



Department for  
Communities and  
Local Government

Cathy Francis  
Jones Lang LaSalle  
22 Hanover Square  
London  
W1S 1JA

Our Ref: APP/N1160/A/12/2169472/NWF  
Your Ref: NWQ Appeal

5 August 2013

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY WHARFSIDE REGENERATION (DEVON) LTD.  
AT NORTH WEST QUADRANT, DERRIFORD ROAD, PLYMOUTH, PL6 8DH  
APPLICATION REF 09/01899/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry which sat for 15 days between 18 September and 16 October into your client's appeal against a decision of Plymouth City Council (the Council) to refuse planning permission for outline planning application for a mixed use development including residential (C3), offices (B1), hotel (C1), retail (A1), financial services (A2), restaurants (A3), bars (A4), takeaways (A5), residential institutions (C2), non residential institutions including healthcare (D1), car parking, landscaping, public open space, highways access, transport infrastructure and cycle provision at North West Quadrant, Derriford Road, Plymouth, PL6 8DH in accordance with application number 09/01899/OUT, dated 16 December 2009.
2. On 14 March 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves: proposals for residential development of over 150 units, on sites of over 5 hectares (ha) which would significantly impact on the Government's objectives to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities, and; proposals for any main town centre use or uses where that use or uses comprise(s) over 9,000m<sup>2</sup> gross floorspace on a site in an edge-of-centre or out-of-centre location that is not in accordance with an up-to-date development plan document.

Department for Communities and Local Government  
Richard Watson  
Planning Casework  
1/H1, Eland House  
Bressenden Place  
London, SW1E 5DU

Tel: 0303 4440000  
Email: PCC@communities.gsi.gov.uk

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

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

### **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, the supplementary information submitted as an Addendum to the ES (IR1.10), and the Inspector's comments at IR1.9-1.11 and IR15.2. The Secretary of State is satisfied that the Environmental Statement, together with the further information submitted complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. The Secretary of State has had regard to the new clause inserted by the appellant at a late stage in the s106 planning obligation by agreement and notes that the Council is agreeable to the proposed clause (IR1.5). He also notes that the amendments to the two obligations identified at IR1.6 have been agreed to by the LPA, and he agrees with the Inspector that there is no reason to doubt that the alterations do no more than reflect the current ownership arrangements (IR1.6).
6. At the inquiry applications for costs were submitted by your client against the Council and by the Council against your client. These applications are the subject of separate decision letters.

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

7. Following the close of the Inquiry, the Secretary of State received the following correspondence concerning the Derriford and Seaton Area Action Plan (AAP): a letter dated 4 May 2013 from the AAP plan Inspector, Andrew Seaman, to the Council setting out his Preliminary Main Concerns (PMCs); a letter dated 8 May 2013 from the Council to the AAP plan Inspector, Andrew Seaman; a letter from your firm dated 14 May 2013 on behalf of your client, Wharfside Regeneration (Devon) Ltd, to the Secretary of State; and a letter dated 14 May 2013 from Montagu Evans on behalf of Sutton Harbour Holdings Ltd, to the Secretary of State. Furthermore, on 20 May 2013, the Regional Strategy for the South West (Revocation) Order 2013 came into force which revoked the Regional Strategy for the South West (the RS).
8. The Secretary of State wrote to interested parties on 20 May 2013 seeking their views on the implications of the correspondence identified at paragraph 7, and of the revocation of the RS, to the case they presented at the inquiry. On 11 July, the Secretary of State circulated the responses, inviting further comments.

Responses to the Secretary of State's letters on these matters are listed at Annex A i) and ii) below.

9. The Secretary of State has carefully considered all of these representations in his determination of this appeal. His conclusion on the weight he attaches to the draft AAP are set out at paragraph 13 below. In respect of the revocation of the RS, in addition to parties' representations on the matter, the Secretary of State has taken into account that the Inspector's report refers to only one RS policy, namely SS17, which the Inspector considers is out of date and should be given little weight (IR15.29). Overall he considers that the revocation has little bearing on his decision. For the avoidance of doubt the Secretary of State has given no weight in this decision to the former RS policy SS17.
10. Copies of all representations listed in Annex A may be obtained by written request to the address at the foot of the first page of this letter.

### **Policy considerations**

11. In deciding the 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.
12. In this case, the development plan comprises the 2007 Plymouth Core Strategy (CS). The Secretary of State considers that the development plan policies most relevant to the appeal are those identified by the Inspector at IR3.5-3.15.
13. In respect of the draft AAP, having taken into account the AAP Inspector's PMCs together with parties' comments on the matter in the representations listed in Annex A, the Secretary of State considers that it is a material consideration but attributes it limited weight.
14. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (the Framework); the Ministerial Statement by the Rt Hon Greg Clark – Planning for Growth (23 March 2011); the Ministerial Statement by the Rt Hon Eric Pickles MP – Housing and Growth (6 September 2012); the Community Infrastructure Levy (CIL) Regulations 2010 and 2011; Circular 11/95: The Use of Conditions in Planning Permissions; Circular 02/2007: Planning and the Strategic Road Network; and The Planning System: General Principles.

### **Main issues**

15. The Secretary of State considers that the main considerations in this appeal are those identified at IR15.1.

### **Development plan**

16. In accordance with the Inspector's approach (IR15.3-15.4) the Secretary of State reaches his conclusions on the first main consideration, namely whether the proposals would accord with the development plan at paragraph 29 below after first considering the matters set out at paragraphs 17 - 28.

## Retail

17. The Secretary of State agrees with the Inspector's reasoning at IR15.5-15.21 and agrees with his conclusion at IR15.22 that the proposals would be contrary to the CS retail policy and that considerable weight should be given to this conflict. He also agrees that unless it can be shown that it would comprise phase I of a district centre, the retail element has no support from the adopted CS but would fail to accord with SO7 or with policies CS07 and AV9 and that it would also conflict with the requirements in paragraphs 24 and 27 of the Framework.

## Prematurity

18. The Secretary of State has carefully considered the Inspector's assessment of prematurity at IR15.23-15.34 together with the AAP plan Inspector's PMCs together with parties' comments on the matter in the representations listed in Annex A. Overall, he agrees with the Inspector that prematurity is a factor to be considered in the planning balance (IR15.34), although he gives the matter limited weight. In coming to this view he gives weight to the plan Inspector's PMCs which states in relation to AAP policy DS16: A new District Centre for Derriford that 'it is difficult to conclude that Proposal DS16, or indeed any specific alternative, is based on sufficiently up to date information so as to be robust'. He furthermore has taken into account the AAP plan Inspector's conclusion in his PMCs that he 'cannot currently envisage how the submitted AAP can be modified to secure the soundness in the absence of key pieces of information, particularly in relation to questions, of deliverability, justification and the future of the airport site'. However, balanced against this he has taken into account that the Council indicates in its letter of 8 May to the AAP plan Inspector that it does not wish to withdraw the plan and also the fact that it remains the case that the CS supports a new district centre to be established through an AAP.

## Traffic on the strategic road network (SRN)

19. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of traffic on the SRN at IR15.35-15.37. He notes that the Highways Agency confirmed that, subject to the satisfactory completion of the s106 Agreement and conditions to secure robust travel plans, any impact on congestion on the SRN as a result of the proposals would be mitigated (IR15.35). The Secretary of State also agrees with the Inspector (IR15.37) that subject to the total contributions in the s106 obligations, and to conditions, the adverse effects on junctions along the local highway network could be largely mitigated such that the overall impact from the completed scheme would be less than severe. Regarding the probability that the foodstore would be occupied, and traffic volumes increase, without all the contributions to the SRN, resulting in severe cumulative impacts, he agrees (IR15.37) that the probability of this happening turns on the deliverability of the scheme as a whole and so, to some extent, should follow his conclusions on viability and deliverability set out at paragraph 27 below.

### Highway safety

20. The Secretary of State agrees with the Inspector's reasoning at IR15.38-15.41 and with his conclusion that cumulatively, with the overall package of improvements including the contribution to the SRN and subject to concerns over the deliverability of the scheme as a whole, the likely deterioration in traffic conditions after mitigation would be acceptable and would not conflict with policies CS28 or CS34 (IR15.41).

### Car parking/ sustainable transport

21. The Secretary of State agrees with the Inspector's assessment of car parking/ sustainable transport (IR15.42). In respect of the Council's concern that there would be too much car parking which would also act as a disincentive to modal shift, he agrees that, in the event that it was likely that the proposed shift could be achieved, little weight should be given this concern. He agrees that it is a matter that is related to his conclusion below on the modal shift arising from the travel plans and otherwise.

### Travel plans

22. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of travel plans at IR15.43-15.44. He agrees that the ambitious targets and the funding limitations in the s106 unilateral undertaking reduce the probability that the modal shifts will be met (IR15.43). The Secretary of State also agrees that it follows that congestion, extending bus journey times, and the parking provisions, would act as disincentives to modal shift, and have an impact on the use of sustainable transport, contrary to policy CS28 and the Framework, and that if the travel plans fail to meet the target modal shifts there would also be a knock on effect on the SRN (IR15.44).

### Affordable housing

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on affordable housing at IR15.45-15.48. He agrees that the probable lack of affordable housing is likely to be as much a result of an inappropriate design brief as of market conditions (IR15.46) and furthermore that it would be wrong to attach the same weight to the benefits of housing in a scheme that is unlikely to provide much, if any, affordable housing when another scheme on the same site, which accorded with the CS and the DSAAP allocation, might we do so (IR15.47). The Inspector also considers that small flats would be overrepresented resulting in a poor mix of housing and that this counts against the scheme (IR15.48). Notwithstanding the limited weight he gives to the draft AAP, the Secretary of State agrees.

### Design and layout

24. The Secretary of State agrees with the Inspector's analysis at IR15.49-15.54 and agrees with his conclusion (IR15.55) that considered together, and given the doubts over the deliverability of much of the scheme, these design concerns should be given some weight. The Secretary of State agrees with the Inspector

that the scheme would not fully accord with CS SO4, policies CS02 and CS34, and with chapter 7 of the Framework which places great importance on the design of the built environment (IR15.55).

#### Community impacts

25. The Secretary of State notes that most of the s106 contributions are agreed and he accepts the Inspector's conclusion that they accord with policy CS23 (IR15.56).

#### Potential benefits

26. The Secretary of State agrees with the Inspector's assessment of potential benefits at IR15.57 – 15.58. He agrees that, if fully implemented the scheme would result in significant economic development and growth (IR15.57), but that the weight to be given to the benefits of growth as a material consideration should be assessed by reference to the likelihood that the scheme would be delivered or substantially delivered (IR15.58). Like the Inspector (IR15.59) the Secretary of State has considered the likely deliverability of the scheme and its phases, and the extent to which this depends on viability, before determining the weight to be given to the potential benefits.

#### Viability/ Deliverability

27. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of viability and deliverability at IR15.60 - 15.68. He agrees that while the first multi-storey car park might well proceed, the chances of all of phase one of a new district centre on the North West Quadrant site as a result of allowing this appeal are slim (IR15.68). The Secretary of State further agrees that as permission would include a significantly sized supermarket, built or otherwise, it is unlikely that investment could be found for a district centre anywhere else in Derriford (IR15.68). He agrees with the Inspector's conclusion that the potential benefits for economic development and growth should be given limited weight in this appeal (IR15.68).

#### Restrictive covenant

28. For the reasons given by the Inspector, the Secretary of State agrees with him that it is not entirely correct to say that the restrictive covenant should pay no part whatsoever in the decision whether or not to grant permission but it should be afforded little weight (IR15.69).

#### Conclusions on the development plan

29. Setting aside the Inspectors comments about the AAP at IR15.72, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR 15.70-15.77. He agrees that, taken as a whole, the scheme would not accord with the development plan (IR15.77). In respect of the AAP, while the Secretary of State agrees with the Inspector's assessment of compliance with draft AAP policy at IR15.72, he gives the draft AAP limited weight.

## Conditions

30. The Secretary of State has considered the proposed conditions at Appendix C of the IR, the Inspector's comments at IR13.1-13.11, and national policy as set out in Circular 11/95 and the Framework. He is satisfied the proposed conditions are necessary, and meet the other tests set out in Circular 11/95 and Framework paragraph 206. However, the Secretary of State does not consider that they overcome his reasons for dismissing the appeal.

## Obligation

31. The Secretary of State has considered the two planning obligations submitted, one by agreement and one by unilateral undertaking, the Inspector's comments at IR14.1-14.8, national policy as set out in the Framework and the CIL regulations. In respect to the affordable housing provisions under the unilateral undertaking, he agrees with the Inspector's assessment at IR14.6-14.7, and agrees with him that little weight should be given to this provision (IR14.7). Overall, the Secretary of State is satisfied that the planning obligations comply with the CIL regulations and meet the tests set out at Framework paragraph 204. However, he does not consider that they overcome his reasons for dismissing the appeal.

## Overall Conclusions

32. The Secretary of State agrees with the Inspector's overall conclusions at IR15.78 – 15.79 and IR15.81 - 15.87. He agrees that the mixed use proposals include several uses which accord with the CS and DSAAP and these weigh in its favour (IR15.78). However, he also agrees with the Inspector's conclusions that the scheme would not deliver the CS requirement for a new district centre, that this weighs heavily against the proposals, and that it would be contrary to CS policies for Derriford and fail the sequential test in the CS and the Framework (IR15.79). In respect of the Inspector's conclusion on prematurity at IR15.80, for the reasons set out at paragraph 18 above, the Secretary of State attaches limited weight to the matter of prematurity as a factor weighing against the proposals. He agrees with the Inspector that the proposals would also be likely to deter investment in another site (IR15.81).

33. In respect of the SRN the Secretary of State agrees with the Inspector's conclusion that given the probability that only the profitable elements would be built, it follows that the SRN contributions that would be paid might not be enough to carry out the junction improvements at Derriford roundabout and so there could be significant congestion for many years (IR15.82). He further agrees that the scheme would not amount to sustainable development and would conflict with the relevant CS policies and the Framework (IR15.82).

34. The Secretary of State agrees with the Inspector's conclusion that little if any affordable housing would materialise and that the mix of housing provision would be poor (IR15.83). In respect of design, he agrees that the amount of underground parking is a major design flaw in terms of viability and also that while concerns over inactive street frontages, overshadowing buildings might be acceptable in the context of the a thriving High Street, given the doubts over the

deliverability of much of the scheme, these concerns should be given some weight (IR15.85).

35. The Secretary of State agrees with the Inspector that the proposals are contrary to the CS (IR15.87). He further agrees that while the potential benefits of the scheme could theoretically boost economic growth, poor prospects for its delivery mean that they should be given little weight as material considerations, and furthermore that by potentially stifling investment in a new district centre elsewhere the scheme might well suppress economic growth (IR15.87).
36. Overall the Secretary of State considers that the proposal conflicts with the development plan and that there are no material considerations of sufficient weight which would justify allowing the appeal.

### **Formal Decision**

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for outline planning application for a mixed use development including residential (C3), offices (B1), hotel (C1), retail (A1), financial services (A2), restaurants (A3), bars (A4), takeaways (A5), residential institutions (C2), non residential institutions including healthcare (D1), car parking, landscaping, public open space, highways access, transport infrastructure and cycle provision at North West Quadrant, Derriford Road, Plymouth, PL6 8DH in accordance with application number 09/01899/OUT, dated 16 December 2009.

### **Right to challenge the decision**

38. 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.
39. A copy of this letter has been sent to Plymouth City Council (as local planning authority), the Highways Agency, Plymouth City Council (as landowner), Montague Evens (on behalf of Sutton Harbour Holdings plc) and Quod (on behalf of Dawnan Ltd and South West Water). A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Richard Watson**

Authorised by Secretary of State to sign in that behalf

## Annex A

### i) Correspondence received following the Secretary of State's letter of 20 May 2013

<b>Name / Organisation</b>	<b>Date</b>
Jones Lang LaSalle (on behalf of the Appellant, Wharfeside Regeneration (Devon) Ltd)	11 June 2013
Deloitte (on behalf of Drake Circus Ltd Partnership)	14 June 2013
Plymouth City Council (as land owner)	27 June 2013
Plymouth City Council (as local planning authority)	28 June 2013
Quod (on behalf of Dawnan Ltd, Stuart Partners Ltd and South West Water Ltd)	28 June 2013
Montagu Evans (on behalf of Sutton Harbour Holdings Ltd)	28 June 2013

### ii) Correspondence received following the Secretary of State's letter of 11 July 2013

<b>Name / Organisation</b>	<b>Date</b>
Jones Lang LaSalle (on behalf of the Appellant, Wharfeside Regeneration (Devon) Ltd)	15 July 2013
Plymouth City Council (as local planning authority)	18 July 2013
Montagu Evans (on behalf of Sutton Harbour Holdings Ltd)	18 July 2013



---

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

by David Nicholson RIBA IHBC

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

Date: 25 February 2013

---

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLYMOUTH CITY COUNCIL**

**APPEAL MADE BY**

**WHARFSIDE REGENERATION (DEVON) LTD.**

Inquiry held on: 18-21 and 24-28 September; 1-2, 9-11 and 16 October 2012  
Accompanied site visit held on: 11 October 2012

North West Quadrant, Derriford Road, Plymouth PL6 8DH

File Ref: APP/N1160/A/12/2169472

---

<b>CONTENTS</b>	<b>Page No.</b>
<b>1. Procedural Matters</b>	<b>4</b>
<b>2. The Sites and Surroundings</b>	<b>6</b>
<b>3. Planning Policy</b>	<b>10</b>
<b>4. Planning History</b>	<b>13</b>
<b>5. The Appeals Proposals</b>	<b>14</b>
<b>6. The Case for Plymouth City Council as Local Planning Authority (LPA)</b>	<b>17</b>
<b>7. The Case for the Highways Agency (HA)</b>	<b>24</b>
<b>8. The Case for Wharfside Regeneration (Devon) Ltd. (the appellant)</b>	<b>24</b>
<b>9. The Case for Plymouth City Council as landowner (PCC)</b>	<b>33</b>
<b>10. The Case for Sutton Harbour Holdings Limited (SHH)</b>	<b>35</b>
<b>11. The Cases for Interested Parties</b>	<b>36</b>
<b>12. Written Representations</b>	<b>36</b>
<b>13. Conditions</b>	<b>37</b>
<b>14. Obligations</b>	<b>39</b>
<b>15. Inspector's Conclusions</b>	<b>42</b>
<b>16. Inspector's Recommendations</b>	<b>58</b>
<b>Appendices</b>	
<b>A. Appearances</b>	<b>59</b>
<b>B. Documents</b>	<b>60</b>
<b>C. Schedule of suggested conditions</b>	<b>70</b>

## GLOSSARY

AAP	Area Action Plan
BREEAM	Building Research Establishment Environmental Assessment Method
CD	Core document
CIL	Community Infrastructure Levy
DAS	Design and Access Statement
DC	District centre
DP	Development plan
DSAAP	Derriford and Seaton Area Action Plan
<i>Framework</i>	National Planning Policy Framework
EIA	Environmental Impact Assessment
EiP	Examination in Public
EMS	European Marine Site
EPO	Environmental Protection Officer
ES	Environmental Statement
FAS	Former Airport Site
FVLR	Forder Valley link road
GEA	gross external area
HA	Highways Agency
HQPT	high quality passenger transport
IC	examination in chief
Inq Doc	Inquiry Document
IQ	Inspector's question
LHT	lower hill town
LPA	Plymouth City Council as Local Planning Authority
MarJons	College of St Mark and St John
MSCP	multi storey car park
NAMA	National Asset Management Agency
NWQ	North West Quadrant
pcu	passenger car unit
PCC	Plymouth City Council
PCL	Plymouth City Council as landowner
PIMTP	Plymouth International Medical and Technology Park
PS:GP	The Planning System: General Principles
ReX	re-examination
RfR	Reason for Refusal
RPG10	Regional Planning Guidance 10, for the South West, 2001
RTP study	Roger Tym & Partners Retail and Centres Study, May 2012
s106	Section 106 (of the Town and Country Planning Act 1990)
SB	Seaton Barracks
SHH	Sutton Harbour Holdings plc
SoCG	Statement of Common Ground
SoS	Secretary of State
SWW	Dawnan Limited, Stuart Partners Limited and South West Water Limited
UHT	upper hill town
UU	Unilateral Undertaking
WRDL	Wharfside Regeneration (Devon) Ltd.
XX	cross-examination

**File Ref: APP/N1160/A/12/2169472**

**North West Quadrant, Derriford Road, Plymouth PL6 8DH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Wharfside Regeneration (Devon) Ltd. against the decision of Plymouth City Council.
- The application Ref. 09/01899/OUT, dated 16 December 2009, was refused by notice dated 29 July 2011.
- The development proposed is outline planning application for a mixed use development including residential (C3), offices (B1), hotel (C1), retail (A1), financial services (A2), restaurants (A3), bars (A4), takeaways (A5), residential institutions (C2), non residential institutions including healthcare (D1), car parking, landscaping, public open space, highways access, transport infrastructure and cycle provision.

**Summary of Recommendation: That the appeal should be dismissed**

---

**1. Procedural Matters**

- 1.1 At the Inquiry applications for costs<sup>1</sup> were made by Plymouth City Council against Wharfside Regeneration (Devon) Ltd., and by Wharfside Regeneration (Devon) Ltd. against Plymouth City Council. These applications are the subject of separate combined Reports.
- 1.2 The Inquiry sat for 15 days between 18 September and 16 October 2012. I conducted an accompanied site visit on 12 October 2012 and carried out unaccompanied site visits before and during the Inquiry on 17 and 28 September and 12 and 15 October 2012. Along with the Plymouth City Council as local planning authority (LPA) and the appellant (WRDL), the Highways Agency (HA), Plymouth City Council as landowner (PCL) and Sutton Harbour Holdings plc (SHH) were given 'Rule 6' status. The Inquiry was closed in writing on 4 February 2013.
- 1.3 The application to which the appeal relates was made in outline form except for access, layout and scale. The other matters (appearance and landscaping) were reserved. The areas of non-residential floorspace and number of parking spaces are set out on the application form but, following revisions and clarifications, in the event the appeal is allowed these should be controlled by conditions. A Design and Access Statement (DAS) was also submitted identifying the amount and scale of development proposed.
- 1.4 Two planning obligations were submitted under Section 106 (of the Town and Country Planning Act 1990 (s106)<sup>2</sup>. One is by agreement; the other is a unilateral undertaking (UU). Both are in two parts having been signed separately by those with an interest in the land<sup>3</sup>. The form and terms of their content were discussed during the course of the Inquiry.
- 1.5 The appellant inserted a new clause at a late stage. Clause 7.22A states:  
*Notwithstanding the terms of clause 7.11 of this Agreement or the terms of*

---

<sup>1</sup> Inq Docs 66a-66d

<sup>2</sup> Inquiry Document (Inq Doc) 73a-73d (with drafts at Inq Doc 1a-1f)

<sup>3</sup> National Asset Loan Management Ltd (NAMA) and the Plymouth Hospitals National Health Service (NHS) Trust

*clause 5.10 of the Unilateral Undertaking, the Council agrees that it will not seek to enforce this Agreement or the Unilateral Undertaking against the Hospital or any successors in title to the Hospital as a consequence of any interest the Hospital may have or obtain in the multi storey car park (MSCP) (being the TF2 building forming Phase 1a of the Development) whether such interest is obtained before or after the date hereof. This would be for the benefit of the NHS Trust which has an interest in part of the Site but who will not be a developer of the scheme as such. PCC confirmed that it is agreeable to the proposed clause 7.22A by email dated 26 November 2012<sup>4</sup>.*

- 1.6 A final rider was added to all copies of the documents omitting clause 2.5 of the Agreement, and clause 2.6 of the unilateral Obligation, and replacing it with 3 new clauses. The rider replaces the reference to a mortgage, in 2006, with that to a debenture on the same date and a subsequent transfer and further debenture. The LPA has agreed the amendments, executed the altered Agreement and forwarded the completed obligations without raising any further query. I therefore find no reason to doubt that the alterations do no more than reflect the current ownership arrangements.
- 1.7 The LPA gave 10 reasons for refusing planning permission<sup>5</sup>. At my request they were rephrased following the publication of the *Framework*<sup>6</sup>. Reason for Refusal (RfR) 4 concerns potential impact on the A38(T) and the Strategic Road Network (SRN). In its opening statement<sup>7</sup> the HA advised that, subject to contributions through a s106 Agreement towards the cost of the delivery of Strategic Transport Infrastructure Improvements, and to a condition requiring a robust travel plan, that the agreed impact on the SRN could be mitigated. It is common ground<sup>8</sup> that the LPA's objection with regard to trees within RfR10 could be overcome by conditions.
- 1.8 The appeal was recovered for a decision by the Secretary of State himself<sup>9</sup>. The reason for the direction was that the appeal involves: proposals for residential development of over 150 units, on sites of over 5 hectares (ha) which would significantly impact on the Government's objectives to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities, and; proposals for any main town centre use or uses where that use or uses comprise(s) over 9,000m<sup>2</sup> gross floorspace on a site in an edge-of-centre or out-of-centre location that is not in accordance with an up-to-date development plan document.

### *Environmental Statements*

- 1.9 The appeal proposal is development which requires an Environmental Impact Assessment (EIA). An Environmental Statement (ES) was submitted with the application in accordance with the Town and Country Planning (EIA) (England and Wales) Regulations 1999 (The Regulations). Correspondence confirms the scoping and publicity. The ES includes a non-technical summary. Under The

---

<sup>4</sup> On main file

<sup>5</sup> CD F19

<sup>6</sup> See main file

<sup>7</sup> Inq Doc 7

<sup>8</sup> CD H3 p25 para 7.2

<sup>9</sup> Recovery letters, dated 14 March 2012, on main file

Regulations, planning permission cannot be granted for EIA development unless the environmental information has been taken into account. This includes not only the ES but also the written and oral evidence to the Inquiry.

- 1.10 Further to concerns expressed by the LPA, supplementary information was submitted as an Addendum to the ES, and consulted upon following the Inquiry sitting days. This includes information on phasing (including population), ecology and transportation<sup>10</sup>. A single response was received from PCC's Environmental Protection Officer (EPO) concerning the statement that neither the Derriford nor Tavistock road is considered sensitive in environmental terms. The EPO's concern is that there should be contributions towards air quality monitoring. The s106 Agreement (see below) contains a provision to fund precisely such monitoring. Since this would provide the detailed information sought I consider that additional work at this stage would be excessive. I therefore conclude that, taken with the Addendum, the ES is fit for purpose. I have taken all the environmental information into account in this report and my recommendation to the Secretary of State.
- 1.11 In opening, I announced that I did not expect to hear evidence of the suitability of other sites as a district centre (DC) as there were no such proposals before me. There was no dissent to this approach. During the course of the Inquiry, the appellant argued that the North West Quadrant (NWQ) proposals could not prejudice other sites as these were fundamentally flawed. I ruled that on this narrow point I would only hear evidence necessary to assess whether or not the other sites had a sufficient case as a DC for them to be considered at an Examination in Public (EiP) but not to look at the evidence of the comparative merits of alternative sites as, if appropriate, this is a matter for the EiP.

## **2. The Sites and Surroundings**

- 2.1 The appeal site, known as the North West Quadrant (NWQ), lies around 5km north east of Plymouth City centre. Much of its 6.6ha was previously occupied by medical residences, of which one three-storey block remains, but it is now mostly hard standing for car parking. There is a single storey building at the north end currently used as a nursery. The site slopes from north to south with an average gradient of around 1 in 14. Mature trees on the eastern edge were once part of linear woodland but none has a Tree Preservation Order. A single Plymouth Pear in the south east corner is afforded protection under the Wildlife and Countryside Act 1981. A vegetated Devon bank runs round the northern boundary along Derriford Road which was thought to be about 10-20 years old<sup>11</sup>. The site is described in more detail in the general planning Statement of Common Ground (SoCG)<sup>12</sup> and in the LPA's planning officer's report to committee<sup>13</sup>.

---

<sup>10</sup> Inq Doc 72

<sup>11</sup> Grant in evidence in chief (IC)

<sup>12</sup> CD H3 section 2

<sup>13</sup> CD F16

- 2.2 PCC holds a restrictive covenant over the NWQ site, imposed in 2006, preventing the building of more than 6,000ft<sup>2</sup> net internal area of Use Classes A1-A5 for 80 years<sup>14</sup>.

#### *Adjacent sites*

- 2.3 The area around the NWQ was developed after the Second World War with employment sites including Derriford Hospital, immediately to the south east, Derriford Business Park, the Plymouth International Medical and Technology Park (PIMTP) and the College of St Mark and St John (MarJons). Due west of the appeal site, and the Derriford roundabout, is the Crownhill Retail Park. The Former Airport Site (FAS) lies further north. The relatively new Future Inns hotel abuts the PIMTP. Further out from the City centre there are low density residential streets.
- 2.4 The landowners of three nearby sites made representations to the Inquiry. Plymouth City Council as landowner (PCL) acquired the former parade ground at Seaton Barracks (SB), within part of the PIMTP, from the South West Regional Development Agency (SWRDA) when it was disbanded. Sutton Harbour Holdings plc (SHH), which owns a leasehold interest in the FAS, also attended. Dawnan Ltd. and South West Water (SWW), with interests near Crownhill to the west of the A386, made written representations<sup>15</sup> and attended the accompanied site visit.
- 2.5 The SB site is currently vacant. As part of promoting the overall PIMTP, SWRDA installed infrastructure, including an access road adjacent to the former parade ground. The FAS is also vacant. The decision to close the airport was deeply unpopular locally and PCC has been under pressure to find ways to reopen it<sup>16</sup>. SWW is an operational treatment plant but there are plans to relocate the works. There is no dispute that the SWW site could not be redeveloped before the end of 2016. The appellant argued that the suitability of these sites could be considered at the Inquiry; the other parties claimed that this was a matter for the EIP.

#### *Retail background*

- 2.6 A separate retail SoCG was produced for the Inquiry<sup>17</sup>. This details relevant policy and outlines the evidence base, existing retail provision in Plymouth, committed proposals and allocations, assumptions and methodology. It identifies the City centre, including the 2006 Drakes Circus development, and seven district centres. The latter vary considerably from older, linear centres, with small to moderate sized supermarkets, to three much larger centres based on car-orientated food superstores<sup>18</sup>. There are also 51 defined local centres, a number of retail parks and two out-of-centre foodstores. The nearest existing shops to the appeal site are the retail developments at the Crownhill Retail Park<sup>19</sup>, a local centre to the west of the A386, which includes a

---

<sup>14</sup> James proof of evidence (PoE) paragraph (para) 4.3

<sup>15</sup> See red folder on main file

<sup>16</sup> See AA's closing paras 123-126

<sup>17</sup> CD H4, in response to the Inspector's request at the Pre-inquiry Meeting

<sup>18</sup> The 7 district centres are listed and located in App1 to the Retail Impact Assessment August 2012 at Robin PoE App1

<sup>19</sup> Downgraded from a district centre to a local centre in the CS

large bulky goods warehouse<sup>20</sup> on a long lease which will not become available until beyond 2026<sup>21</sup>.

- 2.7 The most recent retail studies identify a relatively mobile pattern of expenditure across the City as a whole. In particular, the January 2011 study by Cushman & Wakefield LLP identifies over-trading (store performance compared with company benchmark) for convenience shopping (mostly food) across the nearest zones of the City<sup>22</sup>. The most recent Retail and Centres Study from May 2012, by Roger Tym & Partners (RTP study), reveals that Plymouth's ranking has fallen compared with Exeter and that vacancy rates are 4% higher than the UK average<sup>23</sup>.
- 2.8 The RTP study considers the new stores and commitments<sup>24</sup>, as well as the downturn in the economy, and identifies a much smaller growth in comparison (non-food) goods than previously<sup>25</sup>. It still identifies that a new district centre (DC) is needed at Derriford but also that too much comparison floorspace could compromise the City centre and that further testing should be carried out between phases 1 and 2<sup>26</sup>. The recommendations in the RTP study include maintaining the focus for new retail development in the City centre and limiting phase one of a new DC at Derriford to around 8,500m<sup>2</sup> of combined floorspace<sup>27</sup>.
- 2.9 Committed retail proposals include planning permissions for Transit Way and Plymstock Quarry<sup>28</sup>. The RTP study estimates that the Outland Road Morrisons store is over-trading at twice the Company average<sup>29</sup>. These figures are based on data from 2009 and so do not make an allowance for the committed developments<sup>30</sup>. The latter are taken into account in the RTP summary which suggests a fall in the net requirement to 2016<sup>31</sup> but also includes sensitivity testing.
- 2.10 The RTP study also anticipates increasing expenditure on special forms of trading (SFT) – essentially internet/online purchases – and this is borne out by the most recent Experian figures (even allowing for an initial omission, the most recent figures from Experian<sup>32</sup> indicate a growing trend towards SFT and so reduced expenditure available at shops). Predictions for the growth in SFT are uncertain<sup>33</sup>. For convenience SFT, the figures are adjusted differently by Experian and Pitney Bowes<sup>34</sup>. This is because currently, in Plymouth at least,

---

<sup>20</sup> B&Q: approx. 11,000m<sup>2</sup>, see CD B28, para 5.19

<sup>21</sup> Robin PoE, uncontested, para 1.5

<sup>22</sup> CD C04 para 7.12

<sup>23</sup> RTP study CD C05 para 3.10 and 3.19

<sup>24</sup> RTP study Table 5.1, p45

<sup>25</sup> Ibid para 5.22 and 5.26

<sup>26</sup> Ibid p67

<sup>27</sup> Ibid para 6.75

<sup>28</sup> Ibid Table 5.1

<sup>29</sup> Ibid Table 5.5

<sup>30</sup> See Robin PoE para 5.12

<sup>31</sup> RTP study para 5.43

<sup>32</sup> Inq Docs 27 and 34. See also Inq Doc 51

<sup>33</sup> Inq Doc 51, p5 para 1

<sup>34</sup> Ibid p4, Table 3

an internet purchase is actually picked from the operator's traditional store and then delivered<sup>35</sup>.

- 2.11 On my visits I looked at Plymouth's existing district centres, at Estover, Plympton Ridgeway, Mutley Plain, St. Budeaux, Transit Way and Roborough<sup>36</sup>, and at out-of-centre foodstores at Morrisons on Outland Road and Sainsbury's at Marsh Mills<sup>37</sup>. I visited the foodstores at relatively busy times on weekday evenings or on Friday afternoons.
- 2.12 I saw that while the Outland Road Morrisons was certainly busy on Friday afternoon it was not overcrowded. Indeed, there were parking spaces and unopened checkouts, and a lack of queues at either the tills or the delicatessen counter. The shelves were well stocked and none of the fresh fruit or vegetables had sold out. What I did see was considerable congestion in the car park and queues onto the adjoining street. However, this appeared to be as a result of a poor parking layout, with a small, separated section near the entrance attracting too many drivers, and from a combined exit and entry point close to a very busy junction with the main road.
- 2.13 None of the other foodstores I visited were as busy as the Outland Road Morrisons. All had some free parking spaces, unopened checkouts and lacked queues for the delicatessen counters or self-service checkouts, and had generally well stocked shelves.

### *Highways*

- 2.14 The A386 is the major route through the north of Plymouth towards the City Centre. It crosses the A38(T) which is part of the Strategic Road Network (SRN). NWQ lies next to Derriford roundabout on the A386 Tavistock Road. It is common ground with the PCC (Transport) and the HA<sup>38</sup> that the appeal site is well positioned with regard to the existing road network with access to the site via Derriford roundabout on the A386. Derriford Road loops round the northern boundary of the appeal site from the roundabout to the hospital entrance. The main site access is currently from Derriford roundabout via Derriford Road which has two lanes of traffic, a bus lane and separate cycle lane.
- 2.15 PCC aspires to reconfigure the Derriford roundabout as a four arm signalised junction and provided a layout of the indicative proposals<sup>39</sup>. A so-called 'blue route' for emergency services runs from the A386, along Derriford Road, to the hospital entrance. The Derriford Hospital is very well served by public transport with approximately 12 different bus service routes to the rest of the city. Transport modelling by PCC<sup>40</sup> indicates that measures will need to be taken to reduce the predicted number of car trips to and from the planned developments in Derriford by approximately 50%, through more sustainable modes of travel, prioritised and encouraged through travel plans (TPs).

---

<sup>35</sup> Ibid p4 para 2

<sup>36</sup> Described in RTP 3.22-3.50

<sup>37</sup> See retail sites plan, Inq Doc 71, and Robin PoE, App 1

<sup>38</sup> CD H5 – Statement of Common Ground (SoCG) Highways and Transport, 18 Jul 2011

<sup>39</sup> Ibid para 13.1

<sup>40</sup> CD C26 – Derriford Transport Strategy, 2006-2021, dated July 2012, paras 5.7-5.8

### 3. Planning Policy

#### *National Policy*

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, where regard is to be had to the development plan (DP), proposals must be determined in accordance with it unless material considerations indicate otherwise. In this case, the DP comprises the Regional Planning Guidance 10, for the South West, (RPG10) 2001<sup>41</sup>, the Devon Structure Plan and the Core Strategy (CS) adopted in 2007<sup>42</sup>. The DP policies most relevant to the appeal are set out below.
- 3.2 The Localism Act 2011 provides for the abolition of Regional Strategies with any decision to revoke these subject to strategic environmental assessment. For RPG10, an updated environmental report was published for consultation between 30 November 2012 and 1 February 2013 but the Secretary of State has previously attributed limited weight to the proposed plan revocations. RPG10 Policy SS17: *Plymouth* is to promote employment investment and make provision for major employment growth. The Planning and Compulsory Purchase Act 2004 (as amended) requires every development plan document to be submitted to the Secretary of State (SoS) for independent examination to determine whether it is sound<sup>43</sup>. The Town and Country Planning (Local Planning) (England) Regulations 2012 allow for a policy that is intended to supersede another policy in the adopted development plan, providing that it states that fact and identifies the superseded policy<sup>44</sup>.
- 3.3 Material considerations include current Government policy in the National Planning Policy Framework (the *Framework*). Greg Clark's Statement Planning for Growth, 23 March 2011, and Eric Pickles Statement on Housing and Growth, 6 September 2012<sup>45</sup>, are part of the Government's *growth agenda*. Best practice guidance in the publication *The Planning System: General Principles*<sup>46</sup> (PS:GP) gives general advice and covers the specific matter on prematurity.
- 3.4 Circular 11/95: *Use of Conditions in Planning Permission*, and the Community Infrastructure Levy (CIL) Regulations 2010 as amended, are relevant to conditions and planning obligations. Circular 02/2007 *Planning and the Strategic Road Network*, explains how the HA will participate in all stages of the planning process and expect to see proposals that include ways to reduce the traffic impact of the development.

#### *The Core Strategy (CS)*

- 3.5 Relevant CS policies are listed in the SoCG. Overall, the CS sets sustainable development at its heart<sup>47</sup> with a vision for sustainable growth. It did so 5

---

<sup>41</sup> CD A04

<sup>42</sup> CD B02

<sup>43</sup> Sections 20(1) and (5)(b)

<sup>44</sup> Part 4, Regulation 8(5), CD A07

<sup>45</sup> Inq Docs 2 and 46

<sup>46</sup> Formerly issued by the ODPM, 2005, CD A03

<sup>47</sup> Paragraph 1.20 CD B02

years before these themes were enshrined in the *Framework* and the current Government's *growth agenda*.

- 3.6 The Strategic Objectives (SOs) of particular importance to this appeal include SO1 – to deliver a vision for Plymouth's strategic role in the south west which promotes sustainability and growth, SO3 – to develop sustainable linked communities, SO4 – to deliver a quality city of well designed neighbourhoods, SO5 – to deliver regeneration through Area Action Plans (AAPs), including Derriford.
- 3.7 CS objective SO7: *Delivering Adequate Shopping Provision* promotes new shopping development which contributes positively to delivering Plymouth's vision for sustainable high quality growth, making Plymouth a city of sustainable linked communities, by: *2. Maintaining and enhancing the City Centre's role as a major shopping destination ...; 6. Promoting a district centre at Derriford in order to remedy an identified gap in the spatial distribution of food shopping in the city, and as a key component of the creation of a new sustainable neighbourhood, supporting the existing employment, health and residential uses and providing a new focus in the north of Plymouth.* The targets under SO7 include a new District Centre (DC) at Derriford by 2016.
- 3.8 CS SO14 aims to reduce the need to travel through various measures including: *5. Reducing the rate of growth of traffic congestion through promoting modal shift to sustainable transport methods.*
- 3.9 The relevant CS policies include CS01 – to allocate sites by reference to criteria which would improve sustainability, CS02 – require new development to be well designed, CS04 – to *support a step-change in the performance of Plymouth's economy through: ... 4. Safeguarding and supporting proposals to extend the strategic employment opportunities at Plymouth International Medical and Technology Park and Tamar Science Park, and to improve linkages between these sites and with Derriford Hospital.*
- 3.10 Policy CS06: *City Centre – The Council will support the development of the City Centre's role as the primary comparison shopping retail destination of the sub-region and as a regional shopping centre.* Policy CS08 only supports new retail development which complies with a sequential approach and would not harm the City centre or other centres.
- 3.11 In considering Derriford, the CS Inspector's report<sup>48</sup>, explains some of the thinking behind the retail policies. He noted (paragraphs 3.20-3.23) that *the priority is to maintain the vitality and viability of the City Centre* and supported a *cautious approach to the pace of change being planned for at Derriford*, that *the Vision is essentially to provide a new heart to the northern part of Plymouth* and was persuaded at that time *that the focus of the new District or larger centre should be to the west of the A386 and not the east.*
- 3.12 This is amplified in Policy CS07 which specifically expects new district centres. Of these, No.1 is: *In the Derriford area. To provide a new heart for the north of Plymouth and support the area's existing and proposed residential, commercial and health sector communities. It will include a major foodstore,*

---

<sup>48</sup> CD B40, dated April 2007

*with complementary comparison goods shopping, residential, office, leisure and food and drink uses, and a public transport interchange on the proposed High Quality Public Transport network for the city. It will be developed such that it can grow to play a wider role in Plymouth, but only when it is demonstrated through detailed impact assessment that further development will not undermine the regional shopping role of the City Centre and indeed that such development will deliver major economic benefits to the entire city.*

- 3.13 CS Area Vision 9 (AV9) - Derriford and Seaton – is the Council's vision for the Derriford and Seaton Area Action Plan (DSAAP) which aims *to create a thriving, sustainable, mixed-use new urban centre at the heart of the north of Plymouth, which is well connected to surrounding communities and to the city's High Quality Public Transport (HQPT) network.* The Council's objectives to deliver this vision include: *3. To develop a district shopping centre, centred on the west side of the A386, to support the surrounding residential and commercial communities but with potential to grow once it is demonstrated that it will not undermine the development of the City Centre's shopping role; 4. To provide a new high quality 'northern gateway' into the city, with a strong sense of place; 5. To facilitate public transport, cyclist, pedestrian and vehicular access in a sustainable way; 6. To create a strong urban form, ... which is easy to understand and assists in orientation.*
- 3.14 Paragraph 5.82 adds that *the AAP will ensure the co-ordinated planning and delivery of development options.* The summary in CS paragraph 7.30 explains that *The Derriford proposal will also respond to major population growth planned for in the north of the city, over-trading of nearby superstores, support the Council's strategy for a bipolar economy concept focused on the City Centre and Derriford and put a new heart into the north of Plymouth.*
- 3.15 Policy CS15: *Overall housing provision sets out targets for new housing provision of which at least 30% ... should be affordable homes ... without public grant (subject to viability assessment).* CS28 – *Local transport considerations promotes a high quality and sustainable transport system ... including 3. Safeguarding land for strategic transport infrastructure which will be identified in AAPs, a DPD or other LDD as appropriate.* Where needs arise directly as a result of development, CS33 seeks planning obligations through s106 to create *a city of sustainable linked communities.* CS34 deals with other considerations including design, safety and amenity.

#### *Derriford and Seaton Area Action Plan (DSAAP)*

- 3.16 In line with CS SO5, the LPA has developed a series of AAPs. Of these, the DSAAP<sup>49</sup> was submitted to the Planning Inspectorate by PCC after the Inquiry finished sitting<sup>50</sup>, with the Examination in Public (EiP) anticipated towards the end of March 2013, and adoption expected in August 2013<sup>51</sup>. The updated programme follows a requirement for further consultation between October and December 2012<sup>52</sup>. This compares with a date of July 2013 set out on the PCC's website while the Inquiry was sitting. There is a wide evidence base for

---

<sup>49</sup> Revised presubmission, DSAAP CD B28

<sup>50</sup> On 21 December 2012, see letter on main file

<sup>51</sup> Inq Doc 61

<sup>52</sup> By the Planning Inspectorate – *ibid* para 3

the DSAAP<sup>53</sup>. There has been limited interest in the location of the new DC other than from competing site owners<sup>54</sup>.

- 3.17 Through Strategic Objective 4 of the latest DSAAP<sup>55</sup>, a new DC is now promoted *on the east side of the A386 on the former parade ground at Seaton Barracks (SB), within the PIMTP, as the location best able to all the required components to create a successful District Centre within an appropriate timescale*. Paragraph 7.3 notes that the quantum of retail provision in the CS has been revised by the 2012 Retail Study which now takes a more precautionary view.
- 3.18 DSAAP Proposal DS16: A new District Centre for Derriford sets out very specific requirements, including areas of floorspace and phasing of delivery. In particular, DS16.1b) states that the floorspace will grow to 8,500m<sup>2</sup> net by 2016, with a foodstore of at least 7,000m<sup>2</sup> gross (of which 2,500m<sup>2</sup> net of convenience space) in line with the RTP study. Paragraph 7.8 explains that *The intention of this proposal is to help deliver a new District Centre that provides both essential retail facilities, as well as other necessary services ..., in a way that creates a focus for the whole of northern Plymouth, while supporting and not compromising the role of the City Centre*.
- 3.19 In selecting the former SB parade ground, paragraph 7.9 asserts that this is *the most suitable location* due to a series of advantages including its: position by the A386 near the proposed Forder Valley link road (FVLR), prominence, length of potential active retail frontage, existing clearance and servicing, potential for future phases, deliverability through PCC's ownership, and potential for improved journey times.
- 3.20 For the NWQ site, Proposal DS14 aims for a mixed use development, including housing, office and healthcare employment, and a small local retail centre, but not a district centre. It is common ground that the principle of mixed use development on the site is supported by both the CS and the DSAAP<sup>56</sup>. Proposal DS06 aims to strengthen the role of the PIMTP as a whole; DS12 seeks residential and office development on Glacis Park (mostly the SWW site). The DSAAP Delivery Framework sets a % target of 40:60 houses to flats within the AAP area<sup>57</sup>. Transport Infrastructure Improvements are dealt with in Proposal DS18, including the FVLR and a new junction to replace Derriford roundabout.

#### 4. Planning History

- 4.1 Derriford Hospital was constructed from the early 1970s and opened in 1981. The appeal site was developed alongside the hospital as four residential blocks for hospital staff and as a series of car parks. In January 2009 planning permission was granted for a 627 space MSCP; this was amended in 2010<sup>58</sup>. It is common ground<sup>59</sup> that the appellant made a contractual agreement with

---

<sup>53</sup> CD section C

<sup>54</sup> CD G06

<sup>55</sup> Delivering shops and services, CD B28

<sup>56</sup> SoCG, CD H3 p26 para 7.6

<sup>57</sup> CD B30 p18

<sup>58</sup> General Planning SoCG, CD H3 Table 3.1 p6

<sup>59</sup> Ibid para 3.3

Plymouth Hospitals NHS Trust, when it purchased the site in 2006, to deliver the MSCP and effectively decant the surface parking to allow for redevelopment<sup>60</sup>.

- 4.2 A proposal for a new Derriford Hospital front entrance between it and the NWO site is currently unfunded with no specific commencement date<sup>61</sup>. The appeal proposals were designed with the new hospital entrance in mind<sup>62</sup>. Further to the December 2009 application, the appellant met the LPA on 27 April 2010 to discuss the scheme in the context of the proposed new DC. The appellant followed this with a letter dated 12 August 2010 requesting that determination of the application be deferred pending the emerging AAP. In January 2011, following an updated retail report<sup>63</sup>, the Pre-Submission DSAAP was published for consultation identifying SB as the preferred DC. The LPA took the application to committee in July 2011 and refused it. The appeal was lodged on the unchanged scheme in January 2012. The latest DSAAP was published in July 2012. In its grounds of appeal<sup>64</sup> WRDL argued that the scheme could deliver a new urban centre, including scope for expansion.

## 5. The Appeals Proposals

- 5.1 The extent of the outline application is amplified in the Design and Access Statement (DAS)<sup>65</sup>, and updated in the Addendum Note<sup>66</sup> and the ES addendum<sup>67</sup>. The scheme would be for mixed use including 356 dwellings and several other uses as listed in the description above. The LPA summarised the proposals in its committee report<sup>68</sup>. The SoCG agrees the proposed mix<sup>69</sup> of residential, office, hotel, Use Classes A1-A5, residential and non-residential institutional uses, car parking, open space and transport infrastructure and that these uses, together with relevant drawing numbers, could be controlled by conditions.
- 5.2 The mixed development would be divided into areas described as: Upper Hill Town (UHT) of lower density housing; Lower Hill Town (LHT) of courtyard residential blocks and the upper side of the High Street; Campus Plaza (CP) of mixed uses defining the proposed High Street, with a foodstore of 3,229m<sup>2</sup> gross (CP2)<sup>70</sup>, shops and upper floor residential uses, a hotel and offices, and a 'care square' of health related uses (CP3), and; a 'Transferium' (the name given to two blocks each based on a MSCP, including that already permitted), with apartments and other uses above.
- 5.3 Building heights would vary across the site, from two storeys in the UHT to nine storeys for part of the Transferium<sup>71</sup>, with some apartment blocks in LHT

---

<sup>60</sup> See full planning history of the site and adjoining sites in the committee report CD F16

<sup>61</sup> Illustrated in plan form on the masterplan in the DAS, CD F11, p63

<sup>62</sup> Ibid and p 122: The Transferium ... extending the high street down to the hospital entrance

<sup>63</sup> CD C04

<sup>64</sup> Main file

<sup>65</sup> CD F11

<sup>66</sup> Inquiry Document (Inq Doc) 28

<sup>67</sup> Inq Doc 72

<sup>68</sup> CD F16 p2-4

<sup>69</sup> CD H3, p7

<sup>70</sup> Not specified in the description of development but on the form, masterplan and DAS.

<sup>71</sup> See DAS p65-68

up to or exceeding 6 storeys in height. Sun path studies are illustrated, at a small scale, in the DAS<sup>72</sup>. At one stage an offer was made to lower some of the buildings but this was withdrawn. LHT and CP would contain substantial underground parking provisions. For CP, the DAS notes that the higher density development in this area means underground and semi-underground car parking becomes viable. There are significant level changes across the site, for example CP2 drops 5.5m across its width<sup>73</sup>. There would be a network of walkable streets across the site, as shown on the Masterplan, making up part of a total of 1.26ha of open space. Proposed Urban Design Guidelines could be enforced by conditions.

- 5.4 In the DAS, the High Street is illustrated<sup>74</sup> as a busy environment with a generous pavement on the northern side incorporating benches, bicycle and car parking and street trees. Following highway revisions, there would be a substantial reduction to the north side of the footway along the High Street<sup>75</sup>. A travelator would connect the second MSCP to the foodstore above street level<sup>76</sup>.
- 5.5 Details of the s106 contributions are set out in chapter 14 below. These would include a phased contribution of around £1.6m towards the strategic level proposals to reconfigure the Derriford roundabout and make other improvements to the SRN, including the FVLR. The proposed hotel would come very close to the edge of the new layout in the reconfigured junction design; widening the north side of Derriford Road within the highway would require a new retaining wall alongside<sup>77</sup>. The effects of the proposals on journey times and queues are modelled in Table RW1A onwards<sup>78</sup>.
- 5.6 The main vehicular access to the proposed High Street would be from the existing hospital access off Derriford Road, to the east of the site. The main exceptions would be a dedicated right turn bus lane entry to the High Street from the roundabout, and access from Morlaix Drive to the south<sup>79</sup>. The principles for the highway alterations were established in evidence; the final details could be controlled by conditions<sup>80</sup>.
- 5.7 One existing cycle route would be lost but alternatives would be created<sup>81</sup>. The reserved matters could be required to provide links in accordance with the aspirations in the DAS<sup>82</sup>. Subject to further details, which could be required by conditions, by the end of the Inquiry there were no significant outstanding concerns over highway safety (as opposed to concerns over congestion and

---

<sup>72</sup> Ibid pp 146-147

<sup>73</sup> Ibid p106

<sup>74</sup> DAS p109, CD F11

<sup>75</sup> Inq Doc 13

<sup>76</sup> Two dashed lines above Campus Lane in the DAS, Section V04-04 p66, and on the Masterplan

<sup>77</sup> White appendices Fig P15.2

<sup>78</sup> Inq Doc 55

<sup>79</sup> See dwg FMW0769-SK08 rev B, in ES addendum, Inq Doc 72 and elsewhere

<sup>80</sup> See attached Schedule

<sup>81</sup> White XX, Day 13

<sup>82</sup> DAS pp16-17

sustainability)<sup>83</sup>. The overall number of parking spaces was agreed late on at the Inquiry as 1,088, compared with 1,204 spaces at application stage<sup>84</sup>, with further agreement that this could be controlled by one or more conditions<sup>85</sup>. With regard to the short term parking for the foodstore, I heard evidence<sup>86</sup> that it was a reasonable assumption that 200 spaces could be provided on a temporary basis.

- 5.8 There would be a Travel Plan (TP) for the residential and non-residential developments. The principles behind these are agreed on the basis of suggested conditions<sup>87</sup> which in turn refer to agreed modal shifts away from private car journeys to other modes of transport<sup>88</sup>. The estimated mode share to be undertaken as single occupant car journeys would be 50% or fewer, requiring a shift of around 11% and 19% for residential and daytime populations respectively. The TP contributions required to achieve these modal shifts are set out in the s106 UU and are not agreed. Although there is provision for the overall TP Contribution to be reallocated there is no provision for any additional funds to secure modal shift.
- 5.9 The phasing anticipated at the start of the Inquiry is set out in the SoCG. The viability evidence was based on slightly different phasing assumptions, including temporary parking<sup>89</sup>. The ES Addendum<sup>90</sup> sets out the updated phasing and construction schedule as: 1 – car parks; 2 – UHT; 3 – CP3; 4 – CP2, LHT3; 5 – LHT2; 6 – CP1 and LHT1. It assumed that the development would commence in 2013 and be fully operational by 2022. Phasing of development would be subject to conditions.
- 5.10 The application was submitted without stating the level of affordable housing<sup>91</sup> or any justification for a reduced amount or contribution. Viability evidence was then submitted to justify a scheme without any affordable housing. A further appraisal was then provided to the Inquiry to support the contention that the scheme would be profitable as a whole but could not sustain any affordable housing. This was not agreed<sup>92</sup>. In examining the figures, the LPA identified the omission of over £8m of car parking construction costs. The appellant then looked in more detail and, using a mix of QS and BCIS figures, value engineering and tender documents, argued that the scheme would be sufficiently profitable to be delivered<sup>93</sup>. Provisions for affordable housing are addressed in the s106 UU (see chapter 14 below) but are not agreed.

---

<sup>83</sup> Inq Doc 55 and White, Day 13

<sup>84</sup> Excluding 627 spaces already permitted in the MSCP

<sup>85</sup> Inq Doc 57, SoCG on parking provision, 8 October 2012

<sup>86</sup> Hector XX

<sup>87</sup> Appendix C, conditions 41 and 42

<sup>88</sup> Inq Doc 14

<sup>89</sup> Hector XX

<sup>90</sup> Inq Doc 72 p4

<sup>91</sup> Refusal reason 8

<sup>92</sup> Isgrove rebuttal and response to Hector's addendum, Docs 8a and 8b, and Inq Doc 9

<sup>93</sup> Inq Doc 9

## 6. The Case for Plymouth City Council as Local Planning Authority (LPA)

### *Scope and evolution*

- 6.1 This is an appeal into a specific proposal. It is not a beauty contest between rival sites. The Inquiry is taking place in the context of the emerging DSAAP, due to be submitted on 21 December 2012<sup>94</sup>. It is within the remit of the AAP to identify and allocate the site. The Inspector appointed for the EiP will examine whether or not the AAP is sound. The only proper forum for deciding the location of the new DC is the EiP into the DSAAP. This appeal is not only ill judged on merit but is an unreasonable attempt to circumvent the AAP process. To do so, flies in the face of the plan led system and national advice on prematurity.
- 6.2 Having failed to focus the new DC around the NWQ site at the CS EiP<sup>95</sup>, the appellant commissioned a mixed use residential scheme to be complementary to the DC<sup>96</sup>. The architect was not asked to consider if it was capable of being the DC until around April 2010<sup>97</sup>. Despite an invitation to do so from the LPA, the appellant did not amend the application to fulfil the objective of delivering a DC, but asked to have it deferred. Indeed, the LPA specifically, and proactively, asked how the retail elements could expand as part of wider enquiries into alternative sites<sup>98</sup>.
- 6.3 Although an outline application, the appellant has fixed the layout of all the buildings and the access. The new signalisation was known about when the scheme was designed<sup>99</sup>. There is no flexibility in advance of the final signal design and so the strategy is fundamentally flawed. The original masterplan dates back to when the new hospital entrance and transport interchange were being promoted<sup>100</sup>. The first phase, for the MSCP referred to as TF2, already has consent. The concept would have drawn staff and visitors from the 'Y'-shaped hospital entrance to the NWQ site. The funding for that plan no longer exists and there is no evidence of any prospect of it proceeding. Yet the current plans take no account of its absence or the current public transport interchange. There are no pedestrian or cycle links on the masterplan and even now there would be only one crossing point to the High Street when there were three.
- 6.4 The vision of a High Street with wide pavements for café customers has been lost to a bus lane. The 5m wide promenade has been reduced to 2m: barely enough for tables and chairs, let alone passers-by with shopping or buggies. There would still be parking spaces, reducing the pavement further, as these would need to be kept<sup>101</sup>.

---

<sup>94</sup> Inq Doc 61 para 9a

<sup>95</sup> CD B03 para 3.20-3.23

<sup>96</sup> Papa, Day 6 in XX by the LPA

<sup>97</sup> Some time before CD F20

<sup>98</sup> Inq Doc35 point 4

<sup>99</sup> TA Appendix D and DAS p137 phase 6, CD F11

<sup>100</sup> Inq Doc28 para 2.1.1 (DAS for TF2). Also Papa in XX: the competition was won for a 'major mixed use residential development'; it was conceived to complement the hospital entry.

<sup>101</sup> Papa in XX: the High Street was not originally designed for buses; he did not know where the crossings would be

## *Design*

- 6.5 The part 6 storey heights of LHT2, LHT3 and CP3 all cause concern. Near to the hospital, the 8 to 9 storeys of CP3 at the Care Square are cause for even more concern. These heights will give rise to overshadowing and over dominance by these buildings. The suggested reduction in heights was later withdrawn. The partial variation in height would be of little comfort to those in overshadowed family housing with shaded gardens. The Design Panel also raised this issue with regard to the southern block fronting the High Street, together with phasing and public space<sup>102</sup>. The Care Square would loom large over the High Street. Derriford is not the City Centre and these would be enormous structures. The hospital cannot sensibly be taken as a precedent.
- 6.6 Unlike the earlier design<sup>103</sup>, the proposals fail to properly address Derriford Road, near the Upper Hill Town. There would not be active frontages as required by Building for Life and the Design SPD<sup>104</sup>. The Devon Wall is a poor justification when chunks of this would be removed. For all these reasons, the scheme fails against policies S04, CS02(5) and CS34.
- 6.7 An essential element of sustainable linked communities is social inclusion which is achieved through a well integrated mix of housing types and tenures to meet housing needs<sup>105</sup>. Derriford lacks a mix of housing. The Delivery Framework to the DSAAP<sup>106</sup> specifies a mix of 40:60 houses:flats. The appeal scheme offers 23:77 and so fails to comply with CS15. Worse than that, the scheme would be unable to deliver affordable housing and there is no evidence that the appellant has tried to improve the viability of this dated scheme in today's market. While the buildings could use high quality materials and finishes, it would not be good design with regard to its commercial demand and offer.
- 6.8 RfR10 seeks more information which has not been provided. There are no details to refute the LPA's concern that the six-storey buildings on the north side of the High Street would be over-dominant and overshadowing; or to show that the proposed eight and nine storey buildings in the southern and eastern parts of the site would not harm the visual amenity of the area by reason of the bulk, height and massing of the buildings. The grounds of appeal<sup>107</sup> said that further information would be provided to justify the bulk, massing and heights but it has not been forthcoming.

## *Affordable housing*

- 6.9 The original s106 sought to remove any affordable housing from the early, potentially profitable, phases which could have stood it. The new phased approach is unsupported by a phased appraisal and the likelihood from, for example, the development costs, is that the scheme would not yield any affordable housing. The profit share should maximise affordable housing;

---

<sup>102</sup> Review on 3 February 2010, Selman Rebuttal Ax 6 p2: Massing

<sup>103</sup> Selman Ax 1 p6

<sup>104</sup> CD C69 q19 and CD B15 p43

<sup>105</sup> CS Policy S03, CD B02

<sup>106</sup> CD B30 pp19-19

<sup>107</sup> Main file

instead its terms would maximise profit. The approach in the s106 should be rejected as it would not produce any affordable housing. If the appeal is allowed, the suggested condition should be imposed. As it would not deliver affordable housing, the scheme would conflict with S03 and CS01 and the *Framework*.

- 6.10 Citing Policy CS15 is no answer as the affordable housing obligation is subject to a viability assessment. The obligation cannot be escaped by conceiving a scheme which is so expensive to deliver that it does not allow for any affordable housing. There is no evidence of significant abnormal costs associated with the site; the minor demolition is not unusual<sup>108</sup>. CS paragraph 10.32 does allow for a lower amount but only based on a financial appraisal or, through the SPD<sup>109</sup> where there would be overriding benefits. Granting consent for a foodstore which cannot be delivered as configured and which would jeopardise the AAP would simply obstruct delivery of the DC. The recent ministerial statement<sup>110</sup> reaffirms the need for affordable housing but with a flexible approach to consideration of fewer affordable houses, through negotiation, if that's what's making a development unviable. Moreover, the LPA has a market recovery scheme which offers flexibility, and the CS15 required minimum of 30% is 'subject to viability assessment', but the scheme is so lacking in viability that it cannot take advantage of this. The failure to secure any affordable housing militates against consent.
- 6.11 The DSAAP Proposal for NWQ<sup>111</sup> allocates 30% of 580 homes as affordable. There is no reason why a scheme which followed this Proposal would not be viable or deliverable. Allowing this appeal would prevent delivery of 30% of 580 affordable homes, through another scheme, and replace it with none. This is particularly unfortunate close to Derriford Hospital which is a major employer of staff on salaries which warrant affordable housing.
- 6.12 Policy CS01 is about creating sustainable linked communities. If the scheme delivers no affordable housing the site would miss the opportunity to contribute to a more sustainable Derriford. The quantum of affordable housing has a bearing on whether the development would be sustainable or not. It is not the requirement for affordable housing which makes it unviable<sup>112</sup>. The site is not needed to meet a 5 yr housing land supply<sup>113</sup>. Policy should be judged in the round, taking account of sustainability issues, the local context and local housing need<sup>114</sup>.

### *Viability*

- 6.13 The appellant may have set out to show that the scheme cannot deliver affordable housing but what it has shown is that the scheme as a whole is not viable. The absence of a viability reason for refusal was due to the lack of information at that stage. Amendments to the proposals would be required to

---

<sup>108</sup> Luxton in chief (IC)

<sup>109</sup> Paragraph 8.11 of CD B18

<sup>110</sup> Inq Doc2, Eric Pickles Statement Housing and Growth, 6 September 2012

<sup>111</sup> CD B28 p48 revised presubmission

<sup>112</sup> Luxton in ReX, Day 3

<sup>113</sup> Luxton in XX, Day 3

<sup>114</sup> Luxton IC

attract a foodstore operator<sup>115</sup> and the latter phases are not viable<sup>116</sup>. The LPA spent a considerable amount of time seeking further information and a considerable amount of new information was submitted at the last minute. The parties disagree on values partly because the appellant was valuing the proposals on the basis of a revised configuration which was not part of the scheme.

- 6.14 In detail, the office valuation is unsupported and there is no evidence that the Plymouth Hospitals NHS Trust would take further space, let alone at the rates suggested. £8.3m<sup>117</sup> of construction costs had been omitted, drawing attention to the very high costs of parking provision and the muddled parking strategy overall. This would be in a location where the LPA would support fewer parking spaces. It is not consistent to claim that the scheme is viable with 15% profit but no affordable housing, then add £8.3m in costs and still maintain that it is viable. It is not credible to use a blend of QS and BCIS figures to try and show viability. Attempts at value engineering were in response to this error<sup>118</sup>. Last minute tender documents<sup>119</sup>, received in 2009 but only sent by email the night before evidence was heard, should be disregarded. Even with reduced construction rates, the appellant can only reach 10.24% profit on cost<sup>120</sup> whereas a funder would require much more<sup>121</sup>. There is no formal land valuation. The assumed figure of £7m is substantially less than that paid for the site<sup>122</sup>.
- 6.15 It was suggested that the appellant would proceed on a scheme that might realise £13m, when no other developer would, because it was committed to the site as a result of its purchase. However, unless the scheme is viable it will not be delivered. Rather, the foodstore would not draw sufficient shoppers to properly support the new DC while granting permission would kill off a DC on another site. The weight to the economic benefits of the scheme depends on viability but this scheme is full of risk<sup>123</sup>.
- 6.16 The appellant acknowledged<sup>124</sup> that the profitable phases are the MSCP and the foodstore, and the UHT to a lesser extent, with greater risks regarding later phases. Mixed use developments incur extra costs and banks are now looking for 20% profit on such schemes<sup>125</sup>. Allowing the appeal would deliver the worst outcome for Derriford: there would be no DC, no affordable housing, and Vision 9 in the CS would be fundamentally undermined. The scheme would have to be altered to secure the interest of a foodstore operator. To obtain permission for an undeliverable scheme, and thereby steal a march on

---

<sup>115</sup> Cottle App 2

<sup>116</sup> Hector acknowledged that these were the least profitable in answer to Inspector's Questions (IQs)

<sup>117</sup> Hector Addendum para 2.2

<sup>118</sup> Hector in IC, Day 8

<sup>119</sup> Inq Doc 38

<sup>120</sup> Appraisal 18, Inq Doc 9, final page

<sup>121</sup> Hector accepted Isgrove's figure of 20% profit on cost for a mixed use scheme

<sup>122</sup> Hector in IC, Day 8

<sup>123</sup> Acknowledged by Hector in XX, Day 9

<sup>124</sup> Hector to IQs

<sup>125</sup> Hector in XX, Day 9

rival site owners, would scupper the plan led system and amount to an abuse of the appeal process.

- 6.17 It is not true to say that there is no policy requirement or imperative that permission should be refused for a scheme which is not viable, when granting permission for a scheme which cannot be delivered would frustrate the DC and so would itself be harmful. The Godalming case<sup>126</sup> was dealing with a very different situation, of a contaminated site with abnormal costs in a derelict or semi derelict state, where the market conditions prevented affordable housing rather than the scheme content. The appellant company has no evidence of a track record or secured funding. Rather, company accounts<sup>127</sup> show liabilities exceeding assets and no evidence of any loan. There is no evidence to support the suggestion that existing debts might be written off.

#### *District centre (DC)/retail*

- 6.18 In formulating the CS, the LPA considered the need for additional convenience and comparison floorspace. Policy CS07 in the shopping chapter identifies the need for a new heart for Derriford and sets out the requirements for this. The new DC is to address gaps in shopping provision and respond to planned population growth. Precise constraints are to be articulated through an AAP subject to a detailed retail impact assessment showing that it would not undermine the city centre. Of the two primary roles for the DC, that of a new heart for the north of Plymouth is more significant than just filling a qualitative need in the spatial distribution of food retailing. Even if internet shopping reduces the level of overtrading, there would still be a spatial gap and the need for a new heart.
- 6.19 The DSAAP requirements in DS17 are drawn from the latest retail study<sup>128</sup>, supported by a household survey, which found no need for more convenience space but confirmed the qualitative need. There is no issue over retail impact on the city centre<sup>129</sup>. The size of store and parking arrangements proposed would not draw shoppers from other stores<sup>130</sup>. Indeed, they were conceived to serve local needs, next to the hospital, not act as anchor for the DC. While the DC is supported by two food retailers<sup>131</sup>, neither offers specific support for the scheme. The appellant tried to overcome the undersized store by suggesting that it might expand but none of these ideas did more than show that the scheme is ill thought out.
- 6.20 There are other stores quite nearby. If it would only take 5-10 minutes to drive to another store, with open air free parking (where a trolley can be taken directly to a car) and a comparison goods offer, customers might travel there rather than pay to use a MSCP, have an awkward trolley journey and no comparison goods<sup>132</sup>. The scheme would be far more for top-up shopping than for comparison goods whereas the DSAAP role is as a main food destination.

---

<sup>126</sup> CD E14

<sup>127</sup> Inq Doc 29 and 30

<sup>128</sup> RTP CD C05 p67

<sup>129</sup> Cottle XX, Day 2

<sup>130</sup> Hector's viability assessment depends on car park charges

<sup>131</sup> Morrisons and Sainsbury's representations

<sup>132</sup> Cottle XX

6.21 The CS is visionary. It would proactively encourage development which would make a positive contribution to Plymouth's agenda for change. It is intended to identify broad locations for development, not specific sites. This contrasts with the suggestion that SB is unsuitable because it has been allocated for employment in the CS<sup>133</sup>. The AAP will take precedence over AV9. Providing the new DC by 2016 is a target not a requirement<sup>134</sup>. Until then, the DC is to be centred to the west of the A386. The appeal neither accords with the DSAAP, nor CS AV9, nor the AAP process. The DSAAP has been delayed but only in the context of all other AAPs proceeding according to the timetable<sup>135</sup> and a comprehensive evidence base has been gathered.

*Transport and traffic impact*

6.22 Underlying the concept for Derriford is a mixed centre with uses which would reduce the need to travel. CS Policy SO14 aims for a modal shift to reduce congestion and for a network of HQPT, walking and cycling. With the road network only able to accommodate 50% of total predicted car trips, this is crucial. Mitigating additional congestion relies on delivery of the DSAAP road improvements. SB does not have the NWQ traffic shortcomings.

6.23 Guidance<sup>136</sup> makes clear that a material impact<sup>136</sup> on the highway network includes worsening congestion. The initial TA supported a different road layout when the new hospital entrance was proposed. The original modelling was flawed. Further work also contained errors<sup>137</sup>. Later evidence also contained errors and was superseded<sup>138</sup>.

6.24 The local highway network is operating at, or over, capacity. If the development were to proceed, the queues would be as shown on drawings RW9A and SK23 compared with RW7A and SK21. These show delays worsening existing congestion on a major arterial route which is a strategic public transport corridor and access to a sub-regional hospital. One queue would rise to 152 passenger car units (pcus)<sup>139</sup>. Added congestion would also increase bus journey times and might prevent buses gaining access to their priority lane. All these add up to congestion that would have a material impact. Improvements would be required at the Derriford roundabout in any event but these are planned after the FVLR. Allowing the appeal would bring added congestion before either of these is complete. This level of congestion justifies the proposed 'Grampian' condition precedent. Simply relying on a contribution is not enough when that would never be delivered in full as only part of the scheme is viable. The positions of the proposed buildings are fixed. The signalised road scheme is not. Allowing the appeal could prejudice the effectiveness of the junction. It would conflict with Policy CS28(3).

6.25 The exercise to determine the impact on buses is incomplete. The extent of delays to buses was not agreed, nor was the Travel Plan (TP), highway layout

---

<sup>133</sup> Francis IC. CS 04 refers

<sup>134</sup> Robin IC: the date appears under the Targets on CS p89, not in Policy CS07 or AV9

<sup>135</sup> Grant IC

<sup>136</sup> Explained in the Transport Assessment (TA) 1.18-1.20

<sup>137</sup> Submitted with White's proof of evidence

<sup>138</sup> Modelling and bus travel times produced by FMW, Inq Doc 40

<sup>139</sup> Inq Doc 56

or extent of car parking<sup>140</sup>. Hence, the bus operators have not accepted that the scheme would not increase bus journey times. The 'blue route' priority scheme has not been appreciated and the new arrangements have not been endorsed. The High Street bus stops, serving 40-50 buses per hour<sup>141</sup>, and crossing points are not shown but could be fundamental to maintaining adequate hospital access. Part of the cycle route around the site on Derriford Road would be removed.

#### *Travel plan (TP)*

6.26 A TP is critical to achieving modal shifts. There should be penalties to support the proposed modal shift<sup>142</sup>. Little thought has been given to the cost of the car club. In the absence of justification of the funding limits of the TP, a condition will be needed to control the TP as development proceeds. The s106 undertaking fails to refer to modal shift targets and would only cover one year's car club membership.

#### *DSAAP and prematurity*

6.27 Some weight should be given to the DSAAP at this stage. There is little objection, other than from the appellant, and only policy on scale and format are likely to change as a result of the EiP. The appellant has argued that the appeal is not premature as awaiting the outcome of the DSAAP would prejudice achieving the DC by 2016. The appellant's initial phasing suggested that the foodstore would be delivered as part of phase 2 but, in a bid to show it could be viable, this was changed to 2017. The viability evidence is therefore inconsistent with the plea that only NWQ could deliver by 2016. It is far more important to get the location right. Only latterly did the appellant accept that, if allowed, the appeal would predetermine the location and scale of the DC<sup>143</sup>.

6.28 While recent government statements<sup>144</sup> indicate the priority to promote sustainable economic growth, there is no real prospect of this scheme of proceeding and the appellant makes no commitment to complete any part of the scheme within any timescale.

#### *Overall conclusions*

6.29 The proposals are contrary to virtually every relevant development plan policy and would cause demonstrable harm. Granting permission would frustrate the DSAAP with no economic benefits as the scheme is unviable and undeliverable. No material considerations support a decision contrary to the development plan. Permission for TF2 already exists and the best outcome would be a refusal in order to clear the way for a more prudent landowner to pursue a residential development in line with the DSAAP. Permission should be refused.

---

<sup>140</sup> Highways SoCG, p17 para 14.1

<sup>141</sup> Ibid

<sup>142</sup> Smy XX, Day 3

<sup>143</sup> Francis in XX by LPA

<sup>144</sup> The growth agenda, Inq Docs 9 and 46

## 7. The Case for the Highways Agency (HA)

- 7.1 Following the second SoCG between the appellant and the HA, it was agreed that mitigation measures are required for the Manadon Junction and the FVLR and that a robust travel plan is required. Subject to securing a strategic contribution through a s106 agreement, and suitably worded conditions, the HA accepts that refusal reason 4 has been overcome and that the impact on the Strategic Road Network would be acceptable<sup>145</sup>.

## 8. The Case for Wharfside Regeneration (Devon) Ltd. (the appellant)

### *Introduction*

- 8.1 The appeal scheme would provide the agreed need for a new heart for Derriford bringing new jobs, a High Street, homes and facilities to a fragmented area. The LPA's submissions almost suggest that the scheme has been recast into a housing estate with a Spar shop. Rather, the scheme would bring the transformation the LPA seeks from the DC. The issues boil down to whether the proposals would create a sustainable first phase of a DC, in line with the CS, and whether they should be permitted before an AAP is considered at an EiP.
- 8.2 NWQ lies at a pivotal location next to Derriford roundabout, on the Tavistock Road, surrounded by strategic employment areas and the sub-regional hospital. The LPA acknowledged that the timetable for the Local Development Framework is not set in stone. In fact, the NWQ permission was sought in 2009 when the AAP was already 2 years late. The CS indicated that the DC should be on the western side of Tavistock Road but without providing much detail. The appellant's design was therefore for a mixed use scheme with sufficient facilities to meet the needs of the area without precluding a larger facility on the other side of the road. Since then, the LPA has invited the appellant to discuss how the site might be extended, then refused permission on the basis that the proposals were too large, and now opposes them as not big enough.
- 8.3 The LPA seeks to prevent growth, through rooted opposition and overstatement, at odds with the positive approach required by the *Framework*<sup>146</sup>. In relying on its prematurity argument, the LPA has lost sight of the bigger picture. Plymouth needs regeneration and investment. Its northern corridor has been in need of attention since before the draft DSAAP in 2005. While the LPA has been arguing for a plan-led system, there have been 7 years of delay. The location of the DC has moved from one site to another, both being sites in which PCC has an interest. The suggested retail need has changed. Even now, there is little credibility in the AAP process, not least on account of the manifest flaws in the SB proposal. It is acknowledged that the appeal scheme would predetermine the scale and location of the DC<sup>147</sup>, but this should not lead to automatic refusal as there would be no harm in doing so. There is no guidance in the *Framework* on how the sequential test should be applied in the case of new district centres. Nevertheless, looking at SWW,

---

<sup>145</sup> Inq Doc 65

<sup>146</sup> Paragraphs 17 and 187

<sup>147</sup> Francis IC, Day 11

Crownhill, FAS and SB, NWQ is the sequentially preferable site<sup>148</sup>. If the appeal scheme accords with the *Framework*<sup>149</sup>, it should be approved without delay.

### *Policy*

- 8.4 The DP includes RPG10 and the CS. RPG10 is only directly important to employment policy through SS17 which underpinned the way that SB was treated. The key CS policies include SO1, SO3, SO5, CS01, CS02 and AV9. The latter starts with the fragmented state of the entire Seaton and Derriford area with the DC as the glue to bind the medical, employment, housing and retail uses together. The LPA is no longer pursuing a DC to the west of Tavistock Road as SWW cannot deliver by 2016. Otherwise, CS policy can be used to test the proposals. The draft DSAAP should have little weight insofar as the DC is concerned as there are substantial objections to the SB draft proposal and it has yet to be submitted.
- 8.5 RfR3 alleges that the proposals would be akin to Phase 1 of the DC, and so prejudice SB and the DSAAP, but the LPA has then argued that they could not amount to this. Since the application, the LPA has chopped and changed, finally giving WRDL an ultimatum to submit a revised application or let it be refused. Having refused it, as harmful, as they were akin to Phase 1 of the DC, the LPA has now been told that the retail element is too small. The scheme remains a large mixed use one with a High Street, supermarket and comparison shopping with parking to function as part of the overall design. It would have residential, office, community and care uses. The committee report<sup>150</sup> identified it as the first phase of the DC. There has been no radical change in the proposals, only whether or not the focus for the DC should be to the west or the east of the Tavistock Road.
- 8.6 With regard to Policy AV9, the appellant and LPA have agreed that lying to the east of Tavistock Road cannot count against the proposals and, in fact, the requirement for the DC is to be *centred* to west of Tavistock Road, not *located* there. The other LPA objections concerning AV9 are that: the foodstore would not be a sufficient anchor for the DC; it would not be a northern gateway; it would not facilitate public transport, walking and cycling, and; there are design issues to overcome.
- 8.7 The foodstore criticisms rely on the need for a substantial comparison offer, and on the shape and parking provision. The function of the store is to tie the overall scheme together<sup>151</sup> and it was not until the RTP 2012 study that it was suggested that it needed to compete like-with-like against other stores. There would be more to the centre than the foodstore, although it would be the anchor. It would have the same range as nearby stores and its convenience offer would be comparable to Morrisons at Outland Road. The High Street would offer comparison shopping and the two would be closely linked.

---

<sup>148</sup> Robin PoE, chapter 8

<sup>149</sup> Paragraph 14

<sup>150</sup> CD F16 – under para titled PPS4

<sup>151</sup> CD F13 paragraph 3.2: a key element in the creation of a new urban centre

- 8.8 The size of the foodstore is not critical to its function as an anchor. Quantitative need has fallen away; only qualitative need is required to fill a spatial gap<sup>152</sup>. There is no evidence that a smaller store than the RTP suggestion would not succeed. The alleged overtrading in the RTP study has not been substantiated, indeed the reverse<sup>153</sup>. Other stores are busy but not obviously over-trading. The reference to Morrisons, trading at twice the company average, is not necessarily an accurate picture; congestion and queues are down to a less than ideal layout. If customers want a main foodstore with other convenience goods, there are 4 a short distance away<sup>154</sup>. There are no issues with other stores, the checkouts are never all open and there are no queues. The full range is available at Morrisons, others add pharmaceuticals, coffee and shoes. There would be potential to expand when it becomes clear that doing so would not harm the City centre.
- 8.9 There is a spatial gap and a lot of people who live, work or study in the area. However, there is a not a case for a superstore, which may only have more circulation space and a wider range of the same items, only a smaller foodstore within a centre as at Plympton and Plymstock. The need for as much as 7,000m<sup>2</sup> is based on an assumption about overtrading for which a judgement can be made now rather than at the DSAAP EiP.
- 8.10 The argument about visibility is a poor one when many nearby superstores lack visibility from the main road. NWQ is at a gateway location, as identified in the CS<sup>155</sup> and its High Street would be visible from Tavistock Road. The use of a travelator from a parking area is not unusual and the LPA should support the kind of integrated design proposed. It is not surprising that no operator has signed up yet as doubt still hangs over the location of the DC. Equally, none has ruled it out. A retailer would occupy the store if permission was granted<sup>156</sup> and it could be developed by around the end of 2016.

### *Delivery*

- 8.11 Development viability has been assessed in the context of affordable housing<sup>157</sup>. The toolkit is a snapshot which is now usually teamed with a review mechanism in the s106. In line with the *Framework*, the purpose of looking at viability in the CS is to lead to sustainable development. A residual appraisal is an exercise of judgement either using residual land value or profit on cost (POC). On current assumptions<sup>158</sup>, the proposals would achieve a little over 10% POC. This is not enough. However, whether or not a toolkit shows viability is not the same as whether a scheme would be built out. This is the key issue in this appeal. The LPA cannot say that a foodstore operator wouldn't be found<sup>159</sup>.

---

<sup>152</sup> Robin XX Day 8

<sup>153</sup> Robin IC and XX by LPA

<sup>154</sup> Ibid

<sup>155</sup> CD B02 p69: by reference to the nodal role of the roundabout

<sup>156</sup> Robin's evidence as a retail expert, XX PCL

<sup>157</sup> Policy CS15, CD B02 p114

<sup>158</sup> By Hector

<sup>159</sup> Cottle XX, Day 2

- 8.12 The site was purchased by the appellant for over £13m in 2006. It was funded by loan capital from a bank now under the control of the National Asset Management Agency (NAMA) set up by the Eire government. Both are committed to the scheme as the only way to clear the debt in the site. The notional 10% POC would clear the debt and realise around £7m in profit. That is better than otherwise inevitable losses. The Godalming decision<sup>160</sup> illustrates the correct approach, which is that a decision to dismiss an appeal should not turn on viability. The company accounts are irrelevant to this appeal as the appellant is a special purpose vehicle and a going concern. Matters also change after permission is granted and, with value-engineering, costs can change through both specification and tendered prices. It follows that viability appraisals say little about deliverability and are of limited importance. No planning policy says that an application should be dismissed if it would not be viable<sup>161</sup>.
- 8.13 In summary on valuation, the appellant's witness<sup>162</sup> is an experienced valuation surveyor who has worked locally for most of his working life, including for PCC. He regularly gives advice on mixed-use schemes and has clear expertise compared with the LPA's witness who had to fall back on the advice of others in several key areas. It is good practice to prepare a set of appraisals with sensitivity tests. While no operator has signed up yet, that is hardly surprising given that outline permission has not yet been granted; nor has it for SB. It is in the interests of all parties to the scheme – the appellant, NAMA and the Hospitals Trust – for it to proceed, and so it is likely that it would do so.
- 8.14 Omitting over £8m of car parking costs was a regrettable mistake but the re-appraisals were done swiftly by interrogating the QS and BCIS figures more closely. This showed that some figures were very high indeed, more so than those on the low side<sup>163</sup>, and the tender prices for TF2 MSCP only go to show that the BCIS are often lower than those of a QS.
- 8.15 Office rental rates for new space in Derriford are likely to be at a premium, as none exists, and need the judgement and experience of a local expert. There is every reason, including personal experience in the area<sup>164</sup>, to expect a good yield from the supermarket as this turns on the strength of covenant which would be achieved from the supermarket and good regional or national multiples along the High Street.
- 8.16 Assumptions about car parking depend on relatively small changes in configuration. Once permission is granted, retailers would be willing to take the foodstore, with a value mostly as a function of the lease term, rather than leave the opportunity to others. The residential space would be to a very high quality, in line with the design so far, and so would create its own market. The care square would be of interest to the Hospitals Trust and to Abbeyfield and while funding sources may have changed, the need has not.

---

<sup>160</sup> CD E15, IR401, 169 and 293-294

<sup>161</sup> Luxton in XX, Day 3

<sup>162</sup> Mr Hector

<sup>163</sup> Hector in answer to IQs

<sup>164</sup> Hector in XX

- 8.17 The profitability of different elements will vary with 15-20% POC or above for the foodstore, MSCP and UHT housing<sup>165</sup>. These elements would bear the weight of other less profitable elements and the review mechanism in the s106 works on the basis of phase by phase review. On the facts of this case, the risk that the developer would construct the first few phases and then abandon the rest is small. If permission is granted, the restrictive covenant will be the subject of a negotiation. While it adds to the uncertainty of delivery, it should play no part in the decision whether or not to grant permission.
- 8.18 There is no dispute that, on current figures, the scheme cannot support affordable housing contributions. Deliverability is dependent more on the attitude of the developer and its funders than on the amount of profit. There is no precedent at a national level of refusing permission, or dismissing appeals, on the basis of viability. A viability appraisal does not represent an assessment of deliverability.

#### *Design objections*

- 8.19 The design is by an experienced architect<sup>166</sup> with a strong track record and a feel for the scheme in its context. The application is still at the outline stage. The LPA's three objections were to: the lack of active frontage along Derriford Road, the effect of the tall buildings on amenity, and the height and massing of the buildings on the lower side of the site.
- 8.20 There is no relevant design guidance requiring that schemes should always front directly onto streets. There would be passive surveillance of Derriford Road from within the UHT but this needs to be balanced with the design of the public spaces within the site. The Design Panel was impressed<sup>167</sup> and made no objection on this point. While the scheme aims for active frontages it has the constraints of the Devon bank, for acoustics, and of topography, and Derriford Road is not an attractive walk as it is arduous up from the roundabout. This is balanced by the spaces in the UHT and the chance to cut through to Marjons and the hospital.
- 8.21 Although there would be overshadowing, that is to be expected in a high density DC, there would be south facing gardens and housing would receive direct sunlight at certain parts of the year. It would be wrong to draw an adverse inference from the offer to lower some of the buildings slightly in the hope of reaching agreement.
- 8.22 The massing of the buildings would be appropriate given the hospital and the concept of a high density DC. The legibility of the area would be improved by taller buildings to mark the DC and relate to the hospital. The assertion that gradients across public routes would be as high as 1 in 9 was not substantiated but there was no dispute that the design could achieve a high-quality public realm. The criticism of the width of pavement to the High Street placed undue emphasis on a purely illustrative matter. Getting rid of cars is old thinking as vitality comes from a mix of cars, buses, people and markets. On this issue,

---

<sup>165</sup> Hector to IQs

<sup>166</sup> Mr Papa is a member of the national design review panel for CABE

<sup>167</sup> Francis IC, Day 11

the scheme would accord with policies SO4 and CS02(5) and with the *Framework*.

### *Highways*

- 8.23 There are existing problems with the network. A proposal, with not much status at the moment<sup>168</sup>, would reconfigure the Derriford roundabout as a four arm signalised junction. There were several iterations of the evidence. However, by the end of the Inquiry there were very few points at issue. The HA has withdrawn its objection (see below) subject to £1.6m in contribution through a s106 obligation. The modelling is now agreed<sup>169</sup>, including the curious matter of whether a bus should count as 1 or 2 pcus. Subject to a s278 package, there would not be an overall worsening of the situation. A new retaining wall would be feasible. The proposals would be highly sustainable by providing a new DC with high quality bus facilities near the existing bus hub. There would be good provision for cyclists and pedestrians.
- 8.24 The impact would not be severe. In two cases it would be better; in only one would there be a marginal deterioration<sup>170</sup>. Details are shown on the revised tables RW1 onwards. Overall, the final proposals would be satisfactory<sup>171</sup>. It is acknowledged that Derriford roundabout needs fixing, hence the £1.6m contribution, but there is no evidence to show a new junction is required<sup>172</sup>.
- 8.25 There is no basis for seeking a condition to restrict the opening of the foodstore until after the Derriford junction scheme has been completed. It would fail the tests in Circular 11/95. It is unjustified, and so unnecessary, lacks certainty and would not be reasonable. There is no evidence to substantiate the suggestion that the foodstore would have such a detrimental effect that a condition is needed.
- 8.26 The junction scheme could be implemented without re-configuring the buildings. The modelling which showed the longest peak hour queue<sup>173</sup> is for when the whole scheme is completed and does not take account of the contribution to the FVLR which should be completed well before then. In the short term, the signals could be re-phased.
- 8.27 None of the objections, individually or cumulatively, meet the test in the *Framework*: that permission ought not to be refused unless the residual effects of a proposal would be severe.

### *Sustainability*

- 8.28 The concerns expressed are with regard to transportation and mix of uses. Bus times would be improved. Any delays on account of new stops would be to pick up more passengers and so should be viewed as a benefit. Delays along the highway are a matter of balance as set out above. While a dedicated cycle lane would be lost, there would be plenty of alternatives. Pedestrians

---

<sup>168</sup> The FLVR has a higher priority – see AAP delivery framework, CD B28 p 84

<sup>169</sup> See commentary in Inq Doc 55

<sup>170</sup> White IC, Day 9

<sup>171</sup> White IC, Day 13

<sup>172</sup> Ibid

<sup>173</sup> 152 pcus or 900m, occluding the entrance to the bus lane

would have a choice of route through the site. Plymouth is a hilly city and one must be realistic about gradients.

- 8.29 Agreed conditions would control parking, which is a key component of sustainability. Only 40-45% of development in the AAP would be accommodated by the transport network, hence the ambitious modal shift<sup>174</sup>. The TPs, with their challenging targets<sup>175</sup>, are agreed save for the excessive figure for a car club<sup>176</sup>. The contribution for this is unnecessary but could be dealt with by a condition.
- 8.30 There would be a mix of units, including more flats. The draft AAP promotes a very high density scheme for NWQ and so acknowledges that a high number of flats is appropriate here. Although the lack of affordable housing counts against the scheme to some degree, the CS makes the provision of affordable housing subject to viability testing and so it is wrong to say that the lack of affordable housing would be a breach of CS policy. The review mechanism in the s106 would ensure that a contribution could be made if the scheme proved more profitable.
- 8.31 Although important, affordable housing is not as important as the delivery of housing and growth in general. The scheme would provide a mix of unit types and there is no evidence, given the terrain and current market, that the draft AAP proposal for housing on the site would provide any affordable units either.

#### *Prematurity*

- 8.32 The *Framework* is silent on prematurity; it is found in *The Planning System: General Principles (PS:GP)* published by the ODPM in 2005. It should be noted that *PS:GP* does not automatically reject proposals just because they might prejudice a plan-making process, and the key is whether any harm would be caused to the outcome of the process. Such harm could include harm to the process, lack of proper consultation, consideration of competing sites and any effect on other aspects of the Development Plan Document. Decision makers should not fear granting permission ahead of a plan making process, especially given the increasing emphasis on growth. It is important to balance the planned approach with the need for beneficial development to proceed.
- 8.33 In this case, there are unusual facts which answer the prematurity objection. The location of the DC is almost only of interest to the four competing landowners: NWQ, SB, SWW and FAS, and so the process point does not properly arise and 'localism' is of little relevance. Granting permission would have little effect on the AAP, the vast majority of policies would be unaffected, it would only affect the DC location and NWQ site, and would not cause any delay. The LPA suggests that the scheme would not be implemented and that it would prevent another site coming forward. Both cannot be right. In fact, the scheme would simply be substituted for the SB proposal as DC. The additional houses in draft proposal DS14<sup>177</sup> are not required to meet housing targets.

---

<sup>174</sup> White XX, Day 13

<sup>175</sup> Document 14 and Heseltine Ax 2

<sup>176</sup> There is no evidence that the existing commercial car club operators require a subsidy

<sup>177</sup> CD B28 p48f

- 8.34 The evidence at the Inquiry shows that the claims of SWW, FAS and SB are all flawed as, respectively, either undeliverable within the timescale, excluded by the strategic issues, or obviously contrary to the CS. Moreover, the AAP itself has been constantly receding. It began in 2005; then further work was needed after the CS adoption in 2007. The updated evidence base<sup>178</sup> argues for a lower quantitative need, and this might change again in 2013. The impending consultation on a Plymouth Plan could lead to yet further deferral. The timetable slipped another month during the course of the Inquiry<sup>179</sup>. History suggests that continual deferral is likely and there can be no confidence that the AAP will be processed in 2013.
- 8.35 With regard to the DC, the AAP will simply look at whether or not the allocation is sound. An allocation of SB as the DC is inconsistent with CS04 which safeguards the strategic employment opportunities at PIMTP. There is nothing in the CS to suggest it would be acceptable to site the DC at SB. The Future Inn hotel is ancillary in a way that a DC would not be. To use this safeguarded site for anything other than employment land would be wrong as a matter of law. The mixed use argument is a red herring as the Llewelyn Davies document did not envisage mixed uses on the PIMTP<sup>180</sup>.
- 8.36 Given the hurried, unjustified and mysterious draft DSAAP process, there can be no doubt that the EIP Inspector will find the allocation of SB as a DC unsound. It is still needed as employment land. The evidence does not show that a DC would offer as many jobs as employment land. The point is that it is a flagship site for employment land availability in the City<sup>181</sup>.
- 8.37 The FAS and SWW are both manifestly hopeless. The former is not even within the DSAAP at all but a huge site well to the north. The long-term strategic future of the airport is a matter for the CS review not the DSAAP<sup>182</sup>. The 'former' moniker is not wholly persuasive when the loss is so highly controversial<sup>183</sup> and when PCC intends to review the situation and prevent the permanent loss of the facility. The FAS has no role to play in the DSAAP or a new heart for Derriford.
- 8.38 The SWW site is not available in either the short or medium term. No date for closure and relocation of the water treatment works has been set and the date of 2016 cannot be met. There are no other candidate sites for a new DC.

#### *S106/conditions*

- 8.39 The obligations are divided into a bilateral agreement and a unilateral undertaking. The former would deliver a package worth £3.5m with an agreed CIL clause. The latter offers affordable housing and TP payments. It provides a robust review mechanism of the overall viability of the scheme to allow a proper assessment of cross-subsidy.

---

<sup>178</sup> TRP 2012 report

<sup>179</sup> Document 61

<sup>180</sup> White RX and CD C24 App p11

<sup>181</sup> CD C38, ELR 2006 refers to PIMTP as 'a premier strategic employment location'

<sup>182</sup> CD B28 p7 paras 1.25-1.26

<sup>183</sup> Petition - see Document 47 pp1 and 6

- 8.40 Only the energy and affordable housing conditions are not agreed. Revised wording would future proof the scheme with regard to a district heating scheme while the LPA version would tie both sides to a provision that might not be in place. The affordable housing is dealt with by a now common feature in the unilateral undertaking and so the condition is unnecessary.

*Overall conclusions*

- 8.41 This appeal may not be determined until after the EiP if the LPA's estimate is reliable. If so, there will need to be further submissions. However, the history of the AAP does not give confidence. Subject to obligations and conditions, the proposals should be permitted in order to bring forward the large-scale mixed use heart to Derriford.

**9. The Case for Plymouth City Council as landowner (PCL)**

- 9.1 These submissions do not duplicate those of the LPA. Rather, PCL is interested in the significance of the scheme in the context of the DSAAP. If the scheme is otherwise acceptable in principle, then the issue of prematurity is a material consideration of great significance. Matters relevant to prematurity include economic considerations and the Government's growth agenda, consistency with the strategic aims of the CS, insofar as they are relevant to Derriford, and other statutory policy in the RSS. It will then be necessary to determine, in accordance with *PS:GP*, whether allowing the appeal would prejudice the AAP and, if so, whether such prejudice would be acceptable.
- 9.2 Relevant policy is the CS AV9 and its objectives 3 and 4. Objective 3 requires a DC to the west of the A386. The fact that neither the draft DSAAP nor the appeal proposals are consistent with this does not undermine it as it was based on a misunderstanding of the SWW site. The local planning regulations allow an AAP to expressly supersede the CS<sup>184</sup>.
- 9.3 The DC will need shopping areas of appropriate size and function. What would constitute this comes from the retail studies up to and including the RTP report of May 2012<sup>185</sup>. The appeal scheme was not devised as a DC but to complement the hospital. Implementing the appeal scheme would preclude a DC on the SB site. The conclusions in the RTP study are clear: the DSAAP should set out that the DC will be anchored by a foodstore large enough to attract main shopping trips, that is at least equal in size and format to existing foodstores in DCs and out of centre. This equates to 2,500m<sup>2</sup> net convenience and 7,000 m<sup>2</sup> gross. The size is not fanciful, it is based on a clear understanding of what is needed.
- 9.4 The success of the DC depends on a shift in trading patterns which, in turn, depends on understanding existing and future patterns. The success of the supermarket will also impact on that of the proposed High Street. The appellant has not tested the potential for the new store to act as a focus but only whether or not it would trade competitively. Capacity studies, to show that there would be enough trade draw to the supermarket, are not enough to show that there would be enough for the DC. There can be no guarantee that

---

<sup>184</sup> Town and Country Planning (Local Planning) (England) Regulations 2012, Reg 8 (5)

<sup>185</sup> CD C05

the appellant's proposal would perform the DC role needed for the step change for Derriford in the AAP and the Vision in the CS.

- 9.5 With regard to objective 4, the appeal scheme was never intended to perform a gateway function. In planning parlance, a gateway is a substantial or principal access or entrance to a substantial conurbation. It should be on, or close to, the Tavistock Road with a visual and functional relationship. If Derriford roundabout becomes signalised, NWQ will have no property frontage to the A386. The appeal scheme cannot be a gateway scheme as required by CS Policy AV9.
- 9.6 The appellant's proposition that the SB site is self-evidently unsuitable is based on the premise that the site is identified in the CS as part of the PIMTP and should be wholly safeguarded for employment development. Policy CS04 should be interpreted sensibly. It seeks to safeguard opportunities. It does not preclude part use for complementary uses. To do so would fail the soundness test. This may be a planning issue, but to be a significant material consideration development of the SB site would need to cause unacceptable harm to the employment objectives of the CS. Only 4ha out of 12ha net usable areas at SB would be taken up by a new DC and the appellant cannot show that significant harm would be caused<sup>186</sup>. Even then, it could be outweighed by other planning objectives. There is no such evidence before this Inquiry. Indeed, the objection is really an attack on the DSAAP. Proposal DS06 does not aim to sterilise land indefinitely. It is a matter to be dealt with at the AAP EIP. In any event, locating the DC at SB would create jobs, employment space and new investment.
- 9.7 Prematurity can only be excluded if SB is unequivocally ruled out and the appeal site is accepted as the DC. Either conclusion would be extraordinary. Paragraph 17 of *PS:GP* requires an appreciation of the extent of prejudice and whether or not that would be unacceptable against the benefits. The DSAAP is at an advanced stage and cannot be considered in isolation from the CS. AV9 is a strategic policy which requires the AAP to bring about the Vision. CS paragraph 5.82 recognises this. The appeal scheme is within the scope of paragraph 17. Allowing the appeal would pre-determine decisions, not least over the location and scale of the DC. It would have a cumulative effect on the remaining area and substantial planning consequences. It would not be possible to proceed with the DSAAP by substituting development areas as the process would need to be entirely reviewed, including policies DS06, S03, DS14, S04, DS16 and DS18.
- 9.8 The scheme's lack of viability adds to the uncertainty, and so is also material to the prematurity issue, and would affect the delivery of the CS Vision for Derriford. Allowing the scheme would at least delay the DSAAP. When it is established that the scheme will not be implemented, further review will be needed, and possibly yet more review if the appellant seeks to amend the scheme. Until all this is resolved, the DSAAP cannot proceed in a satisfactory manner. The appellant's dire finances mean that it is dependent on outside sources, adding to the uncertainty. There is no current operator commitment,

---

<sup>186</sup> Holman in XX by PS: 'loss of 4ha would cause some degree of harm'; in ReX this was put at 'quite a significant degree of harm'

without which the scheme cannot proceed. Finally on this point, PCL holds a restrictive covenant and is under a duty to secure an open market value for its release. It is unlikely to release this without evidence that the scheme would be implemented in the public interest. There is no persuasive evidence that the scheme would be implemented beyond the initial, more profitable, phases. Even if the DSAAP is likely to take longer than till 2013 to resolve, the scheme would be premature.

- 9.9 It is axiomatic that the presumption in favour of sustainable development in the *Framework* does not apply to a scheme that is not economically viable. The lack of affordable housing also counts against creating a balanced community compared with the SB scheme. Granting permission would cause unacceptable harm through uncertainty and the appeal should be dismissed.

## 10. The Case for Sutton Harbour Holdings plc (SHH)

- 10.1 SHH owns a long lease on the FAS at Derriford to the north of NWQ. The FAS was originally included in the DSAAP area but since excluded. The appellant and SHH agree that the FAS should be included in the AAP given its potential<sup>187</sup>. The appeal scheme would seriously prejudice the potential role of the FAS in the AAP. Indeed, if allowed the DSAAP could no longer serve any practical purpose.
- 10.2 SHH's objections are threefold: the appeal scheme would fail to deliver against national and local policy; it would be premature and deal a fatal blow to the major new DC, and; the FAS is far from hopeless as an alternative location.
- 10.3 Derriford has no clear focal centre. It is dysfunctional and poorly integrated and this needs to be addressed. CS Policy AV09 seeks to address this by creating a new centre; Policy CS07 requires this to include a major foodstore. The DSAAP does this and sets out specific requirements. The AAP will take precedence over the CS. The foodstore would need to do more than mop up surplus expenditure but to act as an anchor to form a new heart to the DC<sup>188</sup>.
- 10.4 The appeal scheme would not provide the floorspace required in the AAP and so not perform its role. No food retailer has endorsed it and it would be more a top-up than a main food shop. The suggested potential to expand is unrealistic. The reason for this is that the scheme was conceived as something quite different, to address the new hospital entrance, the chances of which have now receded. The scheme could never be a gateway and the proposed hotel building would not stand out as anything special.
- 10.5 Originally conceived as residential, the scheme attempts to achieve several things at once and inevitably fails to do any of them. The appearance of the scheme would be harsh, there would be extensive overshadowing, and pedestrian permeability would be impeded.
- 10.6 *PS:GP* allows for refusal on the grounds of prematurity. The scheme would scupper the plan to deliver the DC through the AAP. Achieving the right location is more important than meeting the date of 2016. This is magnified

---

<sup>187</sup> Francis PoE para 6.109

<sup>188</sup> Edmunds IC: there is an omission in the latest Experian figures, see Inq Docs 27 and 34

by the lack of affordable housing. Moreover, there is a viability gap for the foreseeable future and so limited weight should be attached to any benefits.

- 10.7 The FAS is not a 'hopeless' site as the appellant contends. It has not been allocated for any other use and there are no legal obstacles to its use. While local sentiment would like to keep it, the private sector cannot make it pay, PCC does not have funds to subsidise it, and suggestions that the Prime Minister might step in to make it the only state-run commercial airport in the UK must be fanciful. PCC's own assessment of the airport's viability has been confirmed by two independent sources.
- 10.8 Although further north, the FAS is very well located for new development with a new DC at its heart. This aspiration is far from 'hopeless'. SHH does not seek endorsement of its proposals, only the right to advance them at the DSAAP EiP. Granting permission would prejudice this process and the proper planning of Derriford. The appeal should be dismissed.

## 11. The Cases for Interested Parties

- 11.1 Dennis Silverwood, a resident of north Plymouth, expressed his opposition to piecemeal development. He pointed out that Tavistock Road is already congested, that the area needs a major look at with integrated proposals. There is a chance for a large scale development and, in an era of localism, the appeal shouldn't overturn the City's planning process when not of national or strategic importance.

## 12. Written Representations<sup>189</sup>

*Dawnan Limited, Stuart Partners Limited and South West Water Limited (SWW)*

- 12.1 The SWW site accords with the CS. The appeal proposals would contravene the adopted and emerging development plan by promoting a DC on a site in conflict with the CS. This is a matter which should be advanced through the EiP in early 2013. Allowing the appeal would prevent such an examination. Both the LPA and the appellant query whether or not the SWW site could be delivered within a reasonable timescale, but this is a matter for the DSAAP and SWW maintains that the site is programmed to become available well within the life of the AAP. It is the only site which accords with the CS; the date of 2016 is not a policy requirement, only a target.
- 12.2 Other aspects of the SWW representations endorse the planning policy approach of the LPA and the merits of the proposals put forward by a number of parties. SWW also put forward the merits of its own site which, in line with my approach to the evidence for SB and FAS, I do not repeat here.

*Drake Circus Limited Partnership (a British Land company)*

- 12.3 Drake Circus shopping centre is the main shopping centre in Plymouth. British Land is supportive in principle of a new convenience-led DC in Derriford providing that restrictions are put in place so that it does not have a significant adverse impact on Plymouth City Centre. Should the appeal be allowed,

---

<sup>189</sup> See main file red folder

British Land<sup>190</sup> firmly opposes any subsequent retail development on SB or any other DC.

- 12.4 Plymouth City Centre is under pressure as is recognised in the RTP Study which highlights specific problems and a drop in the centre's retail ranking. The Study indicates that without further investment it could decline further. As drafted, British Land is very concerned that the emerging DSAAP does not contain sufficient restrictions. The Study fails to identify a clear need for a comparison-led DC at Derriford and does not correctly interpret the conclusions that the need for future retail floorspace has declined rapidly since 2006. The draft DSAAP identifies a significant amount of comparison floorspace at Derriford which would compete with the City centre, harm its vitality and viability, and seriously impact on investor confidence.
- 12.5 With regard to the current proposals, if they are approved, conditions should be imposed to cap the areas of floorspace and their uses. In that event, the DSAAP should be revisited to exclude development at SB.

### **13. Conditions**<sup>191</sup>

- 13.1 Discussions were held as to the suitable wording of, and reasons for, any conditions on 25 September, 11 and 16 October with reference to Circular 11/95: *Use of Conditions in Planning Permission*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeal is allowed, the conditions in the attached Schedule should be imposed, for the reasons set out there, and I do not repeat them here.
- 13.2 Some aspects of the proposals, such as building volumes and heights, are described in the DAS, the Urban Design Guidelines or shown on drawings, but not within the description of development. For the reasons in the Schedule, these should be controlled by condition 1. Similarly, parking provision should be controlled as set out in conditions 35-37, and floorspace by the definitions in conditions 48 and 49. These would also address the concerns raised by British Land. Reserved matters would not control phasing and so condition 7 would be required.
- 13.3 The LPA proposed an amended precondition (or Grampian condition) to prevent the foodstore from trading until a scheme for the reconfiguration of the Derriford Roundabout as a four arm signalised junction is completed<sup>192</sup>. The reason given was to ensure that any traffic impacts would be mitigated to prevent an increase in bus journey times. The appellant maintained that the condition would be unreasonable and unnecessary. The s106 Agreement would provide substantial contributions to the SRN, including the possible reconfiguration of the Derriford roundabout, and the HA accepted that this would overcome its objections.
- 13.4 The foodstore would be built during an early phase when only a relatively small proportion of the contribution would be required. This would not fund the whole of the new junction. Consequently, there is a strong probability that the

---

<sup>190</sup> Letter to PINS dated 14 September 2012: red folder, main file

<sup>191</sup> The final version of suggested conditions is at Document 19g with an addendum at Document 19h

<sup>192</sup> Precise wording in Inq Doc 19g, condition 32

foodstore would be built before the junction improvements are completed, or even started, leading to severe cumulative impacts on the transport network. On the other hand, the junction design has not been finalised and might depend on contributions from more than one development. If this appeal is allowed, the reasons are likely to include the benefits of economic growth. A condition delaying the foodstore until the signalised junction is completed would be unreasonable if the junction needed additional funds which were not available. It would delay the economic growth that would be a reason for allowing the scheme to proceed and so be self-defeating. For these reasons, while the likely traffic impacts are relevant to the planning balance, the condition should not be imposed.

- 13.5 The HA withdrew part of its objections on the basis that conditions would require robust TPs. Conditions 41 and 42, for work-based and residential TPs, are agreed. However, the financial elements of the TPs, on which the actual modal shifts could depend, are subject to the s106 Unilateral Undertaking which is not agreed. I deal with this in the next chapter. The car club requirement could be dealt with by a specific condition but it would be irrational to separate this requirement from the other funding provisions and it would be unlikely to have more than a relatively marginal impact on the modal shifts in any event.
- 13.6 As above, the LPA's objection with regard to trees was withdrawn on the basis that its concerns could be adequately mitigated through conditions. These are set out and agreed (conditions 27 and 28).
- 13.7 The hours for deliveries were not agreed, the LPA preferring delivery limited to 19.00 and no despatch on Sundays, Bank or Public Holidays. The appellants suggested an extension to 23.00 hours on Mondays to Saturdays based on the hours at Transit Way. The LPA contends that the sites can be distinguished as there are no dwellings on the Transit Way site compared with this mixed use appeal site with dwellings above and close to commercial uses. It might be possible that the configuration, orientation, construction and access arrangements could be such that the future living conditions might be protected. However, such details are not before me and without them I cannot properly assess the potential impact. In the absence of such details, the outline information on the proximity of uses to the foodstore accesses suggests that it is reasonably likely that there would be a problem for future residents from undue noise and vibration late into the evening. Consequently the earlier hours (in condition 54) are to be preferred.
- 13.8 The appellant argued that condition 43, to require affordable housing, is not necessary as, subject to viability, there would be provision through the s106. The suggested condition would require a viability assessment prior to each phase followed by a scheme. (In fact, although the wording of the condition suggested at the Inquiry would have required a viability assessment, the requirement for a subsequent scheme would only be implied rather than specified; accordingly, I have altered this in the Schedule.) The proposals would therefore comply with, but not exceed, the requirements of the CS policies quoted in the reason. The condition would therefore be directly related, reasonable and necessary and so satisfy the tests in the Circular. With regard to the s106, advice in the Circular and the *Framework* is that, where possible, conditions are to be preferred and should not be duplicated,

and that obligations should only be used where impacts cannot be addressed through a condition<sup>193</sup>. Moreover, as below, although the s106 would theoretically provide affordable housing if viable, the condition would require assessment for each phase and secure provision in line with policy (which already contains a viability clause). As this policy is in place, and as evidence<sup>194</sup> suggests that some phases would be far more profitable than others, the condition is necessary and should be imposed.

- 13.9 The LPA sought a condition on an energy strategy which would not only comply with policy CS20, which is now relatively dated for this subject, but also satisfy each of: the DSAAP draft Proposal DS05 – *Combined Heat and Power, District Heating and Cooling*; the LPA's aspirations for a district heating solution, and; the appellant's stated goals in the DAS<sup>195</sup>. If this appeal is allowed it would alter the DC element of the DSAAP. However, this would only lead to minor changes to Proposal DS05. On the other hand, the appellant has pointed out difficulties with a condition requiring connection to a network which has not yet been designed. The LPA's revised suggestion<sup>196</sup> sought to combine the 15% requirement with its aspirations for a district heating solution, but would be unduly complicated and the extent of the Derriford area is not defined.
- 13.10 Proposal DS05.4 allows for the situation where the network is not operational but says little on how to proceed before it is even designed or specified. Consequently, while weight should be given to Proposal DS05, imposing a condition to comply with it at this early stage would be unreasonable and potentially unenforceable. Moreover, a more general condition controlling at least 15 % of the energy supply through submission of a scheme (condition 55) would be in line with Policy CS20, could achieve the same aim and allow for alternative solutions until the district heating proposal is further advanced. The 15% requirement not only sets a benchmark but, as renewable energy is usually more expensive than energy saving measures, provides an incentive for the construction to be as well insulated as possible and to make use of low energy technology. If necessary, the scheme could also be required to incorporate onsite production to satisfy CS20.3. Condition 55, as set out in the Schedule, is therefore recommended. The reference to District Heating in condition 7 should also be omitted.
- 13.11 The appellant queried whether a requirement for a 'very good' rather than 'good' Building Research Establishment Environmental Assessment Method (BREEAM) standard was a reasonable condition. Given the stated aims in the DAS of minimising building energy use, there is nothing unreasonable in the 'very good' requirement.

## 14. Obligations

- 14.1 The s106 Agreement is between the appellant (and its mortgagee), PCC and Plymouth Hospitals NHS Trust (which has a registered charge over part of the site). It requires contributions to be paid by the appellant (as owner) to PCC for education, libraries, playing pitches, strategic open space, the European

---

<sup>193</sup> Circular 11/95 paras 12 and 13 and *Framework* para 203

<sup>194</sup> Hector in answer to IQs

<sup>195</sup> CD F11 para 4.8.3

<sup>196</sup> Inq doc 19h

Marine Site (EMS), sports facilities, public realm, strategic transport, air quality monitoring, and for management of the obligation. The contributions would be reduced pro rata for any affordable housing delivered and the Agreement also binds PCC to repay any contributions which are not fully committed within 5 years (10 years for education).

- 14.2 The contributions in the Agreement were discussed at the Inquiry with regard to advice in the *Framework*<sup>197</sup> and to the tests in The Community Infrastructure Levy (CIL) Regulations 2010 (Regulation 122 in particular). The detailed requirements for most of the contributions are set out in the DSAAP Delivery Framework<sup>198</sup>. A written summary of the additional information to justify compliance with the CIL Regulations, in response to my questions, was provided<sup>199</sup>, as was an exchange of correspondence between the LPA and The Planning Inspectorate to help clarify the correct approach<sup>200</sup>. In the event that the owner (as defined in the Agreement – currently the appellant) would become liable for CIL charges during the course of development, a clause would prevent these from exceeding the contributions in the Agreement<sup>201</sup>.
- 14.3 Given the detailed justifications, most of the contributions would undoubtedly comply with Regulation 122 and should be given weight in the Decision. Additional information on the playing pitch locations was submitted to establish that they would be directly related<sup>202</sup>. With regard to the library, there would be either a new building in the Derriford area, the preferred option being within the new DC, or an extension to the existing Crownhill library. Given the uncertainty over the DC highlighted by this Inquiry, identifying options is a reasonable approach and the costs of both have been given.
- 14.4 Although much of the EMS covers the Tamar Estuary outside the administrative boundary of PCC, a Forum would direct where the contributions necessary to manage recreational impacts on the EMS would be spent, the fund is administered by PCC, and the projects have been identified and the costs estimated. The list of public realm improvements is extensive and, with many at the initiation stage, originally appeared to be little more than a wish list. However, there are sufficient projects with specific costs on the approach from Derriford for the contributions to satisfy established principles<sup>203</sup>. The monitoring contributions would follow the correct approach and accord with the recent clarifications.
- 14.5 The need, relationship with the development and the cost estimates for the strategic transport contributions are set out by the HA and allowed it to withdraw its objection. The contributions would be phased with the development. Only some 60%<sup>204</sup> of the contributions would be required before any dwelling in Phase 4a, which includes the foodstore, could be occupied so they would not ensure that the road improvements are undertaken before the

---

<sup>197</sup> Paras 204 and 205

<sup>198</sup> CD B30

<sup>199</sup> Inq Doc 23

<sup>200</sup> Inq Docs 18a and 18b

<sup>201</sup> Clause 7.25

<sup>202</sup> Inq Doc 22

<sup>203</sup> Inq Doc 23 and CD E30

<sup>204</sup> Just under £1m out of £1.6m

additional traffic burdens from the foodstore are imposed on the network. This has a bearing on the overall planning balance below. Nevertheless, the contributions have been adequately justified in accordance with the tests.

- 14.6 The affordable housing provisions in the s106 Unilateral Undertaking (UU) would bind the owner (including the mortgagee and Hospitals Trust) to carry out a viability review prior to each phase of development (except phase 1b) and, in the event that it demonstrates an Affordable Housing Adjustment, to either provide affordable housing units or pay a commuted sum. The Adjustment would be calculated through a series of Additional Profit Steps based on the Developer Profit, in turn based on the Development Cost, which would include the Site acquisition costs and finance costs. In the event that the Adjustment is not agreed, further dispute resolution clauses would be applied ultimately falling onto the president of the Law Society.
- 14.7 Even allowing for the viability assessment, the provisions would be unlikely to require sufficient affordable housing to accord with the relevant adopted CS policies. For these reasons, and those given in chapter 13, a condition is preferable. While the principle of a valuation review was not contested, and indeed there is such a provision in the CS, the means of calculation through Adjustments and Additional Profit Steps would be unlikely to achieve the same level of provision as the requirement anticipated in the CS. Consequently, little weight should be given to this provision.
- 14.8 The unilateral obligation would also specify the sums to be paid to fund as the Travel Plan Contribution, including the TP Co-ordinator Cost, the Car Club Membership Contribution, the Bus Ticket Voucher Contribution, and the Bicycle Initiatives Contribution. In the event that the modal shift targets were not met, the overall TP Contribution could be reallocated but there is no provision for any additional funds to secure modal shift<sup>205</sup>. The original suggestion was that funding for the TP should continue for 10 years after the occupation of the last building in each phase, but this was amended to 5 years. The s106 fails to refer to penalties or sanctions in the event that the modal shift targets are not met and would only cover one year's car club membership when the LPA sought longer. The latter could be dealt with by a condition, but this would make little difference to the overall issue of funding.

---

<sup>205</sup> Smy in XX, Day 3

## 15. Inspector's Conclusions

References in square brackets [N] refer to earlier paragraphs in this report.

From the written evidence, the oral submissions at the Inquiry, and from my observations of the site and the surrounding area, I have reached the following conclusions.

15.1 The MAIN CONSIDERATIONS in this appeal are:

- i) whether the proposals would accord with the development plan and, if not, whether there are material considerations which would indicate otherwise, and;

the effects of the proposals on:

- ii) the retail function, vitality and viability of the area;
- iii) the future location of the proposed Derriford District Centre (DC), with particular regard to emerging policy and prematurity;
- iv) the strategic road network (SRN); highway safety and the free-flow of traffic on the local highway network, including buses; car parking provision with regard to sustainable modes of transport;
- v) the quality and mix of housing, and provision for affordable housing;
- vi) the character and appearance of the area, and the living conditions of future residents, with particular regard to design and layout, and;
- vii) infrastructure provision.

The material considerations include the *Framework*, recent Government statements on the *growth agenda*, potential benefits, and whether or not the scheme would be viable and/or deliverable.

15.2 From the Environmental Statement (ES), and the further information submitted during and after the Inquiry sat, I find that the evidence in the ES is thorough and comprehensive and fully adequate for a reasoned assessment of the likely environmental impacts of the proposed developments, and how they may be mitigated, and that the requirements of The Regulations have been met. [1.8-1.10]

### *Development plan (DP)*

15.3 As above, proposals should be determined in accordance with the DP unless material considerations indicate otherwise. Of the DP documents, the Core Strategy (CS) is the most recent, having been adopted in 2007, and the most relevant. The CS sets sustainable development at its heart with a vision for sustainable growth. Consequently, many relevant policies are consistent with the *Framework* and should be accorded considerable weight (paragraph 215). In the event of conflict with the DP, the *Framework* and the *growth agenda* are material considerations which could indicate otherwise. The emphasis on growth also reflects the vision in the CS. [3.1, 3.5]

15.4 The appellant has argued that the proposed mixed use development would accord with the CS, and the *Framework*, and so should be allowed. The LPA has claimed that the scheme would be contrary to the CS and, even if the claimed benefits with reference to the *Framework* and the *growth agenda*

could indicate that permission should be allowed, the scheme would not be viable and so the benefits would not be realised. I have looked at all these matters before reaching my conclusions on the first main consideration. [6.13, 6.29][8.3]

### *Retail*

- 15.5 The CS does not support retail development outside the City centre (CS06) or district/local centres (CS08) without a sequential test and this is consistent with the *Framework*. The NWQ site is not in a currently designated centre and so the scheme is not supported by either of these policies. Policy CS07 expects a new DC in Derriford. [3.10-3.11]
- 15.6 If the proposals could be shown to amount to the first phase of the new DC, the scheme could be supported by Policy CS07, and in turn by the *Framework*. If not, it should be judged against CS policies with regard to its impact on the vitality and viability of existing centres and on likely investment in a proposed DC elsewhere. I have therefore considered the scheme against the relevant policies for a new DC. I look separately, below, at the possible effect of the proposals on the emerging Derriford and Seaton Area Action Plan (DSAAP) and whether or not the scheme might be premature. [3.10]
- 15.7 CS Policy AV9, objective 3, is for the DC to be centred on the west side of the A386. The targets under S07 include a new DC at Derriford by 2016. The LPA and appellant have agreed that neither the SWW site, nor Crownhill, can be developed by 2016 and so the requirement that the DC be to the west of the A386 cannot be fulfilled. SWW has claimed that its site could be available by 2016 and the DSAAP now anticipates the redevelopment of the water works by 2018. The date of 2016 is only a target and so could be altered through the DSAAP which would then supersede this element of the CS. [3.12][8.6]
- 15.8 Similarly, the location could be altered to the east of the A386 as is currently anticipated by the DSAAP proposal for SB. The appellant and LPA agree that the FAS cannot accommodate a new DC due to its location to the north. Although the FAS is not close to the indicative new DC in the diagram to AV9, it does adjoin one of the two identified city gateway locations. Again, if appropriate, this is a matter that could be addressed through the AAP process. What cannot be altered is the existing policy in the CS prior to it being superseded by policy in an AAP. [3.12][8.2]
- 15.9 Regardless of whether or not any other site could comply with the stated timescale, the appeal scheme for the NWQ site would not meet the locational requirements of policy AV9. The timing of the proposals would be dependent on their viability and deliverability (see below) from which it is doubtful that much of the scheme would be in place by 2016. The scheme would therefore be contrary to the wording of CS policies S07 and AV9. Moreover, AV9 requires the DC to be delivered through an AAP. [3.11-3.12]
- 15.10 The degree of harm to the vision for Derriford in the CS, and to policy AV9 in particular, would also depend on whether or not the scheme could amount to a DC, including filling the perceived qualitative gap in retail provision and, if

not, whether it would affect the potential for a DC elsewhere in Derriford. [6.2][8.3]

- 15.11 In looking at the indicators of vitality and viability, CS paragraph 7.8 noted that the City centre is generally healthy, trading at about 20% above benchmark level for a city of its type. The CS anticipated a substantial growth in shopping expenditure. However, since then Plymouth has dropped to just below Exeter in the rankings and the CS forecasts are now well out of date. The RTP study, prepared during the current economic downturn, found that while Drake Circus is performing well, other City centre locations have suffered, and my own observations confirmed this. The RTP study also noted a slight decrease in rental values at district centres and recent retail permissions at Transit Way and Plymstock Quarry. The appellant is therefore justified in arguing that the identified requirement for floorspace in Proposal DS17 of the draft DSAAP may not be supported by the most up-to-date evidence. These concerns were echoed by British Land (owners of Drake Circus). [3.17][12.3-12.5]
- 15.12 From my observations, most foodstores in the area are trading well but there is no particular congestion within the stores. While the Outland Road store was busiest, and the arrangements both within the car park and the adjoining roads lead to traffic congestion, the store itself was not overcrowded and a number of indicators suggested that it is operating effectively at busy times. [2.11-2.13]
- 15.13 The recent permissions will have some impact on trading at existing stores. The most recent Experian figures support the RTP study's suggestion of a growing trend towards greater internet sales. The picture here is complicated by the way that such turnover is recorded. However, even if the stock is taken from a local store, a reduction in the number of customers physically attending that store will reduce the degree of congestion within the store and its car park. As a result, increases in SFT could have a marked reduction in overcrowding at stores, and so the need for new floorspace, even if they do not reduce the extent of overtrading based on turnover alone. [2.10]
- 15.14 Taken together, the economic downturn, recent permissions and the growth in SFT will at least significantly slow any increase in overtrading which might otherwise occur as a result of any growth in population or expenditure. Given the lack of physical indicators of congestion within stores, there is little evidence to support a quantitative need for either more convenience floorspace or a minimum size for a new store. Although the retail figures show that impact on existing stores would be limited, this evidence should be treated with caution, as was also recommended by the CS Inspector. [3.10]
- 15.15 On the other hand, the RTP study continues to recognise the CS aspirations for northern Plymouth and agrees that this provides a qualitative need for a new store, albeit that there is little to justify a larger store than necessary to act as an anchor for the DC. The evidence does not show that, by itself, the proposed retail areas would harm the vitality and viability of existing centres. However, as out-of-centre retail development it would gain no support from the CS. Consequently, the relevance of the retail evidence to this appeal lies in whether or not the scheme would be the correct size to fulfil the role of a new DC. Just as the evidence does not support a finding that the scheme would cause significant harm to existing or committed centres, nor does it

- indicate that there is so much headroom that the City could support the appeal scheme and a new DC elsewhere. [2.8]
- 15.16 To achieve the first phase of a DC, and so deliver the vision in the CS, the scheme would need to attract sufficient investment. It would need to interest a foodstore operator and its customers, including ease of access, parking, and a pleasant retail and leisure environment. The proposed foodstore would be significantly smaller than that specified in the DSAAP and would ultimately be linked to one of the MSCPs. The LPA has argued that, to succeed, the foodstore would need to compete like-for-like with nearby stores and be clearly visible, without relying on signage, from the Tavistock Road. [3.17][8.7]
- 15.17 Convenience retailing is a highly competitive business and so the appellant is justified in arguing that it is unlikely that there would be no interest in an urban site with planning permission for a supermarket. Nevertheless, even if a taker were found for the foodstore, and it were to trade profitably, this does not mean that it would necessarily perform the role of an anchor and attract the necessary future investment in high calibre retail or leisure units to the rest of the High Street for it to amount to a DC. Concerns over the limited extent of floorspace, parking difficulties and lack of clear visibility from the A386 all suggest otherwise. There is little evidence to show that the community uses would be a significant draw. [6.18-6.19][8.8]
- 15.18 None of these points lend support to the argument that the scheme would comply with AV9, or achieve the vision in the CS, even disregarding the site's location to the east of the A386. The scheme has neither the support of the CS, by being promoted through an AAP, nor persuasive evidence that it could achieve the CS vision. [3.12]
- 15.19 The proposals are only claimed to amount to phase one of a potentially larger scheme which might extend west towards the A386. The appellant has demonstrated how this might be possible by incorporating adjoining land. Contrary to the LPA's claims, these ideas are not impossible. However, they have not been worked up in any detail, they would involve adjoining owners and the appeal scheme was not designed with such expansion in mind. (See below under *Design*.) These factors weigh against the probability that the scheme could expand satisfactorily or successfully into phase two of the DC or attract the necessary investment to achieve the CS vision. [6.2][8.5]
- 15.20 Finally, the LPA has claimed that the scheme is not viable, and so would not be delivered, and that this would undermine investment opportunities in a new DC elsewhere without delivering the vision at the NWQ. I shall therefore consider viability, and the likelihood that the scheme would be substantially delivered, before concluding on whether or not it could meet the aim of a new DC in the CS and before I draw my final conclusions. [6.13-6.17][8.11-8.18]
- 15.21 The appellant has argued that the LPA has been inconsistent in refusing the application for proposing more floorspace than in Proposal DS14.3 of the draft DSAAP and then claiming at the Inquiry that the floorspace would not be enough to amount to a new DC. However, this is essentially to point out that the scheme would fall between two stools, being too big to be a local centre, as DSAAP Proposal DS14.3, and as originally designed opposite a new hospital entrance, but not big enough for the DC anticipated in Proposal

DS16. This only emphasises the underlying objection derived from the CS that the appeal scheme would neither be in an existing centre nor gain support (in advance of the EiP) from policy for a new DC. [3.6]

- 15.22 Taking these reasons together, the proposals would be contrary to CS retail policy and considerable weight should be given to this conflict. The scheme is for mixed use, not specifically for a DC. However, unless it can be shown that it would comprise phase I, the retail element has no support from the adopted CS but would fail to accord with SO7, or with policies CS07 and AV9. It would conflict with the requirements in paragraphs 24 and 27 of the *Framework* which require *a sequential test ... for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan* and that *Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.* [3.6][3.11-3.12]

#### *Prematurity*

- 15.23 Inq Doc 61 identified progress on the DSAAP at that time; it has now been submitted. RfR3 cites prematurity and prejudice to the DSAAP in the location, scale and phasing of the proposed DC. The appellant has argued that the emerging DSAAP should have little weight, insofar as the DC is concerned, as there are substantial objections to the SB proposal which have yet to be examined. WRDL acknowledged that the scheme would predetermine any decision on the location of a new DC but claimed that no harm would be done to the AAP process as all of the other contenders for a new DC are hopeless. [3.16][8.3-8.4]8.34]
- 15.24 The appellant suggested that the amount of convenience floorspace required by DSAAP Proposal DS16.1b)i) is based on an assumption about overtrading for which a judgement can be made now, rather than at the DSAAP EiP. However, the EiP can consider not only the quantitative retail need, if any, but also the qualitative role for an anchor store as part of the CS vision for northern Plymouth. Even if the EiP found that there was no need for any additional retail space, the DSAAP could still be found to be sound if a store is needed to fill the identified locational gap. [3.16][8.8]
- 15.25 *PS:GP* paragraphs 17 and 18 are relevant. If there was no early prospect of submission for examination, the draft DSAAP should be accorded limited weight. It has suffered a number of delays. However, it has been submitted and so it should be given more than limited weight. [3.15][8.32]
- 15.26 The Vision Diagram in the DSAAP would expressly supersede the CS as allowed by the 2012 Local Planning Regulations. The end date of 2016 is only a target, and should be treated with some flexibility, just as the location has been significantly altered in the emerging draft. There is nothing in the Planning and Compulsory Purchase Act 2004 to prevent the DSAAP being in general conformity with the CS, and sound, with a different end date and/or location. Indeed, if the SB site is found to be unsound, the EiP could still consider arguments in favour of the SWW site given that developing some of the alternative sites may now be likely to take almost as long. [3.3][3.6][3.12]

- 15.27 In claiming that all the other sites for a new DC are hopeless contenders, the appellant has argued that the SWW site cannot deliver a DC by 2016 or anywhere near that date (also noting that the LPA is no longer pursuing that option); that the FAS is outside the search area, and; that SB has been safeguarded for employment. Adding detail to the LPA's case, PCL, SHH and SWW (in writing) all pointed to the merits of their sites and, specifically or otherwise, refuted the suggestion that their cases are hopeless. [3.6][8.33-8.38][12.1-12.2]
- 15.28 Although outside the Vision Diagram in the draft DSAAP, the FAS is at a gateway location as identified in the CS diagram to AV9. It was not considered for a DC in the CS as, at that time, it was identified for improvements to meet a fuller range of business and leisure needs as an operational airport. While there is local opposition to the loss of this facility, arguments were also made that this is inevitable. Evidence of other interested parties may need to be heard with regard to the future use of the FAS before any conclusions should be drawn and, if appropriate, the EiP could hear such evidence. [ch10]
- 15.29 With regard to SB, the proposed allocation would conflict to some extent with the CS, in this case over employment land and Policy CS04. It would be generally contrary to RPG10 Policy SS17, but this is out of date and should be given little weight. Of the four sites under consideration, any allocation other than the SWW site would conflict with the CS as it refers to the west of the A386. It is semantic to argue that, just because the CS uses the word *safeguarded* with regard to the PIMTP, that the allocation of SB cannot be amended while that for NWQ can be ignored. The need for employment land at PIMTP could weigh heavily at the EiP. The current allocation of SB may yet be found to be unsound for employment land reasons, but that is not a foregone conclusion and, if so, it should be reached in the context of the EiP not an appeal into another site. [ch9]
- 15.30 All sites are flawed in some ways but the arguments for each site are sufficient that, given the flexibility that the AAP should enjoy under the 2012 Local Planning Regulations, none of the criticisms should exclude proper consideration of all these sites, if necessary. Indeed, measured against CS policy, the current scheme is also flawed, in that it has only a very limited frontage with the A386 and is unlikely to deliver much in the way of retail provision by 2016. Nonetheless, if appropriate, this should not exclude the NWQ site from consideration at the EiP either. [3.12][3.17]
- 15.31 Interpreted literally and fully, none of the 4 competing sites would satisfy CS policy for the new Derriford DC. However, if appropriate the merits of any of them might be considered as part of the EiP into whether or not the proposed location of SB in the DSAAP is sound. Therefore, although prejudice to the AAP should not be given substantial weight at this stage, it would be wrong to conclude that it will inevitably be found to be unsound. The claimed inadequacies of the SB proposal in the DSAAP offer no support to the appeal scheme. The argument that the current NWQ scheme is the only possible way to satisfy the aims of the CS for Derriford should fail. [6.27][8.3]
- 15.32 Objective 4 to CS AV9 is for a new high quality 'northern gateway'. The diagram indicates two gateway locations on Tavistock Road, one at the corner of the airport and the other at Derriford roundabout. The proposed new

centre is shown around the latter. The NWQ site borders Derriford roundabout and the proposals would include high density development between there and the hospital which would be visible from the roundabout. In the absence of any CS definition of 'gateway', the proximity of the site and the proposed high buildings would provide some prominence on entering the City, so that the scheme could not be said to conflict in absolute terms with objective 4 of Policy AV9. On the other hand, the scheme was not designed as a gateway and, even with phase two, it would be centred well over to one side and so little weight should be given to the scheme's contribution towards the objective of a gateway. [3.12][8.6, 8.10][9.5][10.4]

- 15.33 For the above reasons, and contrary to the appellant's assertions, the evidence does not show that the claims of PCL, SWW or SHH are necessarily flawed but that all of these landowners are entitled to argue that their sites are contenders for a new DC. Whether or not the current proposal for SB is sound is a matter which should be considered at an EiP in the context of the other sites. The objection to the loss of employment land at SB, and conflict with Policy CS04, RPG10 Policy SS17, and emerging Proposal DS06, could be reviewed at the EiP, as could the end date of 2016 for the SWW site, and the strategic issues and peripheral location of the FAS. Even if only one of these 3 was a realistic challenger, that would be sufficient to make the appeal scheme premature. It is not enough for the appellant to show that the other contending sites diverge from the CS in one way or another. To discount other possibilities would require persuasive evidence that the EiP would not only find SB unsound but reject all other sites as well. There is no such evidence. All sites have flaws and the Inspector at the EiP will reach balanced conclusions on the submitted version. [ch9][ch10][12.-12.2]
- 15.34 The CS recommends that a new DC should be established through an AAP, essentially delegating this decision. The proposals would not comply with the CS as the site has not been selected through the AAP process. They would not comply with the current DSAAP which refers to another site. Given that the DSAAP has not yet reached its EiP, where it is likely to be contested, reduced weight should be given to the prematurity argument. Nonetheless, the scheme would conflict with the process required by CS S07, and gain no support from policies CS07 or AV9, and its prematurity is a factor to be considered in the planning balance. [3.6, 3.10-3.13]

*Traffic on the strategic road network (SRN)*

- 15.35 The HA confirmed that, subject to the satisfactory completion of the s106 Agreement, and conditions to secure robust TPs, any impact on congestion on the SRN as a result of the proposals would be mitigated. In principle, therefore, this objection has been overcome. [ch7]
- 15.36 The A386, and the Derriford roundabout in particular, are at or over capacity. The latest evidence suggests that in places the proposals would make matters worse and that in at least one scenario they might significantly increase bus journey times. The latter could have an impact on the TP targets and in turn on the sustainability or otherwise of the proposals as a whole. On the other hand, the s106 Agreement would make a considerable contribution towards improving the SRN, including the FVLR and improvements at the Derriford roundabout, and the TPs, with ambitious modal shifts, could be required by conditions and funded through the

unilateral s106 obligation. I deal with the TPs below. [5.5-5.8][6.26][8.23-8.27][14.8]

- 15.37 Subject to the total contributions in the s106 obligations, and to conditions, the adverse effects on junctions along the local highway network could be largely mitigated such that the overall impact from the completed scheme would be less than severe. In that eventuality there would be no conflict with Circular 02/2007 or paragraph 32 of the *Framework*. As above, a condition requiring the junction to be completed before the foodstore opens would be unreasonable, as the design has not been finalised, and counter-productive as much of the purported benefits of the scheme depend on prompt delivery. This leaves the possibility that the foodstore would be occupied, and traffic volumes increase, without all the contributions to the SRN, resulting in severe cumulative impacts. The probability of this happening turns on the deliverability of the scheme as a whole and so, to some extent, my conclusions on the road network must follow those on viability and deliverability (below). [13.3]

#### *Highway safety*

- 15.38 After extensive additional work by the main parties, and subject to conditions, the specific highway safety concerns have been addressed. Concerns arising from increased congestion would be overcome in the event of the improvements to the SRN being carried out and the modal shifts in the TPs being achieved. Locally, some aspects of congestion would be improved while others would be made worse. There would probably be a slight overall deterioration in congestion depending on how the balance is weighed up between reductions at some hours in some locations and longer queues at other times elsewhere. [5.5-5.8][6.23-6.24][8.23-8.27]
- 15.39 As above, PCC has aspirations to reconfigure the Derriford roundabout as a four-arm signalised junction and has provided a layout of the indicative proposals. The physical position of the proposed hotel would impinge on the current draft proposals, but only marginally, and it is likely that the final design could take account of the proposed buildings without serious detriment to the performance of the junction. Alongside Derriford Road there would need to be a new retaining wall. I saw from my site visit that the ground falls away behind this area and so, if necessary, a new retaining wall would be quite feasible. In practice it is likely that adjoining owners would agree to the area being re-graded and landscaped. Neither of these concerns should prevent the scheme proceeding, especially when the new junction layout is only in draft. [3.14][5.5][6.24][8.23]
- 15.40 Nevertheless, while highway safety concerns are not enough on their own to justify refusing planning permission, the effect of the proposed highway layout on increased congestion would have an impact on bus journey times and so, indirectly, on the overall sustainability of the scheme. The extent of delays to buses was not agreed and the evidence from bus operators was equivocal. The overall effect would be related to the balance of improvement and deterioration in congestion as a whole and its impact on modal shift.
- 15.41 No individual objection would reach the level of 'severe' required by the *Framework* such that development should be prevented. Cumulatively, with the overall package of improvements including the contribution to the SRN,

and subject to concerns over the deliverability of the scheme as a whole, the likely deterioration in traffic conditions after mitigation would be acceptable and would not conflict with policies CS28 or CS34. [3.14][5.7][6.23][8.24]

#### *Car parking / sustainable transport*

15.42 The extent of car parking is agreed and the layouts of the buildings, and areas of parking within them, are part of the appeal proposals. The LPA argued that, even with the agreed reduced numbers, and controls through suggested conditions, there would be too much car parking which would also act as a disincentive to modal shift. In the event that it was likely that the proposed shift could be achieved, little weight should be given to this concern. The converse is also true. Moreover, this is a location with excellent transport connections and near to the hospital (which employs many staff who may not be able to afford a car) and so where the LPA would support fewer parking spaces. This is therefore another matter related to my conclusion on the modal shift arising from the TPs and otherwise. [5.7][6.25][8.29]

#### *Travel plans*

- 15.43 The TP targets and measures have been agreed in principle. However, the possible costs of the measures have been capped in the s106 UU. In the event that the modal shift targets were not met, the overall TP Contribution could be reallocated but there would be no penalties or sanctions and no provision for any additional funds or further measures. The modal shift targets are ambitious and without penalties to support them there must be substantial doubt that they will be achieved. The sustainability of the scheme, and likely degree of congestion on the roads, depend on meeting the shifts. In a potentially vicious circle, increased congestion could also delay bus journey times and reduce the modal shift. [5.8][6.26][8.29][14.8]
- 15.44 Put together, the ambitious targets and the funding limitations in the s106 UU reduce the probability that the modal shifts will be met and so the weight that should be given to the likelihood that the TPs will achieve their goals. It also follows that congestion, extending bus journey times, and the parking provisions, would act as disincentives to modal shift, and have an impact on the use of sustainable transport, contrary to policy CS28 and the *Framework*. Indeed, if the TPs fail to meet the target modal shifts there would also be a knock on effect on the SRN. [6.26]

#### *Affordable housing*

15.45 The principle of housing on the NWQ accords with the CS. However, the scheme would not guarantee any affordable housing. The review mechanism in the s106 UU might allow much of the profitable housing to be constructed without a significant affordable housing element, if any, and the scheme might then stall without providing any affordable housing within the less profitable parts. As above, a condition could be imposed to require a viability assessment for each phase and so this would be better than the s106 UU. The condition would accord with Policy CS15 and with the *Framework* (paragraph 50) which requires sufficient flexibility to take account of changing market conditions over time. Nevertheless, not even the condition would guarantee any affordable housing. [5.10][13.8][14.6-14.7]

- 15.46 There would be a relatively generous provision of private parking throughout the scheme, much of it underground. While this may amount to good design for central urban areas, with high land values in times of economic growth, this is an expensive solution for an out-of-centre site during an economic downturn. As below, the lack of overall viability of the scheme is a function of incorporating a design more suited to other times and places. A design incorporating fewer integral parking spaces might therefore achieve more affordable housing. Consequently, the probable lack of affordable housing is likely to be as much a result of an inappropriate design brief as of market conditions. [5.7][6.14]
- 15.47 The appellant argued, in the alternative that, if adopted, there was no guarantee that following the DSAAP would lead to the provision of affordable housing on the NWQ site either. This may be true, but without expensive underground parking another scheme might be closer to being viable and so the likelihood would be increased. The CS and the *Framework* are silent, as well they might be, on the implications of design on viability. Nevertheless, it would be wrong to attach the same weight to the benefits of housing in a scheme that is unlikely to provide much, if any, affordable housing when another scheme on the same site, which accorded with the CS and the DSAAP allocation, might well do so. [8.31]
- 15.48 The proposed housing density across the site would range from medium to very high. The DSAAP Delivery Framework specifies a mix of 40:60 houses:flats. The appeal scheme offers 23:77 and so fails to comply with this element of emerging policy. Small flats would be overrepresented resulting in a poor mix of housing. Although to some extent the balance would correct a shortage of smaller dwellings in the wider Derriford area, nevertheless this also counts against the scheme. [3.14][3.19]

#### *Design and layout*

- 15.49 The DAS explains that the design includes a number of features which could benefit a high density mixed use development and result in a sustainable community. In the economic context of the time when the scheme was conceived, and with a proposal for a new hospital entrance, it undoubtedly demonstrated some aspects of good design. However, times have changed. There is little evidence of a serious review of the design in the light of the economic downturn, particularly with regard to the cost of parking. Indeed, it may be no coincidence that this was the area overlooked in the initial appraisal and that parking contributes significantly to the probable lack of viability (see below). [5.4,5.7,5.10][8.19]
- 15.50 Since then, the potential for an attractive High Street, with its café aspirations, has been diluted rather by the bus routes and highways requirements and, with matters such as the number of crossing points still unresolved, there can be little confidence that this central element of the scheme would achieve its goals in full. While a High Street of sorts would be possible, it would not measure up to the initial concept in the DAS. Although not a reason to reject the scheme, it reduces the weight to be given to the benefits of the schematic design. [6.6]
- 15.51 As above, any conflict with the proposed replacement junction for Derriford roundabout would be marginal. Subject to reserved matters, and taking a

realistic approach to the limitations of the existing topography, it should be possible to achieve adequate pedestrian and cycle links across the site. There is no relevant design guidance requiring that schemes should front directly onto streets in all circumstances. While it may be good practice in most cases, design is always a matter of balance, and the appellant's architect explained why the housing should face onto internal streets, rather than towards a busy main road, while still achieving passive surveillance. The Design Panel made no criticism of lack of street frontage and this concern should be given little weight. [3.6, 3.8][8.20, 8.22]

- 15.52 Attempts were put forward to show how the scheme might expand to fulfil phase two of a DC and there is some potential, subject to various constraints. However, the proposals were conceived as a mixed use scheme with some retail floorspace adjoining the proposed hospital entry and to contort it into a DC would be a contrived result, rather late in the day, instead of an integral part of the original concept. Consequently, opportunities for expansion and the potential for a gateway could not be realised anywhere near as well as if they had been part of the original brief. Any second phase would therefore be unlikely to achieve a satisfactory result compared with a scheme which had been designed with this in mind from the outset. While not a reason to dismiss the appeal, it reduces the weight to be given to the claims of good design. [3.11-3.12][6.3-6.4]
- 15.53 The concept is one of a high density urban development. While this may be sound in principle, the site is a long way out from the City centre and would depend on the full delivery of all of its elements for its success. Without the complete proposals, the 8 and 9 storey buildings of the earlier phases would be unduly dominant without the corresponding advantages of an integrated high density scheme. While the character and appearance of the high buildings might be suitable for a city centre, Derriford is not in the City centre and they are less so here. [6.5][8.22]
- 15.54 Limited overshadowing is to be expected in a high density mixed-use DC. However, that disadvantage would need to be offset by the benefits of the correct overall urban form, where such a high density and some overshadowing would be appropriate, for this to be acceptable in the overall planning balance. The Design Panel also raised this issue. A detailed judgement is difficult when the information is at a small scale and when some particulars would be reserved matters. While the evidence does not prove substantial harm to the living conditions of future residents on account of overshadowing, this concern also reduces the weight to be given to the purported benefits of good design. [6.5][8.21]
- 15.55 Considered together, and given the doubts over the deliverability of much of the scheme, these design concerns should be given some weight. The scheme would not fully accord with CS SO4, policies CS02 and CS34, and with chapter 7 of the *Framework* which places great importance on the design of the built environment. [3.6, 3.8, 3.14]

### *Community impacts*

- 15.56 As above, most of the s106 contributions are agreed and would accord with policy CS33. Nonetheless, they would do no more than mitigate against harm that would otherwise be caused.

### *Potential benefits*

- 15.57 Mixed use development on the appeal site would accord with the government's growth agenda. Subject to meeting the definitions for sustainable development, the scheme would be in line with some of the objectives in the CS and the *Framework*. If fully implemented, the scheme would result in significant economic development and growth. In principle this is a material consideration which should be given substantial weight and would be capable of outweighing conflict with the DP. [3.1, 3.4]
- 15.58 These benefits of the scheme, and support from the *Framework*, are prayed in aid as material considerations that could outweigh the conflict with the CS. However, they would only do so, and amount to sustainable development that should be given significant weight, if the benefits could be delivered within the foreseeable future. While there can never be a guarantee that any development will proceed, and while viability is not a requirement for planning permission to be granted, the weight to be given to the benefits of growth as a material consideration should be assessed by reference to the likelihood that the scheme would be delivered or substantially delivered. If only the supermarket, the two car parks, and the housing in UHT are built, the weight to be given to the benefits of economic growth should be significantly reduced. [3.4, 3.5][6.13][8.12]
- 15.59 I have therefore considered the likely deliverability of the scheme and its phases, and the extent to which this depends on viability, before determining the weight to be given to the potential benefits.

### *Viability/Deliverability*

- 15.60 The LPA advised that the lack of a viability reason for refusal was due to the lack of information at that stage. It argued that the proposals would not be viable and so are unlikely to be built out in full in the foreseeable future, if ever, and that consequently the appeal should be dismissed. There is no basis in planning law, policy or practice for withholding permission simply because a scheme is not viable. If the scheme complied with the development plan it would not be necessary to consider its viability. There is nothing in the *Framework* to suggest that the presumption in favour of sustainable development is predicated on viability. Viability is not the same as deliverability and doubtless some planning permissions are implemented that do not achieve an increase in value greater than the cost of the works. [6.13][8.11]
- 15.61 The argument advanced by the LPA, that the scheme would be too expensive to deliver, is particularly on account of the large amount of underground or integral parking. Although a neat design solution for achieving a high density, the abnormal cost of such parking is highlighted by the fact that the appellant's viability witness overlooked it. The proposal for a travelator to link the foodstore with the MSCP on the other side of the road may be workable but it would be an expensive and convoluted solution of the sort which would normally only be necessary in a highly constrained city centre site. It would put off some customers and, for an essentially clear site, is indicative of poorly thought through or compromised design. Although the foodstore would probably be built out, it might not draw sufficient shoppers to properly anchor the new DC in the way envisaged by the CS. [6.14][8.14]

- 15.62 It is not credible to claim that the scheme is only viable without affordable housing, then add £8.3m in car parking construction costs to these figures and still maintain that it is viable overall. Omitting these costs was more than just a regrettable mistake: it casts considerable doubt on all WRDL's viability evidence. Adjusting the subsequent figures through reference to a mix of QS and BCIS statistics, value engineering and uncorroborated tender documents raised further doubts over the construction figures. Cherry picking estimates rather than looking holistically at one or the other is unlikely to be reliable overall. The attempt at value engineering to deal with omitted parking costs should be treated with caution. For the reasons set out by the LPA, the last minute tender figures should be given limited weight. [5.10][6.14][8.12]
- 15.63 The appellant acknowledged that parts of the scheme are more profitable than others, that just over 10% POC is not usually enough, let alone in the current climate, and the more profitable parts have been allocated in the early phases. Indeed, on the appellant's own evidence only the MSCP and the supermarket, and possibly some of the larger houses, are viable by themselves. Even these may not be completed much before the end of 2016, if then. The viability of the remainder of the site is claimed to be as a consequence of reaping the profits from the earlier phases, and the possibility that other parts might become viable with the passage of time, though if they are unprofitable as a result of unrealistic underground parking it is unlikely they would ever be constructed. [6.16][8.11]
- 15.64 For demonstrable benefits from a DC, either towards the CS vision or towards the Government's *growth agenda*, delivery would need to be within the foreseeable future. For much of the High Street and the LHT this does not apply yet these are the areas with some of the greatest potential benefit. Rather than the foodstore, MSCP and UHT housing bearing the weight of other less profitable elements, it is more likely that these earlier phases would be built out and that development would then halt until the economy picks up considerably or fresh proposals are submitted. From the evidence, there is considerable doubt that the later phases would be viable within the foreseeable future. [6.13][8.12]
- 15.65 Regardless of ownership or current company accounts, the LPA has argued that the appellant would need to rely on borrowed money from a commercial source and this has not been challenged. While NAMA might accept a lower POC in order to reduce its losses, there is no evidence to suppose that it would lend money on elements of the scheme with doubtful profitability. It is therefore unlikely that WRDL would be able to raise the necessary capital to build the parts of the scheme that would not be viable with a reasonable profit. [4.1][6.14][6.15][8.12]
- 15.66 Given the questionable viability, the risk that the developer would construct the first few phases and then be forced to abandon the rest is not small, as the WRDL suggests, but quite considerable. Either way, the DC would not be delivered to anything like the CS timetable, if at all. A viability gap would therefore be an impediment to delivery. I have studied the findings in the Godalming appeal. Notwithstanding the peculiarities of that case, it is notable that limited weight was given to the potential benefits of affordable housing. It is not inconsistent with that Decision for limited weight to be

given in this appeal to the purported benefits of growth when it is unlikely that much of the scheme would be delivered within the foreseeable future. For the above reasons, viability and deliverability are both in doubt. [6.17][8.12]

- 15.67 In the appeal before me, the viability concerns are connected to whether or not the scheme would satisfy the CS vision for deliverability within a particular timescale. The appellant's case against the SWW site is that the original vision for the west of the A386 cannot be delivered in time. In the absence of persuasive evidence that substantial parts of the appeal scheme would be deliverable within the foreseeable future, this reduces further any support from the CS. [3.7]
- 15.68 While the first MSCP might well proceed, and could anyway under its existing permission, the chances of all of phase one of a new DC on the NWQ site as a result of allowing this appeal are slim. Moreover, as permission would include a significantly sized supermarket, built or otherwise, it is unlikely that investment could be found for a DC anywhere else in Derriford. Regardless of the findings of the AAP, it is therefore likely that granting permission would reduce the chance of new investment into this part of the city. It follows that the potential benefits for economic development and growth should be given limited weight in this appeal. [3.1]

#### *Restrictive covenant*

- 15.69 As above, if the scheme accorded with the DP, it would be wrong to take any account whatsoever of the restrictive covenant as it is not a planning matter and could, and no doubt would, be the subject of a negotiation. However, the appellant has acknowledged that it adds to the uncertainty of delivery, and so adds weight to the doubt that the purported benefits of delivering the scheme would materialise. Consequently, it is not entirely correct to say that it should play no part whatsoever in the decision whether or not to grant permission but it should be afforded little weight. [8.17][9.8]

#### *Conclusions on the development plan*

- 15.70 For the above reasons, only a proportion of the scheme would be viable or likely to be substantially built out in the foreseeable future. It is unlikely to deliver much, if any, affordable housing. This conclusion has an effect on whether or not the scheme would accord with a number of CS policies. Although the proposals should theoretically gain support from CS strategic objectives SO1, SO3 and SO7 and from policies CS04 and CS15, the benefits are unlikely to be achieved so this should be given limited weight.
- 15.71 In particular, the lack of deliverability means that the scheme would not satisfy the specific performance requirements of a DC in CS07 and compromise the potential for another site to do so. With regard to the retail function of the area, the proposals would conflict with the vision and locational requirements of policy AV9 and the focus and targets under CS S07. The appeal proposals would therefore fail the sequential approach in policy CS08 and in the *Framework*.
- 15.72 Although the CS will probably be superseded on the matter of the date and location of the DC by the DSAAP, the emerging policy does not favour the scheme either. While the DSAAP should not attract substantial weight at this

stage, it still adds to the weight against the scheme. The scheme would therefore offend Proposals DS16 and DS18. To the extent that weight should be given to concerns over prematurity, the scheme would be contrary to CS S05 and S07.

- 15.73 Taking the scheme as a whole, the overall traffic conditions after mitigation would be acceptable and would not conflict with policies CS28 or CS34. However, the lack of deliverability, the probability that the TPs would fail to meet the target modal shifts (and so reduce the probable contributions to the SRN), and the over-provision of parking, would exacerbate the situation and undermine efforts at modal shift. This moves the balance away from complying with policies CS28, CS34 and with CS S014.
- 15.74 While the scheme might promote some growth on the site, it might deter more growth elsewhere, contrary to CS S01. The probability is that the scheme would only deliver the housing in the UHT and little, if any, affordable housing. This would be a relatively small, unbalanced, proportion of the whole scheme and not result in a sustainable linked community or a well designed neighbourhood. The proposals would therefore conflict with CS S03 and S04. The condition requiring a viability assessment for affordable housing would accord with Policy CS15 but, once again, the lack of deliverability undermines the scheme and the likelihood that an appreciable amount of affordable housing would be delivered.
- 15.75 The original scheme might have been well designed for a new hospital entrance. It was not designed as the first phase of a new DC. While this is not automatically a flaw, the implications of the highway constraints and the effects of the economic downturn on deliverability have rendered it poor design in the current context. Design and sustainability are inextricably linked, as has been confirmed by the *Framework*, and so the scheme would conflict with CS S01, S03 and S04, and with policies CS01, CS02 and CS34.
- 15.76 While most of the contributions towards community infrastructure would be delivered via a s106 Agreement, which would satisfy the CIL Regulations, the affordable housing provisions and TP contributions would not and so these elements would conflict with policy CS33.
- 15.77 Taken as a whole, the scheme would not accord with the development plan.

#### *Overall conclusions*

- 15.78 The mixed use proposals include several uses which accord with the CS and the DSAAP and these weigh in its favour. The scheme also includes town centre uses even though NWQ is not in an existing centre. The appellant has argued that it could be the new DC and that the sequential test should be applied on that basis. The CS identifies the new DC as lying to the west of the A386 with a target date for delivery of 2016. No site can now achieve both these goals. If the scheme amounted to a new DC and met both these criteria then that combination would amount to a material consideration that could outweigh the conflict with the DP.
- 15.79 For the reasons set out above, the viability, and delivery in the foreseeable future, of more than the car parks, foodstore and larger dwellings, is doubtful. The appellant cannot afford to build proposals which would not be viable and it is highly improbable that it could raise funds to do so. As a

result, granting planning permission would be unlikely to deliver more than a few phases within the foreseeable future. While lack of viability alone should not be a bar to the grant of planning permission, for the scheme to amount to the new DC as part of the vision in the CS, it would need to be delivered within a reasonable timescale, which it would not. Consequently, the scheme would not deliver the CS requirement for a new DC. This weighs heavily against the proposals. As the scheme would not fulfil the requirements of a new DC it would be contrary to CS policies for Derriford and fail the sequential test in the CS and the *Framework*.

- 15.80 The scheme gains no support from the emerging DSAAP. Other potential sites for a new DC also have flaws. Nevertheless, the other contenders are not hopeless and there is little to support a finding that the AAP process will not succeed in delivering a DC while there is evidence that the appeal scheme would not. The draft DSAAP is not yet at an advanced stage and there must be some doubt remaining as to whether it will be found to be sound given that the EiP has not started. While the scheme would be premature, and prejudice the decision as to the location of a new DC, at this stage in the DSAAP only moderate weight should be given to this objection.
- 15.81 As the scheme would not be for an existing centre, and not amount to a new DC, it would conflict with policies for retail vitality and viability. In short, it would be neither the DC of the vision in the CS nor a modest, local mixed use development linked to a new hospital entrance. Not only would the proposals fail to provide a DC as envisaged in the CS, they would also be likely to deter investment in another site.
- 15.82 The proposals alone would increase congestion on the SRN. However, if completed in full, they would also make a considerable contribution towards improvements to that network. Given the probability that only the profitable elements would be built, it follows that the SRN contributions that would be paid might not be enough to carry out the junction improvements at Derriford roundabout and so there could be significant congestion for many years. To prevent the foodstore being built until improvements are made would not help as this would be likely to result in a permission that would be barely implemented but would still dissuade investment elsewhere. While the impact on the transport network might not amount to severe, increased bus journey times, over provision of parking and inadequate TP funding, offer little confidence that the predicted modal shifts would be achieved. Consequently the scheme would not amount to sustainable development but would conflict with the relevant CS policies and the *Framework*.
- 15.83 As much of the scheme would not be viable, little if any affordable housing would materialise. The mix of housing provision would be poor. There is no shortage of housing land supply in Plymouth. These matters considerably reduce the weight that should be given to the benefits of housing.
- 15.84 The design was conceived in a climate where high density apartments were popular and during an economic boom around proposals for a new hospital entrance. Generically, the design includes a number of features which could benefit a mixed use development and result in a sustainable community. However, it was conceived for a different time with different constraints. For the NWQ site, at some distance from the City centre, those days have passed.

- 15.85 Instead of revising the scheme to suit the changed circumstances, the appellant has asked for the same scheme to be viewed favourably against different criteria. It fails to stand up to such scrutiny. It is unlikely that more than a relatively small proportion of the scheme could be delivered. The amount of underground parking is a major design flaw in terms of viability. While concerns over inactive street frontages, overshadowing and overbearing buildings might be acceptable in the context of a thriving High Street, given the doubts over the deliverability of much of the scheme, these concerns should be given some weight.
- 15.86 The s106 contributions, towards highway safety, parking, design, and affordable housing, would do no more than mitigate against harm that would otherwise be caused and are neutral in the balancing exercise.
- 15.87 For all the above reasons, the proposals would be contrary to the CS. While the potential benefits of the scheme could theoretically boost economic growth, the poor prospects for its delivery mean that they should be given little weight as material considerations. Moreover, by potentially stifling investment in a new DC elsewhere, the scheme might well suppress economic growth, at odds with the government's *growth agenda*. For all these reasons, the benefits of the proposals would not outweigh the considerable overall conflict with the CS and the *Framework* and so the appeal should fail.

## **16. Inspector's Recommendation**

- 16.1 **That the appeal should be dismissed.**

**David Nicholson**

INSPECTOR

## APPENDIX A – APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mary Cook of Counsel

instructed by Mark Lawrence,  
Lawyer, PCC

She called

Tamsin Cottle BA MTP MRTPI

Roger Tym & Partners (Peter Brett  
Associates)

Philip Martin Heseltine BSc MSc MPhil

PCC transport and highways

Gordon Isgrove BSc MRICS

Director, GVA

Scott Smy

PCC highways

Amy Luxton BA DipTP

PCC housing delivery officer

Jonathan Mark Selman BSc DipLA

PCC landscaping

MAUD CMLI

Jonathan Bell BSc DipTP MRTPI

PCC development planning

Richard Grant BA PGDipTP MRTPI

PCC spatial planning team

### FOR THE APPELLANT:

Rupert Warren QC

instructed by Clarke Willmott LLP

He called

Cathy Francis BSc DipTP MRTPI

Jones Lang LaSalle – pdl projects

Nicholas John Holman FRICS ACI Arb

Ickery Holman

Andrew James Hector MRICS

Jones Lang LaSalle - valuations

Dominic Papa BS AAdipl SBA

S333 Architecture + Urbanism Ltd

Richard White BSc Msc MCIT MIHT

FMW consultancy – highways

M.IPENZ MITE FFB

Philip Robin BA MPhil MRTPI

Jones Lang LaSalle – retail

### FOR THE HIGHWAYS AGENCY:

Gary Grant of Counsel

instructed by the Treasury Solicitor

He called

Mike Howell

Associate, Halcrow Group Limited

### FOR PLYMOUTH CITY COUNCIL as landowner:

Paul Shadarevian of Counsel

instructed by Alison Crichfield, PCC

He called

David James BSc MRICS MIED

PCC economic development service

Nick Jones BSc MRICS

savills

Clive Power BSc MRICS

savills

### FOR SUTTON HARBOUR HOLDINGS plc:

Thomas Hill QC

instructed by Montagu Evans

He called

John Webster BA BArch MCD

Atkins Walters & Webster Ltd

Will Edmonds BA MRTPI

Montagu Evans

### INTERESTED PERSONS:

Dennis Silverwood

Local resident

## **APPENDIX B.**

### **Core Document List**

#### **CD A - National Policy Documents**

- CD A01 - National Planning Policy Framework, Mar 2012
- CD A02 - Housing Strategy - Laying the Foundations, Nov 2011
- CD A03 - The Planning System: General Principles, Department of Communities and Local Government (DCLG), formerly issued by the Office of the Deputy Prime Minister, Jan 2005
- CD A04 - Regional Planning Guidance for the South West (RPG10) Sept 2001
- CD A05 - Draft Revised Regional Spatial Strategy for the South West incorporating Secretary of State's proposed changes - for Public Consultation, July 2008
- CD A06 - Planning for Town Centres: Practice on Need, Impact and Sequential Approach, DCLG, 2009
- CD A07 - Town and Country Planning (Local Planning) (England) Regulations 2012
- CD A08 - CIL Regulations, April 2010 (As Amended)
- CD A09 - Circular 05/2005, Planning Obligations [replaced by the *Framework*: See Annex 3, item 31]

#### **CD B - LDF Documents**

- CD B01 - Local Development Scheme, July 2011
- CD B02 - Plymouth Core Strategy (April 2007)
- CD B03 - Core Strategy Inspector's final report Apr 2007
- CD B04 - Derriford/Seaton/Southway Area Action Plan (AAP): Issues and Options (2005)
- CD B05 - Derriford/Seaton/Southway AAP: Issues and Options Consultation Report (2005)
- CD B06 - Derriford and Seaton (DS) AAP: Issues and Option Sustainability Appraisal (2005)
- CD B07 - DS AAP: Issues and Preferred Options (2009)
- CD B08 - DS AAP: Issues and Preferred Options Consultation Report (2009)
- CD B09 - DS AAP: Issues and Preferred Options Sustainability Appraisal (2009)
- CD B10 - DS AAP: Pre-submission 2011
- CD B11 - DS AAP: Pre-submission Consultation Report 2011
- CD B12 - DS AAP: Pre-submission Submission Sustainability Appraisal 2011
- CD B13 - DS AAP: Delivery Framework 2011
- CD B14 - City Centre and University AAP Adopted 2010
- CD B15 - Design Supplementary Planning Document Adopted 2009
- CD B16 - Development Guidelines SPD Adopted 2010
- CD B17 - Adopted Planning Obligations and Affordable Housing SPD First Review 2010
- CD B18 - Adopted Planning Obligations and Affordable Housing SPD Second Review 2012
- CD B19 - Plymouth's Third Local Transport Plan 2011-2026
- CD B20 - Plymouth's Third Local Transport Plan - Implementation Plans 2011-2026
- CD B21 - Local Development Scheme, Jul 2010
- CD B22 - Local Development Scheme, April 2009
- CD B23 - Local Development Scheme, Jun 2008
- CD B24 - Local Development Scheme, Jul 2007
- CD B25 - Local Development Scheme, Mar 2006
- CD B26 - Local Development Scheme, Jul 2005
- CD B27 - Shopping Centres SPD, Adopted July 2012
- CD B28 - DS AAP: Revised Pre-submission Area Action Plan (July 2012)
- CD B29 - DS AAP: Revised Pre-submission Sustainability Appraisal, May 2012
- CD B30 - Derriford and Seaton Delivery Framework, May 2012
- CD B31 - Planning Obligations and Affordable Housing SPD, PCC, 2008
- CD B32 - Core Strategy Issues and Options Papers, 2005

- CD B33 - Report summarising Consultation Responses to Core Strategy Issues and Options Papers, 2005
- CD B34 - Core Strategy, Preferred Options Paper, 2005
- CD B35 – Report summarising Consultation Responses to Core Strategy Preferred Options, 2005
- CD B36 – Core Strategy, Key Changes to the Preferred Options, 2006
- CD B37 – Report summarizing Consultation Responses to Core Strategy, Key Changes to the Preferred Options, 2006
- CD B38 – Core Strategy, Submitted, 2006
- CD B39 – Report summarizing Consultation Responses Core Strategy, Submitted, 2006
- CD B40 – Inspectors Report on the examination of Plymouth’s Core Strategy, April 2007
- CD B41 – Plymouth’s Second Local Transport Plan 2006 – 2011

### **CD C – Evidence Base Documents**

- CD C01 - Plymouth Shopping Study, Cushman and Wakefield Aug 2006
- CD C02 - Derriford and Seaton Proposed New District Shopping Centre, Cushman and Wakefield Jan 2007.
- CD C03 - Derriford and Seaton Proposed New District Shopping Centre, Cushman and Wakefield Nov 2009
- CD C04 - Derriford and Seaton Proposed New District Shopping Centre, Cushman and Wakefield Jan 2011
- CD C05 - Plymouth Retail and Centres Study, Roger Tym and Partners, May 2012
- CD C06 - Plymouth Infrastructure Needs Assessment, PCC Jul 2011
- CD C07 - Derriford Development Framework Evidence Report, LDA Design Feb 2009
- CD C08 - District and Local Centres Study, Cushman and Wakefield Nov 2010
- CD C09 - Plymouth City Centre Future Direction, Cushman and Wakefield Jun 2008
- CD C10 - Plymouth City Council’s strategic approach to Planning Obligations: Response to issues raised with Planning Inspectorate January 2012
- CD C11 - Market Recovery Scheme, PCC, Jul 2012
- CD C12 - Revised Draft CIL Charging Schedule, PCC June 2012
- CD C13 - Planning Obligations Evidence Base Document, PCC 2010
- CD C14 - Planning Obligations and Affordable Housing SPD 2nd Review Evidence Base Update, PCC Jan 2012
- CD C15 - a) Habitat Regulations Assessment of Core Strategy, PCC Jan 2007  
b) Habitat Regulations Assessment of Derriford and Seaton AAP, PCC May 2012
- CD C16 - Plymouth’s Green Infrastructure Delivery Plan, PCC Jun 2010
- CD C17 - LTP Implementation Plans, PCC 2011-2026
- CD C18 - Plymouth Playing Pitch Strategy, PCC 2007-2016
- CD C19 - Plymouth’s Greenspace Strategy, PCC 2008-2023
- CD C19a – Plymouth’s Greenspace Strategy Background Report, PCC 2008-2023
- CD C20 - Plymouth Infrastructure Needs Assessment, PCC Jul 2011
- CD C21 - Basic Needs Reports, PCC Cabinet Papers 2010-2011
- CD C22 - Sports Facilities Strategy, PCC
- CD C23 - a) Tamar Estuaries Management Plan, TECF 2006-2012  
b) Draft Tamar Estuaries Management Plan, TECF 2013-2018
- CD C24 - Plymouth Sustainable Growth Study, Llewellyn Davies, Jul 2004
- CD C25 - Derriford and Southway Area Planning Framework, Llewellyn Davies, May 2005
- CD C26 - Derriford Transport Strategy, PCC 2006 - 2021
- CD C27 - Smarter Choices Changing the Way We Travel, DFT (2004)
- CD C28 - Geometric Design of Major/ Minor priority Junctions (TD42/95)
- CD C29 - Derriford Area Travel Planning, MVA, Oct 2009
- CD C30 - Circular 02/2007 Planning and the Strategic Road Network, DFT 2007
- CD C31 - Guidance on Transport Assessment, DFT March 2007
- CD C32 - Good Practice Guidelines: Delivering Travel Plans through the Planning Process, DFT April 2009

- CD C33 - Derriford and Seaton Masterplan Framework, LDA Design, Aug 2009
- CD C34 - Derriford and Seaton District Centre Delivery Study, LDA Design, Aug 2009
- CD C36 - Royal Marine Barracks Seaton SPG, PCC April 1997
- CD C37 - Seaton Local Centre Development Statement, LDA Design, Feb 2008
- CD C38 - Employment Land Review, Baker Associates, March 2006
- CD C39 - Experian Goad - Retail Planner Updates, Briefing Notes, and other data
- CD C40 - Pitney Bowes Retail Expenditure Guide 2011
- CD C41 - Design Manual for Roads and Bridges (Volumes 5 & 6), The Highways Agency
- CD C42 - Manual for Streets, DFT, Mar 2007
- CD C43 - Manual for Streets 2 – Wider Application of the Principles, DFT September 2010
- CD C44 - Providing for Journeys on Foot, The Chartered Institute of Highways & Transportation, May 2000
- CD C45 - Guidelines for Planning for Public Transport in Developments, The Chartered Institute of Highways & Transportation, April 1999
- CD C46 - Urban Design Compendium 1, Homes & Communities Agency, Llewellyn Davies Yeang 2000
- CD C47 - Urban Design Compendium 2, Delivering Quality Places, Homes & Communities Agency, Studio Real 2007
- CD C48 - Car Parking What Works Where, English Partnerships, 2006
- CD C49 - By Design: Urban design in the planning system towards better practice, CABE DETR, 2000
- CD C50 - This way to better residential streets, CABE 2009
- CD C51 - Better neighbourhoods: Making higher densities work, CABE 2005
- CD C52 - Design Reviewed Masterplans: Lessons learned from projects reviewed by CABE's expert design panel, CABE 2004
- CD C53 - Civilised Streets, CABE 2008
- CD C54 - This Way to Better Streets: 10 case studies on improving street design, CABE 2007
- CD C55 - Vision for Plymouth, MBM Arquitectes with AZ Urban Studio, 2003
- CD C56 - Rapid Urban Character Study, Alan Baxter Associates, 2005
- CD C57 - Housing Requirement for Plymouth Study, Baker Associates, May 2012
- CD C58 - Prospects for Plymouth's Priority Economic Sectors, ARUP, Jul 2011
- CD C59 - Household Survey NEMS Market Research, Roger Tym and Partners, June 2011
- CD C60 - NWQ Planning Application, 08/01418/FUL, Multi-Storey Car Park
- CD C61 - NWQ Planning Application, 10/01047/FUL, Multi-Storey Car Park
- CD C62 - Derriford Hospital Planning Application, 08/00971/FUL, New Hospital Entrance
- CD C63 - Planning Application Plymstock Quarry, LPA ref 07/01094/OUT, 1,684 new homes
- CD C64 - Planning Application Hooe Lake, LPA ref 11/01250/FUL, Re-development of site by erection of 222 new dwellings
- CD C65 - Unity Park, LPA ref 08/02266/OUT, Outline application for up to 130 residential units
- CD C66 - Building for Life Criteria, 2008
- CD C67 - The Essential Guide to Travel Planning, DFT, March 2008
- CD C68 - Local Transport Note 2/08, Cycle Infrastructure Design, Oct 2008
- CD C69 - RICS Guidance Note - Financial Viability in Planning, 1st edition (GN 94/2012)
- CD C70 - Supplementary Information 4 July 2012
- CD C71 - Retail Impact Assessment, July 2012
- CD C72 - Plymouth Park and Ride Strategy 2008
- CD C73 - Planning Application Decision Notice, Plymouth Airport, 08-01968-OUT
- CD C74 - Planning Application Decision Notice, Plymstock Quarry, 07-01094-OUT

#### **CD – D - Background Documents**

- CD D01 - Wharfside CS Background Issue D Area Visions (2007)
- CD D02 - Wharfside CS Background issue B Public Transport (2007)
- CD D03 - Wharfside CS Background Issue C Housing (2007)
- CD D04 - Wharfside CS Background Issue K Evidence (2007)
- CD D05 - PCC CS Paper Area Visions and Strategy (2007)

- CD D06 - PCC CS Paper Retail with appendix (2007)
- CD D07 - Plymouth Housing Plan, Consultation Draft, 2012-2017
- CD D08a - Plymouth Housing and Market Needs Assessment 2006
- CD D08b – Plymouth Strategic Housing and Market Needs Assessment, Update 2009/10
- CD D09 - Derriford Sustainable Neighbourhood Assessment
- CD D10 - 2001 Census statistics for Plymouth Neighbourhood profile (no 27) for Derriford
- CD D11 - Plymouth Housing Register- Statistic Analysis

### **CD – E - Appeal Decisions**

- CD E01 - SoS Decision Letter and Inspector's Report, Wain Homes, St Austell, Oct 2011
- CD E02 - Wainhomes (South West) Holdings Ltd V Secretary of State for DCLG another, 2012, EWHC 914 (Admin)
- CD E03 - Robert Hitchins Ltd V Secretary of State for DCLG and another, 2010, EWHC 1157 (Admin)
- CD E04 - Land at Jericho Oxford, Appeal Decision APP/G3110/A/08/2070447, Oct 2008
- CD E05 - Clay Farm – S Cambs 2010
- CD E06 - Welwyn Garden City (Broadwater Road) / Taylor Wimpey 2010
- CD E07 - London Irish Middlesex (Appeal A) Secretary of State 2011
- CD E08 - SoS Decision Letter and Inspectors Report, Catesby Property Group, Binhamy Farm, Bude 2010
- CD E09 – Inspector's Report, Land at 1 - 56 Raglan Road, Plymouth, 2011
- CD E10 – Inspector's Report, Land at Pennycomequick, Plymouth, 2011
- CD E11 – Inspector's Report, Holtwood, Plymbridge Road, Plymouth, 2011
- CD E12 – Inspector's Report, Land at Pleasure Hill Close, Plymouth, 2011
- CD E13 – Inspector's Report, Barn and land adjacent to 3 Costow, Swindon, 2011
- CD E14 – SoS Decision Letter and Inspector's Report, Land at Flambard Way, Godalming, 2008
- CD E15 - SoS Decision Letter and Inspector's Report, Knockhall Road, Greenhithe, 2009

### **CD – F - Planning Application and Related Documents**

- CD F01 - Planning Application form, 16 Dec 2009
- CD F02 - Site location plan – drawing no - 1175-10-001a
- CD F03 - Masterplan - drawing no - 1175-11-001
- CD F04 - Masterplan Key- drawing no - 1175-11-001a
- CD F05 - Phasing Key- drawing no - 1175-11-001b
- CD F06 - Active Ground – drawing no – 1175-11-002
- CD F07 - Landscape Strategy- drawing no – 1175-11-003
- CD F08 - Movement Strategy – drawing no – 1175-11-004
- CD F09 - Section H1, 3, 5, 7- drawing no- 1175-13-001
- CD F10 - Section V2, V4, V6- drawing no – 1175-13-002
- CD F11 - Design and Access Statement, Dec 2009
- CD F12 - Planning Supporting Statement, Dec 2009
- CD F13 - Retail Impact Assessment, Dec 2009
- CD F14 - Vol 1 Environmental Statement, Dec 2009
- CD F14 - 1 – Vol 2 EIA Scoping Request
- CD F14 - 2 - Vol 2 EIA Scoping Opinion Plymouth City Council including consultee responses
- CD F14 - 3 - Vol 2 Statement of Community Involvement
- CD F14 – 4 - Vol 2 Project Team Directory
- CD F14 – 5 - Vol 2 Aerial Photographs
- CD F14 – 6 - Vol 2 Floorspace Schedule
- CD F14 – 7 - Vol 2 Landscape Strategy inc Public Open Space
- CD F14 – 8 - Vol 2 Movement Strategy Plan
- CD F14 – 9 - Vol 2 Phasing Schedule
- CD F14 – 10 - Vol 2 Plymouth Core Strategy Extract (Derriford and Seaton)
- CD F14 – 11 - Vol 2 Landscape and Visual Impact Figures 8.1-8.9

CD F14 – 12 - Vol 2 Landscape and Visual Impact Figures 8.10-8.17  
CD F14 – 13 - Vol 2 Landscape and Visual Assessment Photographs  
CD F14 – 14 - Vol 2 Extract from Sustainable Neighbourhood Assess – Derriford  
CD F14 – 15 - Vol 2 Extract from North Plymouth Community Park Feasibility Study (LDA Design)  
CD F14 – 16 - Vol 2 Landscape Impact Table  
CD F14 – 17 - Vol 2 Visual Impact Table  
CD F14 – 18 - Vol 2 Assessment of Visual Impact  
CD F14 – 19 - Vol 2 Pollution Concentration Contour Plots  
CD F14 – 20 - Vol 2 Road Traffic Data included in Air Quality Assessment  
CD F14 – 21 - Vol 2 Noise – Baseline Assessment  
CD F14 – 22 - Vol 2 Noise – Operation Phase Assessment Calculations  
CD F14 – 23 - Vol 3 TA and Framework Travel Plan  
CD F14 – 24 - Vol 3 Designated Sites  
CD F14 – 25 - Vol 3 Phase I Habitat Map  
CD F14 – 26 - Vol 3 Target Notes  
CD F14 – 27 - Vol 3 BRP Trees  
CD F14 – 28 - Vol 3 Bat Activity  
CD F14 – 29 - Vol 3 Arboricultural Implications Assessment  
CD F14 – 30 - Vol 3 Tree Survey Schedules  
CD F14 – 31 - Vol 3 Tree Protection Plan  
CD F14 – 32 - Vol 3 Geotechnical and Geoenvironmental  
CD F14 – 33 - Vol 3 Flood Risk Assessment and Conceptual Drainage Strategy  
CD F15 – 1 - Transport Assessment, FMW, Nov 2009  
CD F15 – 2 - Appendix A: Framework Travel Plan  
CD F15 – 3 - Appendix B: Notes of meetings with Highway Authorities  
CD F15 – 4 - Appendix C: Plymouth Paramics Model Results  
CD F15 – 5 - Appendix D: Proposed Derriford Roundabout Junction Improvements  
CD F15 – 6 - Appendix E: Proposed Forder Valley Link Road  
CD F15 – 7 - Appendix F: Traffic Accident Data  
CD F15 – 8 - Appendix G: Plymouth Cycle Map  
CD F15 – 9 - Appendix H: Proposed NWQ Layout  
CD F15 – 10 - Appendix I: TRiCS Data  
CD F15 – 11 - Appendix J: 2006 National Travel Survey – Trips by Purpose  
CD F15 – 12 - Appendix K: Nomisweb: Moor View Residents – Ward of Work  
CD F15 – 13 - Appendix L: Extract from PCC Local Transport Plan  
CD F15 – 14 - Appendix M: Nomisweb: Moor View Employees – Ward of Residence  
CD F15 – 15 - Appendix N: Derriford AAP – Committed Developments and Trip Generation  
CD F15 – 16 - Appendix O: Plymouth Accessibility Based Parking Standards  
CD F16 - Committee Report 28 July 2011  
CD F17 - Oral Update Report, Jul 2011  
CD F18 - Minutes of Planning Committee 28 July 2011  
CD F19 - Application Decision Notice 29 July 2011  
CD F20 - Supplementary Information document 26 April 2010  
CD F21 - NWQ Energy Report, November 2009  
CD F22 - Education Forecast Data  
CD F23 - Derriford Area Action Plan Key Sites  
CD F24 - Derriford AAP Committed Development  
CD F25 - Viability Appraisal Model, GVA Grimley, May 2010  
CD F26 - Viability Appraisal Model, GVA Grimley, 4 June 2012  
CD F27 - Viability Appraisal Model, GVA Grimley, 1 July 2012  
CD F28 - Viability Appraisal Model, GVA Grimley, 15% AH, 3 July 2012  
CD F29 - Viability Appraisal Model, GVA Grimley, 30% AH, 3 July 2012  
CD F30 - Viability Appraisal Model, GVA Grimley, 30% AH, 16 July 2012  
CD F31 - Viability Appraisal Model, GVA Grimley, 30% AH Revised, 16 July 2012  
CD F32 – Environment Agency Consultation Response 23 Aug 2010  
CD F33 – Environment Agency Consultation Response 26 Jan 2010

CD F34 – Highways Agency Consultation Response 10 November 2010  
CD F35 – Highways Agency Consultation Response 18 May 2010  
CD F36 – Highways Agency Consultation Response 28 Jan 2010  
CD F37 – Highways Agency Letter 3 May 2011  
CD F38 – Mr Ian Stewart Letter of Representation 19 Jan 2011  
CD F39 – Natural England Consultation Response 11 Feb 2010  
CD F40 – PCC Housing Consultation Response 1 Feb 2010  
CD F41 – PCC Public Protection Service Consultation Response 8 Feb 2010  
CD F42 – PCC Transport Consultation Response 17 May 2010  
CD F43 – Police Consultation Response 13 Jan 2010  
CD F44 - South West Water Consultation Response 8 Jan 2010  
CD F45 – South West Water Letter of Representation 2 Mar 2010  
CD F46 - Letter of Representation by RPS on behalf of Dawnan Ltd and SWW Ltd 2 Mar 2010  
CD F47 – Letter of Representation from South West RDA, dated 2 Feb 2010

### **CD – G - Consultation response for AAP/ Core Strategy**

CD G01 – Representation made by NHS on Core Strategy – Preferred Options  
CD G02 – Representations made by Wharfside on Core Strategy – Key Changes to Preferred Options  
CD G03 – Representations made by Wharfside on Core Strategy – Submission  
CD G04 – All representations received on Draft Derriford and Seaton Area Action Plan – Issues and Preferred Options  
CD G05 - All representations received on Draft Derriford and Seaton Area Action Plan – Superseded Pre-submission  
CD G06 - All representations received on Draft Derriford and Seaton Area Action Plan – Revised Pre-submission

### **CD H – Inquiry Documents**

CD H1 – Questionnaire  
CD H2 – Notes of Pre Inquiry meeting 12 Jun 2012  
CD H3 – Statement of Common Ground, General Planning Matters, 18 Jul 2011  
CD H4 – Statement of Common Ground, Retail, 18 Jul 2011  
CD H5 – Statement of Common Ground, Highways and Transport, 18 Jul 2011  
CD H6 – Draft Conditions

### **CO - Correspondence**

CO1 – Letter from Plymouth Hospitals NHS Trust to Plymouth City Council dated 1 Aug 2012  
CO2 – Letter from Lone Eagle Properties to Plymouth City Council dated 15 Aug 2012  
CO3 – Letter from Lone Eagle Properties to Plymouth City Council dated 4 June 2010  
CO4 – Letter from PCC to Planning Inspectorate dated 10 Feb 2012  
CO5 – Letter from Plymouth City Council to Wharfside dated 23 July 2012  
CO6 – Letter from Wharfside to Plymouth City Council dated 27 July 2012  
CO7 – Letter from Plymouth City Council to Wharfside dated 2 Aug 2012  
CO8 – Letter from Wharfside to Plymouth City Council dated 8 Aug 2012

### **Plymouth City Council (Local Planning Authority) Documents**

LPA01 – Statement of Case  
LPA02 – Proof of Evidence – Retail  
LPA03 – Proof of Evidence – Strategic Transport  
LPA04 – Proof of Evidence – Local Transport  
LPA05 – Proof of Evidence – Affordable Housing  
LPA06 – Proof of Evidence – Viability

LPA07 – Proof of Evidence – Design  
LPA08 – Proof of Evidence – Section 106/Community Facilities  
LPA09 – Proof of Evidence – Strategic Planning Issues  
LPA10 – Rebuttal Strategic Planning  
LPA11 – Rebuttal Local Transport  
LPA12 – Rebuttal Strategic Transport  
LPA13 – Rebuttal Design  
LPA14 – Addendum to s106 Proof of Evidence  
LPA15 – Rebuttal Viability

### **Wharfside (Appellant) Documents**

WH01 – Statement of Case  
WH02 – Proof of Evidence – Retail  
WH03 – Proof of Evidence – Viability  
WH04 – Proof of Evidence – General Planning  
WH05 – Proof of Evidence – Employment  
WH06 – Proof of Evidence – Highways  
WH07 – Proof of Evidence – Design  
WH08 – 2nd Statement of Common Ground – Highway Matters  
WH09 – LDA Design - Derriford District Centre Design Study  
WH10 – Addendum to Proof of Evidence - Viability

### **Plymouth City Council (Landowner) Documents**

PCL01 – Statement of Case  
PCL02 – Plan PCCL01  
PCL03 – Plan PCCL02  
PCL04 – Deed of Release and Variation between Council of City of Plymouth and Plymouth Hospitals NHS Trust, 3 Apr 2006  
PCL05 – Plymouth City Council Cabinet Report, 18 Jan 2011  
PCL06 – Proof of Evidence by D James  
PCL07 – Proof of Evidence by C Power  
PCL08 – Proof of Evidence by N Jones

### **Highways Agency Documents**

HI01 – Statement of Case  
HI02 – Proof of Evidence  
HI03 – DfT Circular 02/2007 - Planning and the Strategic Road Network  
HI04 – The Highways Agency and the Planning Application Process  
HI05 – FMW Draft Response To PCC And HA Comments  
HI06 – Regional Network Report for the South West 2008  
HI09 – TRICS Research Report 95/02 'Pass By and Diverted Traffic'

### **Sutton Harbour Documents**

SU01 – Statement of Case  
SU02 – Proof of Evidence by Montagu Evans on behalf of Sutton Harbour Holdings  
SU03 – Proof of Evidence by J Webster  
SU04 – Appendices to SH Proof of Evidence  
SU05 – The Derriford Study – Masterplan for the Former Airport Site  
SU06 – The Derriford Study – Addendum 1

## **South West Water Ltd (SWW), Dawnan Ltd and Stuart Partners Ltd**

SDS1 - Written Statement on behalf of Dawnan Ltd Stuart Partners Ltd and SWW

### **Inquiry Documents**

- Inq Doc 1a Section 106 Agreement (1st draft produced by Appellant)
- Inq Doc 1b Section 106 Agreement (2nd draft produced 25 September)
- Inq Doc 1c Section 106 Agreement (3rd draft produced 10 October)
- Inq Doc 1d Unilateral Undertaking (1st draft produced by Appellant)
- Inq Doc 1e Final draft Bi-lateral planning obligation
- Inq Doc 1f Final draft Unilateral Undertaking
- Inq Doc 2 Eric Pickles Statement Housing and Growth 6 September 2012.
- Inq Doc 3 Revised Bus Lane Proposal Drw no 1175-11-024, Cycle Route Comparison Figure No FMW0769-SK05, Proposed Retaining Wall Section Figure No FMW0769-SK07
- Inq Doc 4 Appellant's Opening Statement
- Inq Doc 5 Opening Submissions on behalf of PCC as LPA
- Inq Doc 6 Opening Submission on behalf of Sutton Harbour Holdings
- Inq Doc 7 Opening Statement on behalf of the Highways Agency
- Inq Doc 8a Addendum to Gordon Isgrove's Rebuttal on Viability
- Inq Doc 8b Response to Andrew Hector's Addendum to Proof of Evidence dated 10 September 2012
- Inq Doc 9 Appraisal 18 - prepared by Mr Andrew Hector
- Inq Doc 10 E-mail dated 21 August 2012 from Steve Matcham confirming publication of notice of Inquiry and site notices
- Inq Doc 11 Extract from DFT Guidance "Inclusive Mobility" Footways, Footpaths and Pedestrian Areas.
- Inq Doc 12 Derriford Roundabout Preliminary General Arrangement Junction Option 1 Drw No 398442-04-04 Rev A (PCC Plan)
- Inq Doc 13 Derriford Road Proposed Highway Improvement Drw No SK08 (FMW Consultancy Ltd - Plan)
- Inq Doc 14 Framework Travel Plan Draft Proposed Targets and Measures - 19 September 2012.
- Inq Doc 15 Notification of Public Inquiry letter, Notification of Inquiry Venue and Press Notification
- Inq Doc 16 E-mail from Jonathan Bell to Andrew Hector and John Read dated 19 September 2012 – notes of key points discussed at meeting of 19 September
- Inq Doc 17 Experian Planner Briefing Note 10 - September 2012
- Inq Doc 18a PCC (LPA) Letter to Ben Linscott dated 6 July 2011
- Inq Doc 18b Ben Linscott's response to LPA dated 16 January 2012
- Inq Doc 19a Draft Conditions – (version discussed at conditions and s106 session 25 September.
- Inq Doc 19b Draft Conditions – (revised version 27 September)
- Inq Doc 19c Document omitted – (duplication of 19 b)
- Inq Doc 19d Draft Conditions- amendment to Travel Plan and Affordable Housing conditions 42, 43 and 44 (9 October)
- Inq Doc 19e Draft Conditions (revised version 10 October)
- Inq Doc 19f Draft Conditions (revised version 12 October)
- Inq Doc 19g Draft Conditions (final version)
- Inq Doc 19h Addendum to Draft Condition 56 (12 October)
- Inq Doc 20 Plymouth City Council boundary plan.
- Inq Doc 21 Air Quality Monitoring Sites Plan and explanatory e-mail from PCC (LPA) dated 24 September 2012.
- Inq Doc 22 PCC (LPA) plan showing location of sports pitches.
- Inq Doc 23 PCC (LPA) table showing additional information on infrastructure projects.

- Inq Doc 24 E-mail from Jonathan Bell to Cathy Francis dated 24 September setting out notes of a s106 Agreement meeting.
- Inq Doc 25 Strategic Infrastructure Condition
- Inq Doc 26 Plan 2965/110 The Derriford Study NWQ Food Store Analysis, introduced in Mr Webster's evidence
- Inq Doc 27 Experian Planner Briefing Note 9 - September 2011
- Inq Doc 28 Design and Access Statement dated 15 July 2008 and Addendum dated 26 May 2012 – Multi Storey Car Park
- Inq Doc 29 Abbreviated Accounts for year ended 31 March 2011 for Bircham Park Estates Limited.
- Inq Doc 30 Abbreviated Accounts for year ended 31 March 2011 for Wharfside Regeneration (Devon) Limited.
- Inq Doc 31 Companies House Annual Return Wharfside Regeneration (Devon) Limited
- Inq Doc 32 Companies House Annual Return Bircham Park Estates Limited
- Inq Doc 33 Masterplan of NWQ site with Mr White's Junction Improvement Scheme
- Inq Doc 34 E-mail from Experian dated 26 September 2012 confirming omission of three columns relating to the SFT store sales figures.
- Inq Doc 35 Letters dated 19 February 2010, 12 August 2010 and 4 October 2010, plus meeting minutes dated 16 June 2010 between PCC (LPA) and Appellants submitted with Appeal submission.
- Inq Doc 36 Minutes of meeting held between viability experts on 18 September 2012
- Inq Doc 37 Letter from PMP Health Developments dated 20 September 2012 and Stratton Creber dated 26 September 2012 re Care Square provision at NWQ.
- Inq Doc 38 Tender Information for TF2
- Inq Doc 39 E-mail dated 22 September 2012 to Andrew Hector containing Davis Langdon's revised cost plan for the MSCP.
- Inq Doc 40 Modelling and bus travel times produced by FMW
- Inq Doc 41 Letter dated 25 September: Result of review of retaining wall proposals on drawing number FMW0769 SK10 Rev A
- Inq Doc 42 Derriford Road Cycle Route Comparison Drawing no. FNW0769-SK05-A
- Inq Doc 43 E-mail response from First Link dated 26 September re bus journey times plus e-mail from Brian Condon dated 25 September 2012 with attached drawing FMW0769- SK13-Proposed and Existing Bus Routes
- Inq Doc 44a LinSig Modelling with plan of location of internal reservoir area on Derriford Road from Andrew Lillington
- Inq Doc 44b E-mail dated 27 September 2012 containing Andrew Lillington's observations on modelling.
- Inq Doc 44c Andrew Lillington's CV
- Inq Doc 45 SWERDA Assets and Liabilities Plan 31 January 2011
- Inq Doc 46 Greg Clark's Statement Planning for Growth 23 March 2011
- Inq Doc 47 Extracts from The Herald newspaper re Plymouth City Airport closure
- Inq Doc 48 Letter from King Sturge (Cathy Francis) to John Dixon PCC (LPA) dated 19 March 2009 responding to Issues and Preferred Options Consultation (February 2009)
- Inq Doc 49 E-mail dated 2 October from Plymouth City Bus
- Inq Doc 50 Agreed approximate floor areas of existing development in Plymouth International Medical and Technology Park
- Inq Doc 51 Memo dated 8 October 2012 in response to Experian Retail Planner 10 release
- Inq Doc 52 Site Visit Plan
- Inq Doc 53 DFT - Making Car Sharing and Car Clubs Work Final Report December 2004
- Inq Doc 54 DFT - Residential Travel Planning Guidance S3 (2007) - Guidance from Car Plus (2010). Extract from Atkins Ltd. report re Commercial Car Clubs (March 2010)
- Inq Doc 55 Technical Note 4 – Response to PCC's Modelling Comments 4 October 2012
- Inq Doc 56 E-mail dated 8 October 2012 from Brian Condon attaching drawing numbers FMW0769-SK21, FMW0769- SK22 and FMW0769- SK23
- Inq Doc 57 Statement of Common Ground on Parking Provision – 8 October 2012

- Inq Doc 58 E-mail from Scott Smy containing his initial comments on the TA and Masterplan
- Inq Doc 59 E-mail exchange between Scott Smy and FMW re signalisation of Derriford Roundabout
- Inq Doc 60 Pitney Bowes Retail Expenditure Release - Expenditure Release 2011/2012
- Inq Doc 61 Derriford and Seaton Area Action Plan Preparation Update - 11 October 2012
- Inq Doc 62 Closing Submissions on behalf of Sutton Harbour Holdings plc
- Inq Doc 63 Overlay of Masterplan
- Inq Doc 64 Mr James's notes of meeting with Cushman and Wakefield and SWERDA dated 25 August 2010
- Inq Doc 65 E-mail dated 11 October from Mike Howell of the Highways Agency regarding the Strategic Transport Contribution
- Inq Doc 66a PCC (as LPA) application for costs letter dated 14 September 2012
- Inq Doc 66b Appellant's response to PCC's application for costs
- Inq Doc 66c Appellant's application for costs
- Inq Doc 66d PCC's response to Appellant's costs application
- Inq Doc 67 E-mail from Amy Luxton to Sarah Newland dated 11 October setting out key Affordable Housing issues
- Inq Doc 68 Closing Submissions in behalf of PCC as Landowner
- Inq Doc 69 Closing Submissions on behalf of PCC as LPA
- Inq Doc 70 Appellant's Closing Submissions
- Inq Doc 71 Bundle of site visit maps and requests
- Inq Doc 72 Environmental Statement Addendum, dated 30 October 2012
- Inq Doc 73a-d Executed s106 Agreement and Obligation in 4 parts

## **APPENDIX C.**

### **SCHEDULE OF SUGGESTED CONDITIONS**

#### **Plans**

**1.** The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan – drawing no 1175-10-001a, Masterplan - drawing no 1175-11-001, Masterplan Key - drawing no 1175-11-001a, Phasing Key - drawing no 1175-11-023E, Active Ground – drawing no 1175-11-002, Landscape Strategy - drawing no 1175-11-003, Movement Strategy – drawing no 1175-11-004, Section H1, 3, 5, 7 - drawing no 1175-13-001, Section V2, V4, V6 - drawing no 1175-13-002, and the massing and building heights shown on the drawing in section 5.2 on page 65 of the Design and Access Statement and Urban Design Guidelines dated 16.12.2009.

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the CS, and the layout and mix of uses of the proposed development is the subject of an EIA and any material alteration to the layout and mix of uses may have an impact which has not been assessed by that process.

#### **Reserved Matters and Implementation**

**2.** Approval of the details of the appearance of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority (LPA) in writing before any development is commenced.

Reason:

Application was made in outline only under Section 92 of the Town and Country Planning Act and approval of the details specified is still required.

**3.** Plans and particulars of the reserved matters referred to in condition 2 above, relating to the appearance of any buildings to be erected and the landscaping of the site, shall be submitted in writing to the LPA and shall be carried out as approved.

Reason:

Application was made in outline only under Section 92 of the Town and Country Planning Act and approval of the details specified is still required.

**4.** Application for approval of the reserved matters of phase one of the development hereby permitted shall be made to the LPA before the expiration of three years from the date of this permission

Reason:

To comply with Section 92 of the Town and Country Planning Act 1990.

**5.** No subsequent phase of development hereby permitted shall be commenced until an application for approval of the reserved matters relating to that phase of development has been submitted to and approved in writing by the LPA.

Reason:

To allow the development to be built out in a phased manner consistent with conditions 1 and 7 and to ensure that the development proceeds in a satisfactory manner to comply with policies CS01, CS18, CS20, CS28, CS30 and CS34 of the adopted City of Plymouth Core Strategy Development Plan Document, 2007 (CS).

**6.** The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason:

To comply with Section 92 of the Town and Country Planning Act 1990 and Section 51 of the Planning and Compulsory Purchase Act 2004.

### **Phasing**

**7.** As part of the first reserved matters application, a phasing plan for the whole site shall be submitted to the LPA for approval in writing. The phasing plan shall include details of the individual parts of the strategic infrastructure within the site including the highways, footways, cycleways, accesses for pedestrians, cyclists, buses and vehicles, surface water drainage, green infrastructure, play-spaces, and the community facility. The strategic infrastructure shall be implemented in accordance with the approved details and phasing.

Reason:

To ensure that the necessary strategic infrastructure is in place at the appropriate time as the development is built out in phases to ensure that the development proceeds in a satisfactory manner to comply with policies CS01, CS18, CS20, CS28, CS30 and CS34 of the CS and policy DS05 of the DSAAP.

### **Construction phase**

Construction method statement

**8.** No development shall take place on any phase of development, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the LPA for that phase of development. 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 hoardings including decorative displays and facilities for public viewing, where appropriate;
- v. wheel washing facilities;
- vi. measures to control the emission of dust and dirt during construction; and
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects during construction works and avoid conflict with Policy CS22 of the CS.

Hours of construction/demolition

**9.** Demolition and construction works shall not take place outside 08.00 hours to 18.00 hours Mondays to Fridays and 08.30 hours to 13.00 hours on Saturdays nor at any time on Sundays or Bank Holidays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects during construction works and avoid conflict with CS Policy CS22.

### Construction Environment Management Plan

**10.** No development shall take place on any phase of development until a detailed Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the LPA for that phase of development. This Plan shall include details of all permits, contingency plans and mitigation measures that shall be put in place to control the risk of pollution to air, soil and controlled waters, protect biodiversity and avoid, minimise and manage the productions of wastes with particular attention being paid to the constraints and risks of the site. The development shall be carried out in accordance with the Construction Environment Management Plan.

#### Reason:

To ensure that adequate measures are put in place to avoid or manage the risk of pollution or waste production during the course of the development works to comply with policies CS22 of the CS.

### Surface water management

**11.** No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management for the whole site has been submitted to and approved in writing by the LPA. The details shall include: -

- details of the drainage during the construction phase;
- details of the final drainage scheme;
- provision for exceedance pathways and overland flow routes;
- a timetable of construction;
- a construction quality control procedure;
- a plan for the future maintenance and management of the system and overland flow routes.

Prior to occupation of the site it shall be demonstrated to the satisfaction of the LPA that relevant parts of the scheme have been completed in accordance with the details and timetable agreed. The scheme shall thereafter be managed and maintained in accordance with the approved details.

#### Reason:

To prevent the increased risk of flooding and minimise the risk of pollution of surface water by ensuring the provision of a satisfactory means of surface water control and disposal during and after development to comply with policy CS21 of the CS.

### Ground conditions

**12.** Development of each phase of development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 12 to 15 have been complied with. If unexpected contamination is found after development has begun, work on that phase of development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the LPA in writing until condition 16 has been complied with in relation to that contamination.

#### Reason:

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 to comply with policies CS34 and CS22 of the CS.

**13.** An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site for each phase of development. The contents of the scheme are subject to the approval in writing of the LPA. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the LPA. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets,
- woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason:

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 to comply with policies CS34 and CS22 of the CS.

**14.** For each phase of development a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the LPA. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as 2009 contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason:

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 to comply with policies CS34 and CS22 of the CS.

**15.** The approved remediation scheme for each phase of development must be carried out in accordance with its terms prior to the commencement of development of that phase of development other than that required to carry out remediation, unless otherwise agreed in writing by the LPA. The LPA must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation shall be submitted to the LPA for approval in writing.

Reason:

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 to comply with policies CS34 and CS22 of the CS.

**16.** In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the LPA. An investigation and risk assessment must be undertaken in accordance with the requirements of section 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 14, which is subject to the approval in writing of the LPA. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be submitted to the LPA for approval in writing in accordance with condition 15.

Reason:

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 to comply with policies CS34 and CS22 of the CS.

**Noise**

**17.** All living rooms and bedrooms within dwellings and Use Class C2 Residential institutions uses shall be constructed in accordance with BS8233: 1999: 'Sound insulation and noise reduction for buildings' so as to provide sound insulation against externally generated noise. The good room criteria shall be applied, meaning there must be no more than 30 dB LAeq for living rooms (0700 to 2300 daytime) and 30 dB LAeq for bedrooms (2300 to 0700 night-time), with windows shut and other means of ventilation provided. Levels of 45 dB LAf.max shall not be exceeded in bedrooms (2300 to 0700 night-time).

Reason:

To ensure that the proposed dwellings and Use Class C2 living and bedrooms hereby permitted achieve a satisfactory living standard and do not experience unacceptable levels of noise disturbance to comply with policies CS22 and CS34 of the CS.

Sound insulation verification

**18.** Details of the sound insulation verification methodology including the identification of the appropriate test properties and subsequent sound insulation verification results for each phase or part of a phase of the development shall be submitted to and approved in writing by the LPA before any dwelling or building is occupied in that phase or part of that phase of development. Development shall be carried out in accordance with the approved details.

Reason:

To ensure that the proposed dwellings hereby permitted achieve the good room criteria as stated in condition 17 so the properties achieve a satisfactory living standard and do not experience unacceptable levels of noise disturbance to comply with policies CS22 and CS34 of the CS.

## **Landscape design**

### Landscape masterplan

**19.** At the submission of the first application for the approval of Reserved Matters details of a comprehensive landscape masterplan for the whole site including all public open space areas and public amenity areas shall be submitted to and approved in writing by the LPA before work begins on the development hereby permitted. The landscape masterplan shall include the landscape design principles and showing the principal areas of public realm of hard and soft landscaping, public open space, play space, amenity space, water features tree retention, tree planting and structured planting. Subsequent detailed landscaping schemes for each phase of development submitted in compliance with condition 3 shall comply with the approved landscape masterplan.

#### Reason:

To ensure that the site is landscaped in an attractive and structured manner to enhance the visual amenities of the area to comply with policies CS01, CS02, CS18 and CS34 of the CS.

### Landscape design proposals

**20.** No development shall take place on any phase of development until full details of both hard and soft landscape works and a programme for their implementation for that phase of development have been submitted to and approved in writing by the LPA and these works shall be carried out as approved. The details and programme shall include all the public open space and public amenity areas at all ground floor and upper floor levels of that phase. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; the implementation programme.

These details shall include: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc., indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant and new tree planting with species compatible with the proposed sustainable urban drainage system in the copse area in the south east part of the site referred to as the "Care Square" in the Design and Access Statement and Urban Design Guidelines dated 16.12.2009.

#### Reason:

To ensure that satisfactory landscape works are carried out in accordance with Policies CS18 and CS34 of the CS.

### Landscape works implementation

**21.** All hard and soft landscape works including all those for the public open space and public amenity areas at all ground and upper floor levels shall be carried out in accordance with the approved details. The works for any phase of development shall be carried out prior to the occupation of any part of that phase of development or in accordance with the programme agreed with the LPA.

Reason:

To ensure that satisfactory landscaping works are carried out in accordance with Policies CS18 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021)2007.

Landscape management plan

**22.** A landscape management plan, including long term objectives, management responsibilities and maintenance schedules for all landscape areas including all those for the public open space and public amenity areas at all ground and upper floor levels, other than small, privately owned, domestic gardens, for each phase of development shall be submitted to and approved by the LPA prior to the occupation any building within that phase of development for its permitted use. The landscape management plan shall be carried out as approved.

Reason:

To ensure that satisfactory landscaping works are carried out in accordance with Policies CS18 and CS34 of the CS.

Stockpiling/protection of existing topsoil

**23.** Existing topsoil stripped for re-use must be correctly stored in stockpiles that do not exceed 2m in height and protected by chestnut palings at least 1.2m high to BS 1722-4: 1986 'Fences. Specification for cleft chestnut pale fences' securely mounted on 1.2m minimum height timber posts driven firmly into the ground.

Reason:

To ensure that the structure of the topsoil is not destroyed through compaction; that it does not become contaminated; and is therefore fit for re-use as a successful growing medium for plants in the interest of amenity and in accordance with Policies CS18 and CS34 of the CS.

Details of floodlighting

**24.** Details of floodlighting for each phase of development shall be submitted to and approved in writing by the LPA before any of the buildings in that phase of development is occupied. Development shall be carried out in accordance with the approved details.

Reason:

To ensure that the details of the development are acceptable to the LPA and that they are in keeping with the standards of the vicinity in accordance with Policies CS22 and CS34 of the CS.

Boundary treatment

**25.** No development shall take place on a phase of development until there has been submitted to and approved in writing by the LPA a plan indicating the positions, design, materials and type of boundary treatment to be erected for that phase of development. The boundary treatment shall be completed before the building/s within that phase of development is/are occupied. Development shall be carried out in accordance with the approved details.

Reason:

To ensure that the details of the development are in keeping with the standards of the vicinity in accordance with Policy CS34 of the CS.

## **Design and appearance**

**26.** Before the submission of the first application for the approval of Reserved Matters the appellant/developer shall submit an over-arching design code for the whole site to be approved in writing by the LPA. Before work begins on any phase of development a detailed design code shall be submitted to and approved in writing by the LPA for that phase of development. The detailed design codes shall be in accordance with the over-arching design code. The development shall be built in accordance with the principles of the approved design codes.

Reason:

To ensure that a satisfactory standard of design is achieved to comply with policy CS02 of the CS.

## **Trees**

Location of trees

**27.** The plans and particulars submitted in accordance with condition 3 above for each phase of development shall include:

- (a) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, showing which trees are to be retained and the crown spread of each retained tree. The plan shall include the Pine, Lime and Holm Oak in the copse area in the south east part of the site referred to as the "Care Square" in the Design and Access Statement and Urban Design Guidelines dated 16.12.2009;
- (b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- (c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
- (d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or of any tree on land adjacent to the site;
- (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

The plans and particulars shall include details of the size, species, and positions or density of all new trees to be planted, and the proposed time of planting for each phase of development.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

Reason:

In the interests of visual amenity to comply with policies CS18 and CS34 of the CS.

Tree replacement

**28.** For each phase of development if within a period of five years from the date of the occupation of the last building within that phase of development or from the planting of any tree within that phase that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the LPA, seriously damaged or defective, another tree of the same species and size shall be planted at the same place, unless the LPA gives its written consent to any variation.

Reason:

To ensure that satisfactory landscaping works are carried out in accordance with Policies CS18 and CS34 of the CS are subsequently properly maintained, if necessary by replacement.

### **Nature conservation and ecology**

**29.** At the submission of the first application for the approval of Reserved Matters an ecological management plan for the whole of the site shall be submitted to and approved in writing by the LPA. It shall include: details on how the protected species will be safeguarded; details for habitat creation, enhancement or restoration and links within the application site to the Bircham Valley local nature reserve including a description and evaluation of proposals; details of how a net increase in biodiversity will be achieved; and the phasing of when the works will be done. These measures are required in order to demonstrate that the development is in accordance with the Environmental Statement. The development shall be carried out in accordance with the approved ecological management plan.

Reason:

To assimilate the development into its surroundings, and to protect the biodiversity resource of the area in accordance with policy CS19 of the CS and part 12 of the ES.

### **Transport/Access details**

#### **Grampian conditions**

Grampian Condition (Highway Works – Hospital Access West Junction)

**30.** No development shall commence on any part of the site until details of a scheme of improvements to the western junction of Hospital Access Road with Derriford Road have been submitted to and approved in writing by the LPA and no occupation of any part of the development hereby permitted shall take place until this scheme has been delivered in accordance with the approved details.

Reason:

To ensure that an appropriate and safe means of access is provided to the site off Derriford Road in interests of highway capacity and safety in accordance with Policies CS28 and CS34 of the CS.

Grampian Condition (Highway Works – High Street Junction)

**31.** No development shall commence on any part of the site until details of a scheme of improvements to the junction of the High Street with Derriford Road (including the dedicated right turn bus lane) have been submitted to and approved in writing by the LPA and no occupation of any part of the development hereby permitted shall take place until the scheme has been delivered in accordance with the approved details.

Reason:

To ensure that an appropriate and safe means of access is provided to the site in interests of highway capacity and safety in accordance with Policies CS28 and CS34 of the CS.

Grampian condition relating the High Street to the second MSCP (TF1)

**32.** The second mixed use multi storey car park described in the Design and Access Statement and Urban Design Guidelines dated 16.12.2009 as Transferium 1 shall not be used until the High Street carriageway and footways and its junction with Derriford Road have been completed.

Reason:

To ensure that the traffic impacts of the development are mitigated in order not to cause a severe increase in congestion, increased risk of danger and an increase in bus service journey times on the surrounding highway network to comply with policies CS28 and CS34 of the CS.

Street details

**33.** Development shall not begin on any phase of development until details of the design, layout, levels, gradients, materials and method of construction and drainage of all roads, footways and junctions and sight lines between the proposed service road/s and highway for that phase of development have been submitted to and approved in writing by the LPA. No dwelling or building within any phase of development shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved details to base course level.

All roads and footways forming part a residential phase of the development hereby permitted shall be completed in accordance with the approved details to final wearing course level before the first occupation of the penultimate dwelling within that phase of development.

All roads and footways forming part of a phase of development that includes commercial, Use Class C2 Residential institutions uses, or Use Class D1 Non-residential institutions uses shall be completed in accordance with the approved details before either: the first occupation of the penultimate dwelling, or the first occupation of a commercial building, a Use Class A1-A5 building, residential institution building, non-residential institution building or the MSCP within that phase of development, whichever is the sooner.

Reason:

To provide a road and footpath pattern that secures a safe and convenient environment and to a satisfactory standard in accordance with Policies CS28 and CS34 of the CS.

Access (contractors)

**34.** Before any works are commenced on a phase of development, an adequate road access for contractors with a proper standard of visibility shall be formed and connected to the adjacent highway for that phase of development in a position and a manner to be agreed in writing by the LPA.

Reason:

To ensure an adequate road access at an early stage in the development in the interests of public safety, convenience and amenity in accordance with Policies CS28 and CS34 of the CS.

## Parking

### Interim Car parking management strategy

**35.** Prior to the commencement of the development hereby permitted, the appellant/developer shall submit to the LPA an Interim Car Parking Management Strategy. The said Strategy shall provide information in relation to the proposed continued use of the application site for car parking associated with Derriford Hospital (for staff, patients and visitors) detailing numbers of spaces, their allocation, means to control the use of those spaces and their specific location on the application site (including spaces contained within either of the two MSCPs). The Interim Car Parking Management Strategy shall be approved in writing by the LPA prior to the

commencement of the development hereby permitted and thereafter all of the car parking associated with Derriford Hospital that takes place on the application site shall be used in strict accordance with the agreed Interim Car Parking Management Strategy.

Reason:

To ensure that the level of car parking provided on the site, for both the proposed development and Derriford Hospital (for staff, patients and visitors), does not exceed existing levels which could give rise to highway capacity issues on the Local Highway Network, resulting in delays to buses, and which would give rise to conditions that would be contrary to the aims and objectives of the North West Quadrant Travel Plan in securing a greater level of modal shift towards the use of sustainable modes of transport and hence reduce the number of single car journeys being made on the highway network to comply with policy CS28 of the CS.

Car parking management strategy

**36.** Prior to the commencement of the use of the MSCP referred to as TF1 in the Design and Access Statement, a site-wide Car Parking Management Strategy shall be submitted to and approved by the LPA. The strategy shall provide information in relation to the allocation and use of car parking across the entire North West Quadrant site and include specific measures relating to the use and control of the proposed MSCP which shall include (but not be restricted to) enforcement, charging, hours of operation taking into account the management regime in operation within the adjoining multi storey car park, TF2, permitted under planning permission 10/01047. From the date of the commencement of the use, the MSCP shall be operated in strict accordance with the approved Car Parking Management Strategy.

Reason:

To ensure that the level of car parking provided and the use of those spaces is properly controlled in order to support the aims and objectives of the Travel Plans in securing a greater level of modal shift towards the use of sustainable modes of transport and hence reduce the number of single occupancy car journeys being made to and from the site on the highway network in accordance with Policy CS28 of the CS.

Car parking provision

**37.** No building in a phase of development shall be occupied until space has been laid out within that phase of development in accordance with details previously submitted to and approved in writing by the LPA for an agreed maximum number of cars to be parked, and for the loading and unloading of an agreed number of vehicles, and for vehicles to turn so that they may enter and leave the site in forward gear. Two spaces shall be provided for a car club within the application site at a location and by a time to have been previously agreed in writing by the LPA.

Reason:

In the opinion of the LPA, although some provision needs to be made, the level of car parking provision should be limited in order to assist the promotion of sustainable travel choices in accordance with Policy CS28 of the CS.

Provision of parking area

**38.** Each parking space shown on the approved plans shall be constructed, drained, surfaced and made available for use before the unit of accommodation (be it residential or non-residential) that it serves is first occupied and thereafter that space shall not be used for any purpose other than the parking of vehicles.

Reason:

To enable vehicles used by occupiers or visitors to be parked off the public highway so as to avoid damage to amenity and interference with the free flow of traffic on the highway in accordance with Policies CS28 and CS34 of the CS.

Bicycle provision

**39.** Details of the bicycle parking and/or secure bicycle storage for each phase of development shall be submitted to and approved in writing by the LPA before any dwelling or building within that phase of development is occupied.

The bicycle parking and/or secure bicycle storage for each phase of development shall be provided in accordance with the approved details before any dwelling or building within that phase of development is occupied.

The bicycle parking areas and secure areas for storing bicycles shown on the approved details shall remain available for their intended purpose.

Reason:

In order to promote cycling as an alternative to the use of private cars and to ensure that there are secure bicycle parking and storage facilities available for occupiers of, or visitors to, the development in accordance with Policies CS28 and CS34 of the CS.

Loading and unloading provision

**40.** Before any part of a phase of the development hereby permitted that requires on-site loading and unloading facilities is first brought into use, adequate provision shall be made to enable goods vehicles to be loaded and unloaded within the boundary/ies of the building/s for that part of the development in accordance with details previously submitted to and approved in writing by the LPA. The land indicated on the approved plans for the loading and unloading of vehicles shall not be used for any other purposes unless an alternative and equivalent area of land within the curtilage of the site is provided for loading and unloading with the prior consent in writing of the LPA.

Reason:

To enable such vehicles to be loaded and unloaded off the public highway and to ensure that space is available at all times so as to avoid: - (i) damage to amenity; (ii) prejudice to public safety and convenience; and (iii) interference with the free flow of traffic on the highway in accordance with Policies CS28 and CS34 of the CS.

**Travel plans (TPs)**

Travel plan (work-based)

**41.** No part of the development including uses hereby permitted not falling within Use Class C3: Dwellings shall be occupied until a full TP for the whole site has been submitted to and approved in writing by the LPA not less than 6 months after commencement of construction of any building on any phase of the development. The said TP shall seek to encourage staff and visitors to use modes of transport other than the private car to get to and from the premises. It shall also include:

- a. the agreed targets for modal shift as outlined in the document North West Quadrant, Plymouth - Framework TP Draft Proposed Targets and Measures Rev D and based upon agreed trip rates for the development;
- b. measures to control the use of permitted car parking areas in accordance with both the Interim and Final Car Parking Management Strategies;
- c. details of the measures and initiatives that will be implemented in order to encourage the use of sustainable modes of transport as an alternative to the

- private car, including the provision of car club with a minimum of two designated parking spaces;
- d. the name, position and contact details of the person responsible for its implementation (TP Coordinator) who shall be in post not less than 6 months after commencement of construction of any of the buildings on the site to which the TP relates and whom shall be employed for a period of 10 years from the first date of employment;
  - e. provisions of monitoring and reporting arrangements related to stages of the development and in terms of monitoring shall include the provision of automatic traffic counters in locations to be agreed by the LPA;
  - f. surveys of staff travel patterns to be compliant with monitoring systems operated by the LPA such as 'i-Trace';
  - g. details of financial arrangements to secure the funding of the TP for five years after occupation of the final building constructed in each phase.

The TP shall be fully complied with from the date of first occupation of the building/s to which the TP relates.

**Reason:**

In the opinion of the LPA, such measures need to be taken in order to reduce reliance on the use of private cars (particularly single occupancy journeys) and to assist in the promotion of more sustainable travel choices in accordance with Policy CS28 of the CS.

**Residential TP**

**42.** No dwelling house, maisonette, duplex or flat within any phase of development shall be occupied until a Residential TP has been submitted to and approved in writing by the LPA for the development. The said Residential TP shall seek to encourage residents or visitors to use modes of transport other than the private car when making journeys to and from the development. It shall also include:

- a. the agreed targets for modal shift as outlined in the document North West Quadrant, Plymouth - Framework TP Draft Proposed Targets and Measures Rev D and based upon agreed trip rates for the development;
- b. measures to control the use of permitted car parking areas in accordance with both the Interim and Final Car Parking Management Strategies;
- c. details of the measures and initiatives that will be implemented in order to encourage the use of sustainable modes of transport as an alternative to the private car, including the provision of car club with a minimum of two designated parking spaces;
- d. the name, position and contact details of the person responsible for its implementation (TP Coordinator) who shall be in post not less than 6 months after commencement of construction of any of the residential units on the site and whom shall be employed for a period of 10 years from the first date of employment;
- e. provisions of monitoring and reporting arrangements related to stages of the development and in terms of monitoring shall include the provision of automatic traffic counters in locations to be agreed by the LPA;
- f. surveys of residential-based travel patterns to be compliant with monitoring systems operated by the LPA.
- g. details of financial arrangements to secure the funding of the TP for 5 years after occupation of the final dwelling constructed in each phase.

The Residential TP shall be fully complied with from the date of occupation of the first dwelling within any phase of development to which the Residential TP applies.

Reason:

In the opinion of the LPA, such measures need to be taken in order to reduce reliance on the use of private cars (particularly single occupancy journeys) and to assist in the promotion of more sustainable travel choices in accordance with CS Policy CS28.

## Housing

### Affordable housing

**43.** Development shall not commence on any phase of development (as defined by condition 1) until a viability assessment for the provision of affordable housing as part of **that phase of the** development, together with a scheme for the provision of affordable housing as indicated by the viability assessment, has been submitted to and approved in writing by the LPA. Subject to the outcomes of the viability assessment of that development phase, the affordable housing shall be provided in each phase of development that contains dwellings and/or bed spaces in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than agreed percentage of housing units/bed spaces justified by the development viability review;
- ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii. the arrangements for the transfer of the affordable housing to an affordable housing provider with affordable housing provision details in accordance with the adopted Plymouth Planning Obligations and Affordable Housing Supplementary Planning Document Second Review 2012 (or in any subsequent document superseding, amending or reviewing it) including transfer at a discounted purchase price or the management of the affordable housing (if no Registered Provider is involved) ;
- iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, and;
- v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason:

To ensure that the site provides an adequate supply of affordable housing units to comply with policies CS01 and CS15 of the CS.

### Lifetime homes

**44.** A minimum of 20 percent Lifetime Homes shall be provided on the application site as a whole. For each phase of development containing dwellings full details of the Lifetime Homes showing how they meet all of the up to date criteria for Lifetime Homes shall be submitted to and approved in writing by the LPA before work begins on that phase of development.

Reason:

To ensure that 20 percent of the dwellings on site are built to Lifetime Homes standards to comply with policy CS15 of the CS.

### **Further details**

Specifications for community use area

**45.** Before work begins on the phase of development containing the bookshop/cafe/library/community use building, details of the specifications for the community use area shall be submitted to and approved in writing by the LPA. The building shall be built in accordance with the approved details and completed before any part of the larger building within Campus Plaza 3 as shown on the Masterplan Key drawing number 1175-11-001a is occupied.

Reason:

To ensure that the library and community area are designed to operate effectively for their functions to comply with policy CS01 and Strategic Objective 15 of the CS.

Fume extraction

**46.** Before any of the commercial and Use Class C2 and D1 uses hereby permitted that requires a fume extraction system begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to, and approved in writing by, the LPA and the approved scheme shall be implemented and retained thereafter.

Reason:

To avoid undue loss of amenity from smells, fumes or noise to comply with policies CS22 and CS34 of the CS.

Plant and machinery

**47.** Before any use hereby permitted that requires plant and machinery including condensers and compressors begins, details of the plant and machinery shall be submitted to, and approved in writing by, the LPA and the approved scheme shall be implemented retained thereafter.

Reason:

To avoid undue loss of amenity from smells, fumes or noise to comply with policies CS22 and CS34 of the CS.

### **Defining the planning permission**

Floorspaces

**48.** The foodstore floorspace shall not exceed 3,229 square metres (sq m) gross external area (GEA); the other Use Class A1 shops floorspace shall not exceed 1,586 sq m GEA with no single unit exceeding 500 sq m GEA; the Use Class A2 financial and professional services floorspace shall not exceed 1,587 sq m GEA; the Use Class A3, A4 and A5 restaurants and cafes, drinking establishments and hot food takeaways shall not exceed 1,424 sq m GEA with no unit exceeding 500 sq m GEA with no more than two units used for use class A4 hot food takeaway purposes; the mixed use bookshop, café, library and community use building shall not exceed 1,190 sq m GEA, with neither the bookshop part exceeding 250 sq m GEA nor the café part exceeding 250 sq m GEA, and the B1 business uses shall not exceed 2,773 sq m GEA.

Reason:

To define the terms of the permission and to ensure that the development has an appropriate mix of uses at the right scale to comply with the city's retail hierarchy and future employment provision and to ensure that the foodstore has adequate car parking provision to comply with policies CS01, CS04, CS06, CS07, CS08 and CS28 of the CS.

### **Foodstore sales areas**

**49.** When details of reserved matters are submitted for the foodstore, in compliance with condition 3, details of the amount of sales areas for convenience goods and comparison goods shall be provided and agreed in writing by the LPA. The internal layout of the foodstore shall comply with the agreed convenience and comparison goods sales areas. Notwithstanding Use Class A1 of the Schedule to the Town and Country (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification the sales area for comparison goods shall not increase without the prior written permission of the LPA.

Reason:

In order not to prejudice the primary shopping role of the city centre and the shopping hierarchy of Plymouth in accordance with Policies CS06 and CS08 of the CS.

Restriction of use – Use Class D1

**50.** The Use Class D1 – Non-Residential Institutions floorspace hereby permitted shall be used for all uses within Use Class D1, other than for the provision of education, of the Schedule to the Town and Country (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason:

In order to allow the impacts of an education use on the surrounding highway network to be considered in accordance with Policies CS28 and CS34 of the CS.

Restriction of permitted changes of use

**51.** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no change of use falling within:

- Class A - a change to a Class A1 shop from a Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways);
- Class B(b) – a change to a Class B8 (storage and distribution) from a Class B1 (business) use;
- Class C – a change to a Class A2 (financial and professional service) use from Class A3 (restaurants and cafes), Class A4 (drinking establishments) or Class A5 (hot food takeaways);
- Class D – a change to a Class A1 shop, of any premises with a display window at ground floor level, from a Class A2 (financial and professional services) use;

of Part 3 of Schedule 2 to that Order, shall be carried out without the consent in writing of the LPA.

Reason:

To ensure that the development has the right mix of uses and in order not to prejudice the primary shopping role of the city centre and the shopping hierarchy of Plymouth in accordance with Policies CS01, CS06, CS07, CS08 and CS34 of the CS.

Hours of use

**52.** The Use Class A3, A4, and A5 uses hereby permitted shall not be open for customers outside the following hours:

08.00 hours to 23.00 hours, Mondays to Thursdays;

08.00 hours to midnight, Fridays and Saturdays; and

10.00 hours to 23.00 hours on Sundays.

The Use Class A1 and A2 uses hereby permitted shall not be open for customers outside the following hours:

08.00 hours to 20.00 hours, Mondays to Saturdays;

10.00 hours to 17.00 hours on Sundays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, such as noise and vibration, and to avoid conflict with Policies CS22 and CS34 of the CS.

No amplified music

**53.** No amplified or other music shall be played in any open space or in any of the premises other than dwellings hereby permitted outside the following times: 08.00 to 23.00 hours Mondays to Saturdays inclusive and 10.00 hours to 22.00 hours on Sundays and Bank or Public Holidays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, such as noise and vibration, and to avoid conflict with Policies CS22 and CS34 of the CS.

Hours of delivery

**54.** No deliveries shall be taken at or despatched from the site outside the hours of 07.00 hours to 19.00 hours, Mondays to Saturdays and outside the hours of 09.00 hours to 17.00 hours on Sundays, Bank or Public Holidays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, such as noise and vibration, and to avoid conflict with Policies CS22 and CS34 of the CS.

### **Sustainable development**

**55.** Before the development begins a scheme (including a timetable for implementation) to secure at least 15% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA as part of the reserved matters submissions. The approved scheme shall be implemented and retained as operational thereafter.

Reason:

To ensure that the development complies with the aspirations of the Design and Access Statement and the LPA's strategic approach to carbon performance.

BRE Environmental Assessment Method (BREEAM) standard

**56.** The non-residential buildings hereby permitted shall be constructed to a 'very good' standard of the BREEAM (or subsequent equivalent quality assured scheme). No non-residential building shall be occupied until an authorised assessor has demonstrated confirmation with the required standard.

Reason:

To achieve sustainable development to include features that: reduce energy consumption; ensure that water resources are conserved; waste is minimized; and recycling is facilitated to comply with policy CS20 of the CS and paragraphs 7, 14 and 95 of the *Framework*.



## 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.