administrative boundary of RBC and HBBC. It is also the boundary of Leicestershire County Council (LCC) and Warwickshire County Council (WCC); and the boundary of the East and West Midlands. The plan attached to the SoCG at Appendix 1 also identifies the wider site and shows land edged in blue, comprising 0.986 has, which is also in the ownership of the Applicant.<sup>6</sup>
- 1.6 The application site was previously used as a compound when the construction of the M69 was carried out and is now fallow. The site slopes down by about 7m from the north west corner adjacent to Wolvey Road towards the eastern boundary adjacent to the M69. At the junction with the A5 the M69 is elevated above the site, the motorway slopes down towards the south west of the site.
- 1.7 Access to the site is gained from Wolvey Road which joins the A5 approximately 380m north west of the M69 roundabout. Wolvey Road is a cul-de-sac. Prior to the construction of the M69 this road linked Wolvey and Burbage. The former route of this road runs along the western boundary of the

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<sup>2</sup> INQ3

<sup>3</sup> APP7

<sup>4</sup> RB3

<sup>5</sup> INQ3 Drawing No: KDSC-PL02

<sup>6</sup> INQ3 Drawing No: KDSC-PL02

site. There is agricultural land to the west of the former road. The application site is located outside the Green Belt in the countryside. The application site falls within Flood Zone 1 and is not liable to flooding.

- 1.8 There was previously a dwelling to the north of the application site within the administrative area of HBBC. This has been replaced by a small development of 4 residential properties. The residential curtilage of the closest dwelling is approximately 10m from the site boundary with the dwelling itself being located approximately 24m from the site boundary. Within 200m of the application site commercial properties are sited on the A5, Watling Street. These comprise a petrol filling station with a shop and two public houses/restaurants.
- 1.9 There are no areas of woodland within the application site. Individual trees are found within the site. Individual mature trees are to be found on the western site boundary adjacent to Wolvey Road and on the south eastern boundary adjacent to the M69. These are subject to a Tree Preservation Order and the majority of these trees will be retained (although some trees within these areas are in poor condition).
- 1.10 The application site is not within a Conservation Area. There are no Listed Buildings within or adjoining the application site. There are high voltage overhead electricity power lines crossing the application site, although the pylons are not located within the application site area. There are no public footpaths running across the application site and there is no public access to the application site or the wider land within the Applicant's control. The application site does not contain or immediately adjoin any statutory or nationally designated ecological/wildlife areas. Part of the application site was designated as a Local Wildlife Site by WCC in 2011 based on the flora and fauna present on the site.

## **Planning History**

- 1.11 Details of the planning applications for planning permission which have been submitted on the application site prior to the submission of the current applications are set out section 4 of Miss McCulloch's proof of evidence. The application site has previously been the subject of enforcement action based upon unlawful storage of building materials. The enforcement notice, dated 24 February 1997, related to the unauthorised use of the site for the deposit and storage of waste materials including soil, subsoil, concrete and tarmac rubble and machinery. In response to the enforcement notice, served upon the earlier land owner, the site has been the subject of significant remediation, including taking down of dangerous buildings across the site and clearing materials.

## **The Proposals**

- 1.12 The application is for outline planning permission with all matters reserved. The proposals relate to a mixed use development comprising Class B1 business, Class C1 hotel development incorporating Class A3 restaurant, Class D2 assembly and leisure and associated car parking and landscaping. The Applicant has advised that the A3 use would be ancillary to the proposed hotel. The application form specifies the amount of floorspace proposed for

each of the proposed uses and also states that the proposed hotel would have 100 bedrooms. The application is described in more detail in the application documents submitted to the Local Planning Authority (LPA) and notably in the Design and Access Statement (DAS).

- 1.13 As this is an outline application, details relating to layout, scale, appearance, access and landscaping are not considered at this stage. However, illustrative plans were submitted showing how the site might be developed. Plans were also submitted showing illustrative landscape proposals and ecological mitigation proposals. Indicative levels plans were also submitted which show the likely building heights. Perspectives of the elevations were also provided. A full list of the plans submitted with the application and on which the decision should be based is to be found in document RB1 and copies of these plans are to be found in the application file folder.
- 1.14 The reader's attention in particular is drawn to the illustrative site layout – Drg No: KDSC-PL01 Revision D which accompanies the application. This plan is entitled "Proposed Master Plan for Commercial Development (Illustrative Layout Only)". A copy of this plan is also attached at Appendix 2 of the SoCG.<sup>7</sup> Plan KDSC-PL01 Revision D illustrates a scheme with a 100 bedroom hotel and conference facility (Class C1), a 3,252m<sup>2</sup> leisure facility (Class D2) and a 2,091m<sup>2</sup> office building (Class B1). Two further office pavilions (Class B1), extending in total to 929m<sup>2</sup> and 697m<sup>2</sup> respectively, are also proposed. Some 371 car parking spaces would be provided on the site. It is anticipated that the development would create around 350 jobs.
- 1.15 The illustrative plans show that access to the site would be gained from Wolvey Road in the north west corner of the site. The hotel, leisure building and main office building are shown towards the south east of the site, closest to the M69. The smaller office/industrial buildings are shown closer to the site entrance. Areas of car parking and landscaping are shown between the proposed buildings. The illustrative levels and cross sections show that the buildings adjacent to the M69 would be three storey buildings whereas those closer to the site entrance would be two storey. Land remaining within the Applicant's ownership would provide for extensive amenity landscaping and ecological mitigation.
- 1.16 Several documents were submitted in support of the proposals<sup>8</sup> including a DAS and Supplementary DAS; a Planning Statement; a Site Investigation Report; a PPS4 Impact Analysis and Sequential Site Assessment & Appendices; a Landscape Strategy; a Biodiversity Enhancement Report; a Nocturnal Bat Activity Survey Report; an Extended Phase 1 Habitat Survey; an Arboricultural Report & Supplementary Arboricultural Report; a Tree Survey; a Transport Assessment; a Flood Risk Assessment, a Hydraulic Modelling Report and a Framework Travel Plan. Copies of all of these documents are enclosed.

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<sup>7</sup> INQ3

<sup>8</sup> RB2

## **Environmental Impact Assessment (EIA)**

1.17 The Stretton Croft proposal falls within the description at paragraph 10(b) of Schedule 2 of the 1999 Regulations<sup>9</sup>, being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the view that the proposed development would not be likely to have significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 9(1) and 6(4) of the above Regulations, the SoS issued a Screening Direction on 18 September 2012 to the effect that this development is not Environmental Impact Assessment (EIA) development. I agree that in respect of the Stretton Croft proposal, this is not "EIA development" and therefore it did not require the submission of an Environmental Statement.

## **Planning Policy and Guidance**

1.18 At the time of the Inquiry the development plan for the area included the Regional Spatial Strategy for the West Midlands (WMRSS) (2008), the adopted Warwickshire Structure Plan (WSP) (2001) and the adopted Rugby Local Development Framework Core Strategy (2011) (RBCCS) together with relevant saved policies of the Rugby Borough Council Local Plan (RBCLP) (2006). The development plan for HBBC, which includes the Hinckley Core Strategy (2009) and the Hinckley Town Centre Area Action Plan (AAP) (2011), is a material consideration.

### ***West Midlands Regional Spatial Strategy (WMRSS) (2008)***

1.19 At the time of the Inquiry the WMRSS was part of the development plan. However, an Order to revoke the WMRSS in its entirety was laid on 24 April 2013. All directions under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Act 2004 preserving policies contained in structure plans in the area to which the WMRSS relates have also been revoked. The Order came into force on 20 May 2013.

### ***Rugby Borough Council Core Strategy (RBCCS) (2011)***

1.20 There is broad agreement between the parties with regard to the RBCCS policies that are relevant in this case. The following RBCCS policies are relevant to the proposed development:

- Policy CS1 - Development Strategy
- Policy CS10 - Developer Contributions
- Policy CS11 - Transport and New Development
- Policy CS14 - Enhancing the Strategic Green Infrastructure Network
- Policy CS16 - Sustainable Design
- Policy CS17 - Reducing Carbon Emissions

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<sup>9</sup> The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

- 1.21 Policy CS1 provides a clear sequential approach to locating development; it seeks to direct proposals towards the most sustainable locations in the Borough, principally the urban area of Rugby. It is stated that the location and scale of development must comply with the settlement hierarchy. It must be demonstrated that the most sustainable locations are considered ahead of those further down the hierarchy. Rugby town will be primary focus for services and facilities and for meeting strategic growth targets. Outside Rugby Town, 9 Main Rural Settlements will accommodate development within existing village boundaries. Beyond Rugby Town and the Main Rural Settlements, there are strict controls over development. New development in the Green Belt and countryside will be resisted.
- 1.22 The application site is located within an area of countryside. Within such areas Policy CS1 states that new development will generally be resisted; only where national policy on countryside locations allows will development be permitted. The supporting text to Policy CS1 makes reference to other locations within the Borough that could be excluded from the hierarchy and be considered as sustainable locations for development. Core Strategy paragraph 2.10 states:
- “Rugby Borough is not an island and the administrative boundary sits very close to urban areas such as Bedworth, Nuneaton, Hinckley and Coventry... Development within the Borough that is related to these areas or sites remains contrary to the wider approach set out in this strategy as any such development would not assist in achieving sustainable development focused on Rugby Town. Any such proposal would be judged on its merits in partnership with the relevant neighbouring Local Planning Authority”.*
- 1.23 Policy CS10 relates to the use of planning obligations to mitigate the impact of development. Policy CS11 refers to the need to prioritise sustainable modes of transport and to mitigate against transport impacts arising from development. Policy CS14 relates to the creation of a comprehensive, Borough wide Green Infrastructure network. Policy CS16 refers to sustainable design including the impact on the amenity and character of an area, the amenity of neighbouring occupiers, Sustainable Drainage Systems and water conservation standards. Policy CS17 relates to reducing carbon emissions and the need to comply with the published Building Regulations at the time of construction.

***Rugby Borough Council Local Plan (RBCLP) (2006) (Saved Policies 2009)***

- 1.24 In January 2009 RBC made a successful application to the SoS under the Planning and Compulsory Purchase Act 2004 to extend the period of time some policies of the RBCLP 2006 would remain adopted. The RBCCS has replaced some of the policies that were saved for an extended period at that time that related to strategic matters. The remaining Saved Policies relate to detailed Development Management issues and will be replaced by future Development Plan Documents. There is broad agreement between the parties with regard to the RBCLP policies that are relevant in this case. The following RBCLP policies are relevant to the proposed development:
- Policy GP2 - Landscaping
  - Policy E6 - Biodiversity
  - Policy T5 - Parking facilities
  - Policy LR10 - Tourism and visitor facilities and attractions

1.25 Saved Policy GP2 relates to landscaping and requires that landscape is integral to design. Policy E6 relates to biodiversity and Policy T5 to parking. Policy LR10 states that tourism and visitor facilities should be located in town centre, edge of centre or urban area locations. These facilities should only be located outside the urban area if no site is available and suitable within the urban area and the following conditions are met:

1. *“It would not be detrimental to the vitality and viability of the Town Centre, taking into account the cumulative impacts of development.”*
2. *Development outside the Urban Area is appropriate to its village or countryside location.*
3. *The development is on previously developed land or a full assessment has been made of such sites, which found them to be unsuitable.”*

### **National Planning Policy Framework (NPPF) (2012)**

1.26 The NPPF was published in March 2012. Sections of the NPPF that are considered relevant to the issues are addressed are outlined below.

1.27 Paragraph 14 of the NPPF outlines the presumption in favour of sustainable development. Paragraph 24 states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Further, paragraph 26 states:

*“When assessing applications for retail, leisure and office development outside of town centres which are not in accordance with an up to date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set threshold. This should include an assessment of:*

- *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.”*

1.28 Paragraph 27 states that applications should be refused where they fail to satisfy the sequential test or are likely to have significant adverse impact on one or more of the above factors.

1.29 Section 4 of the NPPF is relevant in that it deals with promoting sustainable transport. Section 11 of the NPPF is also relevant in that it deals with conserving and enhancing the natural environment.

***Planning for Town Centres – Practice guidance on need, impact and the sequential approach (2009)***

1.30 Planning for Town Centres: Practice guidance on need, impact and the sequential approach was published in support of Planning Policy Statement 4 (PPS4) in December 2009. Whilst PPS4 has been replaced by the NPPF the practice guidance has not and therefore remains relevant. Guidance relating to sequential site assessments is contained in part 6 and assessing impact is contained in part 7.

## **2. THE CASE FOR APPLICANT – WILLIAM KENDRICK & SONS LIMITED**

2.1 This Inquiry has provided a forum in which the objectors to these proposals have been able to fully ventilate their concerns in relation to the development proposals. That process has done nothing more than expose those concerns as being utterly without substance. The longer the Inquiry went on, the clearer that that picture has become. It has become obvious that the LPA was both well advised and sensible when it concluded that there were no tenable objections to this proposal, and that the benefits which it would bring in terms of employment opportunities and the regeneration of a site which is otherwise incapable of beneficial use should be realised through the grant of planning consent. These submissions are structured along the lines of the main issues set out at the Pre-Inquiry Meeting.

### ***(a) Compliance with the Development Plan and sustainable development principles***

2.2 In addressing the first of those issues, namely the question of compliance with the Development Plan, it is important to focus upon those policies which it is claimed that the development may be contrary to. In doing so, however, it is important, obviously, to appreciate the substantial raft of Development Plan policies with which the development proposals accord. Before dealing in detail with the policies, there are a number of observations which need to be made in respect of the status and weight to be attached to the policies in current circumstances.

2.3 Firstly, it is clear that the East Midlands Regional Strategy, which is a material consideration but not part of the Development Plan for this case, was revoked by Order on 12 April 2013.<sup>10</sup> The Order revoking the West Midlands Regional Strategy (which is part of the Development Plan for this case) is due to come into effect on 20 May 2013. It is only fair to observe that the evidence before the Inquiry is that little weight could attach to the provisions of that document. The conclusion must be, therefore, that, whilst, quite properly, there was extensive citation of regional planning policy in the evidence, in relation to the decision the Regional Strategy will be of limited weight and may even no longer be in existence.

2.4 So far as the policies of the RBCCS and the RBCLP are concerned, the 12-month transition period set out in paragraph 215 of the NPPF has now passed, and therefore the weight which can be afforded to the policies of those documents depends upon their degree of consistency with the policies of the NPPF. The same is true of the Development Plan documents which have been referred to in the HBBC area and which are material considerations. It is important, therefore, that that assessment is undertaken in the context of determining the application.

2.5 In substance, only two policies are relied upon by the objectors within the Development Plan as giving rise to issues of consistency. The first is Policy CS1 of the RBCCS, and the second is Policy LR10 of the RBCLP.

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<sup>10</sup> APP9

- 2.6 Dealing first with Policy CS1, it is important to appreciate that this is a policy which is to be applied, along with other policies, to meet the needs of Rugby. Therefore, in addressing Rugby's needs, it rightly focuses upon a development hierarchy which starts with Rugby town centre and then cascades through other settlements until it reaches the countryside and Green Belt. However, what is critical is that the Explanatory Text to the policy clearly recognises that there will be non-Rugby related needs associated with settlements adjoining the Borough which will need to be addressed during the course of the plan period.
- 2.7 Mr Littlejohn is right in identifying, along with the LPA itself, an exception to the Rugby needs development hierarchy provided by paragraph 2.10 of the Explanatory Text. That text acknowledges that there will be development sites contrary to the wider approach set out in Policy CS1 which nonetheless need to be met, and that such proposals will be judged on their merits. Hinckley is identified as a case in point in this respect in the paragraph.
- 2.8 Much has been made of the use of the word "partnership" within that paragraph. However, what is established from a reading of the text itself and indeed from the evidence is that the word "partnership" does not mean that there is any right of veto on the part of the adjoining authority, or that the initiative for the development must come from the adjoining authority, or that there must be some agreement with the adjoining authority. Each of those alternatives would effectively abrogate the duty placed upon RBC to determine the planning application in accordance with the merits as it sees them. It would be absurd if a LPA should proceed to refuse a development which it considers it should approve simply because the adjoining LPA objects. That would be an error of public law.
- 2.9 The use of "partnership" may well require close working and detailed consultation with the adjoining authority. It is clear that that occurred in this case from the extensive and documented correspondence which passed between RBC and HBBC. Ultimately it is obvious that that dialogue proved fruitless both in terms of achieving any consensus and also in terms of identifying any coherent objection and evidence for such an objection from HBBC. The LPA is obliged to take a decision on the planning application in accordance with the statutory regime bearing in mind the merits of the case. Clearly, whilst the observations of an adjoining authority will form part and parcel of the merits which the LPA has to consider, it cannot be the case that if there is an objection it is obliged to refuse the application. Contrary to Mr Dunnett's evidence, HBBC does not have some quasi power of direction. If the LPA is satisfied on the merits that the case for development has been proved, then it must resolve accordingly. Mr Dunnett refers to the duty to cooperate which was introduced under section 33A of the Planning and Compulsory Purchase Act 2004. However, the paragraphs he quotes in the NPPF refer to plan making and are therefore not relevant to the case in hand.
- 2.10 It follows that the proper understanding of Policy CS1 alongside paragraph 2.10 of the Explanatory Text means that, if there is a proposal immediately adjacent to an adjoining district seeking to meet the needs of that district, then the policy provides that that will be an exception to the hierarchy in Policy CS1. Thus, whilst the proposed development is not strictly

speaking consistent with the express policy in the hierarchy, the Explanatory Text recognises that it would be an acceptable exception to it and anticipates that development to meet the needs of adjoining settlements will be appropriate. The question therefore breaks back to a consideration of need and demand, and whether this is an appropriate location at which to meet need and demand which will be addressed below.

- 2.11 Turning to Policy LR10 of the RBCLP, this is again a policy which is clearly directed to meeting the needs of Rugby. It is therefore of peripheral relevance to addressing a hotel proposal which is related to the needs of Hinckley and in particular associated with the need for business park developments, of which a hotel forms a clear and obvious component. Nonetheless, as Mr Littlejohn explained, if one substitutes Hinckley for the urban area of Rugby within the policy, then the proposals are clearly consistent with the spirit of the policy. There are no town or edge-of-centre locations identified either by HBBC or by its planning documentation which are specifically identified as locations for hotel development.
- 2.12 Whilst Mr Dunnett drew attention to the general observations about seeking to develop a night-time economy within Hinckley town centre, neither those generic observations on pages 12 and 13 of the Town Centre AAP nor the site-specific allocations of uses make reference to a hotel use. It follows, therefore, that there are no identified town centre or edge-of-centre locations. For the reasons which will be set out below, the proposal is well related to Hinckley town centre and would not affect the vitality and viability of Hinckley town centre, thus demonstrating that in spirit the policies of the plan have been complied with. Mr Dunnett refers to paragraph 28 of the NPPF but that paragraph is not engaged because this proposal is not related to sustainable rural tourism. The nearby highways, buildings signage and lighting have an urbanising effect on the application site and the surrounding area.
- 2.13 If it is observed that, viewing the policies, the proposals are not consistent with their strict interpretation and application, that is in a sense unsurprising bearing in mind, as set out above, that those policies are designed to meet Rugby's needs and this proposal is not, and secondly bearing in mind the unusual circumstance that the proposal is designed to meet the needs of an area which is not the LPA for the purposes of the application. It will therefore almost inevitably be the case that issues in relation to sustainable development, and other material considerations, will be determinative of the planning merits of the proposal rather than the framework of the forward plan. Nevertheless, for the reasons which have been set out above, the proposal is well related to the proposals and principles of the development plan.
- 2.14 The relationship to the development plan is clearly linked to the evidence in relation to need and demand and, in particular, the need for development of the kind proposed in this location. That evidence of need relates closely to the central concern of the NPPF, namely sustainable development. It relates in particular closely to the economic and social roles of sustainable development by supporting growth and a competitive economy, and also providing employment in a high-quality built environment alongside local services in the form of the leisure and hotel proposals.

- 2.15 The need for the proposals is clearly and unequivocally established from a variety of sources. The first source is the evidence of Mr Lloyd, who is the only witness before the Inquiry directly involved in the market for commercial premises. His evidence was clear and unequivocal that there was a need and demand for business park development associated with Hinckley, taking advantage of the opportunities presented by the proximity of the strategic road network in this location so as to meet occupiers' requirements for ready access to that road network, as well as larger-scale office floor space within a high-quality landscaped environment.
- 2.16 His evidence was not simply based on his overall market experience, but was derived from specific enquiries both from occupiers looking to grow-on into larger premises and also from potential occupiers of a more footloose character looking for premises within a wider geographical area that there was a need and demand to be met. It was Mr Lloyd's view that the occupiers would have a potential range in terms of their characteristics. They would not be simply indigenous Hinckley firms but they would also be occupiers who would bring new employment opportunities to the town who had a requirement to be located in a broader area. Thus, it was Mr Lloyd's evidence that the proposal would have a breadth of attraction in terms of job creation opportunities, and support existing Hinckley-based businesses, as well as attracting new investment to the area.
- 2.17 The second source of evidence of need is the Development Plan itself. HBBC still relies on its Core Strategy as an authoritative source of the evidence of need for office space, and recognise that Policy 1 of the Core Strategy requires the provision of 34,000 sq ms of office space to meet the needs of Hinckley. The policy goes on to identify that that should be in the town centre, but for the purposes of assessing need 34,000 sq ms remains an important and relevant figure for the purposes of identifying office requirements in Hinckley. This shows that there is a substantial need for office space in this area.
- 2.18 The third authoritative source of need is the BE Group Employment Land and Premises Study Review of May 2010<sup>11</sup>, which supersedes the HBBC Core Strategy but nevertheless continues to support the need for the provision of office floor space. As with all reports of this kind, it needs to be read as a whole. When it is read as a whole, the conclusions are clear. There is a need for higher-quality and larger office floor space in the form of a business park to meet the needs of Hinckley, and that need exists now.
- 2.19 The report demonstrates that existing office supply is poor quality, generally in small units, and therefore the Borough lacks a broad portfolio of office opportunities. The level of enquiries clearly supports the conclusion of all parties that the provision of this proposal would be a successful development. Whilst in its case HBBC focused on the survey of the existing stock of offices being largely of moderate or worse quality and mainly of 100 sq ms or less, and highlighted the anecdotal information from agents and the very small sample of existing occupiers who responded to their survey, it is important to note that that is not the entirety of the evidence base that was researched by

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<sup>11</sup> Mr Littlejohn's proof of evidence Appendix 6

the consultants, nor would one draw the conclusions HBBC appears to have done from that evidence. The paucity of quality accommodation and the almost non-existent extent of larger office stock points clearly to a need for more office space to be provided of a different quality and size, and not a perpetuation of the existing homogenous stock.

- 2.20 Far more important findings of the study were that there was a history of extensive office-based enquiries, even during a period of recession; bespeaking high levels of potential need for office space (see table 20, page 58). This coupled with the need to enhance and diversify the quality and range of office space available led the consultants to the very clear and repeated conclusion that there was a need in Hinckley to provide a business park development in order to address the low level and quality of office space. Paragraphs 12.4 and 12.5 of the study could not be clearer:

“12.4 Service sector growth means this will require an improved stock of office and retail accommodation to cater to modern needs. However this can be difficult to achieve in practice given the complexity of site assembly in urban centres.

12.5 This needs to be complemented by out of town business parks providing attractive office schemes and modern industrial premises.”

- 2.21 This section of the conclusions of the report is reinforced at Table 65 and paragraph 12.35, where the report again identifies the need for modern business park development to be provided, in particular because future demand will not be satisfied in town centre developments. The need for business parks is reinforced on the basis of providing for range and choice in the employment market. The recommendations of the report endorse the need not only for grow-on units but also at paragraph 13.9 for campus-style offices. Further, it is clear from the report that the need for this provision arises now.
- 2.22 The fourth source of evidence in relation to need is the 2012 PACEC report. This employment land study for the Leicester and Leicestershire HMA does not provide any analysis of qualitative requirements but does forecast for HBBC's area a need of 11,800 sq ms of office floor space. Having analysed the readily available supply (see below), it concludes that there is a shortfall of nearly 8,000 sq ms of office floor space that is required. HBBC does not refer to any of this evidence. All of this evidence points to a need for more offices and modern business parks at Hinckley.
- 2.23 Measured against all of this evidence, there is clearly a quantitative need for the roughly 3,500 sq ms of office development comprised in the application, and a qualitative need for the business park proposal. It is important to appreciate, as established in Mr Lloyd's evidence and seemingly accepted by Mr Hemming, that need for a business park means need for the composite assembly of uses which are comprised in that form of development. That includes the related need for a hotel and leisure facilities to complement the offices and comprise, taken together, a business park development. Mr Dunnett claims there is no need for a further budget hotel and this means there is no need for the whole development. However, his approach displays a

flawed logic as there is a need for the hotel to cater for a distinct market as paragraph 6.9 of the Planning for Town Centres Practice Guide makes clear.

- 2.24 Thus, on the basis of the establishment of the need in this location, the credentials of the proposal as a sustainable development are clearly made out. There is a sense in which this conclusion is corroborated by the acceptance by Mr Hemming that on the advice of his agency colleagues the development proposed would prove successful. Certainly Mr Lloyd, with his extensive experience of the commercial property market in this area, was unequivocal in his evidence that the application would be a successful development and lead to the creation of the order of 350 jobs.
- 2.25 HBBC and Burbage Parish Council (BPC) have raised objections on the basis of the impact on the countryside of the proposals. These suggestions are entirely without merit.
- 2.26 It is clear from the evidence that it is agreed that the site is incapable of any beneficial use, whether as agriculture or otherwise. The site is contaminated, and it is obvious that in sustainability terms the treatment of that contamination is beneficial. The site visit will have confirmed the nature of the site and the extent to which it fulfils any sensible definition of countryside beyond a technical planning definition.
- 2.27 Whilst it is accepted that the site does not fall within the definition of previously developed land in the NPPF, nevertheless the spirit of paragraph 111 of the NPPF is relevant. The reason why previously developed land is identified is so as to secure the beneficial recycling of land which cannot otherwise be put to use. That element of the justification for the preference in policy applies equally to the application site.
- 2.28 Although HBBC has raised issues in relation to the visual effects of the proposals, it is important to appreciate, firstly, that the landscape resources on the site would be safeguarded and enhanced by the provision of management and further landscape planting. There would therefore be an overall benefit to the landscape features on the site that have any value.
- 2.29 In terms of the visual points raised by HBBC, it is clear that no distant views of the development have been identified. All of the views upon which HBBC has relied are immediately from the site boundary and, even then, are limited in their extent. No attempt has been made to engage in a proper Landscape and Visual Impact Assessment. Had that exercise been undertaken, it would have been clear that not only were the locations of the views not remotely sensitive since they are views from highway users or those immediately adjacent to substantial highway infrastructure, but also that the extent of the views, bearing in mind the urban influences that are already present in and around the site, the extent of change would be extremely limited. As the site visit and the photographs in Mr Wood's evidence illustrate, there are already pylons, signage and substantial highway junctions immediately adjacent to the site and at the locations where the views have been taken. Therefore, if an analysis had been done on the basis of the sensitivities of the views and the extent of visual change, it would have been impossible to demonstrate any material harm.

2.30 In the light of the condition of the land and the visual containment which it enjoys together with the urban influences which are around it, it is plain both that the site, whilst technically countryside in that it is beyond a settlement boundary, does not share (beyond the landscape resources that will be preserved) anything of value with the countryside, nor would there be any material visual effect arising from the development proposed.

***(b) The extent to which the development accords with Section 2 of the NPPF***

2.31 The submissions which have been made as to the need which the development has been designed to meet frame the requirements of the sequential test and also issues of impact. It is critical to understand what need is being addressed in order that the sequential test can be properly applied.

2.32 In order for a site to be sequentially preferable, it needs to be suitable, available and viable. In this case, the question of suitability is the issue which HBBC has consistently failed to adequately grasp. It is critical that a site, if it is to be a preferable alternative, is capable of meeting the need that the developer is seeking to meet. In this case, any site must therefore be capable of satisfying the requirement for a business park for Hinckley both to meet indigenous grow-on requirements and also to attract the footloose office enquiries registered by both Mr Lloyd and the BE Group. The need is not just a generic need for office development.

2.33 That this is the case is proved, firstly, from the highest authority in the decision of the Supreme Court in *Tesco Stores v Dundee City Council* [2012] UKSC 13.

2.34 In the leading judgment of Lord Reed in construing the word suitable in the policy, he provided conclusions in paragraphs 24–29 of the judgment, and in particular at paragraph 24 he stated as follows:

“24 ... As I have explained, the appellant’s primary contention is that the word ‘suitable’ in the first criterion of Retailing Policy 4 of the structure plan and the corresponding policy 45 of the local plan means ‘suitable for meeting identified deficiencies in retail provision in the area’, whereas the respondents proceed on the basis of the construction placed upon the word by the Director of City Development, namely ‘suitable for the development proposed by the applicant’. I accept, subject to a qualification I shall shortly explain, that the director and the respondents proceeded on the latter basis. Subject to that qualification, it appears to me that they were correct to do so, for the following reasons.”

2.35 Lord Hope also addressed the point at paragraphs 36–38. In particular at paragraph 38 he concluded as follows:

“38 The context in which the word ‘suitable’ appears supports this interpretation. It is identified by the opening words of the policy, which refer to ‘proposals for new or expanded out of centre retail developments’ and then set out the only circumstances in which developments outwith the specified locations would be accepted. The words ‘the proposal’ which

appear in the third and fifth of the list of criteria which must be satisfied serve to reinforce the point that the whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer. It is worth noting too that the phrase 'no suitable site is available' appears in policy 46 of the local plan relating to commercial developments. Here too the context indicates that the issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers in paragraph 28, above, they would be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so."

- 2.36 This approach to suitability, namely that it means suitable for the development proposed by the Applicant, is reinforced by a proper understanding of the guidance in the Practice Guide. Paragraph 6.9 of the Practice Guide makes clear that in applying the sequential approach the market which the developer is seeking to serve needs to be taken into account. Paragraph 6.9 in particular identifies that business park office development will serve a different function and market to town centre office development. Thus, the sequential approach needs to take a different stance in relation to examining suitability in respect of such development. It needs to respect the market sector which the development is seeking to address. The distinction which Mr Leader draws in relation to need for offices to be met over the period to 2026 is not material. It is the market to be served. That is clear from the Dundee judgment.
- 2.37 That is further reinforced by paragraph 6.37 of the Practice Guide, which relates suitability to "the need or demand which the proposal is intended to meet". Paragraph 6.45 is in a similar vein. Thus, the market demand which is being addressed is central to an assessment of the sequential approach, and the sequential approach in this instance needs to be applied bearing in mind that it is a business park style office development that is needed and that is proposed.
- 2.38 The observations within the March 2012 PPS4 Impact Analysis and Sequential Site Assessment produced by the Applicant need to be read in that context. Observations about the potential for other sites to accommodate elements of the proposal without delivering the benefits proposed at the Stretton Croft site are clearly related to the nature of the market demand which the proposals are seeking to meet. Equally, it will be noted that in Appendix 3 of that document the sites which are identified as being of a scale that could physically accommodate the development are dismissed on the basis that they would not be able to meet the specific locational requirements of the business park style development and are unsuited to business park style development.
- 2.39 Once this important principle of the approach is understood, as Mr Hemming accepted in cross-examination, you can immediately discount all sites in Rugby and Leicester as being unfit to meet the need which has been identified

in Hinckley, and also discount all of the town centre sites on the basis that none of them are capable of being suitable for a business park style development. Indeed, it follows from that that Mr Hemming was not able to identify any suitable sites apart from the application site. It is indeed the only site of which anyone is aware which is being promoted for a business park style development of the kind identified by the requirements of the BE Group report and confirmed by Mr Lloyd.

- 2.40 HBBC, recognising the frailty of its position, sought at a late stage to promote the Sketchley Brook employment site as a possible alternative site. However, this suggestion is wholly unsupported by the evidence.
- 2.41 Firstly, that site is being promoted by developers who are well experienced in providing business park style accommodation, namely Goodmans, but they are not promoting it as a business park because it is, as Mr Lloyd explained, not in a suitable location and does not have the necessary attributes to meet the requirements of a business park. Moreover, not only are Goodmans not promoting it, but none of the employment land studies promotes it as such nor does any HBBC document promote it as such.
- 2.42 Indeed, thirdly, quite the contrary is true. The only independent study produced by HBBC which looks at that site, the 2012 PACEC study, identifies it for 1,858 sq ms of office development in table 4.68, and acknowledges at paragraph 4.7.17 on page 52 that the market demand "is likely to be for large scale warehouses". That is borne out by the sales particulars which have been produced by Goodmans, which show it laid out as a development directed at the B8 distribution market. A point which Mr Hemming confirmed in re-examination. It is not a site which is relevant or suitable to the sequential test.
- 2.43 Turning to availability and viability, none of the town centre sites are available. As HBBC's own evidence demonstrates, neither are they viable.
- 2.44 However, even taking HBBC's case at face value, it is unable to establish that the application proposal fails the sequential test. Taking the case at face value, one assumes that the need, contrary to the Practice Guidance and Tesco Stores<sup>12</sup>, is simply for office development. For the purposes of this argument, we shall disregard issues of the market to which the development is addressed and questions of format. HBBC's case is that there is, pursuant to Core Strategy Policy 1, a requirement for 34,000 sq ms and, in accordance with that policy, at Hinckley the town centre sites should be deployed as sequentially preferable alternatives.
- 2.45 Once that case is set out, it is immediately apparent that sites in Rugby and Leicester are quite incapable of meeting the need for Hinckley which Policy 1 sets out. The Rugby and Leicester sites are, as is explained in the evidence, there to meet the needs of Rugby and Leicester. Moreover, the vast majority of them are neither town centre nor edge of centre and therefore not remotely sequentially preferable to the application site. Furthermore, the sustainable urban extensions at Barwell and Earl Shilton can be discounted on the basis

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<sup>12</sup> Ibid.

that both the Hinckley Core Strategy and the emerging AAP for those developments expressly exclude B1 development.

- 2.46 The question which then arises is as to whether or not the town centre sites which have been identified are either capable or have adequate capacity to meet HBBC's own case on the requirement in Policy 1 of the Core Strategy. Firstly, so far as whether or not they are capable is concerned, it is important to appreciate that none of those sites are presently viable, nor is there any indication as to when they may become viable. The gaps in the financial appraisals of many of the sites are so substantial that it is difficult to envisage when they might become available. Although it is argued that they may be brought forward viably for development at some point prior to 2026, that is of little use in relation to meeting present short- or even medium-term needs and, further, that assessment is not one which is based on them being viable for significant elements of office use.
- 2.47 Secondly, it is important to appreciate that the uses which are identified in the AAP<sup>13</sup> are specifically identified as being "aspirational". They are not and expressly not said to be "requirements". A different way of putting this is the enthusiasm of the AAP and, indeed, the Inspector who endorsed it, for flexibility in those uses. Paragraphs 8.3, 9.3 and 9.4 of the AAP make clear that there is potential for radical departure from the uses identified on page 36 of the document with a view to ensuring that some beneficial development and regeneration occurs on those sites.
- 2.48 What follows is the conclusion that there can be absolutely no assurance, or even likelihood, that the scale of office development identified on page 36 of the AAP will in fact materialise.
- 2.49 This is especially the case when, firstly, gauged against the AAP's viability work which, as set out above, shows that the sites were not viable. Secondly, it is telling that the actual experience on the ground of these sites being brought forward further reinforces that the level of office use identified on page 36 is highly unlikely to materialise. For instance, the College site has not developed any office use within it.
- 2.50 Accounting for adjustments of net office space development (and deducting the loss of the Council's existing offices), it is clear even on HBBC's own case (see HB5) that only around half of the 34,000 sq ms of development required will in fact be delivered on the town centre sites.
- 2.51 That is, however, a clear over-estimate. Firstly, when one examines the site at Stockwell Head, 2,500 sq ms of office floor space are most unlikely to be delivered on that site. As the AAP itself acknowledges, the site is in multiple ownerships, and it is also occupied presently by a number of viable businesses. All of those businesses will have to be displaced and the ownerships assembled if there is to be any development of that site. That will require a CPO. At present, there is no master plan, no planning permission, and no resolution to pursue a CPO. In fact, HBBC has acted contrary to a

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<sup>13</sup> CD10

desire to assemble the land interests by disposing of its own freehold ownerships to Trillium. That action clearly shows it has no intention whatsoever of pursuing a CPO and, even if it did, it would be laughed at by objectors pointing to the fact that it had recently disposed of its own interests.

- 2.52 Turning to the railway station site, again there is simply no sensible basis for suggesting that 5,000 sq ms of office floor space will be developed in that location. The enquiries that have been made of the land owner make clear that he has no interest in pursuing an office-led development, and the evidence demonstrates that an office-based development would be unviable. If the site comes forward for anything, it will not be an office-led scheme.
- 2.53 Turning to Mount Road, HBBC has identified its own office site as being a leisure centre. The wider part of the site is currently in active health-related uses, which Mr Hemming accepted were not likely to relocate and which HBBC would not have an appetite to compulsorily acquire. There is therefore no prospect of that delivering up to 4,000 sq ms of office development.
- 2.54 Once those deductions are made from HB5, it becomes clear that only around 6,000 sq ms of office development would be capable of being delivered in the town centre. That is a tiny fraction of the 34,000 sq ms required by Policy 1 and, furthermore, would not meet the requirements of either the BE Group report or the PACEC report. It is clear, therefore, that, even on HBBC's own case, when properly scrutinised, there remains a clear and evident need for the proposals that are before the Inquiry. There is no reality to any sequential test objection to the application proposals.
- 2.55 Turning to the question of impact, in reality, no evidence was offered by HBBC beyond an unsubstantiated assertion. There is no basis on which to contend that there would be any quantitative impact, nor have any figures been produced by HBBC to suggest any quantitative effect. In reality, since all of the town centre sites are on the current state of the evidence unviable, the last thing that they need, in accordance with the AAP viability study, is a requirement to produce more offices which will further imperil delivery by affecting their viability. That would be contrary to the aspirations of the AAP to see them brought forward and regenerated by some form of development.
- 2.56 In fact, the qualitative impact of the proposals will undoubtedly be positive. As identified in the BE Group report, the business park style development proposed by the application will add to the range and choice of office floor space available to the market. Furthermore, there is nothing to seriously dispute Mr Lloyd's evidence about the beneficial effect of the business park raising rent tone across the market and, in fact, having a positive impact on the potential viability of the schemes in the town centre.
- 2.57 Thus, there is no sensible case which has been made by HBBC to demonstrate any impact as a result of the proposals, and that was effectively endorsed in Mr Killip's answer to Mr Choongh in cross-examination that HBBC did not contend that the proposals failed the impact test.
- 2.58 It follows that in terms of the requirements of Section 2 of the Framework the proposals comprised in the application pass the sequential test and will not

have an adverse impact on the vitality and viability of the town centre. They are fully compliant with national planning policy in that regard.

**(c) *The accessibility of the proposals by sustainable transport***

- 2.59 The proposals before the Inquiry, as explained by Mr Andrews, include provisions for sustainable transport which will enhance the accessibility of the site both by slow modes and by public transport. These provisions have been accepted not only by WCC but also by LCC as providing the necessary assurance that the site will be accessible. Whilst points have been made in relation to the present position of the site in terms of public transport, that is irrelevant to the application proposals, which have to be assessed on the basis of the package of measures which are being offered through the application.
- 2.60 The extent of the public transport contribution which has been made has been measured by LCC as being appropriate to secure a long-term future for the bus service. Albeit anecdotal, the evidence of Councillor Bray reinforced the fact that public transport services in the area were well supported, if not over-subscribed. It is to be noted that Mr Andrews and the LCC has designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service will necessarily provide a strong linkage both to the town centre and to the railway station, and will provide therefore an appropriate and sustainable alternative to the use of the private car.
- 2.61 As is to be expected, the Framework Travel Plan, which has been agreed with the highway authorities, reinforces that there will be a carrot and stick approach based on specific occupier requirements to bear down on the modal share at the site. This provides a guarantee that the site would be sustainable.
- 2.62 Whilst dwelling upon transport-related issues, it is important to reinforce that the junction arrangements which are proposed would not only assist in catering for sustainable travel by fostering the use of walking and cycling as an appropriate mode, but would also resolve existing highway safety issues in terms of providing an acceptable design solution.

**(d) *Protected species and biodiversity***

- 2.63 The proposals do not have any impact on any protected species, following detailed analysis and survey work which has been undertaken at the site. Furthermore, in the light of the concessions made by HBBC and BPC on the first day of the Inquiry, there is now no objection raised on the grounds of nature conservation.
- 2.64 The evidence of both Mr Low and Mr Warren has explained how, firstly, the site itself will be enhanced as a result of the biodiversity works which will be undertaken as part and parcel of the landscaping solution. Furthermore, the biodiversity offsetting contribution will be directed towards improvements at a site in Warwickshire which will benefit from the enhancement. Overall, therefore, there is a significant benefit in nature conservation terms which will be brought about by the grant of consent in this case, and the requirements of

both Development Plan and national policies in respect of those interests will be safeguarded.

***(e) and (f) Conditions and Section 106 Planning Obligations***

- 2.65 Appropriate conditions have been agreed after discussion between the parties. In addition, a Section 106 obligation has been provided in order to address highways contributions and the biodiversity offsetting payment. Thus, all impacts of the development have been met. There is a schedule demonstrating the compliance of the proposals with the CIL Regulations.

***Conclusions***

- 2.66 As a result of the evidence provided at the Inquiry, it is clear, firstly, that there is an undisputed need for additional office floor space in the form of a business park of the kind proposed by the application. Secondly, it is clear that there is no other site which has been credibly suggested as being suitable or available to meet that need and, further, the meeting of the need will not in any way imperil the vitality of Hinckley town centre. Not only are the town centre sites incapable of meeting the need targeted by the development (as contemplated by paragraph 6.9 of the Practice Guide) but in fact commercial viability considerations mean that office uses will imperil their development. The AAP does not require them to support office uses and fosters flexibility in relation to uses to ensure that the sites are brought forward and not hamstrung as a result of unprofitable uses. Several of the sites are unlikely to come forward in any event for office or indeed any other use.
- 2.67 Suitable measures are in place to ensure that the development is accessible. The proposals will contribute to the economic prosperity of the area by providing a substantial number of jobs as well as remediating the site and securing overall bio-diversity enhancements. As such the development represents suitable and sustainable development which can be commended to the SoS.

### 3. THE CASE FOR RUGBY BOROUGH COUNCIL (RBC)

3.1 The case for RBC is structured on the basis of the 6 main issues identified.

***(a) The extent to which the proposed development is consistent with the development plan for the area and will deliver a sustainable form of development***

3.2 As set out in the Report to Committee this proposal is contrary to Policy CS1 of the RBCCS and Saved Policy LR10 of the RBCLP 2006. However, if the matter is considered more closely it quickly becomes apparent that the conflict with these policies cannot in the circumstances of this case warrant refusal of the application.

3.3 Policy CS1 provides a development hierarchy, but it is a hierarchy that is to be applied only when considering the development needs of Rugby itself. Paragraph 2.10 is headed "other locations within the borough". It expressly provides that "there are locations that are specifically excluded from this hierarchy which could be considered as sustainable locations for development." It follows that there are locations which for the purposes of applying this policy are not to be treated as falling within any of the other categories (the Rugby Urban Area, Main Rural Settlements, Local Needs Settlements, Countryside and Greenbelt) even if the location is one which is designated as falling within one of those categories. Any other interpretation of paragraph 2.10 would render it nugatory because every location within Rugby will fall within one or other of the listed categories.

3.4 Paragraph 2.10 tells us precisely where these "other locations" are. They are locations that sit within the administrative boundary of RBC, but are situated close to urban areas lying outside RBC boundaries. Hinckley is given as one such example. The reason that the LPA has accepted that development in such locations is contrary to Policy CS1 is because paragraph 2.10 provides that "development within the Borough that is related to these areas or sites remains contrary to the wider approach set out in this strategy." However, the conflict is more apparent than real, because the policy does not rule out development at these locations, but requires that such proposals (i.e. proposals which relate to these other areas) be judged on their merits in partnership with the relevant neighbouring LPA. It can therefore be said that if a development, judged on its merits, is found to be acceptable, it is not contrary to Policy CS1. This shows that whether the proposal is (a) contrary to Policy CS1 but acceptable on its merits, or (b) falls within an exception to it, or (c) is in compliance with it, are all differences without a distinction.

3.5 HBBC and BPC do not in fact disagree with the proposition that Policy CS1 does permit development to take place outside of the hierarchy set out within that policy. This is clear from the fact that they accept that the example given in paragraph 2.11 (development to meet the long-term employment land needs of Coventry) would be permitted under the auspices of Policy CS1. Their case is that either the "one known illustration" referred to in paragraph 2.11 is the only development contemplated under paragraph 2.10, or that the reference to judging a proposal on its merits "in partnership with the relevant

- neighbouring local planning authority” means that it can only be granted with the agreement of that adjoining authority. Both arguments are untenable.
- 3.6 Paragraph 2.11 makes clear in terms that the situation referred to in that paragraph is one example of the sort of development referred to in paragraph 2.10. An example provided to illustrate the working of a policy cannot be converted or read as an exhaustive list of what will be acceptable under that policy.
- 3.7 Interpreting the reference to “partnership” in paragraph 2.10 to mean that in effect the adjoining authority has a power of veto runs contrary to the legal framework for determining planning applications. The decision-maker (whether that be a LPA, a Planning Inspector or the SoS) must make a decision in accordance with the development plan, unless material considerations indicate otherwise. The development plan requires that a proposal for development that relates to an area outside of Rugby be judged on its merits. The reference to partnership requires the decision-maker to have regard to what the adjoining authority has to say about all relevant matters, not least of all whether it agrees that the development does relate to its area. But the task for the decision maker remains one of judging the application on its merits. An unmeritorious argument by the adjoining authority cannot justify refusal.
- 3.8 In this case, the starting point for deciding whether this application falls within the exception set out within paragraph 2.10 is to ascertain whether the development proposed relates to Hinckley. The Applicant has submitted evidence that the need which its development is looking to service is a need which arises in Hinckley, namely a need for an out of town business park with related hotel and leisure facilities that is well-connected to the strategic road network. No evidence was provided to the LPA to suggest that there is no such need. At this Inquiry Mr Killip for HBBC and Mr Dunnnett for BPC are planning witnesses and their evidence was quite correctly restricted to planning matters. They are not in a position to judge whether there is a commercial need for this type of development to meet the needs of Hinckley. Mr Hemming was not in a position to dispute the evidence of Mr Lloyd that there was interest in the market for such a facility. Mr Hemming’s evidence was restricted to the issue of whether that need could be met at a different site.
- 3.9 It follows from this that the proposal relates to the needs of Hinckley and must be judged on its merits.
- 3.10 Turning next to Policy LR10, although the proposal conflicts with this policy, the conflict is one which attracts little weight. Firstly, this is a saved policy that predates Policy CS1. The latter policy as the more recent manifestation of the LPA’s thinking should be given greater weight. Secondly, Policy LR10 does not address the particular situation that is addressed by Policy CS1, namely where a site is in the countryside but the proposed development is designed to meet the needs of the adjoining authority. Thirdly, Policy LR10 is restricted to looking at tourism and visitor facilities and attractions only. Although the hotel element of the present scheme could fall within the definition of visitor facility, the scheme taken as a whole is not the type of scheme to which Policy LR10 addresses itself. This is a scheme that cannot be disaggregated for the

reasons explained by Miss Fisher in her evidence; it is a development put together to cater for a particular segment of the market, which is a different segment to that considered in Policy LR10.

- 3.11 The other relevant policies of the RBCCS are set out at paragraph 5.6 of Miss McCulloch's evidence. Policy CS10 (planning obligations) will be addressed under main issue (f), Policy CS11 (transport sustainability) under main issue (c), and Policy CS14 (ecological matters) under main issue (d). It is submitted that the proposed development complies with all of these policies. Policy CS16 requires consideration to be given to sustainable design and the impact of development on the community and character of an area, and the amenity of neighbouring occupiers. Policy CS17 relates to reducing carbon emissions.
- 3.12 There was no objection to the proposal from the Environmental Health Department regarding noise or pollution. The proposed conditions show that these matters are capable of being adequately addressed. The impact on the amenity of nearby occupiers is considered in detail both in the Report to Committee and in the evidence of Miss McCulloch and show that the impact would be acceptable. Suffice it to say that the closest residential property is about 24m from the site boundary. There is a landscaped area between the curtilage of this dwelling and the application site which means that the curtilage of the closest dwelling would be around 10m from the site boundary. The proposed development could therefore be accommodated in a manner that would provide sufficient separation to ensure neighbouring properties would not be adversely affected in terms of loss of light or privacy.
- 3.13 As regards the policies of the saved RBCLP, Policy GP2 requires landscaping to form an integral part of the design and development and provision of a high standard of hard and soft landscaping. This is an outline application and these matters are capable of being controlled by planning condition. Policy T5 requires satisfactory parking facilities, and no evidence has been submitted that the parking facilities to be provided on this site would be unsatisfactory. Policy E6 seeks to protect ecological assets. This matter will be addressed under main issue (d). None of the policies of the WMRSS add anything to the policies already set out above.
- 3.14 That leaves under this main issue the question of whether the proposal will deliver a sustainable form of development. Paragraph 6 of the NPPF provides that the sustainability of a proposal is to be judged by having regard to all the policies set out in paragraphs 18 to 219 of the NPPF. The key policies that are particularly relevant to this proposal are those which seek to direct town centre uses to centres, ensure that proposals are located at locations accessible by means of transport other than the private car, and protect ecological and biodiversity interests. All of these are addressed below. But we address here briefly the three-dimensions to sustainable development set out in paragraph 7 of the NPPF.
- 3.15 This proposal will contribute to building a strong, responsive and competitive economy by meeting a need in the marketplace as identified by the applicant. For the reasons set out below, it is not a need that can be met elsewhere. Therefore, if this proposal is rejected it will mean that an opportunity to create jobs and provide the facilities which businesses need in order to compete and

grow would have been rejected. In resolving to grant planning permission, the LPA attached significant weight, as directed to do so by paragraph 19 of the NPPF, to the need to support economic growth through the planning system and to encourage and not impede sustainable growth. The LPA submits that it is for the market to decide whether demand exists for a proposal, not the planning system. The role of the planning system is restricted to ensuring that proposals are sustainable i.e. that they do not create planning harms that outweigh the benefits.

- 3.16 The proposal scores highly when measured against the social role of planning, because it will create a high quality built environment with accessible services that reflect what is required to meet the needs of this area. Although the social role is primarily addressed at meeting housing needs, the principle applies equally to this type of development which provides a work environment that addresses the health and social needs of employees through the leisure and hotel elements.
- 3.17 The proposal does not create any or very limited environmental harm. The impact on ecological assets is considered below, but there has been reference at this Inquiry to the countryside location and it has been suggested that this proposal harms the countryside.
- 3.18 It is important to observe that there has been no evidence to the effect that there will be harm to landscape character. Criticism has been limited to the visual impact of the proposals on the countryside. What is currently an undeveloped site will be developed, and this will undoubtedly change the character of the site. However, regard must be had not only to the site but the wider area when judging the level of any harm.
- 3.19 The site lies within an urban fringe location, surrounded on all 3 sides by roads, two of them very large and very busy (M69 and A5). Although Mr Wood gave evidence that these were not urbanising features, it is difficult to imagine what would constitute an urbanising feature if not an elevated motorway, a very large motorway junction, and a very busy road all running within close proximity to a site. Furthermore, as Miss McCulloch pointed out, the site is not experienced from the air. Those who move around the site experience the busy roads, the nearby commercial premises and the overall level of activity (and lighting at night) that these bring. The site itself is well contained and has defensible boundaries to the Green Belt beyond. When the location was considered by the Rugby Local Plan Inspector in 1990, he saw no reason why it should remain permanently open, and a later review by HBBC also concluded that it served no separation purpose. Although Mr Dunnett spoke of HBBC's long-standing policy resisting built development on its part of the larger site, the facts establish that HBBC has in the past granted planning permission for a hotel development, and later for the development of 4 residential properties.
- 3.20 Finally in respect of countryside impact, any harm that is created has to be weighed against the economic benefits that these proposals would bring. When that weighing exercise is engaged it quickly becomes clear why the LPA resolved to grant planning permission.

***(b) The extent to which the proposed development accords with the National Planning Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres***

- 3.21 Although the sequential and impact tests are set out in the NPPF, detailed guidance on how to apply the tests is to be found in the still extant PPS4 Practice Guidance. It is extremely important to note that at paragraph 6.52 under the heading “checklist: adopting a sequential approach” attention is drawn to the importance of defining the need: “is the need “location specific” or even “site specific”? The Applicant has presented evidence to demonstrate that the need is location specific – the need that it is seeking to cater for is a need which arises in the Hinckley area for an out of centre business park development which incorporates ancillary type uses. The Applicant has also identified that occupiers of such premises require close and easy access to the motorway and strategic road network.
- 3.22 HBBC appeared to be under the misapprehension that because the need identified by the Applicant could be serviced by business operators from outside of the Hinckley area (footloose developers) it was somehow not a Hinckley need. This is to confuse the requirement for such premises within the Hinckley area with the separate issue of who will run the businesses that want to service the Hinckley area. Hinckley requires premises of this description if it is going to either retain or attract businesses that need these types of premises. If the provision of the type of office development proposed would attract businesses from outside of the area to relocate to Hinckley that can only be a good thing. It would be evidence that Hinckley does indeed have a need for an out-of-town business park of the type offered by the Applicant.
- 3.23 As Miss Fisher explained, it is not a development that can be disaggregated because if it is disaggregated it would not cater for the demand that the Applicant has identified. To identify sites which could accommodate parts of the development is not to identify a suitable site for the development that is proposed, but a different type of proposal catering for a different segment of the market. The Practice Guidance recognises that main town centre uses can differ in their operational and market requirements. At paragraph 6.9 specific reference is made to business parks catering for a different demand to a town centre office use, and hotels associated with motorway service areas catering for a different market to a city centre hotel.
- 3.24 The sequential test is passed if the Applicant can demonstrate that sequentially preferable sites, i.e. sites which are in or on the edge of a centre, are not available, suitable or viable. It does not require much more than common sense to appreciate that a site located in or on the edge of Rugby town centre cannot be suitable to tap a demand for an out-of-centre business park designed to meet the B1 office needs of Hinckley. Unfortunately, Mr Hemming was not prepared to concede this until the matter was put to him in cross-examination. At that point, he readily accepted that none of the sites that he had identified within Rugby were suitable to meet the need as identified by the Applicant.
- 3.25 This makes it unnecessary to spend much time considering the Rugby sites he had identified in his evidence. However, it is noteworthy that many of the sites

he had identified were not in any event sequentially preferable within the meaning of NPPF paragraph 24. The sites are neither in nor on the edge of Rugby town centre, or any other centre. When considering out-of-centre sites, paragraph 24 requires preference to be given to accessible sites that are well-connected to the town centre. If the application site is accessible and well connected to Hinckley town centre, it should be granted planning permission in the absence of an available, suitable and viable site in or on the edge of Hinckley town centre. No one has identified any support for Mr Hemming's view that preference should be given to the most accessible out-of-centre site. In any event, a dispute about whether out-of-centre sites preference should be given to an accessible or the most accessible site is on the facts of this case theoretical. Mr Hemming did not identify any site that lies outside of Hinckley town centre that is available, suitable and viable and which is more accessible than the application site.

- 3.26 Given that the need that is to be met is the need of Hinckley, and not the needs of Rugby or Coventry or Nuneaton, the Applicant must demonstrate that there are no sites within or on the edge of Hinckley town centre that are available, suitable or viable. The Applicant demonstrated this to the satisfaction of the LPA in its sequential and impact analysis. The evidence presented to this Inquiry by Mr Hemming on behalf of the HBBC criticising the rejection of the Hinckley sites was subject to cross-examination by the Applicant, and Mr Hemming accepted that the sites he had identified were not viable. The Applicant deals with this matter in more detail. Mr Hemming argued that the Hinckley sites will become viable at some undefined period during the remaining 13 years of the Hinckley Town Centre AAP. Although it is correct that a site does not have to be available immediately, the market must have confidence that it would become available within a reasonable time period. To turn away an Applicant who seeks to meet a need which exists in the marketplace now on the basis that a site may become viable at some undefined period over the next decade or more cannot be justified. It would be to act contrary to the injunction in paragraph 19 of the NPPF to encourage and not impede sustainable growth and to do everything that can be done to support sustainable economic growth. It would also undermine the Government's efforts to build a "responsive" economy.
- 3.27 Mr Killip was keen to point out that paragraph 27 of the NPPF requires an Applicant to pass the sequential test and the impact test. However, and rather confusingly, he also accepted that HBBC had never presented and did not present to this Inquiry any evidence to the effect that granting this planning application would have a significant adverse impact on either Hinckley town centre or any other town centre. It is clear that no evidence was provided by Mr Killip on this matter. His argument appeared to be a generalised assertion that development of out-of-centre sites has an adverse impact on town centres. However, where there is no sequentially preferable site, an application can only be rejected on the basis that there would be a significant adverse impact on either the existing, committed or planned public and private investment in the centre or such impact on town centre vitality and viability. Mr Killip candidly accepted that no such evidence had ever been presented. By contrast, the Applicant has presented a detailed impact assessment which demonstrates that there would be no such impact.

3.28 If the sequential test is failed, planning permission must be refused regardless of the impact test. If, as here, the sequential test is passed, planning permission can only be refused if there is evidence of significant adverse impact on a town centre. A generalised assertion of adverse impact, without quantifying it or identifying which existing, committed or planned public and private investment is put at risk, is not sufficient to justify refusal.

3.29 ***(c) The extent to which the proposed development is consistent with the Government advice in promoting more sustainable transport; promoting accessibility jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car***

3.30 It is the position of the LPA that the site is accessible and well connected to the town centre by public transport, walking and cycling. Most of the nearby urban area is within a reasonable cycling distance, and the improvements at the junction of the A5/Wolvey Road would make it easier for cyclists to access the site. The southern areas of Burbage are within a 2kms walking distance of the site, and once again the improvements planned for the junction would make it easier for pedestrians to cross the A5. There is an hourly bus service linking the site to Burbage, and there is a bus stop located around 350m of the site. There is also a bus every 90 minutes linking the site to Coventry and Leicester, with a bus stop situated some 600m to the north of the site.

3.31 The Applicant has offered a unilateral undertaking under the terms of which the bus service to the site would be improved. A bus service would be brought into the site itself, and serve the site 6 days a week from 0700 hours to 1900 hours and would be re-routed through the residential areas of Burbage and would link the site to Hinckley town centre and Hinckley railway station. On the basis of Miss McCulloch's evidence, it is the position of the LPA that the site is sufficiently sustainable without the enhanced service, but the new service would improve accessibility which is to be welcomed. If the SoS comes to the conclusion that the improved bus service is necessary in order to make the site sufficiently accessible, the unilateral undertaking would deliver the improved bus service.

***(d) The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (section 11 of the NPPF)***

3.32 The site has Local Wildlife Site status. The ecological and biodiversity interests on site have been evaluated by the WCC Ecological Unit, and the unchallenged evidence provided by Mr Lowe on behalf of WCC to the Inquiry is that the layout and design of the development would retain ecological features where possible and would translocate and create additional habitat on land within the Applicant's control. This, together with a biodiversity management plan, would ensure that Local Wildlife Site values will be retained. Although there would remain some biodiversity loss, this could be compensated for through a biodiversity offsetting scheme in accordance with the principles set out in the NPPF. Mr Lowe has undertaken the work to evaluate the level of offsetting required, and the offsetting would be delivered within the RBC area funded by

a payment from the Applicant through the unilateral undertaking. Mr Lowe confirms that with the biodiversity offsetting funded by this scheme there would be a net gain in biodiversity.

***(e) Whether any permission should be subject to any conditions and, if so, the form these should take***

- 3.33 Conditions are necessary to make the development acceptable in planning terms. The form of these conditions and the reasons for imposing them, have been agreed with the Applicant and are provided separately.

***(f) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable***

- 3.34 A Planning Obligation is required in order to secure the biodiversity off-setting and the Travel Plan. The LPA's view on the requirement for an enhanced bus service is set out above. It is the view of the LPA's Legal Department that the terms of the obligation submitted by the Applicant are acceptable to deliver the benefits which the instrument seeks to deliver.

#### **4. THE CASE FOR HINCKLEY AND BOSWORTH BOROUGH COUNCIL (HBBC) - A RULE 6 PARTY**

- 4.1 HBBC's case is that the application: (i) is contrary to the development plan; (ii) fails the sequential test set out in the NPPF paragraph 24; (iii) is generally unsustainable; (iv) runs counter to and would tend to undermine, the spatial strategy for Hinckley; and (more particularly), (v) is likely to harm the vitality of Hinckley town centre.
- 4.2 HBBC is not sure how the scheme has reached this stage. It appears that the LPA did not read the Applicant's sequential test or marry up its conclusions with paragraphs 24 and 27 of the NPPF before it resolved to grant planning permission.
- 4.3 Subsequently, the Applicant became aware of the problem. Some may well think it entirely natural to grant planning permission in the open countryside for large, footloose town centre uses which encourage the use of the private car. It should be noted that the scheme is intended to meet only that need which arises in Hinckley. Mr Littlejohn confirmed that there was a very specific market and sub-regional catchment, which is so confined it does not even extend as far as Rugby, a mere 20 minutes away by car.<sup>14</sup> Once any close tie to Hinckley is severed there can be no proper basis for limiting the sequential site search to the town. In reality the proposed development is an opportunistic application for planning permission on the kind of site for which there will always be demand, but not a need.

##### ***Conflict with the Development Plan***

- 4.4 The development plan comprises the WMRSS, the RBCCS, the WSP and the saved policies of the RBCLP. The parties' planning witnesses agree that the imminent demise of the Regional Plan means it should be accorded little weight in the determination of this case. Setting that document to one side, there is no doubt that the scheme conflicts with the development plan.
- 4.5 The RBCCS sets out the spatial strategy for the Borough. Policy CS1<sup>15</sup> identifies a sustainability hierarchy, which "provides a clear sequential approach to the selection of sustainable locations for development".<sup>16</sup> Rugby town centre is identified as the most sustainable location in the Borough.<sup>17</sup> Policy CS9 provides that new office floorspace should take place within or on the edge of the town centre<sup>18</sup> to "bring significant benefits to the town centre's vitality and viability".<sup>19</sup> At the other end of the hierarchy, the plan states that countryside locations which are not defined by a settlement boundary "are the most unsuitable for development".

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<sup>14</sup> Littlejohn page 23, paragraph 5.30 and page 40, paragraph 8.4

<sup>15</sup> Rugby CS page 12, Policy CS1

<sup>16</sup> Rugby CS page 14, paragraph 2.10

<sup>17</sup> Rugby CS page 12, paragraph 2.4

<sup>18</sup> Rugby CS page 30, Policy CS9

<sup>19</sup> Rugby CS page 30, paragraph 4.14

- 4.6 Employment development that cannot be accommodated in the town centre is to be located in two sustainable urban extensions which together with the town centre make up the "Rugby Urban Area"<sup>20</sup> Policy CS4 sets a target for the delivery of 31 hectares of employment land devoted to B1, B2 and B8 uses in the "Rugby Radio Sustainable Urban Extension". The policy specifically requires "an element of provision as new business incubation units".<sup>21</sup> Policy LR10 of the RBCLP fits the framework set by the RBCCS by requiring tourist and visitor facilities such as hotels to be located in the town centre, edge of centre and urban locations. In a similar vein Policy TC2 of the WSP directs entertainment and leisure development to town centres.
- 4.7 The application site is in the open countryside. The uses proposed by the Applicant are town centre uses. In the circumstances the Applicant and the LPA sensibly concede that the scheme conflicts with the spatial strategy.<sup>22</sup> It also conflicts with Policy CS4 and Policy CS9 of the RBCCS, Policy LR10 of the RBCLP and Policy TC2 of the WSP.<sup>23</sup> In short, the proposal is contrary to the development plan.
- 4.8 Therefore, it is not surprising that both the Applicant and the LPA try to conceal the scheme in paragraphs 2.10 and 2.11 of the subscript to Policy CS1. Their difficulty does not, however, disappear. The paragraphs do not dis-apply Policy CS1; on the contrary, paragraph 2.10 states in plain terms that even if development might be regarded as sustainable in locations which would be regarded as sequentially unacceptable: "Development within the Borough that is related to these areas of sites remains contrary to the wider approach set out in this strategy as any such development would not assist in achieving sustainable development focused on Rugby town".
- 4.9 Moreover, the circumstances in which it would be permissible to promote development which remains contrary to the spatial strategy is limited to those cases in which neighbouring Local Authorities wish to work "in partnership" with RBC to meet their development needs in Rugby. The purpose of paragraphs 2.10 and 2.11 is thus to facilitate co-operation between Local Authorities. That construction is obviously right for 2 reasons: -
- (i) What may be presumed to be the deliberate choice of the word "partnership" instead of "consultation". The former connotes a joint venture whereas consultation merely requires regard to be had to another's views.
  - (ii) The description of when the approach is appropriate: the "one known illustration of this scenario" is meeting the employment needs of Coventry "identified by the City Council". Miss Fisher agreed other potential "illustrations" would arise if Rugby met similar requests from other Local Authorities, although she agreed none have been made. "This scenario" is thus limited to proposals to promote economic growth in neighbouring authorities which are promulgated or supported by

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<sup>20</sup> Rugby CS page 13, paragraph 2.5

<sup>21</sup> Rugby CS page 20, Policy CS4

<sup>22</sup> Fisher XX and Littlejohn XX and note McCullough Appendix 3, page 34, paragraph 7 (Report to Committee)

<sup>23</sup> Fisher, page 5, paragraph 19

those authorities even if, in this latter case, they are first advanced by a developer and supported by RBC.

- 4.10 The notion that there can be partnership working in the face of opposition from a neighbouring authority is unreasonable.
- 4.11 The issue that arises is how should the provisions of paragraph 2.10 and 2.11 be applied? The answer is straightforward. Partnership working to meet the jointly agreed needs of a neighbouring authority would operate as a weighty material consideration to offset conflict with Policy CS1. In other cases, the failure to engage the exception would not: “mean that planning permission should be refused” (as was suggested on behalf of the Applicant and LPA). That would only be the result if other material considerations do not outweigh the conflict with policy in a case where the “exception” cannot be added into the balance.
- 4.12 The exception is not engaged in this case because the scheme is not supported by HBBC: there is no partnership. The Applicant and the LPA must therefore work hard to tip the balance back in their favour. In carrying out that exercise, the next factor to be weighed is the scheme’s non-compliance with the SoS’s policies.

#### ***Conflict with the National Planning Policy Framework (NPPF)***

- 4.13 The SoS’s policy is not to allow any development, even in sustainable locations, merely because it might promote economic growth. Key sustainable development principles include the considered management of growth and location.<sup>24</sup> The approach to managing the growth and location of town centre uses is set out in Part 2 of the NPPF.

#### ***Principles on the application of the sequential test***

- 4.14 Development plans are required to allocate a range of sites to meet the leisure, office and tourism development that is “needed in town centres”.<sup>25</sup> This is to “ensure the vitality of town centres.”
- 4.15 LPAs are required to undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable town centre sites.<sup>26</sup> They must then allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available.<sup>27</sup> Only if that cannot be achieved are policies required to enable need to be met in other accessible locations provided they are well connected to the town centre.
- 4.16 The critical point to note is that it is need, not what the market demands, which must be satisfied. The difference does not seem to have been grasped

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<sup>24</sup> Inspector’s report on the Rugby CS, page .8, paragraph 31

<sup>25</sup> NPPF, paragraph 23, bullet 6

<sup>26</sup> NPPF, paragraph 23, bullet 6

<sup>27</sup> NPPF, paragraph 23, bullet 7

by the Applicant or the LPA. That is unfortunate because in the context of the application sequential test the difference between these concepts is of vital importance.

- 4.17 Since need is to be determined by reference to the development plan it follows that what is to be regarded as a “sufficient supply”, of “suitable”, “viable” sites is not to be judged by sites that fit that description now. Instead, as Mr Littlejohn agreed, the proper frame of reference is the plan period against which need is calculated. That that is the right approach is confirmed by the DCLG’s “Practice Guidance” on the sequential test, which all parties agree is a material consideration in this case. Paragraph 6.37 is explicit: “the viability of alternatives depends in part on the nature of the need and the timescale over which it is to be met”. The need for offices in Rugby (and Hinckley) is to be met (in accordance with the Core Strategy) over the period to 2026. That is, therefore, the appropriate timescale in this case.
- 4.18 A further matter which is not in dispute is that (to quote the Guidance): “it is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather (it is necessary) to consider what contribution more central sites are able to make, either individually or collectively, to meeting the same requirements.” The test requires a flexible approach.<sup>28</sup> In this case that approach is justified: Mr Lloyd agreed that there is no necessary link between the office, leisure and hotel uses that are proposed.<sup>29</sup> It is also the approach that was prescribed by the LPA, and adopted by the Applicant, without even a hint of disagreement or complaint.<sup>30</sup>
- 4.19 The final preliminary question which arises is what is the area of search? The Practice Guidance states that depends on whether the particular need to be met is “location specific”, “site specific” or “more generalised”?<sup>31</sup> In this case it is plain that the need to be met is generalised. That is clear from the following 5 pointers:
- (i) Mr Choongh’s helpful clarification, (to quote): “Let me make it clear. It is not and never has been the LPA’s case that the development will meet need in Hinckley”. This approach was endorsed by Miss McCullough who said “the development will not just meet Hinckley’s need”.<sup>32</sup>
  - (ii) Mr Littlejohn’s confirmation that the 2,091 sq ms pavilion will not meet the needs of existing Hinckley based businesses.<sup>33</sup>
  - (iii) The LPA’s direction to the Applicant to consider all sequentially superior sites in Warwickshire and Leicestershire with which the Applicant complied without demur.<sup>34</sup>

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<sup>28</sup> Practice Guidance, page.46, page.44, paragraph 6.42 and paragraph 6.52

<sup>29</sup> Lloyd XX

<sup>30</sup> See e.g. Littlejohn Appendix 1, page 38, paragraph 4.63 and his agreement under XX that it is appropriate to consider the potential for disaggregation

<sup>31</sup> Practice Guidance, page.46, paragraph 6.52

<sup>32</sup> McCullough XX

<sup>33</sup> Littlejohn XX

(iv) Mr Lloyd's confirmation that half the demand expressed for the offices to date comes from large footloose single occupiers from Coventry compared with the need which arises from Hinckley which he agreed comprises:

- (a) small serviced suites of up to 200 sq ms; and,
- (b) grow-on units of up to 500 sq ms, built to avoid over-specification.

It is informative to note that Rugby is closer to Hinckley than Coventry. This undermines Mr Littlejohn's assertion that the scheme would serve a very specific market and sub-regional catchment.<sup>35</sup>

(v) The absence of any evidence that the leisure use or the hotel would meet a locational or site specific need centred on Hinckley or Rugby or the A5/M69 junction.

4.20 In summary, in this case, the sequential test is to be applied to an area of search that encompasses all sequentially superior town centre, edge of centre and out-of-centre sites in Warwickshire and Leicestershire identified to meet the need of town centres over the period to 2026 having regard to the potential to disaggregate each use.

#### ***The application of the sequential test***

4.21 One of the curious things about this Inquiry is that although there has been a great deal of evidence given by the Applicant and the LPA about whether the scheme satisfies the sequential test that really ought not to have been necessary. In March 2012 the Applicant completed a sequential site analysis in accordance with the brief set by the LPA. Mr Littlejohn agreed the document was prepared "carefully."<sup>36</sup> The work was informed by DTZ. It concluded as follows: "Whilst the sequential analysis has indicated that there are a limited number of sites which could accommodate the nature and scale of the proposed development either in its entirety or its component parts, they would not deliver the benefits proposed at the Stretton Croft site."<sup>37</sup> That statement is unambiguous.

4.22 To complete the picture the sequentially superior sites were identified by Mr Littlejohn in that report and set out in Appendix 3 to the document. He confirmed that they comprise most of the sites blocked in red.<sup>38</sup> At the time (as can be seen from the comments in Appendix 3 of the sequential analysis) the Applicant's case for the grant of planning permission rested on the benefits to be derived from the remediation of a "degraded landscape" and the regeneration of a "previously developed site"; all of the other benefits listed, such as the provision of 350 jobs, would attach to the development wherever

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<sup>34</sup> Littlejohn Appendix 1, page.3 paragraph 1.5: PPS4 sequential site analysis

<sup>35</sup> Littlejohn page 40, paragraph 8.4

<sup>36</sup> Littlejohn XX

<sup>37</sup> Littlejohn, Appendix 1, page 46, paragraph 5.15. See also page.38, paragraph 4.63

<sup>38</sup> Littlejohn XX

it is built out.<sup>39</sup> It simply did not occur to the Applicant or the LPA that the admission there are sequentially superior sites was fatal. Instead, non-compliance with the sequential test was shrugged off by reference to the two tenuous "site specific benefits" which have been highlighted, which are of no relevance whatsoever to the test.

- 4.23 The application went before the LPA's Planning Committee in April 2012. The NPPF had been published a little less than one month previously. It seems that neither the LPA nor the Applicant re-read the sequential site assessment in the light of NPPF paragraphs 23 to 27 - especially paragraph 27. Had they done so the Report to Committee would surely have explained how notwithstanding paragraph 27 states: "Where an application fails to satisfy the sequential test....it should be refused." The report recommends that it should be approved. That recommendation, and the LPA's decision, was (and remains) inexplicable. Certainly the Report to Committee does not suggest the sequential test ought to be limited to Hinckley town centre.
- 4.24 Nor does it intimate the site needs to be brought forward to meet an urgent need arising from the unsuitability or viability of sites in and on the edge of Hinckley town centre. That is telling. The methodology imposed on the Applicant, and its acceptance of it, indicates the approach they both actually believed ought to be taken to satisfy the sequential test when free from considerations prompted by this Inquiry, which neither anticipated. Similarly, both parties seemed either not to understand, notice or worry about the scheme's non-compliance with the test. That changed when the Applicant and Miss Fisher prepared their evidence for this Inquiry.

#### ***The Applicant's evidence to the inquiry***

- 4.25 At this Inquiry the Applicant has sought to escape from its own sequential analysis. There are 5 key components to this escape:
- (i) That the only sites that are relevant to the sequential test are those in and at the edge of Hinckley town centre;
  - (ii) The notion that viability and suitability of alternative sites fall to be judged today;
  - (iii) That it is surprising, or even a matter of concern, that sites allocated for offices in Hinckley town centre are not viable today;
  - (iv) That the sequential test is concerned with demand, not need;
  - (v) That Sketchley Brook can be discounted as a sequentially superior site.
- 4.26 None of these points has any substance.

#### ***The Hinckley site search***

- 4.27 If the Applicant intended to meet only Hinckley's need for office, leisure and hotel development it would be reasonable to limit the test to sites in and around Hinckley. As has been seen, that is not what the scheme would do. It is not the LPA's case. Nor is it the Applicant's case. There is no proper basis

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<sup>39</sup> See Littlejohn, Appendix 1, page 47, paragraph 5.17

for excluding sites in Leicestershire and Warwickshire. That accords with what both parties believed before this call-in Inquiry. It is simply untenable to argue now that only sites in Hinckley should be sequentially assessed.

*The timing of assessments of the viability and suitability of alternative sites*

- 4.28 The notion that viability and suitability of sequentially superior sites falls to be judged today is another interesting change of tack. It is just wrong. It is not derived from the NPPF. Certainly that was not suggested to HBBC's witnesses. Nor is it derived from the Practice Guide. On the contrary, it highlights the need to relate the time at which viability is assessed to what is reasonable having regard to the need that must be satisfied, which is itself related to the development plan. That too was accepted by the Applicant and the LPA before the call-in. That they now suggest otherwise is not credible.

*The current viability of sites in Hinckley town centre*

- 4.29 As to the quality of sites in Hinckley, Mr Hemming received a lengthy and robust cross-examination designed to underline that several of Hinckley's town sites may not be viable in the immediate future. The point of that cross-examination is not immediately obvious. It is also wrong. Setting to one side the fact it focused on the wrong geographical area, the Town Centre AAP and the Inspector who approved the plan as sound broadcast the fact that those sites are not, and will not be, viable whilst the economy remains in the doldrums. Hinckley's town centre sites are hardly unique in that respect. It does not mean some will not come forward in accordance with the Plan. Nor does it mean others will not become available in-centre, in accordance with the Plan's principle of flexibility, and edge of centre, such as Sketchley Brook.
- 4.30 The real point is that lack of viability today does not matter. The Practice Guide indicates that the proper approach is to take a reasonable view on timing and associated matters such as site assembly and CPOs. As will be seen, there is no pressing need (or demand) for new land for offices or site assembly activity. The issues highlighted by the cross-examination of Mr Hemming are irrelevant to the proper application of the sequential test.

*The Applicant's misplaced emphasis on demand*

- 4.31 The emphasis placed on demand was not presaged in the Applicant's statement of case or grounds of appeal. It is irrelevant. Demand focuses on the "here and now". The sequential test does not. Reference to demand is intended to create a sense of crisis and urgency and to try and distance the Applicant from the conclusions that it presented to the LPA in March 2012. Even if that point is relevant, the impression that it seeks to convey is wrong. The Applicant's evidence of a "demand" for office space is drawn from a selective trawl through and comment on the BE Group's report; Mr Lloyd brought very little original or detailed evidence of his own to bear on the issue, and that which he did produce was vague and anecdotal. A good example of this is what he had to say about enquiries for the application site. Yet the Inspector who considered that report concluded that it did not actually demonstrate any urgent demand for offices in Hinckley.

### *Sketchley Brook*

- 4.32 The Applicant agrees the site is an edge of centre site. There is planning permission for 16.48 hectares of B1 and B8 use. The site is being marketed. Infrastructure works are underway. Industrial development is being front loaded contrary to the suggestion it will be “residentially led”. The land is controlled by a developer with a substantial track record in the delivery of business parks. If it is necessary for HBBC to produce evidence of a sequentially superior site in Hinckley there could not be a better example than Sketchley Brook.
- 4.33 The Applicant belatedly discovers and introduces marketing material into the cross examination of Mr Hemming after its own case has closed and asserts that an illustrative layout for a B8 and B1 development proves that the site cannot or will not be used to provide B1 development. That approach is as hopeless as it is desperate. The kind of development that would take place on Sketchley Brook remains to be seen. In the meantime its potential to accommodate substantial B1 office development destroys the suggestion that there is no a sequentially superior site in Hinckley stone dead. Indeed, given Goodman’s expertise and track record, if the site does not come forward for campus style B1 office use it may safely be inferred that is because, as local and regional agents have testified,<sup>40</sup> there really is no demand for that kind of space in Hinckley.

### ***Conclusions on the sequential test***

- 4.34 The proper area of search is Leicestershire and Warwickshire because the need that the scheme would meet is for footloose, single occupiers who would not originate in Hinckley. The March 2012 sequential site analysis indicates that there are sequentially superior sites to be found in that area. Mr Lloyd’s efforts to thin down the list of superior sites by reference to contemporary issues of viability and availability is misplaced. Overall, even if a sequentially superior site is sought now in Hinckley, Sketchley Brook fits the bill. Applying the SoS’s policy in paragraph 27 of the NPPF consent should be refused.

### **Is the application site sustainable in general terms?**

#### ***The environmental dimension***

- 4.35 The scheme scores very badly against the environmental dimension of the NPPF. The site is in the countryside. It is highly visible.<sup>41</sup> Viewed from the M69 and A5 it is impossible to detect any history of tipping; it does not look “degraded”. It reads as a green field edged by trees and hedges. Close up, on foot, the site is relatively tranquil, despite the close proximity of the M69. From every perspective it contributes to the green backcloth that fringes Burbage. If development takes place the site’s positive contribution to the

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<sup>40</sup> Littlejohn, Appendix 6 (BE Group report) page 72, Table 27 and page 147, paragraph 13.9: “Currently there is limited office demand but it should emerge over the next 5-10 years” and page 146, paragraph 13.2 Hinckley and Bosworth has a value orientated property market....priority should be given to keeping costs down rather than providing over-specified schemes.

<sup>41</sup> Littlejohn page 41, paragraph 8.11, bullet 3

setting of Burbage would be lost. The green backcloth will be replaced by 2-3 storey buildings and large areas of car parking on a site that rises from the M69 slip road towards the A5. Nearby houses would be dwarfed by the new buildings. They are likely to be disturbed by light and the noise generated by the cars travelling in and out to the leisure and hotel uses until late at night.

- 4.36 The site is also very poorly connected to the town centre. It is well beyond walking distance to the town centre. The bus service that ran past it has been withdrawn. It may be inferred that it was neither well used nor viable. That which is planned is hardly adequate to serve the offices, let alone the 24/7 hotel and late night leisure uses, even if it endures beyond the 5 year period for which it may be funded. It certainly does not render the site "accessible" compared with town centre, edge of centre and other out of centre sites in Hinckley and elsewhere in the area of search. At the end of the day the significance to be given to accessibility by public transport is put in perspective by what the Applicant admits is a key driver of the scheme: a highway related site designed to appeal to occupiers who want to use their cars. The development would promote the use of motor vehicles. To describe it as sustainable in environmental terms is not seriously arguable.

#### ***The economic and social dimensions***

- 4.37 The scheme's contribution to the social and economic dimensions of sustainable development is limited. The scheme would provide 350 jobs. The point is, however, that because the development would attract footloose occupiers those 350 jobs would have been provided anyway. The effect of this scheme is to draw them away from sequentially superior and more sustainable sites, including those in town centres. The only sensible conclusion to be drawn is that this is not a sustainable proposal.

#### **Other material considerations**

##### ***The development plan for Hinckley***

- 4.38 The Applicant concedes that the development plan for Hinckley is a material consideration. Mr Littlejohn asserts the scheme would accord with the Plan.<sup>42</sup> That contention might be regarded as somewhat optimistic. The Plan directs town centre development to the town centre and edge of centre sites and the urban area.<sup>43</sup> A central location is important because it optimises the sustainability of development. It also promotes regeneration. The location of the scheme runs directly contrary to that policy objective. It is no answer to argue it would help "address structural weaknesses" or "diversify the economy". That would be true of any town centre development.

##### ***Impact on the town centre***

- 4.39 The spatial strategy for Hinckley and the sequential test are predicated on the assumption that the development of out-of-centre sites causes harm. If that

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<sup>42</sup> Littlejohn page 38, paragraph 6.22

<sup>43</sup> HBBC Core Strategy, Policies CS1, CS2 and CS3

were not the case the SoS would hardly require a failure of the sequential test to result in the refusal of planning permission. The Practice Guide recognises that quantitative measures of harm are less relevant for non-retail uses.<sup>44</sup> Instead, a qualitative approach is justified.

- 4.40 HBBC's concern is that if the scheme provides some offices of a size and quality that might be attractive to existing or potential town centre uses, such as small serviced office suites of about 200 sq ms or grow on units of 500 sq ms, that would compete directly with existing town centre office accommodation (including recent, successful developments, such as the Atkins Building) as well as that which might be built. What would be the result? Existing local occupiers would move out of the town centre to the site. New businesses would move directly to the site. Growing businesses might move to, or stay at, the site rather than utilise the town centre. If that happens, common sense suggests that it can hardly boost the demand for offices in the town centre. There is already an excess supply compared with demand.<sup>45</sup> Increasing supply without changing demand would reduce rent levels. That would further undermine the viability of the sector.
- 4.41 Mr Lloyd sought to counter that argument by talking in vague terms about "rent tone". Two things were striking about this part of his evidence. First, there was a marked absence of any examples of a similar effect elsewhere. If the effect is real and can be evidenced he would surely have told the Inquiry about it. Second, he anticipates that a reduction of rent would be avoided by the conversion of offices to other non-town centre uses, such as housing. That would be fine if it were not the policy of HBBC to increase the supply of offices in the town centre and avoid the harm to vitality that is caused by their loss or lack of investment in and use of the existing stock.

### **Conclusion**

- 4.42 The planning balance is clear. The scheme conflicts with the development plan. It conflicts with the sequential test. The development is not sustainable. It would harm the countryside, increase travel by car, and divert jobs from more central locations. The scheme would undermine HBBC's spatial strategy. It is also likely to harm the regeneration of Hinckley town centre and adversely affect investment in the town centre. It is a purely speculative scheme, promoted by a developer who purchased the site back in 1997, has repeatedly tried and failed to bring it forward for development and is now having another go. For the reasons given the result this time ought to be the same. The development should be recommended for refusal of planning permission.

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<sup>44</sup> Practice Guide, page.51, paragraph 7.14

<sup>45</sup> Littlejohn, Appendix 6, page.93, Table 49.

## **5. THE CASE FOR BURBAGE PARISH COUNCIL (BPC) - A RULE 6 PARTY**

- 5.1 The Applicant's case, particularly the evidence of Mr Lloyd, made it clear that the proposed development is a hybrid scheme which cannot or should not be disaggregated. The scheme is for an out-of-town office park with a budget hotel intended to cater for firms on the business park as well as businesses and clientele further afield.
- 5.2 Whilst the hybrid nature of the scheme promoted has the benefit of making the identification of sequentially superior sites more difficult, as they can be ruled out as not comparable, it also has the disadvantage in that if one element of the scheme can be shown to have a materially adverse impact then the whole development will be judged to have an adverse impact.
- 5.3 At the Inquiry, the Applicant's evidence concentrated wholly on the provision of office space in Hinckley and in particular Hinckley town centre. Little was made of the hotel element of the scheme other than it would be for a budget hotel.
- 5.4 Evidence presented by BPC on hotel provision was unchallenged. Paragraph 5.13 of the BPC's evidence refers to the Hinckley town centre experience and under-provision of quality hotel operators.<sup>46</sup> Spatial Objective 6 of the AAP seeks to promote development of the evening economy as part of a tourism initiative in Hinckley town centre.
- 5.5 Paragraph 28 of the NPPF, in promoting a prosperous economy, supports the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities. The need for the new hotel therefore needs to be proven.
- 5.6 Development site policies in Chapter 8 of the AAP propose landmark buildings at Stockwell Head<sup>47</sup> and adjacent to the railway station<sup>48</sup> which could provide opportunities for a new hotel.
- 5.7 Chapter 7 of BPC's evidence identifies the current availability of hotels in the locality, including budget hotels. Paragraph 7.3 notes that there are 7 x 2 star, 55 x 3 star, 21 x 4 star and 2 x 5 star hotels within 12 miles of Hinckley.
- 5.8 Policy CS1 of the RBCCS states that new development in the countryside will be resisted. Only where national policies on countryside locations allow will development be permitted. Miss McCulloch confirmed that the application site is in the countryside and a greenfield site.
- 5.9 Paragraph 2.8 of the RBCCS notes that RBC anticipates that the only exceptions to the general embargo on development in the countryside will be the exceptional delivery of houses to meet local needs or types of development that are intrinsically appropriate to a countryside setting. BPC

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<sup>46</sup> Paragraph 4.20 of the Hinckley Town Centre Action Area Plan

<sup>47</sup> Paragraph 8.13

<sup>48</sup> Paragraph 8.4

stated that office units and hotels are not intrinsically appropriate to a countryside setting. This was not challenged.

- 5.10 RBC is seeking to take advantage of the exception described in paragraph 2.10 of the RBCCS. In such instances, any proposal should be judged on its merits, in partnership with the relevant neighbouring authority – in this case HBBC.
- 5.11 Both HBBC and BPC argue that “in partnership” means more than consultation.
- 5.12 In this case, the proposal would impact upon the sub regional centre of Hinckley. The proposals would involve the delivery of jobs, leisure and commercial development (see paragraph 156 of the NPPF) and therefore its consideration requires a “duty to co-operate” across local boundaries, as set out at paragraphs 178 – 181 of the NPPF. In this case, the application site abuts not only a district boundary but also the county and regional boundary.
- 5.13 The duty to co-operate “expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.”<sup>49</sup> It is clearly intended to provide for co-operation between authorities which would otherwise have been provided by RSS and County Structure Plans.
- 5.14 Paragraph 179 of the NPPF continues “joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance because of a lack of physical capacity ...”
- 5.15 This example is exactly that described in paragraph 2.11 of the RBCCS. Under cross examination neither the Applicant nor RBC could give any other examples of the need for working in partnership across boundaries.
- 5.16 BPC presented evidence to the Inquiry to show that a further budget hotel is not required to serve the Hinckley area. As the development proposed is not to be disaggregated, this means that there is no need for the whole development, whether or not HBBC has currently identified sufficient office sites to meet the requirements of Hinckley town centre. Both HBBC and BPC demonstrated that the development would not be to the mutual benefit of both RBC and HBBC.<sup>50</sup> It is difficult to see how a hotel intended to meet Hinckley’s needs would have any benefit for Rugby Borough. HBBC intends providing for its own needs. It follows that if there is not a benefit to one or both of the two boroughs, then the proposal should be refused planning consent.
- 5.17. BPC described, in evidence, how the policies of the Hinckley & Bosworth Local Plan and Core Strategy have operated to oppose inappropriate built development in a corridor of open countryside between Hinckley and Burbage and the M6. Mr Choong sought to question this in cross examination,

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<sup>49</sup> Paragraph 178 of the NPPF

<sup>50</sup> Paragraph 178 of the NPPF

suggesting that HBBC had approved four houses in the past and therefore HBBC was being inconsistent in its attitude towards this area.

- 5.18. BPC referred to CD3 and, in particular, Drg KDSC-PL04, which shows how what was approved at Stretton Croft in the form of 4 dwellings, is an appropriate form of development to a rural area, representing a farmhouse and barn/outbuildings. The application proposal for offices and hotel buildings is on a much greater scale and not appropriate to a countryside setting. The 4 dwellings had a footprint smaller than the building they were replacing.
- 5.19 The application site effectively forms part of this open wedge and development of it in the style and scale envisaged would clearly be contrary to the policy operating immediately over the District Council boundary in Hinckley & Bosworth, Leicestershire and the East Midlands.
- 5.20 The Applicant originally owned the whole triangle of land defined by the M69, A5 and Wolvey Lane; land within both HBBC and RBC.
- 5.21 Repeatedly, in the Applicant's evidence, reference was made to finding a beneficial use for the site. Although reference was made to paragraph 17 of the NPPF,<sup>51</sup> it was conceded by Mr Littlejohn and Miss McCulloch, that the application site does not meet the definition of previously developed or brownfield land set out at Annex 2 of the NPPF, as the remains of any structures had blended into the landscape in the process of time.
- 5.22 Evidence presented by BPC confirmed that this justification (the need to find a beneficial use for the land) had been put forward when the application for the 4 dwellings at Stretton Croft was submitted in 2006 (06/00919/FUL). The scheme had been negotiated with HBBC as the best way forward to develop a problem site and had been welcomed by HBBC as a way of enhancing this approach to Hinckley.
- 5.23 Mr Beddow confirmed the current value of the 4 dwellings at Stretton Croft as £375,853.00. Allowing for the 20% decline in property values since 2007/08, this would have valued the properties at about £450,000.00 when built giving a land value for 4 plots of in excess of £600,000.00 – a not inconsiderable beneficial use for the site. In addition, the site also currently has an ecological value, which has been discussed at the Inquiry.
- 5.24 BPC confirmed at the Inquiry that it was pleased to note that bus services were due to be extended into the site as part of a Section 106 Planning Obligation and Travel Plan. The only issue of concern remaining in this respect was ensuring that this bus service would remain in place for the foreseeable future and not be subject to closure once the period set out in the Section 106 Planning Obligation is concluded.
- 5.25 BPC respectfully asks that the application the subject of this Inquiry be refused consent as it is inconsistent with the development plan for the area and with the policies contained in the NPPF.

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<sup>51</sup> Bullet point 8

## 6. THE CASE FOR INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

- 6.1 **Mr. Richard Beddow** is local resident who lives at Stretton Croft, Burbage. The other residents of Stretton Croft (4 properties) and Stretton Cottages (2 properties) have all agreed in writing that they are happy for him to represent their views. His full statement is at IP1.
- 6.2 Mr Beddow highlights the specific objections raised by local residents but this in no way suggests that the matters to be raised by others as part of the Inquiry are not a concern to the local residents. The current residents of Stretton Cottages purchased their properties in 1979 and Stretton Croft in 2008. Stretton Croft is a new build development developed by William Kendrick and Sons Limited. Stretton Cottages are Victorian and were originally farm workers' cottages. Stretton Croft and Stretton Cottages are located on Wolvey Road which is a cul de sac, just off the A5 Watling Street. The A5 separates the urbanisation of Burbage with Stretton Croft and Stretton Cottages. Prior to the opening of the M69 (1977) Wolvey Road linked Wolvey and Burbage. Historically this land was part of the Leicester Grange Estate which has now decreased in size considerably.
- 6.3 Mr Beddow says that since 1975 a number of planning applications have been dealt with and on each occasion, permission has been denied with the exception of the development of the four residential properties at Stretton Croft. The primary reasons for refusal were: (i) recognition that the area is green belt; and (ii) granting permission for large scale development would undermine future resistance to large scale development of green belt land.
- 6.4 He refers to the fact that four properties residential properties (Stretton Croft) were considered permissible as they were in the same approximate position as the original farm building previously in existence and did not exceed the area of those original buildings. He states that at no time have buildings ever existed within the boundary of the proposed site.
- 6.5 Mr Beddow spoke about the current average value of the properties in the area. Three of the above properties are currently on the market and have been for a considerable time. All properties have received offers but the impact of the proposed development has caused each of the buyers to withdraw from the sale.
- 6.6 In 1997 an enforcement notice was served on the site by WCC requiring the owner to return the land to agricultural use. The enforcement notice has never been satisfied, yet this fact has been omitted in its entirety from the planning officer's report and recommendations. Mr Beddow assumes the current owners would have discovered this enforcement notice as part of their due diligence in acquiring the land yet have chosen not to act and now rely on the existing condition to support the application claiming "the site is brownfield in its nature". WCC enforcement officers have acknowledged that this notice is still to be acted upon and are looking to RBC to ensure this activity is undertaken. RBC enforcement officers are unable to comment as to why the requirements of this notice have not been enforced.

- 6.7 For the purpose of his evidence Mr Beddow says that Wolvey Road South is the area located next to Stretton Cottages and Stretton Croft south of the A5, and Wolvey Road North is the area adjacent to Hinckley Knight and Harvester Public Houses, north of the A5.
- 6.8 Local residents would like the Inquiry to consider the following objections each of which were detailed in a document issued to RBC by Mr Beddow prior to the RBC Planning Committee's assessment of the application. Local residents consider these issues have not had a fair hearing and where further mitigations were considered appropriate these have not found their way onto the proposed list of conditions suggested by RBC.

*Increase in traffic*

- 6.9 Local residents currently enjoy a countryside location near to the urbanisation of Burbage but separated by the A5. The properties enjoy the lack of any artificial lighting to the aspects facing the proposed development site. It is fair to report that all properties receive the 'hum' of M69 and A5. This noise experienced by residents is 'background' noise as opposed to local noise i.e. car doors banging, music. A noise survey conducted in 2006 as part of the application for development of Stretton Croft concluded that the noise levels did not warrant any special measures.
- 6.10 The developer is proposing to build a hotel which will attract motorway custom, e.g. Travel Lodge. The developer has estimated traffic levels attributable to development of 2,178 movements per day. Current traffic movements for Wolvey Road South are estimated to be 30 movements per day. There will be, therefore, an increase in localised traffic movements of 6,500%. The most direct impact will be to Stretton Cottages which are located directly onto Wolvey Road South, have no pavement and little land between the properties and the roadside. All properties would receive the impact of the noise from the cars and lorries visiting the development day and night. Due to the proposed nature of the development it can be expected that the additional traffic generated would run from the early hours of the morning through to late in the evening. In addition, there would undoubtedly be light pollution from the street, lighting from the parking areas and vehicle headlights. This would substantially change the character of Wolvey Road South - Stretton Cottages and Stretton Croft. It is impossible to see how any conditions could fully mitigate this impact in terms of noise, light and privacy.
- 6.11 Stretton Croft currently does not experience the direct impact of local traffic other than that generated by the residents and occasional farm traffic to Stretton Baskerville farm. Residents are currently able to walk along Wolvey Road South with little risk and frequently use the area for dog walking and children's play. With the proposed development residents would experience the direct impact of local traffic. A roundabout is proposed immediately to the rear of 1 Stretton Croft. This would increase noise levels with the slowing down, braking and acceleration of traffic. The A5 is due to be widened bringing it closer to the perimeter of 1 and 2 Stretton Croft. Original plans submitted by the developer suggested that 3 and 4 Stretton Croft would have a bus terminus inserted approximately 10 m from their gardens. If permitted in the future, the privacy currently enjoyed would be lost.

- 6.12 The access arrangements to Wolvey Road would have a greatly negative impact on the local environment and residents. Whilst trying to exit Stretton Croft onto Wolvey Road South residents would have access problems due to the increased localized traffic to Wolvey Road South and the fact that the exit to Stretton Croft was not designed with high volumes of traffic in mind.
- 6.13 After discussions with LCC Highways Department it became apparent that, due to the reference maps used for maintenance and planning matters, the proposed changes to Wolvey Road South had not been fully considered. In fact LCC Highways Department were of the view that this road was under the jurisdiction of WCC. It is understandable that no objections have been received from these parties.

*Increase in parking at the proposed site and the adjacent area*

- 6.14 Visitors to Stretton Croft and Stretton Cottages park on Wolvey Road South. This would not be possible should the development go ahead. No parking arrangements for the Croft or Cottages have been considered. It is not permissible for cars to be parked on the Croft due to existing covenant arrangements. Current provision for parking within the plans is for 371 parking spaces. With this in mind, the developer believes there would be 350 jobs created, a 100 bedroom hotel, leisure facilities, offices and conference facilities. It is easy to see why, with these predicted numbers, residents do not believe there would be adequate provision for parking. It is likely that obstructive parking would occur on Wolvey Road North and South.
- 6.15 The residents have previously brought the issue of the impact of traffic to the attention of the RBC Planning Committee, particularly the results of the Sequential Analysis:
- "1.26 The site is presently accessed from Wolvey Road. The existing access could accommodate additional development. It is considered that future access, serving the wider site including that out with Hinckley and Bosworth Borough Council, could be achieved via direct access to the A5. Transportation consultants Stuart Michael Associates are instructed by the Applicant to negotiate the access arrangements with the Highways Agency."<sup>52</sup>
- 6.16 To date this negotiation with the Highways Agency has not occurred and when questioned at the April 2012 Planning Committee by Councillors the case officer stated this had not been considered.
- 6.17 Mr Beddow says that due to the proposed changes to the junction of Wolvey Road North and the A5, an overflow parking facility adjacent to the Hinckley Knight public house would be lost. During peak periods this parking facility is vital to local residents to prevent obstructive parking to Wolvey Road North and South and further inconvenience to local residents on both roads. It is impossible to see how with the loss of this overflow facility at the Hinckley Knight and Three Pots public houses could meet their parking needs. This may well impact future licence applications for both long standing establishments.

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<sup>52</sup> Page 6 of the Sequential Report – 21 March 2012

*Loss of character*

- 6.18 The A5 is a very definite visual break between Wolvey Road South and the two public houses and petrol filling station located adjacent to Wolvey Road North. Once upon Wolvey Road South the area has a countryside character. There is currently no urbanising effect upon the Croft or Cottages. With removal of trees or removal of branches of trees on Wolvey Road South, all properties would be impacted as these trees provide noise mitigation. This has not been assessed by the developer sufficiently and it is impossible for residents to perceive how this can be sufficiently mitigated. Due to the nature of the Stretton Croft development tree removal and branch removal would alter the visual character of the road. Currently, local residents utilise Wolvey Road South and the farm track for walking dogs. It is also used by farm traffic.
- 6.19 Mr Beddow says that the illustrative plans show contemporary buildings. Stretton Croft and Stretton Cottages are 'farmhouses/mock barn conversions and cottages' Therefore the plans do not accord with the visual character of the area. The current plans for the hotel i.e. motorway hotel do not meet the current character of the area. The current developer plans to alter the character to meet his needs.
- 6.20 The development would have an urbanizing effect on this area and would have an affect on greenbelt and local residents. If the scale of this development is agreed this would set a precedent for other developments such as the recent developments at the Morrisons site in Coventry. These are considered an eyesore by local residents.
- 6.21 To date none of the properties have suffered burglary or any attempts to do so. It is anticipated by the local police force that, due to the development, car and residential crime would increase in the area.

*Loss of Designated Wildlife area*

- 6.22 The application site and surrounding area is a designated wildlife site. The development would have a negative impact upon this. RBC would benefit from 'enhancements of other areas within borough' through a contribution from the developers (National Biodiversity Offsetting Scheme). This would not benefit local residents or Hinckley or Bosworth residents due to the proposed location of the enhancement site - Ryton Pools. Mr Beddow considers that this impact has not been properly considered and he believes the proposed mitigations are not sufficient in any way. Moreover, he claims that the tree survey does not record a considerable number of trees within perimeter of proposal.

*Loss of Privacy*

- 6.23 Mr Beddow says that the area between the northern boundary of the proposed development and properties situated in Stretton Croft has never been sufficiently landscaped. A Planning Contravention Notice was served on the developer (Kendrick Homes) in September 2012. Although planting has taken place in November 2012, this is still not sufficient to be acceptable to HBBC Planning Department or local residents. With this in mind it is difficult for

residents to have any confidence that the same developer would implement any planning conditions imposed.

- 6.24 Due to the nature of the proposed development significant additional artificial lighting would be required, including the proposed parking areas. This additional lighting would spill into the gardens and properties of Stretton Croft. These properties currently enjoy a distinct lack of light pollution particularly to the aspects facing the proposed site. Again it is difficult to understand how this can be successfully mitigated whilst still achieving the development of a sustainable commercial development.

*Residents' objections: Petition April 2012*

- 6.25 During April 2012 a petition with about 300 signatures was collected in order to alert RBC and RBC Planning Committee to the strength of feeling and the real concerns of residents in Wolvey Road North and South. The main concerns from residents were as follows:

- The developer has stated that there will be an increase in traffic on Wolvey Road North by 25%. On Wolvey Road South this has been calculated at 6,500%. Wolvey Road will become part of the main arterial network
- Pollution and noise from the increase in traffic
- The land at Stretton Croft is a designated wildlife reserve. The planning officer's report states that any proposed condition would fail to mitigate the direct impact
- There is an existing enforcement notice on the land to return it to agricultural use
- If planning permission is granted this will pave the way for other 'developments' in and around Burbage
- RBC has disenfranchised Hinckley and Bosworth residents
- The development is outside of the RBC Core Strategy area
- The proposed development is in the countryside
- Stretton Croft is not the most sequentially preferable site. Indeed the site is outside the boundary of 'Burbage'. The proposal fails many of the criteria of the sequential test which are required to allow a development of this nature to proceed
- The developer has not provided sufficient evidence to confirm that the development would not have an adverse impact on the vitality of Hinckley town centre.

- 6.26 In conclusion, Mr Beddow considers that all of the information given within his evidence to be a true reflection of the site, surrounding conditions, and opinions of the residents of Stretton Croft and Cottages. Local residents consider this development would not be appropriate in scale or character for this location. Stretton Croft is not in an urbanised location and the proposed site would therefore not be a sustainable one. He hopes that outline planning permission will be refused for what he considers to be an ill-conceived and poorly considered application. Furthermore, he would look to RBC to carry out its duty and oversee the enforcement of the notice served on the land in 1997 and see the land returned to agricultural use, as is appropriate to the

surrounding area. Failing to comply with or enforce this notice and claiming the land is “brownfield in its nature” does not justify countryside development.

6.27 Should the proposal be granted planning permission then Mr Beddow proposes the following additional measures should be considered in order to assure the best possible implementation of the development:

- An “hours of darkness” site visit should be conducted in order to assess the current lighting conditions and to understand the impact of any additional lighting in the area. This is particularly relevant to the aspects of Stretton Croft facing the proposed development site. He says that RBC have imposed conditions restricting the hours that new commercial developments may use artificial lighting where these are located close to existing residential properties. He claims that the restriction placed has been “usage one hour after dusk and one hour before dawn”.
- A working party should be appointed to resolve appropriate conditions imposed on the planning permission to mitigate the issues raised. A representative from the local residents should be appointed to the working party to ensure these conditions are sufficient.
- The Inquiry should take the time to ensure that all possible mitigations have been considered and that all relevant planning conditions are fully implemented.
- Alternative access arrangements should be independently and fully evaluated and the output reviewed by the Inquiry.

6.28 **Councillor Stuart Bray** is the Leader of HBBC and an LCC Councillor. Councillor Bray submitted a letter written by Councillor David Inman,<sup>53</sup> a member of HBBC representing Burbage (Sketchley and Stretton) ward which is immediately adjacent to the site. Councillor Inman could not attend the Inquiry in person. The letter sets out his concerns about vehicle speeds in the area; about Wolvey Road being used as a short cut for vehicles driving from the A5 towards Hinckley to avoid the traffic signals at the M69 roundabout and about the likely adverse effects of the proposal on the amenities of those living in the area.

6.29 Councillor Bray is concerned about the likely increase in traffic on Rugby Road, Wolvey Road and the nearby residential areas due to “rat running”. He considers that the application site is not a sustainable location in terms of bus services. In his view the current bus services are not fit for purpose and are not reliable although he accepts that they are well used. He said that a top priority of HBBC is the regeneration of Hinckley Town Centre. He is concerned that if the proposed development goes ahead it would set a precedent for further schemes of this type.

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<sup>53</sup> Councillor Inman’s letter is at IP2

## **7. WRITTEN REPRESENTATIONS FROM INTERESTED PERSONS**

7.1 Written representations from interested persons following the issue of the SoS's Direction to call in the application are at INQ2. It is not intended in this section to describe in detail all aspects of the written representations which have been submitted. The comments in the following paragraphs are intended to outline the material points of concern rather than provide precise descriptions of every issue raised. If readers wish to follow up certain written representations in more detail then they should refer to the documents at INQ2. All written representations and responses have been taken fully into account in my conclusions and recommendations.

### **Representations following call-in of the application**

7.2 ***Councillor Craig Humphrey*** is Leader of Rugby BC and he submitted written representations on 19 September 2012. The letter sets out how Rugby BC dealt with the application prior to the call in by the SoS. He refers to the location of the site in the countryside and in close proximity to Burbage. He points out that an assessment of sequentially preferable sites was submitted as part of the application and that the site is contrary to policy. It says that HBBC was asked to provide information as whether the proposed development would have an adverse impact on the adjacent centres and whether there were specific alternative sites that would be affected by the proposal. No information was provided. Councillor Humphrey states that the proposal would create up to 350 jobs and is acceptable. It was recommended for approval in April 2012. He recognises that HBBC objects to the proposal. He claims that the proposal is compliant with the NPPF.

7.3 ***The Environment Agency*** submitted written representations on 7 September 2012. The letter explains that the Environment Agency has no objections to the proposed development as submitted. A number of conditions are suggested in the event of planning permission being granted.

7.4 ***The Highways Agency*** submitted written representations on 15 August 2012. The Highways Agency refers to the extensive discussions which have been held with the relevant parties in relation to the proposal and point out that their concerns have been satisfactorily addressed. A number of suggested conditions are attached to the letter in the event of planning permission being granted.

### **Representations at the planning application stage**

7.5 Objections to the proposal were submitted in relation to a number of matters:

- impact on residents of peaceful rural area
- loss of privacy
- damage to hedgerows when road is widened
- impact on wildlife
- large number of vehicle movements
- impact on M69 roundabout
- development is Green Belt land
- previous applications were refused due to traffic concerns

- not in keeping with character of area
- enforcement notices to clear site have not been complied with
- has need for development been proved?
- development will impact on rural character of the area
- area of proposed development is not previously developed land
- will blur boundary between Burbage and the countryside
- contemporary urban style buildings are not appropriate
- protected trees, wildlife habitats and hedgerow will be lost
- there are developments similar to the proposals close to the site, are more really needed?
- site is not accessible by public transport
- increased use of unadopted road
- use by large delivery vehicles and buses and use late at night will disturb local residents
- adding a roundabout will add to congestion on A5 and M69, the area is already very busy
- Wolvey Road/Three Pots is used as a rat run, development would increase this
- increased use and larger vehicles on Wolvey Road and Three Pots Road will be dangerous and damage road
- increased litter from users of the development using local shops
- HGVs park overnight in the lay by blocking visibility
- development would lead to HGVs parking on Wolvey Road leading to noise and loss of privacy
- there are other more suitable sites in the area
- buildings will lead to loss of privacy to nearby homes, application states the impact is reduced by trees however these will lead to a loss of light
- when recent homes were completed the developers damaged trees, they do not maintain the land that they own
- consider Rugby Borough Council has little direct interest in the site
- do not consider sufficient consultation was carried out
- HBBC has not been sufficiently involved in the application
- affected residents live within HBBC's area, consider development would infringe Human Rights Act as people have right to private and family life
- previous applications were refused due to Green Belt location
- applications for dwellings nearby were refused
- there are outstanding enforcement issues at the site
- Wolvey Road also provides access to agricultural land and Stretton Baskerville Farmhouse
- access along this road for large agricultural vehicles must be maintained
- does not overcome original objections to the development
- increased traffic on A5, this is already a high accident area
- development would not lead to business or regeneration benefits, there are similar facilities nearby, some of these are vacant
- local residents would be unable to access homes
- access along this road for large agricultural vehicles must be maintained, concern that agricultural vehicles will have to turn right across traffic leaving the site
- development will have a detrimental impact on the environment and turn a quiet road into a busy thoroughfare
- will affect traffic flow and road safety on the A5 and M69 island

- over intensive and unsustainable use of a site in the countryside close to the Green Belt
- something needs to be done to the land, however this will affect local residents
- traffic will be a major issue, this is a traffic blackspot
- could the access mitigate for the traffic volumes
- is the site suitable for this scale of development; screening the existing residents from the development should be a priority
- concerns about how HBBC views have been reported
- report clearly indicates that the development does not comply with Rugby's Core Strategy however, consider RBC has already determined application will be approved
- at meeting with HBBC it was clear RBC wanted to support application, goes against duty to co-operate
- HBBC gave evidence that sequential tests were not robust, the assessment concludes the site is not the most sequentially preferable
- consider developer's evidence regarding the impact on town centre vitality and viability is not robust, application should therefore be refused
- have drafted a suggested reason for refusal but this was not reported to members
- HBBC would be prepared to attend an appeal but would only cover their own costs
- HBBC supports regeneration and growth but in a justified, evidence based sustainable manner in co-operation with neighbouring authorities
- would work with developer to find more sustainable sites
- consider additional need for offices would be met from unallocated sites close to the town centre, should not be met outside of any settlement boundary
- have not assessed impact of leisure, hotel and restaurant elements of the proposal
- results of sequential assessment are not mentioned despite HBBC providing this information, therefore the report is flawed
- there are technical deficiencies in the reports which HBBC identified and these have not been included in the report; this shows a lack of objectivity by RBC
- NPPF has now been published, this defines proposed uses as main town centre uses
- NPPF retains requirement for a sequential assessment which this development fails
- application should be refused in accordance with the NPPF
- RBC has failed in its duty to co-operate with HBBC
- sequential site analysis does not demonstrate why site is sequentially preferable
- contrary to Rugby Borough Core Strategy Policy CS1 as site is within the countryside
- contrary to Hinckley & Bosworth Core Strategy
- Council acknowledge development is remote from Rugby and should be assessed in partnership with neighbouring authority
- HBBC is concerned about conclusions of sequential assessment
- the site is over 800m from the centre of Burbage

- development is unsustainable and contrary to the NPPF
- have major concerns re: impact on traffic in the area
- concerned were not directly consulted, application should be deferred
- petition signed by 151 residents objecting to the proposal due to increased traffic problems and congestion; inappropriate development for the area; the development is not needed; impact on the landscape and concerns about farm access
- annoyed that neighbour objections are not included in the agenda; consider recommendation dismisses neighbours' concerns without sufficient consideration or weight
- how can approval be recommended without consultation, does not follow a fair and democratic process
- application is being determined in a closed meeting
- development is contrary to policies within Core Strategies of Rugby and Hinckley & Bosworth
- do not consider conditions would be sufficient to address issues
- have not had sufficient time to consider sequential assessment, however disagree that there is a need for the development
- has not been shown why this site is sequentially preferable
- there are brownfield sites within Hinckley that would be more suitable for the development
- could affect business at other nearby hotels
- should visit the site to see the traffic
- all visitors will arrive by car
- Council are obviously not aware of the impact on traffic flow, traffic can be at a standstill between the M69 and Dodwells, can take 10 minutes to access the A5
- proposed roundabout would increase danger and traffic would back up onto the M69
- why wasn't access from the M69 considered?
- access direct from the A5 should be considered
- cannot properly consider application without traffic, pollution or noise reports; should have been an Environmental Impact Assessment;
- residents already suffer noise from the M69 and A5 and consider increased traffic will affect the peaceful, rural area
- traffic along Wolvey Road will increase from around 20-30 movements, to 3000, do not believe this can be mitigated
- there will also be increased traffic on the northern part of Wolvey Road, this is a quiet residential road, proposed roundabout could result in this being a rat-run
- there is currently a bus stop on a blind bend, vehicles try to overtake here and the proposals would make this more dangerous
- development will not bring jobs to the area, workers will be from outside the area
- loss of privacy which cannot be screened by landscaping; light pollution should not be brushed over and dealt with by condition
- do not consider developers care for the environment
- HBBC objects to the application and recommend refusal
- will affect rural feel of area
- will affect quality of life of neighbouring residents
- area is a designated wildlife area
- Green Belt land should be protected

- there must be a more suitable use for the site
- developer is claiming special circumstances to develop this Green Belt land on the basis that the site is brownfield, there was a previous enforcement notice to return land to agricultural condition but this was not complied with
- properties will be devalued

7.6 The reader should note that full details of all the responses at the application stage are set out in the RBC officer's Report to Committee dated 25 April 2012 in Miss McCullough's Appendix C.

## 8. INSPECTOR'S CONCLUSION

*[In this section the numbers in superscript refer to the preceding paragraphs.]*

- 8.1 Points (a) to (f) set out at paragraph 1.2 above relate to the matters about which the SoS needs to be informed and cover the main considerations of prime significance in this case. The conclusions that follow are structured to address each of the points (a) to (d) in turn. I then proceed to examine conditions in point (e) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under S106 of the 1990 Act in point (h) before giving my overall conclusion and recommendation.<sup>[1.2]</sup>
- 8.2 The application site is located to the south of Burbage, adjacent to Junction 1 of the M69 motorway where it crosses the A5. It covers an area of some 3.047 hectares. The triangular shaped site is bounded to the north by land owned by the Applicant and the A5 is beyond this. To the west the site is bounded by Wolvey Road and to the south by the M69 motorway. The site slopes down by about 7m from the north west corner adjacent to Wolvey Road towards the eastern boundary adjacent to the M69. The entire application site is in the ownership of the Applicant. At the junction with the A5 the M69 is elevated above the site, the motorway slopes down towards the south west of the site. Access to the site is gained from Wolvey Road which joins the A5 approximately 380m north west of the M69 roundabout.<sup>[1.4-1.10]</sup>
- 8.3 The application site is not within the Green Belt. The site was used as a compound when the construction of the M69 was carried out. There was previously a dwelling to the north of the application site within the administrative area of HBBC. This has been replaced by a small development of 4 residential properties. There are also residential properties on Wolvey Road. Close to the site on the A5 there are commercial properties, 2 public houses/restaurants and a petrol filling station with a shop. There are high voltage overhead electricity power lines crossing the application site, although the pylons are not located within the application site area. There are mature trees on the site boundary with Wolvey Road and the M69; these are protected by a Tree Preservation Order.<sup>[1.4-1.10]</sup>
- 8.4 The application is for outline planning permission with all matters reserved. The proposals relate to a mixed use development comprising Class B1 business, Class C1 hotel development incorporating Class A3 restaurant, Class D2 assembly and leisure and associated car parking and landscaping. The Applicant has advised that the A3 use would be ancillary to the proposed hotel. The application form specifies the amount of floorspace proposed for each of the proposed uses and also states that the proposed hotel would have 100 bedrooms. The application is described in more detail in the application documents submitted to the LPA notably in the DAS.<sup>[1.12]</sup>
- 8.5 As this is an outline application, details relating to layout, scale, appearance, access and landscaping are not considered at this stage. However, illustrative plans were submitted showing how the site might be developed. The reader's attention in particular is drawn to the illustrative site layout – Drg No: KDSC-PL01 Revision D which accompanies the application. This plan is entitled "Proposed Master Plan for Commercial Development (Illustrative Layout

Only)". A copy of this plan is attached at Appendix 2 of the SoCG.<sup>54</sup> Plan KDSC-PL01 Revision D illustrates a scheme with a 100 bedroom hotel and conference facility (Class C1), a 3,252m<sup>2</sup> leisure facility (Class D2) and a 2,091m<sup>2</sup> office building (Class B1). Two further office pavilions (Class B1) extend in total to 929m<sup>2</sup> and 697m<sup>2</sup> respectively are also proposed. Some 371 car parking spaces would be provided on the site. It is anticipated that the development would create around 350 jobs.<sup>[1.13-1.14]</sup>

8.6 The proposal falls within the description at paragraph 10(b) of Schedule 2 of the 1999 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, being an urban development project on a site exceeding 0.5ha. No Screening Opinion was issued by the LPA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the Regulations came to the view that the proposal would not be likely to have significant effect on the environment by virtue of factors such as its nature, size or location. Accordingly, in exercise of the powers conferred on the SoS by Regulations 9(1) and 6(4) of the Regulations, the SoS issued a Screening Direction on 18 September 2012 to the effect that the development is not Environmental Impact Assessment (EIA) development. I agree that the proposal is not "EIA development" and therefore does not require the submission of an Environmental Statement.<sup>[1.17]</sup>

8.7 I deal first with compliance with the development plan and sustainable development principles:

***Issue (a) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;***

8.8 The statutory development plan for the area comprises the adopted Rugby Local Development Framework Core Strategy (2011) (RBCCS) together with relevant saved policies of the Rugby Borough Council Local Plan (RBCLP) (2006). The development plan for HBBC, which includes the Hinckley Core Strategy (2009) and the Hinckley Town Centre Area Action Plan (AAP) (2011), is a material consideration.<sup>[1.18]</sup>

8.9 Notwithstanding the extensive citation of regional policy in the evidence, the parties agreed that little weight should be given to these documents as they would no longer be in existence at the time the SoS makes a decision in the case. I agree.<sup>[2.3, 3.13, 4.4]</sup>

8.10 So far as the policies of the RBBCS and the RBCLP are concerned the 12-month transition period set out in paragraph 215 of the NPPF has now passed, and therefore the weight which can be afforded to the policies of those documents depends upon their degree of consistency with the policies of the NPPF. The same is true of the development plan documents which have been referred to in the HBBC area and which are material considerations. It is important, therefore, that that assessment is undertaken in the context of determining the application.<sup>[2.4]</sup>

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- 8.11 The parties agree in the SoCG that the relevant policies in the RBBCS are Policies CS1 Development Strategy; Policy CS10 Developer Contributions; Policy CS11 Transport and New Development; Policy CS14 Enhancing the Strategic Green Infrastructure Network; Policy CS16 Sustainable Design and Policy CS17 Reducing Carbon Emissions. The parties also agree that the relevant Saved Policies of the RBCLP include Policy GP2 Landscaping; Policy E6 Biodiversity; Policy T5 Parking facilities and Policy LR10 Tourism and visitor facilities and attractions. Copies of all of these policies can be found in CD6 and CD7 and there is no need for me to repeat them here.<sup>[1.20-1.25]</sup>
- 8.12 Although HBBC contends conflict with other policies including Policy CS4 and CS9 of the RBCCS and Policy TC2 of the WSP, in substance only two policies within the development plan are relied upon by the objectors as giving rise to issues of consistency. The first is Policy CS1 of the RBBCS and the second is Policy LR10 of the RBCLP.<sup>[2.5, 3.2, 4.5-4.9, 5.8, 6.20, 7.5]</sup>
- 8.13 At first blush the proposals are contrary to Policy CS1 of the RBCCS and Saved Policy LR10 of the RBCLP. However, if the matter is considered more closely it quickly becomes apparent that the conflict attracts little weight. Policy CS1 provides a development hierarchy, but it is a hierarchy that is to be applied only when considering the development needs of Rugby itself. Therefore, in addressing Rugby's needs, it rightly focuses upon a development hierarchy which starts with Rugby town centre and then cascades through other settlements until it reaches the countryside and Green Belt. What is critical is the Explanatory Text to the policy which clearly recognises that there will be non-Rugby related needs associated with settlements adjoining the Borough which will need to be addressed during the plan period.<sup>[2.6, 3.2-3.3, 4.8]</sup>
- 8.14 Paragraph 2.10 expressly provides that there are locations that are specifically excluded from this hierarchy which could be considered as sustainable locations for development. Paragraph 2.10 acknowledges that there will be development sites which remain contrary to the wider approach set out in Policy CS1 which nonetheless need to be met. However, the conflict is more apparent than real, because the policy does not rule out development at these locations but requires that such proposals be judged on their merits in partnership with the relevant neighbouring LPA. Hinckley is identified as a case in point in this respect in the paragraph. Paragraph 2.11 makes clear in terms that the situation referred to in that paragraph (meeting the employment needs of Coventry) is one example of the sort of development referred to in paragraph 2.10. It cannot be read as an exhaustive list of what will be acceptable under that policy.<sup>[2.7-2.10, 3.4-3.9, 4.8-4.12, 5.8-5.10]</sup>
- 8.15 There was much debate at the Inquiry about the use of the word "partnership" within paragraph 2.10. However, what is established from a reading of the text itself and indeed from the evidence is that the word "partnership" does not mean that there is any right of veto on the part of the adjoining authority, or that the initiative for the development must come from the adjoining LPA, or that there must be some agreement with the adjoining LPA. Each of those alternatives would effectively abrogate the duty placed upon RBC to determine the planning application in accordance with the merits as it sees them. It would be absurd if a LPA should proceed to refuse a development which it

considers it should approve simply because the adjoining LPA objects. That would be an error of public law.<sup>[2.7-2.10, 3.4-3.9, 4.8-4.12, 5.11-5.15]</sup>

- 8.16 Plainly, the use of “partnership” may well require close working and detailed consultation with an adjoining LPA. Plainly that occurred in this case from the evidence that is before the Inquiry. Ultimately, the dialogue between RBC and HBBC proved fruitless both in terms of achieving any consensus and also in terms of identifying any coherent objection and evidence for such an objection from HBBC. RBC is obliged to take a decision on a planning application in accordance with the statutory regime bearing in mind the merits of the case. Whilst the observations of an adjoining LPA will form part and parcel of the merits which RBC has to consider, it cannot be the case that if there is an objection it is obliged to refuse the application. Contrary to Mr Dunnett’s evidence, the adjoining LPA does not have some quasi power of direction. If RBC is satisfied on the merits that the case for development has been proved, then it must resolve accordingly. Mr Dunnett refers to the duty to cooperate which was introduced under section 33A of the Planning and Compulsory Purchase Act 2004. However, the paragraphs he quotes in the NPPF refer to plan making and are therefore not relevant to the case in hand.<sup>[2.7-2.10, 3.4-3.9, 4.8-4.12, 5.11-5.15]</sup>
- 8.17 Interpreting Policy CS1 alongside paragraph 2.10 of the Explanatory Text makes clear that if there is a proposal immediately adjacent to an adjoining district seeking to meet the needs of that district then the policy provides that that will be an exception to the hierarchy in Policy CS1. Thus, whilst the proposed development is not strictly speaking consistent with the Policy CS1 in the hierarchy, the Explanatory Text recognises that it would be an acceptable exception to it and anticipates that development to meet the needs of adjoining settlements will be appropriate. The question therefore reverts back to a consideration of need and demand, and whether this is an appropriate location at which to meet need and demand.<sup>[2.7-2.10, 3.4-3.9, 4.8-4.12, 5.11-5.15]</sup>
- 8.18 In this case, the starting point for deciding whether this application falls within the exception test set out in paragraph 2.10 is to ascertain whether the development proposed relates to Hinckley. The Applicant has submitted evidence that the need which its development is looking to service is a need which arises in Hinckley, namely a need for an out-of-town business park with related hotel and leisure facilities that is well-connected to the strategic road network. No evidence was provided to the LPA to suggest that there is no such need. Mr Hemming was not in a position to dispute the evidence of Mr Lloyd that there was interest in the market for such a facility. Mr Hemming’s evidence was restricted to the issue of whether that need could be met at a different site.<sup>[3.8]</sup>
- 8.19 It is noteworthy that the evidence of need relates closely to the central concern of the NPPF, namely sustainable development. It relates in particular closely to the economic and social roles of sustainable development by supporting growth and a competitive economy, and also providing employment in a high-quality built environment alongside local services in the form of the leisure and hotel proposals.<sup>[2.14]</sup>
- 8.20 From the evidence submitted to the Inquiry the need for the proposals is clearly and unequivocally established. There are four main sources of

evidence. The first source is the evidence of Mr Lloyd, who is the only witness before the Inquiry directly involved in the market for commercial premises. His evidence was clear and unequivocal that there was a need and demand for business park development associated with Hinckley, taking advantage of the opportunities presented by the proximity of the strategic road network in this location so as to meet occupiers' requirements for ready access to that road network, as well as larger-scale office floor space within a high-quality landscaped environment.<sup>[2.15]</sup>

- 8.21 His evidence was not simply based on his overall market experience, but was derived from specific enquiries both from occupiers looking to grow-on into larger premises and also from potential occupiers of a more footloose character looking for premises within a wider geographical area that there was a need and demand to be met. It was Mr Lloyd's view that the occupiers would have a potential range in terms of their characteristics. They would not be simply indigenous Hinckley firms but they would also be occupiers who would bring new employment opportunities to the town who had a requirement to be located in a broader area. Thus, the proposal would have a breadth of attraction in terms of job creation opportunities and would support existing Hinckley-based businesses, as well as attracting new investment to the area.<sup>[2.16]</sup>
- 8.22 The second source of evidence of need is the HBBC development plan. HBBC still relies on its Core Strategy as an authoritative source of the evidence of need for office space, and recognises that Policy 1 requires the provision of 34,000 sq ms of office space to meet the needs of Hinckley. The policy goes on to identify that that should be in the town centre, but for the purposes of assessing need 34,000 sq ms remains an important and relevant figure for the purposes of identifying office requirements in Hinckley. This shows that there is a substantial need for office space in this area.<sup>[2.17]</sup>
- 8.23 The third authoritative source of need is the BE Group Employment Land and Premises Study Review of May 2010, which supersedes the Hinckley Core Strategy but continues to support the need for the provision of office floor space. When the report is read as a whole, the conclusions are clear. There is a need for higher-quality and larger office floor space in the form of a business park to meet the needs of Hinckley and that need exists now.<sup>[2.18]</sup>
- 8.24 The report demonstrates that existing office supply is poor quality, generally in small units, and therefore the Borough lacks a broad portfolio of office opportunities. The level of enquiries clearly supports the conclusion of all parties that the provision of this proposal would be a successful development. Whilst in its case HBBC focused on the survey of the existing stock of offices being largely of moderate or worse quality and mainly of 100 sq ms or less, and highlighted the anecdotal information from agents and the very small sample of existing occupiers who responded to the survey, it is important to note that that is not the entirety of the evidence base that was researched by the consultants, nor would one draw the conclusions which HBBC appears to have done from that evidence. The paucity of quality accommodation and the almost non-existent extent of larger office stock points clearly to a need for more office space to be provided of a different quality and size, and not a perpetuation of the existing homogenous stock.<sup>[2.19]</sup>

- 8.25 Far more important findings of the study were that there was a history of extensive office-based enquiries, even during a period of recession; suggesting the presence of high levels of potential need for office space (see Table 20, page 58). This coupled with the need to enhance and diversify the quality and range of office space available led the consultants to the very clear and repeated conclusion that there was a need in Hinckley to provide a business park development in order to address the low level and quality of office space. This conclusion is confirmed at Table 65 and paragraph 12.35, where the report again identifies the need for modern business park development to be provided, in particular, because future demand will not be satisfied in town centre developments. The need for business parks is reinforced on the basis of providing for range and choice in the employment market. The recommendations of the report endorse the need not only for grow-on units but also at paragraph 13.9 for campus-style offices. Moreover, it is clear from the report that the need for this provision arises now.<sup>[2.20-2.21]</sup>
- 8.26 The fourth source of evidence in relation to need is the 2012 PACEC report. This employment land study for the Leicester and Leicestershire HMA does not provide any analysis of qualitative requirements but does forecast for HBBC's area a need of 11,800 sq ms of office floor space. Having analysed the readily available supply, it concludes that there is a shortfall of nearly 8,000 sq ms of office floor space that is required. HBBC does not refer to any of this evidence. All of this evidence points to a need for more offices and modern business parks at Hinckley.<sup>[2.22]</sup>
- 8.27 Measured against all of this evidence, there is clearly a quantitative need for about 3,500 sq ms of office development comprised in the application, and a qualitative need for the business park proposal. That need for a business park means need for the composite assembly of uses which are comprised in that form of development. That includes the related need for a hotel and leisure facilities to complement the offices and comprise, taken together, a business park development. Mr Dunnett argues there is no need for a further budget hotel and this means there is no need for the whole development. However, his approach displays a flawed logic as there is a need for the hotel to cater for a distinct market as paragraph 6.9 of the Planning for Town Centres Practice Guide makes clear.<sup>[1.30, 2.23, 5.3- 5.7, 5.16]</sup>
- 8.28 Thus, on the basis of the establishment of the need in this location, the credentials of the proposal as a sustainable development are clearly made out. The evidence is unequivocal that the application would be a successful development and lead to the creation of the order of 350 jobs.<sup>[2.24, 3.9, 4.37]</sup>
- 8.29 Turning to Policy LR10 of the RBCLP, although the proposal conflicts with this policy, the conflict is one which attracts little weight. Firstly, this is a saved policy that predates Policy CS1. The latter policy as the more recent manifestation of the LPA's thinking should be given greater weight. Secondly, Policy LR10 does not address the particular situation that is addressed by Policy CS1, namely where a site is in the countryside but the proposed development is designed to meet the needs of the adjoining authority. Thirdly, Policy LR10 is restricted to looking at tourism and visitor facilities and attractions only. Although the hotel element of the present scheme could fall within the definition of visitor facility, the scheme taken as a whole is not the

type of scheme to which Policy LR10 addresses itself. This is a scheme that cannot be disaggregated; it is a development put together to cater for a particular segment of the market, which is a different segment to that considered in Policy LR10. [2.11-2.12, 3.10, 5.3- 5.7, 5.16]

- 8.30 Policy LR10 is clearly directed to meeting the needs of Rugby. It is therefore of peripheral relevance to addressing a hotel proposal which is related to the needs of Hinckley and in particular associated with the need for business park developments, of which a hotel forms a clear and obvious component. There are no town or edge-of-centre locations identified either by HBBC or by its planning documentation which are specifically identified as locations for hotel development. [2.11-2.12, 3.10, 5.3- 5.7, 5.16]
- 8.31 Whilst Mr Dunnett drew attention to the general observations about seeking to develop a night-time economy within Hinckley town centre, neither those generic observations on pages 12 and 13 of the Town Centre AAP, nor the site-specific allocations of uses make reference to a hotel use. The proposal is well related to Hinckley town centre and would not affect the vitality and viability of Hinckley town centre, thus demonstrating that in spirit the policies of the plan have been complied with. Mr Dunnett refers to paragraph 28 of the NPPF but that paragraph is not engaged because this proposal is not related to sustainable rural tourism. Clearly, the nearby highways, buildings, signage and lighting have an urbanising effect on the application site and the surrounding area. [2.11-2.12, 3.10, 5.3- 5.7, 5.16]
- 8.32 With regard to the other relevant policies of the RBCCS, Policy CS10 Developer Contributions will be addressed under main issue (f), Policy CS11 Transport and New Development under main issue (c) and Policy CS14 Enhancing the Strategic Green Infrastructure network under main issue (d). Both the Applicant and the LPA contend that the proposed development complies with all of these policies. Policy CS16 requires consideration to be given to sustainable design and the impact of development on the community and character of an area, and the amenity of neighbouring occupiers. It is noteworthy that there was no objection from the LPA's Environmental Health Department regarding noise or pollution. The proposed conditions show that these matters are capable of being carefully and adequately addressed to protect the amenity of local residents. [3.11]
- 8.33 The impact on the amenity of nearby occupiers is considered in detail both in the Report to Committee and in the evidence of Miss McCulloch and show that the impact would be acceptable. Suffice it to say that the closest residential property is about 24m from the site boundary. There is a landscaped area between the curtilage of this dwelling and the application site which means that the curtilage of the closest dwelling would be around 10m from the site boundary. The proposed development could therefore be accommodated in a manner that would provide sufficient separation to ensure neighbouring properties would not be adversely affected in terms of loss of light or privacy. There is no conflict with either Policy CS16 or CS17 subject to conditions which are discussed under issue (e) below. [3.12, 4.35, 6.18-6.27, 7.5]
- 8.34 As regards the policies of the saved RBCLP, Policy GP2 requires landscaping to form an integral part of the design and development and provision of a high

standard of hard and soft landscaping. This is an outline application and these matters are capable of being controlled by planning condition. Policy T5 requires satisfactory parking facilities, and no evidence has been provided that the parking facilities to be provided on this site would be unsatisfactory. Policy E6 seeks to protect ecological assets and this matter will be addressed under main issue (d) below. None of the policies of the WMRSS add anything to the policies already set out above.<sup>[3.13, 6.14-6.17, 7.5]</sup>

- 8.35 HBBC and BPC have raised objection on the basis of the impact on the countryside of the proposals. These suggestions are entirely without merit. It is clear from the evidence that it is agreed that the site is incapable of any beneficial use, whether as agriculture or otherwise. The site is contaminated, and it is obvious that in sustainability terms the treatment of that contamination is beneficial. The site visit confirmed the nature of the site and the extent to which it fulfils any sensible definition of countryside beyond a technical planning definition.<sup>[2.25-2.30, 3.17-3.20, 4.35-4.36, 5.17-5.23, 6.18-6.21, 7.5]</sup>
- 8.36 Whilst it is accepted that the site does not fall within the definition of previously developed land in the NPPF, nevertheless the spirit of paragraph 111 of the NPPF is relevant. The reason why previously developed land is identified is so as to secure the beneficial recycling of land which cannot otherwise be put to use. That element of the justification for the preference in policy applies equally to the application site.<sup>[2.25-2.30, 3.17-3.20, 4.35-4.36, 5.17-5.23, 6.18-6.21, 7.5]</sup>
- 8.37 Although HBBC has raised issues in relation to the visual effects of the proposals, it is important to appreciate, firstly, that the landscape resources on the site would be safeguarded and enhanced by the provision of management and further landscape planting. There would therefore be an overall benefit to the landscape features on the site that have any value.<sup>[2.28]</sup>
- 8.38 In terms of the visual points raised by the HBBC, it is clear that no distant views of the development have been identified. All of the views upon which the HBBC has relied are immediately from the site boundary and are limited in their extent. No attempt has been made to engage in a proper Landscape and Visual Impact Assessment. Had that exercise been undertaken, it would have been clear that not only were the locations of the views not remotely sensitive since they are views from highway users or those immediately adjacent to substantial highway infrastructure, but also that the extent of the views, bearing in mind the urban influences that are already present in and around the site, the extent of change would be extremely limited.<sup>[2.25-2.30, 3.17-3.20, 4.35-4.36, 5.17-5.23, 6.18-6.21, 7.5]</sup>
- 8.39 It was noticeable from the site visit and from the photographs in Mr Wood's evidence that there are already pylons, signage and substantial highway junctions immediately adjacent to the site and at the locations where the views have been taken. Thus, had an analysis been done on the basis of the sensitivities of the views and the extent of visual change, it would have been impossible to demonstrate any material harm.<sup>[2.25-2.30, 3.17-3.20, 4.35-4.36, 5.17-5.23, 6.18-6.21, 7.5]</sup>
- 8.40 In the light of the condition of the land and the visual containment which it enjoys together with the urban influences which are around it, it is plain both that the site, whilst technically countryside in that it is beyond a settlement boundary, does not share (beyond the landscape resources that will be

preserved) anything of value with the countryside, nor would there be any material visual effect arising from the development proposed. [2.25-2.30, 3.17-3.20, 4.35-4.36, 5.17-5.23, 6.18-6.21, 7.5]

- 8.41 That leaves under this main issue the question of whether the proposal would deliver a sustainable form of development. Paragraph 6 of the NPPF provides that the sustainability of a proposal is to be judged by having regard to all the policies set out in paragraphs 18 to 219 of the NPPF. The key policies that are particularly relevant to this proposal are those which seek to direct town centre uses to centres, ensure that proposals are located at locations accessible by means of transport other than the private car, and protect ecological and biodiversity interests. All of these matters are addressed in subsequent issues. However, the 3 dimensions to sustainable development set out in paragraph 7 of the NPPF are addressed here. [3.14-3.20, 4.13, 6.267.5]
- 8.42 This proposal would contribute to building a strong, responsive and competitive economy by meeting a need in the marketplace as identified by the Applicant. HBBC contends that the proposal would attract footloose occupiers so the jobs would be provided anyway. However, it is not a need that can be met elsewhere. If the proposal is rejected it would mean that an opportunity to create jobs and provide the facilities which businesses need in order to compete and grow would have been rejected. In resolving to grant planning permission, the LPA attached significant weight, as directed to do so by paragraph 19 of the NPPF, to the need to support economic growth through the planning system and to encourage and not impede sustainable growth. The LPA maintains that it is for the market to decide whether demand exists for a proposal, not the planning system. [3.14-3.20, 4.13, 4.39-4.41, 6.267.5]
- 8.43 The proposal scores highly when measured against the social role of planning, because it would create a high quality built environment with accessible services that reflect what is required to meet the needs of this area. Although the social role is primarily addressed at meeting housing needs, the principle applies equally to this type of development which provides a work environment that addresses the health and social needs of employees through the leisure and hotel elements. [3.14-3.20, 4.13, 4.39-4.41, 6.26, 7.5]
- 8.44 The proposal would create very limited environmental harm. The site is in a countryside location and it has been suggested that this proposal would harm the countryside. However, there has been no evidence to the effect that there would be harm to landscape character. Criticism has been limited to the visual impact of the proposals on the countryside. What is currently an undeveloped site would be developed, and this would undoubtedly change the character of the site. However, regard must be had not only to the site but the wider area when judging the level of any harm. The site itself is well contained and has defensible boundaries to the Green Belt beyond. When the location was considered by the Rugby Local Plan Inspector in 1990, he saw no reason why it should remain permanently open, and a later review by HBBC also concluded that it served no separation purpose. Finally, in respect of countryside impact, any harm that is created has to be weighed against the economic benefits that these proposals would bring. [3.14-3.20, 4.13, 4.36-4.38, 6.267.5]
- 8.45 In relation to issue (a) I conclude that the proposal would accord with a very wide range and a large number of development plan policies and objectives. It

would not be consistent with a strict interpretation of Policy CS1 of the RBCCS and Saved Policy LR10 of the RBCLP but that is in a sense not surprising bearing in mind that those policies are designed to meet the needs of Rugby and this proposal is not. The proposal would be well related to the principles of the development plan and would accord with the 3 dimensions to sustainable development set out in paragraph 7 of the NPPF. I have to consider the proposal in the context of the other main issues which have been identified before coming to an overall conclusion in relation to the development plan.

***Issue (b) the extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres;***

- 8.46 Although the sequential and impact tests are set out in the NPPF detailed guidance on how to apply the tests is to be found in the still extant PPS4 Practice Guidance. Adopting a sequential approach to selecting sites means wherever possible seeking to focus new development within or, failing that, on well located sites on the edge of existing defined centres. Only if town centre or edge of centre sites are not available will out of centre locations be likely to be appropriate in policy terms, provided that they are well served by alternative means of transport, and are acceptable in all other respects including impact. National policy requires those promoting development, where it is argued that no other sequentially preferable sites are appropriate, to demonstrate why such sites are not practical alternatives in terms of their availability, suitability and viability.<sup>[3.21, 4.14-4.17]</sup>
- 8.47 The Applicant's submissions in relation to need for the development frame the requirements of the sequential impact tests. With regard to suitability, it is submitted that it is critical that a site, if it is to be a preferable alternative, is capable of meeting the need that the developer is seeking to meet. In this case, any site must therefore be capable of satisfying the requirement for a business park for Hinckley both to meet indigenous grow-on requirements and also to attract the footloose office enquiries registered by both Mr Lloyd and the BE Group. The need is not just a generic need for office development.<sup>[2.31]</sup>
- 8.48 The Applicant cited the decision of the Supreme Court in *Tesco Stores v Dundee City Council* [2012] UKSC 13. In the leading judgment of Lord Reed in construing the word 'suitable' in the policy, he stated that the correct basis placed on the word was 'suitable for the development proposed by the applicant'. This approach to suitability, namely that it means suitable for the development proposed by the Applicant, is reinforced by a proper understanding of the guidance in the Practice Guide. Paragraph 6.9 of the Practice Guide makes clear that in applying the sequential approach the market which the developer is seeking to serve needs to be taken into account.<sup>[2.33-2.36]</sup>
- 8.49 Paragraph 6.9 of the Practice Guidance in particular identifies that business park office development will serve a different function and market to town centre office development. Thus, the sequential approach needs to take a different stance in relation to examining suitability in respect of such development. It needs to respect the market sector which the development is seeking to address. The distinction which HBBC draws in relation to need for

offices to be met over the period to 2026 is not material. It is the market to be served. That is clear from the Dundee judgment.<sup>[2.36, 4.24-4.32]</sup>

- 8.50 That is further reinforced by paragraph 6.37 of the Practice Guide, which relates suitability to “the need or demand which the proposal is intended to meet”. Paragraph 6.45 is in a similar vein. Thus, the market demand which is being addressed is central to an assessment of the sequential approach, and the sequential approach in this instance needs to be applied bearing in mind that it is a business park style office development that is needed and that is proposed. This is not a development that can be disaggregated because if it is disaggregated it would not cater for the demand that the Applicant has identified<sup>[2.37, 3.23, 4.24-4.32, 5.2]</sup>
- 8.51 The observations within the March 2012 PPS4 Impact Analysis and Sequential Site Assessment produced by the Applicant need to be read in that context. Observations about the potential for other sites to accommodate elements of the proposal without delivering the benefits proposed at the Stretton Croft site are clearly related to the nature of the market demand which the proposals are seeking to meet. Equally, it will be noted that in Appendix 3 of that document the sites which are identified as being of a scale that could physically accommodate the development are dismissed on the basis that they would not be able to meet the specific locational requirements of the business park style development and are unsuited to business park style development.<sup>[2.28]</sup>
- 8.52 Once this important principle of the approach is understood, as Mr Hemming accepted in cross-examination, then all sites in Rugby and Leicester can be discounted as being unfit to meet the need which has been identified in Hinckley, and also all of the town centre sites can be discounted on the basis that none of them are capable of being suitable for a business park style development. Indeed, Mr Hemming was not able to identify any suitable sites apart from the application site. It is the only site of which anyone is aware which is being promoted for a business park style development of the kind identified by the requirements of the BE Group report and confirmed by Mr Lloyd. It should be noted that many of the sites identified by Mr Hemming were not in any event sequentially preferable within the meaning of NPPF paragraph 24 as the sites are neither in or on the edge of Rugby town centre.<sup>[2.39, 3.24-3.25, 4.24-4.32]</sup>
- 8.53 The HBBC Core Strategy directs town centre development to the town centre, edge of centre sites and the urban area. HBBC did promote the Sketchley Brook employment site as a more central site to meet the identified need. However, there are a number of problems with this site. Firstly, that site is being promoted by developers who are well experienced in providing business park style accommodation, namely Goodmans, but they are not promoting it as a business park because it is, as Mr Lloyd explained, not in a suitable location and does not have the necessary attributes to meet the requirements of a business park. Secondly, not only are Goodmans not promoting it, but none of the employment land studies promotes it as such nor does any HBBC document promote it as such.<sup>[1.18, 2.40-2.42, 3.26, 4.27-4.34, 4.38-4.42]</sup>
- 8.54 Thirdly, the only independent study produced by HBBC which looks at that site, the 2012 PACEC study, identifies it for 1,858 sq ms of office development

- in table 4.68, and acknowledges at paragraph 4.7.17 on page 52 that the market demand “is likely to be for large scale warehouses”. That is borne out by the sales particulars which have been produced by Goodmans, which show it laid out as a development directed at the B8 distribution market. A point which Mr Hemming confirmed in re-examination. It is not a site which is relevant or suitable to the sequential test. [2.40-2.42, 3.26,4.27-4.34, 4.38-4.42]
- 8.55 Turning to availability and viability, none of the HBBC town centre sites are available. As the HBBC’s own evidence demonstrates, neither are they viable. [2.43, 4.24-4.34, 4.38-4.42]
- 8.56 If it is assumed that the need, contrary to the Practice Guidance and the Dundee judgment, is simply for office development, even then HBBC is unable to establish that the proposal fails the sequential test. For the purposes of this argument issues relating to the market to which the development is addressed and questions of format can be disregarded. The HBBC’s case is that there is, pursuant to Core Strategy Policy 1, a requirement for 34,000 sq ms and, in accordance with that policy, at Hinckley the town centre sites should be deployed as sequentially preferable alternatives. [2.44, 4.24-4.34]
- 8.57 From this it is clear that sites in Rugby and Leicester are quite incapable of meeting the need for Hinckley which Policy 1 sets out. The Rugby and Leicester sites are there to meet the needs of Rugby and Leicester. Moreover, the vast majority of them are neither town centre nor edge of centre and therefore not remotely sequentially preferable to the application site. Furthermore, the sustainable urban extensions at Barwell and Earl Shilton can be discounted on the basis that both the Core Strategy and the emerging AAP for those developments expressly exclude B1 development. [2.45, 4.24-4.34]
- 8.58 The question which then arises is as to whether or not the town centre sites which have been identified are either capable or have adequate capacity to meet HBBC’s own case on the requirement in Policy 1 of the Core Strategy. Firstly, so far as whether or not they are capable is concerned, it is clear from the evidence to the Inquiry that none of those sites are presently viable, nor is there any indication as to when they may become viable. The gaps in the financial appraisals of many of the sites are so substantial that it is difficult to envisage when they might become available. Although HBBC argues that they may be brought forward viably for development at some point prior to 2026, that is of little use in relation to meeting present short- or even medium-term needs and, further, that assessment is not one which is based on them being viable for significant elements of office use. [2.46, 4.24-4.34]
- 8.59 Secondly, it is noteworthy that the uses which are identified in the AAP are specifically identified as being “aspirational”. They are not and expressly not said to be “requirements”. A different way of putting this is the enthusiasm of the AAP and, indeed, the Inspector who endorsed it, for flexibility in those uses. Paragraphs 8.3, 9.3 and 9.4 of the AAP make clear that there is potential for radical departure from the uses identified on page 36 of the document with a view to ensuring that some beneficial development and regeneration occurs on those sites. What follows is the conclusion that there can be absolutely no assurance, or even likelihood, that the scale of office development identified on page 36 of the AAP will in fact materialise. This is especially the case when, firstly, gauged against the AAP’s viability work which shows that the sites were

not viable. Secondly, it is telling that the actual experience on the ground of these sites being brought forward further reinforces that the level of office use identified on page 36 is highly unlikely to materialise e.g. the College site has not developed any office use within it.<sup>[2.47-2.49, 4.24-4.34]</sup>

- 8.60 Accounting for adjustments of net office space development and deducting the loss of HBBC's existing offices, it is clear even on HBBC's own case on HB5 that only around half of the 34,000 sq ms of development required would in fact be delivered on the town centre sites.<sup>[2.50, 4.24-4.34]</sup>
- 8.61 That is, however, a clear over-estimate. Firstly, in relation to the Stockwell Head, it is clear that 2,500 sq ms of office floor space are most unlikely to be delivered on that site. As the AAP itself acknowledges, the site is in multiple ownerships and it is occupied presently by a number of viable businesses. All of those businesses would have to be displaced and the ownerships assembled if there is to be any development of that site. That would require a CPO. At present, there is no master plan, no planning permission, and no resolution to pursue a CPO. In fact, HBBC has acted contrary to a desire to assemble the land interests by disposing of its own freehold ownerships to Trillium. That action clearly shows it has no intention of pursuing a CPO.<sup>[2.51, 4.24-4.32]</sup>
- 8.62 Turning to the Railway Station site, again there is simply no reasonable basis for suggesting that 5,000 sq ms of office floor space would be developed in that location. The enquiries that have been made of the land owner make clear that he has no interest in pursuing an office-led development and the evidence demonstrates that an office-based development would not be viable. If the site comes forward for anything, it would not be an office-led scheme.<sup>[2.52, 4.24-4.32]</sup>
- 8.63 Turning to the Mount Road site, HBBC has identified its own office site as being a leisure centre. The wider part of the site is currently in active health-related uses, which Mr Hemming accepted were not likely to relocate and which HBBC would not have an appetite to compulsorily acquire. There is therefore no prospect of that delivering up to 4,000 sq ms of office development.<sup>[2.53, 4.24-4.32]</sup>
- 8.64 Once those deductions are made from HB5, it becomes clear that only around 6,000 sq ms of office development would be capable of being delivered in the town centre. That is a tiny fraction of the 34,000 sq ms required by Policy 1 and, furthermore, would not meet the requirements of either the BE Group report or the PACEC report. It is clear, therefore, that, even on the HBBC's own case, when properly scrutinised, there remains a clear and evident need for the proposals that are before the Inquiry. There is no reality to any sequential test objection to the application proposals.<sup>[2.54, 4.34]</sup>
- 8.65 Turning to the question of impact, no evidence was offered by HBBC beyond a generalised assertion. There is no basis on which to contend that there would be any quantitative impact, nor have any figures been produced by HBBC to suggest any quantitative effect. In reality, since all of the town centre sites are on the current state of the evidence unviable, the last thing that they need, in accordance with the AAP viability study, is a requirement to produce more offices which would further imperil delivery by affecting their viability. That would be contrary to the aspirations of the Town Centre AAP to see them

brought forward and regenerated by some form of development.<sup>[2.55, 3.27, 4.39-4.42]</sup>

- 8.66 In fact, the qualitative impact of the proposals will undoubtedly be positive. As identified in the BE Group report, the business park style development proposed by the application would add to the range and choice of office floor space available to the market. Furthermore, there is nothing to seriously dispute Mr Lloyd's evidence about the beneficial effect of the business park raising rent tone across the market and, in fact, having a positive impact on the potential viability of the schemes in the town centre.<sup>[2.56, 3.27, 4.35-4.42, 7.2]</sup>
- 8.67 There is no substantive evidence which has been made by the HBBC to demonstrate any impact as a result of the proposals. That was confirmed by Mr Killip in his answer to Mr Choongh in cross-examination that HBBC did not contend that the proposal failed the impact test.<sup>[2.57, 3.27, 4.35-4.42]</sup>
- 8.68 Overall in relation to issue (b) I conclude that in terms of the requirements of Section 2 of the NPPF the proposals comprised in the application pass the sequential test and would not have an adverse impact on the vitality and viability of the town centre. The proposals are fully compliant with national planning policy set out in the NPPF.

***Issue (c) the extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (Section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car;***

- 8.69 From the evidence submitted to the Inquiry, the application site is not as accessible as one would expect but it is reasonably connected to the town centre by public transport, walking and cycling. Most of the nearby urban area is within a reasonable cycling distance, and the improvements proposed at the junction of the A5/Wolvey Road would make it easier for cyclists to access the site. The southern areas of Burbage are within a 2kms walking distance and the improvements planned for the junction would make it easier for pedestrians to cross the A5. There is an hourly bus service linking the site to Burbage and there is a bus stop located around 350m from the site. There is also a bus every 90 minutes linking the site to Coventry and Leicester, with a bus stop situated some 600m to the north of the site.<sup>[3.29, 4.38]</sup>
- 8.70 The Applicant has offered a unilateral undertaking under the terms of which the bus service to the site would be improved. A bus service would be brought into the site itself, and serve the site 6 days a week from 0700 hours to 1900 hours and would be re-routed through the residential areas of Burbage and would link the site to Hinckley town centre and Hinckley railway station. The LPA contends that the site is sufficiently sustainable without the enhanced bus service. However, the new bus service is necessary to improve accessibility. If the SoS agrees that the improved bus service is necessary in order to make the site sufficiently accessible, the unilateral undertaking would deliver the improved bus service.<sup>[3.30, 4.38]</sup>
- 8.71 Given the new bus service and the other proposed improvements, it is clear that the proposal before the Inquiry would enhance the accessibility of the site

both by slow modes and by public transport. These provisions have been accepted not only by WCC but also by LCC as providing the necessary assurance that the site would be accessible. Whilst various points have been made in relation to the present position of the site in terms of public transport, the application proposal has to be assessed on the basis of the package of measures which is being offered through the application. [2.59, 3.30, 4.38, 5.24, 6.9-6.13, 6.25, 6.28-6.29, 7.4, 7.5]

- 8.72 The extent of the public transport contribution which has been made has been measured by LCC as being appropriate to secure a long-term future for the bus service. Albeit anecdotal, the evidence of Councillor Bray reinforced the fact that public transport services in the area were well supported, if not over-subscribed. It is to be noted that Mr Andrews and the LCC have designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service would necessarily provide a strong linkage both to the town centre and to the railway station, and would provide an appropriate and sustainable alternative to the use of the private car. [2.60, 3.30, 4.38, 5.24, 6.9-6.13, 6.25, 6.28-6.29, 7.4, 7.5]
- 8.73 A Framework Travel Plan has been agreed with the highway authorities. It demonstrates a carrot and stick approach based on specific occupier requirements to bear down on the modal share at the site. This provides a guarantee that the site would be sustainable. [2.61, 4.38]
- 8.74 Finally, it is noteworthy that the junction arrangements which are proposed would not only assist in catering for sustainable travel by fostering the use of walking and cycling as an appropriate mode, but would also resolve existing highway safety issues in terms of providing an acceptable design solution. There would be no conflict with Policy CS11 of the RBCCS or the NPPF. [2.62]
- 8.75 Overall in relation to issue (c) I conclude that the proposal would be consistent with Government advice in promoting more sustainable transport

***Issue (d) the extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF);***

- 8.76 It is agreed amongst the parties that the site has Local Wildlife Site status. It is also agreed that the proposals do not have any impact on any protected species. The ecological and biodiversity interests on site have been evaluated by the WCC Ecological Unit, and the unchallenged evidence provided by Mr Warren and Mr Lowe is that the layout and design of the development would retain ecological features where possible and would translocate and create additional habitat on land within the Applicant's control. This, together with a biodiversity management plan, would ensure that Local Wildlife Site values would be retained. Although there would remain some biodiversity loss, this could be compensated for through a biodiversity offsetting scheme in accordance with the principles set out in the NPPF. Mr Lowe has undertaken the work to evaluate the level of offsetting required, and this would be delivered within the RBC area funded by a payment from the Applicant through the unilateral undertaking. Mr Lowe confirms that with the biodiversity offsetting funded by this scheme there would be a net gain in biodiversity.

There would be no conflict with Policy CS14 of the RBCCS, Policy E6 of the RBCLP or the NPPF. [2.63-2.64, 3.31, 6.22 6.25, 7.5]

8.77 Overall, I conclude on issue (d) that the proposal, together with the proposed ecological mitigation, would comply with Government policies in the NPPF particularly in relation to protected species and to biodiversity interests within the wider environment. Indeed the proposals go beyond the requirements of national and local planning policies in relation to biodiversity and would provide a net enhancement, qualitatively and quantitatively, of biodiversity and habitat interest. There would be a significant benefit in nature conservation terms which would be brought about by the grant of consent in this case.

***Issue (e) whether any permission should be subject to any conditions and, if so, the form these should take;***

8.78 RBC submitted a list of suggested conditions and these were discussed at the Inquiry at a round table session. These conditions were subsequently revised and document RBC3 represents a high level of agreement between the Applicant and RBC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95. [2.64, 3.32, 6.27, 7.3-7.5]

8.79 Conditions 1-4 are necessary to ensure that the development will not start until all reserved matters are approved and that the development is carried out in accordance with the approved plans. Conditions 5-16 are necessary in the interests of visual amenity and biodiversity, to protect the ecological character of the area and to ensure that protected species are not harmed by the proposed development. Conditions 17-18 are necessary to ensure a suitable access and layout is provided in the interests of highway safety. Conditions 19-21 are necessary to reduce the risk of flooding and in the interests of fire safety. Condition 22 is necessary to ensure water efficiency through sustainable design and construction. Condition 23 is necessary to ensure energy efficiency through sustainable design and construction. Conditions 24-28 are necessary in the interests of residential amenity, to ensure a satisfactory appearance and in the interests of health and safety. Condition 29 is necessary to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

***Issue (f) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.***

8.80 A Section 106 planning obligation/unilateral undertaking has been provided in order to address the biodiversity offsetting payment and the highways contributions. The owner covenants to pay the biodiversity offsetting contribution of £18,000 prior to first occupation of the development. The owner also covenants to pay the public transport contribution of £110,000

prior to first occupation of the development, and subject to paragraph 2.3 of the Second Schedule, make four further annual payments of £110,000 to offset the reasonable costs of operating the public transport service. A Travel Plan has also been submitted to assist in promoting sustainable transport choices and reduce reliance on the private car.

- 8.81 The planning obligation was discussed in detail at the Inquiry. The LPA considers the planning obligation is required in relation to the biodiversity offsetting and the Travel Plan. The LPA's view on the requirement for an enhanced bus service is set out at paragraph 8.71. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. An agreed statement of compliance with the CIL Regulations 2010 was submitted to the Inquiry. The planning obligation is at APP7 and the statement of CIL compliance is at APP8. From all the evidence that is before me I consider that all of the provisions of the S106 planning obligation are necessary. They meet the 3 tests of Regulation 122 of the CIL Regulations 2010, Policy CS10 of the RBCCS and paragraph 204 of the NPPF. I accord the S106 planning obligation significant weight and I have had regard to it as a material consideration in my conclusion.

### **Overall Conclusion**

- 8.82 From all the evidence submitted to the Inquiry, it is clear, firstly, that there is a definite need for additional office floor space in the form of a business park of the kind proposed by the application. Secondly, it is clear that there is no other site which has been credibly suggested as being suitable or available to meet that need and, further, the meeting of the need would not in any way undermine the spatial strategy for Hinckley or the vitality of Hinckley town centre. Not only are the town centre sites incapable of meeting the need targeted by the development (as contemplated by paragraph 6.9 of the Practice Guide) but in fact commercial viability considerations mean that office uses would imperil their development. The Town Centre AAP does not require them to support office uses and fosters flexibility in relation to uses to ensure that the sites are brought forward and not ham-strung as a result of unprofitable uses. Several of the sites are unlikely to come forward in any event for office or indeed any other use.
- 8.83 Suitable measures are in place to ensure that the development is accessible. The proposals would contribute to the economic prosperity of the area by providing some 350 jobs as well as remediating the site and securing overall bio-diversity enhancements. The proposals are not consistent with a strict interpretation and application of Policy CS1 of the RBCCS and Policy LR10 of the RBCLP. In that these 2 policies are designed to meet Rugby's needs and this proposal is not, then this limited conflict is unsurprising. However, due to its accordance with all other policies of these plans, there is no overall conflict with the development plan. In all circumstances the development represents a suitable and sustainable development where other material considerations clearly outweigh the limited development plan conflict.

**9. INSPECTOR'S RECOMMENDATION**

9.1 I recommend that planning permission be granted subject to conditions.

*Harold Stephens*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPLICANT:**

Mr Ian Dove QC	Instructed by Shoosmiths Solicitors
He called	Mr Simon Lloyd BSc (Hons) Est Man MRICS Mr Andy Warren BSc (Hons) MA (LM) MIEEM Mr Stewart Andrews MCIHT MCILT Mr Fraser Littlejohn MA (Hons) MRTPI

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Satnam Choong of Counsel	Instructed by Mr Mark Neale, Head of Legal and Democratic Services Rugby Borough Council
He called	Miss Sarah Fisher BA (Hons) MA MRTPI Mr David Lowe BSc (Hons) Warwickshire CC Miss Karen McCulloch BA (Hons) DipTP MRTPI

### **FOR HINCKLEY AND BOSWORTH BOROUGH COUNCIL:**

Mr Timothy Leader of Counsel	Instructed by Adam Bottomley
He called	Mr Andrew Killip BSc (Hons) MA Stephen Hemming DipEM DipTP MRTPI Simon Wood BA (Hons) BTP MRTPI

### **FOR BURBAGE PARISH COUNCIL:**

Mr Richard Dunnett BA (Hons) MRTPI – Director of Planning, Marrons

### **INTERESTED PERSONS:**

Mr Richard Beddow	Local Resident representing residents of Stretton Croft and Stretton Cottages
Councillor Stuart Bray	Leader of Hinckley and Bosworth Borough Council

### **INQUIRY DOCUMENTS**

INQ1	Notification Letter
INQ2	Written representations received submitted following the issue of the SoS's Direction to call-in the application
INQ3	Statement of Common Ground
INQ4	Notes of Pre Inquiry Meeting 1 October 2012

## **CORE DOCUMENTS**

- CD1 Site Location Plan
- CD2 Illustrative Master plan for proposals
- CD3 Other application plans
- CD4 West Midlands Regional Spatial Strategy, 2008  
Policies: UR2, UR3, PA1, PA10, PA11, PA14, QE6 and T2
- CD5 Warwickshire Structure Plan, 2002  
Policy TC2
- CD6 Rugby Borough Core Strategy, 2012  
Page 11 (Key Diagram); and Policies CS1, CS3, CS4, CS10, CS11, CS14,  
CS16 and CS17  
Rural Proposals Map
- CD7 Rugby Borough Local Plan, 2006 Saved Policies  
Saved Policies GP2, E6, T5, ED5, LR10, A1 and A2
- CD8 Planning for Town Centres - Practice guidance on need, impact and the  
sequential approach, 2009 Parts 5, 6 & 7
- CD9 Hinckley & Bosworth Borough Council Local Plan (2001) Saved Policy NE5  
and NE10
- CD10 Hinckley Town Centre Area Action Plan (2011)
- CD11 Planning Obligations SPD (2012)
- CD12 Extract from Local Plan Inspector's Report (1990 Rugby BC Local Plan)
- CD13 Relevant Green Belt Plan Extracts (Rugby BC Local Plan)
- CD14 East Shilton and Barwell Area Action Plan
- CD15 Secretary of State Decision Letter dated 30 January 2012 and extracts from  
Inspector's Report (Appeal Ref: 2143343 and others)

## **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPLICANT**

- APP1 Plan identifying Title details in relation to land at Stockwell Head (East of  
Baptist Walk).
- APP2 Plan identifying Title details in relation to land at Stockwell Head (West of  
Baptist Walk).
- APP3 HBBC Report to Full Council dated 13 November 2012.
- APP4 OJEU Notice (dated 4 January 2013) relating to procurement of leisure  
services contract at Argents Mead.
- APP5 HBBC Town Centre AAP Viability and Deliverability Assessment (April 2010).
- APP6 Indicative Bus Route Plan.
- APP7 Section 106 Unilateral Undertaking.
- APP8 CIL Regulation 122 Compliance Statement
- APP9 The Regional Strategy for the East Midlands (Revocation) Order 2013
- APP10 Tesco Stores Ltd v Dundee City Council [2012] UKSC 13
- APP11 Anticipated Employment Generation Calculation
- APP12 Marketing Details for Sketchley Brook
- APP13 Official Copies of Register of Title LT155479 (and Plan)
- APP14 DTZ "Recent Market Enquiries"
- APP15 Opening Submissions
- APP16 Closing Submissions

### **ADDITIONAL DOCUMENTS SUBMITTED BY RUGBY BOROUGH COUNCIL**

- RB1 List of application plans
- RB2 List of application documents
- RB3 List of suggested conditions
- RB4 Opening Submissions
- RB5 Closing Submissions

### **ADDITIONAL DOCUMENTS SUBMITTED BY HINCKLEY AND BOSWORTH BOROUGH COUNCIL**

- HB1 Inspector's report on the Hinckley and Bosworth Core Strategy
- HB2 Inspector's report on the Rugby Core Strategy
- HB3 Inspector's report on the Hinckley Town Centre Area Action Plan
- HB4 Marketing brochure for Sketchley Brook prepared by Messrs Savills
- HB5 Revised table of sites and floorspace for office development in Hinckley town centre
- HB6 Extract from Hinckley and Bosworth Local Development Scheme
- HB7 Closing Submissions

### **ADDITIONAL DOCUMENTS SUBMITTED BY BURBAGE PARISH COUNCIL**

- BPC1 Opening Submissions
- BPC2 Closing Submissions

### **INTERESTED PERSONS' DOCUMENTS**

- IP1 Statement of Mr Richard Beddow
- IP2 Statement of Councillor David Inman LLB

## ANNEX - RECOMMENDED CONDITIONS

- 1) Application for approval of the reserved matters specified in Condition 3 below, accompanied by detailed plans and full particulars, must be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The development hereby permitted must be begun not later than the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) Details of the following reserved matters shall be submitted to and approved in writing by the Local Planning Authority for each plot before any part of the development of that plot is commenced and shall be implemented as approved:
  - (a) - Layout,
  - (b) - Scale,
  - (c) - Appearance,
  - (d) - Access and
  - (e) - Landscaping
- 4) The development hereby permitted shall not be carried out except in broad accordance with the details shown on the submitted plans and documents, as detailed below:

<u>Plan/Document</u>	<u>Reference</u>	<u>Date received</u>
Location plan	KDSC-PL02	7 February 2011
Illustrative Master plan for Commercial Development	KDSC-PL01/D	4 July 2011
Site Plan, Elevation A, Elevation B and Perspectives	-	31 March 2011
Proposed Levels	KDSC-PL04	4 March 2011
Master plan with Ecological Areas Identified	KDSC-SK102	26 January 2012
Illustrative Landscape Proposals	11-19-01/C	26 January 2012
Illustrative Ecology Mitigation Proposals	11-19-02/B	26 January 2012
Existing Site Survey Plan	KDSC-PL03	7 February 2011
Junction Improvement A5 Watling St/Wolvey Road	3839.001/E	14 March 2012

### Visual Amenity

- 5) The development shall comply with the following requirements:
  - (i) the hotel shall not exceed 100 bedrooms nor 2,787 sq ms.
  - (ii) the buildings to be used for B1 use shall not exceed 3,716 sq ms.
  - (iii) the buildings to be used for D2 use shall not exceed 3,252 sq ms.
  - (iv) the A3 use shall be ancillary to the hotel,
  - (v) no building shall exceed 16m in height above the existing ground level.
- 6) No development shall commence on any building unless and until full details of the colour, finish and texture of all new materials to be used on all external surfaces, for that building, together with samples of the facing materials and roof tiles have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

- 7) No development shall commence on any building, unless and until full details of the siting, design and materials of the proposed bin and cycle stores for that building have been submitted to and approved in writing by the Local Planning Authority. The bin and cycle stores shall be provided, in accordance with the approved details before the first occupation of that building and shall be retained thereafter.
- 8) No development shall commence on any building unless and until details of all proposed walls, fences, railings and gates for that building have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
- 9) No development shall commence on any building unless and until full details of finished floor levels of that building and ground levels of all access roads, parking areas and footways associated with that building have been submitted to and approved in writing by the Local Planning Authority. Development shall not be carried out other than in accordance with the approved details.
- 10) The landscaping details required by condition 3 shall include an 8m wide planted buffer zone on land in the ownership of the Applicant situated between the northern boundary of the application site and the residential properties to the north of the site. This buffer zone shall be provided no later than the first planting season following first occupation of the development and shall be retained for the life of the development.

### **Trees, Landscaping & Ecology**

- 11) The landscaping scheme, as required by condition 3, shall be implemented no later than the first planting season following first occupation of the development. If within a period of 5 years from the date of planting, any tree/shrub/hedgerow is removed, uprooted, destroyed or dies, (or becomes in the opinion of the Local Planning Authority seriously damaged or defective), another tree/shrub/hedgerow of the same species and size originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variations.
- 12) No retained tree as shown on the Tree Survey plan within the Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011 shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS5837:2005 (Recommendations for Tree Work) and should be carried out before the commencement of any works.
- 13) No development shall commence unless and until details of the location of 2 replacement Lime (*Tilia cordata*) trees, as detailed in the Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011, have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the 2 semi-mature replacement Lime trees (18-20cm circumference and 5-6m in height) have been provided

in the approved locations. If within a period of 10 years from the date of planting, either replacement Lime tree is removed, uprooted, destroyed or dies, (or becomes in the opinion of the Local Planning Authority seriously damaged or defective), another tree of the same species and size originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variations.

- 14) The development shall not be carried out other than in accordance with the approved Tree Survey received by the Local Planning Authority on 31 March 2011, Arboricultural Report received by the Local Planning Authority on 6 June 2011 and Supplementary Arboricultural Report received by the Local Planning Authority on 2 August 2011. All tree protection measures contained within these reports shall be implemented prior to the commencement of development and in accordance with the written approval of the Local Planning Authority.
- 15) No development, including site clearance, shall commence unless and until a combined ecological and landscaping management scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all aspects of environmental enhancements and landscaping and details of species to be planted, timing of works, programme of implementation and future management with monitoring if deemed necessary by the Local Planning Authority. The agreed scheme shall be implemented in the first planting season following the first occupation of the development and shall be thereafter retained.
- 16) No development shall commence unless and until an Environment Protection Plan for Construction has been submitted to and approved in writing by the Local Planning Authority. This shall include:
  - details concerning working practices and safeguards for wildlife to be employed whilst works are taking place on site,
  - details of the protection of species and habitats to be retained on site,
  - a timetable of works,
  - details of the proposed supervision,
  - any necessary translocation, protection and mitigation measures.The agreed Environment Protection Plan for Construction shall thereafter be implemented in full.

## Highways

- 17) No development shall take place until a scheme of highways improvement in accordance with Drawing Number 3839.001 Rev. E, including the approval of necessary departures from standard, has been fully implemented and is constructed and open to traffic.
- 18) No building shall be first occupied until access, loading areas, car and cycle parking serving it have been provided in accordance with the approved plans and shall be thereafter retained.

## **Drainage**

- 19) The development shall not be carried out other than in accordance with Flood Risk Assessment reference w1101-111005 received by the Local Planning Authority on 17 October 2011.
- 20) No building hereby permitted shall be occupied until foul and surface water drainage works have been implemented for that building in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - (i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - (ii) include a timetable for its implementation; and
  - (iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 21) The development hereby permitted shall not be first occupied until a scheme for the provision of adequate water supplies and fire hydrants, necessary for fire fighting purposes at the site, has been submitted to, and approved in writing by, the Local Planning Authority. The development shall not then be occupied until the scheme has been implemented.

## **Sustainability**

- 22) Prior to the first occupation of any building, details of water efficiency measures to be incorporated into the design of that building to meet the equivalent of the BREEAM (Building Research Establishment Environmental Assessment Method) Very Good water conservation standard shall be submitted to and approved in writing by the Local Planning Authority. These approved measures shall then be incorporated into the design of each building prior to their first occupation and then retained in working order in perpetuity.
- 23) Details shall be provided, concurrently with the reserved matters required by condition 3, of technology to be incorporated into the design of the buildings to achieve a 10% carbon emissions reduction efficiency, this shall include the submission of an Energy Performance Certificate. No development shall commence until these details have been approved in writing by the Local Planning Authority. The approved efficiency measures shall be implemented in accordance with this approval and shall be retained in working order in perpetuity.

## Environmental Protection

- 24) No development shall take place on any building, until a Construction Method Statement for that building has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (v) wheel cleaning facilities;
  - (vi) measures to control the emission of dust and dirt during construction;
  - (vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - (viii) measures to control noise during construction;
  - (ix) a signage strategy for construction traffic.
- 25) No external construction works or related deliveries shall take place outside 0800 to 1800 hours on Mondays to Fridays or 0800 to 1300 hours on Saturdays not at any time on Sundays or Bank and National Holidays except in an emergency.
- 26) No artificial lighting shall be installed unless full and precise details of the lighting scheme have been submitted to and approved in writing by the Local Planning Authority. This shall include:
- (i) A statement setting out why a lighting scheme is required, and the frequency and length of use in terms of hours of illumination throughout the year.
  - (ii) A site survey showing the area to be lit relative to the surrounding area, the existing landscape features and proposed landscaping features to mitigate the impacts of the proposed lighting.
  - (iii) Details of the make and catalogue number of any luminaires/floodlights.
  - (iv) Size, type and number of lamps fitted within any luminaire or floodlight.
  - (v) The mounting height of the luminaires/floodlights specified.
  - (vi) The location and orientation of the luminaires/floodlights.
  - (vii) A technical report prepared by either a qualified lighting engineer or the lighting company setting out the type of lights, performance, height and spacing of lighting columns. The light levels to be achieved over the intended area, at the site boundary and for 25 metres outside it.
- The lighting shall be constructed and installed in full accordance with the approved details and shall thereafter be maintained in full accordance with the approved details.
- 27) No development shall commence unless an air quality assessment, by a suitably qualified consultant, has been submitted to and approved in writing

by the Local Planning Authority, in consultation with Hinckley and Bosworth Borough Council. This assessment shall include an assessment of traffic flow and background air quality and an assessment of the impact of the proposed highway alterations, changes to traffic flow and B1 uses of the site on air quality and any mitigation required. This should assess the impact on sensitive receptors within Rugby Borough Council and Hinckley and Bosworth Borough Council's administrative areas. Any mitigation identified shall be carried out before the occupation of the development and be thereafter retained.

- 28) No development shall commence until a noise mitigation scheme designed to minimise the impact from traffic on Wolvey Road South such that the noise levels within the dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 29) Development shall not commence on any phase approved under condition 3 of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.



## Department for Communities and Local Government

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

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

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

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

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

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

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

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

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

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

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