



Department for  
Communities and  
Local Government

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Our Ref: APP/T3725/A/14/2229398

14 January 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GALLAGHER ESTATES LTD  
LAND SOUTH OF GALLOWES HILL/WEST OF EUROPA WAY, HEATHCOTE,  
WARWICK  
APPLICATION REF: W/14/0681**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI, who held a public local inquiry between 25 August and 3 September 2015 into your client's appeal against a decision of Warwick District Council to refuse outline planning permission for: residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling, on land south of Gallows Hill/West of Europa Way, Heathcote, Warwick, in accordance with application number W/14/0681 dated 1 May 2014.
2. 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 scheme involves a proposal for residential development of over 150 units, or is on a site of over 5 hectares, which would impact significantly on the objective of the Government to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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

3. The Inspector has recommended that the appeal be allowed and planning permission allowed. For the reasons given below, the Secretary of State agrees with the Inspector's 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. Like the Inspector, the Secretary of State is content that the Environmental Statement (ES) complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application (IR2–5).
5. The Secretary of State is in receipt of post inquiry representations that were received by the Planning Inspectorate too late to be considered by the Inspector. These are from the Ms L Marjoram dated 10 June and 25 June 2015, Cllr Ray Bullen of Bishops Tachbrook Parish Council dated 17 September 2015 and Tony Bateman on behalf of the appellant dated 17 November 2016. The Secretary of State has given careful consideration to these representations, but as they do not raise matters that would affect his decision he has not considered it necessary to circulate them to all parties. Copies of the representations will be provided on request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

6. 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.
7. In this case, the adopted development plan comprises the Warwick District Local Plan (LP) adopted in September 2007. The Secretary of State considers that the development plan policies most relevant to the application are those set out by the Inspector at IR48, 59 - 61, 63, 66 - 67 and 70.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and the planning guidance ('the Guidance') published in March 2014; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and the Historic England guidance entitled "*The Setting of Heritage Assets*" as updated in July 2015.
9. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

10. The Secretary of State notes that the examination of the emerging Warwick Local Plan (ELP) has been suspended until May 2016. He has had regard to paragraph 216 of the Framework in relation to the weight to be given to emerging plans. In regard to the first and second considerations in paragraph 216, the ELP is at an early stage and still subject to significant unresolved objections to relevant policies. As regards the third consideration in paragraph 216, as the examining Inspector has indicated that the housing supply policies in the ELP (DS2, DS10, DS20 and H0) are currently unsound, the Secretary of State is not satisfied that, in their current form, those emerging policies would fully accord with the aim in the Framework to boost significantly the supply of housing. For all these reasons regarding the three considerations listed in Framework paragraph 216, the Secretary of State attributes limited weight to relevant policies in the ELP.

### **Main issues**

#### *Conflict with adopted development plan*

11. The appeal site lies outside the development boundary for Warwick, as defined by the LP, and is consequently in a rural area for the purposes of LP Policy RAP1. That policy would only permit residential development in very limited circumstances which would not apply to the appeal proposal. However, like the Inspector, the Secretary of State notes that the adopted LP only included planned provision for housing up until 2011 and that the settlement boundaries were defined on this basis. Consequently he agrees that LP policy RAP1 is out-of-date (IR48). Nevertheless, due to the conflict with Policy RAP1 and with policies considered below on landscape and heritage assets, the Secretary of State considers that the appeal proposal conflicts with the development plan as a whole.

#### *Housing land supply*

12. For the reasons given at IR358 - 359, the Secretary of State concludes that the Council is unable to demonstrate a robust five year supply of deliverable housing land. He has reflected on the representations of Bishops Tachbrook Parish Council and other interested parties, including representations not seen by the Inspector. However, like the Inspector, the Secretary of State considers that more weight should be attached to the agreement between the main parties that the Council cannot demonstrate a five year housing land supply. For these reasons in addition to the reason at IR48, the Secretary of State shares the Inspector's view that, pursuant to paragraph 49 of the Framework, Local Plan Policy RAP1 which directs the location of new housing cannot be considered up-to-date (IR360).
13. The Secretary of State also agrees that the appeal site would deliver a significant amount of housing towards meeting the 5 year supply shortfall, including affordable housing. Whilst the appeal proposal is unlikely to be completed within the identified 5 year period, to allow the appeal would result in earlier delivery than would be achieved by awaiting the identification of additional land in the ELP (IR387).

### *Heritage assets*

14. The Secretary of State has given careful consideration to the weight to be accorded to the adopted LP policies DAP4, DAP8 and DAP11. He agrees with the Inspector's reasoning set out at IR388 - 390 that this weight should be limited where they are not consistent with national policy and that the national policy tests should take precedence (IR390). On this matter, the Secretary of State shares the Inspector view that this does not affect the statutory duties in the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of protecting or enhancing the character or appearance of conservation areas or to give special regard to the desirability of preserving the setting of listed buildings. Overall, like the Inspector, he considers that the high (Grade I) listing of several heritage assets in this case adds weight to their significance (IR391).
15. There are no designated heritage assets on the appeal site and thus there would be no direct effects on any such asset, but there are designated assets in the wider area with the potential for an effect on their setting and significance. Like the Inspector, the Secretary of State considers that these assets were assessed in the Environmental Statement and that it reasonably concluded that for most assets, such as the listed buildings in Warwick town centre, any effect on setting or significance would be negligible or non-existent. The Secretary of State also agrees with the Inspector that there is a lack of substantive evidence of harm to the significance of Warwick churches, Spiers Lodge, the Toll House or the New Bridge (IR392).
16. For the reasons at IR393-396, the Secretary of State agrees with the Inspector that there would be a negligible impact on the setting and significance of Warwick Castle and other listed buildings, and therefore that LP Policy DAP4 is not contravened (IR396).
17. The Secretary of State has given careful consideration to the Inspector's assessment at IR397-417 regarding harm to the setting and significance of the registered Castle Park and this part of the Warwick Conservation Area. The Secretary of State notes that the Inspector's assessment does not take into account the cumulative impact on the Conservation Area of this appeal proposal and development on 'The Asps' site if he were to allow that appeal and grant planning permission for that proposal (appeal ref APP/T3725/A/14/2221613, application number W/14/0300). Cumulative impacts apart, for the reasons that the Inspector gives the Secretary of State agrees with him that there would be some limited less than substantial harm to the setting and significance of the registered Castle Park and of Warwick Conservation Area arising from this appeal proposal (IR425). He shares the Inspector's view that if there were intended to be planned views out of the park towards the appeal site, and if Banbury Road was a designed approach to the Castle (both of which remain uncertain) then this would only add a negligible amount to that harm to significance and that the harm would remain less than substantial.
18. In reaching his conclusion on harm to heritage assets in his separate decision letter also dated 14 January on The Asps appeal, the Secretary of State carefully considered the cumulative impacts on those assets if he were to allow that appeal and also allow this appeal, and concluded at paragraph 16 of that letter

that the cumulative harm would remain less than substantial if both appeals were to be allowed.

19. Like the Inspector, the Secretary of State finds that the proposed development would result in a contravention of LP policy DAP11, which does not allow for any harm to the setting of a registered park. He also finds that there would be an arguable contravention of LP Policy DAP8 in respect of the Conservation Area, albeit that the policy wording is less stringent than DAP11. He also shares the Inspector's conclusion that the identified less than substantial harm to the significance of heritage assets should instead be weighed with any public benefits of the development, as now required by paragraph 134 of the Framework (IR425-426). Accordingly, the Secretary of State has given careful consideration to paragraphs 131 - 134 of the Framework on the assessment of designated heritage assets in the determination of planning applications. He has applied the tests in paragraph 134 in the planning balance at paragraphs 35 - 42 below.
20. For the reasons given by the Inspector at IR427, the Secretary of State agrees with the Inspector that that the Council's suggestion that a precautionary approach be applied in this case is not appropriate.
21. The Secretary of State agrees with the Inspector's assessment at IR420 - 423 with regard the traffic impact in Warwick Conservation Area. He agrees with the Inspector that the marginal additional effect of the additional traffic from the appeal development on the character, appearance and heritage significance of the Conservation Area and other designated assets in the town centre would be negligible (IR423).

#### *Landscape character and visual amenity*

22. For the reasons given at IR430 - 435, the Secretary of State agrees with the Inspector that the proposed development would have some adverse impact on the local landscape character, causing a conflict with LP policy DP3 criterion (c) (IR436).
23. The Secretary of State has given careful consideration to the Inspector's assessment regarding visual amenity at IR437- 444. The Secretary of State notes that the Inspector's assessment does not cover the cumulative impact on landscape and visual amenity if this appeal proposal and development on 'The Asps' site were both to be granted planning permission (IR447). Cumulative impacts apart, for the reasons that the Inspector gives the Secretary of State agrees with him that the overall impact of this appeal scheme on visual amenity in views from Banbury Road would be only slightly adverse (IR443).
24. In his separate decision on The Asps appeal, the Secretary of State concludes that the very substantial harm to the established character and appearance of the area as a consequence of allowing The Asps appeal proposal on its own would not be made significantly more harmful, cumulatively, if both that appeal and this appeal were to be allowed, as well as the other developments likely to proceed on the south side of Warwick. Consistent with that conclusion, he does not consider that allowing this appeal would have a significant impact on visual amenity, including views from Banbury Road, even when considered in combination with the impact of development of The Asps site.

### *Precedent and prematurity*

25. For the reasons at IR444 - 447, the Secretary of State agrees with the Inspector that considerations of precedent do not warrant dismissal of the appeal (IR448). Likewise, for the reasons at IR449 - 450 the Secretary of State agrees that, subject to the other identified issues and the outcome of the planning balance, the appeal should not be dismissed on grounds of prematurity.

### *Agricultural land quality*

26. The Secretary of State agrees with the Inspector's analysis with regard the use of agricultural land at IR452. He agrees that there is no evidence that the housing needs of the Housing Market Area can be met by avoiding development of such best and most versatile land and that, in spite of a conflict with LP Policy DP3(g), agricultural land quality is not a reason for refusal of planning application. Nevertheless, having considered paragraph 112 of the Framework, he places moderate weight on the loss of best and most versatile agricultural land in this case.

### *Transport and traffic impacts*

27. The Secretary of State agrees with the Inspector's assessment of transport and traffic impacts at IR453 - 457. He agrees that there is no reason for refusal relating to transport or traffic issues (IR453). In reaching this conclusion the Secretary of State notes the Inspector's point at IR456 that the cumulative impacts of other committed developments in the area were included in the traffic modelling but that this did not include the traffic impact of The Asps development. However, in his separate decision on The Asps appeal the Secretary of State noted that the original traffic assessments for that development included the potential traffic data for other proposed developments in their calculations, which included the site south of Gallows Hill.

### *Air quality*

28. The Secretary of State agrees with the Inspector's assessment regarding air quality in Warwick town centre at IR458. He agrees that the additional traffic that the proposal would generate would have only a negligible impact on emissions and air quality.

### *Tourism*

29. For the reasons at IR459 - 460, the Secretary of State agrees with the Inspector that it has not been demonstrated that the marginal increase in traffic movements due to this development, or its other impacts, would have any significant effect on tourist numbers.

### *Benefits*

30. The Secretary of State agrees with the Inspector's assessment of the benefits of the appeal scheme at IR468 - 470. He agrees that the significant shortfall in the 5 year supply of housing land should be accorded considerable weight, and that the supply of up to 450 more dwellings including 40% affordable units to address an acknowledged need for market and affordable housing would have significant economic and social benefits and contribute to the Framework aim to boost significantly the supply of housing. He attaches considerable weight to these benefits.

31. The Secretary of State agrees with the Inspector's view that similar benefits might also be achieved by the allocation of additional housing land through the Local Plan process but, for the reasons given by the Inspector at IR468, there would be an inevitable delay and the additional housing land would thus not be available immediately. He concurs with the Inspector that a significant benefit of allowing the appeal would be that this would address some of the identified shortfall in housing provision at a much earlier date and consequently there would be a greater contribution to meeting the current 5 year shortfall than would be the case for a development of the same scale to be allocated elsewhere through the Local Plan or through new Local Plans for other Local Planning Authorities in the same Housing Market Area (IR469).
32. The Secretary of State also agrees with the Inspector that there would also be some environmental benefits to set against the identified environmental harm; in particular the inclusion in the development of significant new green infrastructure and open space has potential benefits for biodiversity as well as social benefits (IR470). The Secretary of State attaches moderate weight to these benefits.

### **Section 106 planning obligations**

33. Having examined the completed and signed S106 Planning Agreement and considered the commentary and views at IR349 - 356 and the Inspector's assessment at IR462 - 467, the Secretary of State concludes that the obligations in the Agreement accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.

### **Conditions**

34. Having considered the Inspector's assessment at IR342 - 348 and the proposed schedule of conditions in the Inspector's report, the Secretary of State is satisfied that those conditions, which are reproduced in Annex A to this letter, meet the tests of paragraph 206 of the Framework and comply with the Guidance.

### **Planning balance and overall conclusion**

35. The appeal proposal conflicts with LP policy DP3 due to there being some adverse impact on the local landscape character. There is a conflict with LP policy RAP1 because the development scheme is located in the countryside, though this policy is out-of date. There is also some conflict with the LP heritage policies, though these policies are not fully consistent with paragraph 134 of the Framework because they do not provide for the balancing of less than substantial harm with any public benefits. Overall, the Secretary of State considers that the proposal conflicts with the adopted development plan as a whole.
36. The Secretary of State attributes limited weight to the relevant policies in the ELP because the Inspector of the ELP has indicated that the housing supply policies are currently unsound and because of the reasons in paragraph 10 of this letter.
37. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has given careful consideration to whether there are material considerations in this case, including cumulative impacts if this development is added to other developments on the south side of Warwick, that indicate the appeal should be determined other than in accordance with the development plan.

38. Weighing against the proposal is, first, the limited less than substantial harm to the setting and significance of the registered Castle Park and that part of the Warwick Conservation Area. In the Secretary of State's view that harm would still be less than substantial in terms of the Framework after taking cumulative effects into account. Having paid special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area, the Secretary of State places considerable weight on the harm identified in this case.
39. Second, the proposed development on its own would have some adverse impact on the local landscape character. However the Secretary of State does not consider that allowing this appeal would have a significant impact on visual amenity, including views from Banbury Road, even when the proposal is considered in combination with the impact of development of The Asps site. He nevertheless places moderate weight on the harm to landscape character and visual amenity.
40. The Secretary of State also places moderate weight on the loss of best and most versatile agricultural land, even though he considers that this is likely to be unavoidable if the identified housing needs of Warwick District the wider Housing Market Area are to be addressed. The traffic impacts and associated air quality impacts are negligible and so attract little weight.
41. Weighing in favour of the development are the housing benefits set out at paragraphs 30 - 31 above, on which he places considerable weight. He also attaches moderate weight to the inclusion in the development of significant new green infrastructure and open space which has potential benefits for biodiversity as well as social benefits.
42. Overall, the Secretary of State considers that the sum of benefits outweighs the sum of harm and consequently that the material considerations in this case justify determining the appeal other than in accordance with the development plan.

### **Formal decision**

43. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for: residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling, on land south of Gallows Hill/West of Europa Way, Heathcote, Warwick, in accordance with application number W/14/0681 dated 1 May 2014, subject to the conditions at Annex A.
44. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
45. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

46. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
47. A copy of this letter has been sent to Warwick District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**Julian Pitt**  
**Authorised by Secretary of State to sign in that behalf**

## **Annex A**

### **Conditions attached to grant of planning permission: Application W/14/0681**

#### *Timing*

- 1) This permission is granted under the provisions of Article 4(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010, as amended, on an outline application and the further approval of the Local Planning Authority shall be required to the under-mentioned matters hereby reserved before any development is commenced:-
  - a. layout
  - b. scale
  - c. appearance
  - d. landscaping
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the final approval of the reserved matters, whichever is the later.

#### *Access*

- 4) No dwellings shall be constructed until the access to the site from Europa Way has been located and laid out in general accordance with drawing 11050943/SK033 Rev I and no dwellings shall be occupied until the full crossroads junction with pedestrian crossing shown on Drawing 11050943/SK/037 Rev C (or the pedestrian crossing alone) has been constructed.
- 5) If the junction to the north as approved under planning permission ref: W/14/0967 has been implemented the access to the site from Gallows Hill shall be located and laid out in general accordance with drawing C14171-615-p1; or alternatively if the junction to the north has not been implemented that access shall be located and laid out in general accordance with drawing number C1471-614-p1.
- 6) The access to the site for occupants'/residents' vehicles shall not be used in connection with the development until it has been surfaced with a suitable bound material for its whole length.

#### *Design*

- 7) The development hereby permitted shall be carried out substantially in accordance with the details described in the Design and Access Statement and as shown on the site location plan and drawing numbers BIR.4361-02A-3 and BIR.4361-01k and specification contained therein although for the avoidance of doubt the illustrative masterplan is not approved.
- 8) No reserved matters application for any phase of the development shall be submitted until there has been submitted to and approved in writing by the Local Planning Authority a Site Wide Design Code for the approved

development. This Design Code shall be in accordance with the principles and parameters as set out within "Garden Towns, Villages and Suburbs: A Prospectus for Warwick District Council, May 2012" (and any subsequent revision and/or approved plans/strategy available at the time).

The Design Code shall include the following matters:

- a. hierarchy of streets/routes/sections (including the extent of adoptable highways and associated areas)
- b. Development blocks including built form and massing and relationship with adjoining development areas/blocks including areas of transition between development parcels (including the relationship between built form and adjoining open space);
- c. Building types
- d. Building heights
- e. The means to accommodate the parking of vehicles and cycles
- f. Sustainable Urban Drainage features
- g. Key spaces, open spaces and green features
- h. Architectural language and detailing
- i. Design principles for street tree planting and other structural planting landscaping areas
- j. Design principles on hard and soft landscaping treatments (including surfacing materials for all public realm) and proposals for their long term management
- k. Design principles on waste disposal and recycling
- l. Design principles on the colour and texture of external materials and facing finishes for roofing and walls of buildings and structures
- m. Design principles for street lighting and any other lighting to public space (including parking areas)
- n. The principles shall include a regulating plan on an ordnance survey base at a scale no greater than 1:1250
- o. A mechanism for periodic review and refinement if necessary of the approved Design Code

The Design Code shall then be used to inform the subsequent reserved matters applications.

- 9) No reserved matters application for any phase of the development shall be submitted until there has been submitted to and approved in writing by the Local Planning Authority a Site Wide Masterplan for the approved development, which shall substantially be in accordance with the plans and documents submitted with this application and the principles set out within the Council's approved document 'Garden Towns, Villages and Suburb: A Prospectus for Warwick District Council, May 2012' (and any subsequent revision and/or approved plans/strategy available at the time), and which shall also accord with the principles set out in the approved Site Wide Design Code.

The Site Wide Masterplan shall include the following:

- a. Illustrative details of how the proposed layout of development has been designed with due regard to the surrounding urban and rural context
- b. Land form topography as existing and proposed
- c. Land use plan and character areas (including densities and building heights)
- d. Movement corridors within the site (including principal roads, public transport corridors, footpaths, cycleways and green corridors) and demonstrating how these relate to existing movement networks in the wider area
- e. Location of any areas for off-street car parking areas and courts
- f. Key infrastructure (including SUDs, significant utility provision, schools, district/local centres)
- g. Landscape corridors and open space network
- h. Public open space
- i. Housing mix including tenure and size of dwelling
- j. Location of affordable housing
- k. Street tree planting and other structural planting landscape areas
- l. Hard and soft landscaping treatments
- m. Street lighting arrangements and any other lighting to public space
- n. A phasing plan including triggers for delivery of key elements of supporting infrastructure
- o. A statement establishing how the development proposals accord with the principles set out in the Site Wide Design Code.

#### *Tree Protection*

- 10) No phase of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place for that phase of the development. The scheme must include details of the erection of stout protective fencing and be in accordance with British Standard BS5837: 2012, a Guide for Trees in relation to construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved scheme shall be kept in place until that phase of the development have been completed and all equipment, machinery and surplus materials have been removed.

### *Ecology and Landscape*

- 11) The landscaping matters reserved for subsequent approval by Condition 1 shall include details of landscape buffer of native trees and shrubs not less than 20m in width to the site's western boundary and shall include a programme for its implementation early in the construction period. For the avoidance of doubt, this condition shall not apply if, at the programmed date of planting, the comprehensive residential development of the land to the west has, either been the subject of an allocation in an adopted development plan, or if that land then has planning permission for such comprehensive residential development.
- 12) No phase of the development hereby permitted shall, for that phase of the development, commence until a detailed Landscape and Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of planting and maintenance of all new planting. Details of species used and sourcing of plants should be included. The plan shall also include details of habitat enhancement/creation measures and management, such as native species planting, wildflower grassland creation, woodland and hedgerow creation/enhancement, and provision of habitat for protected and notable species (including location, number and type of bat and bird boxes, location of log piles). Such approved measures shall thereafter be implemented in full for the phase of development.
- 13) No phase of the development hereby permitted (including vegetation clearance) shall commence until further breeding bird surveys of the site have been carried out and a detailed mitigation plan including a schedule of works and timings for the relevant phase has been submitted to and approved in writing by the Local Planning Authority. Such approved mitigation plan shall thereafter be implemented in full.
- 14) No phase of the development hereby permitted shall commence until adequate measures have been taken to protect Local Wildlife Site, Tach Brook, with associated habitat and areas of woodland (potential LWS Turnbolls Garden), during development. A barrier, such as a wire fence, should be erected before works start. This fenced area should include a buffer zone between the development and the boundary of the LWS and woodland. No access or storage of materials within this buffer zone shall be permitted.
- 15) No phase of the development hereby permitted shall commence until a Construction and Environmental Management Plan (CEMP) in accordance with BS 42020:2013 has been submitted to and approved in writing by the local planning authority for that phase of the development. In discharging this condition the LPA expect to see details concerning pre-commencement checks for protected and notable species with subsequent mitigation and monitoring as deemed appropriate. In addition appropriate working practices and safeguards for other wildlife dependent of further survey work, that are to be employed whilst works are taking place on site. The agreed Construction and Environmental Management Plan for that phase of the development shall thereafter be implemented in full.

### *Lighting*

16) No development shall take place under any relevant phase of the development until a detailed lighting scheme for that phase which shall use low energy lighting has been submitted to and agreed in writing by the local planning authority. In discharging this condition the local planning authority expects lighting to be restricted around the boundary edges, particularly along hedgerows, where protected species are likely to be found, and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats and other nocturnal wildlife. This could be achieved in the following ways:

- a. low energy LED lighting should be used in preference to high pressure sodium or mercury lamps;
- b. the brightness of lights should be as low as legally possible;
- c. lighting should be timed to provide some dark periods; and
- d. connections to areas important for foraging should contain unlit stretches.

Such works, and use of that lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details.

### *Archaeology*

17) No phase of the development hereby permitted shall take place on site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority for each relevant phase.

### *Site Investigation*

18) No phase of the development shall take place unless and until:

- a. A site investigation has been designed for the relevant phase using the information obtained from the desk-top study and any diagrammatical representations (conceptual model). This should be submitted to and approved in writing by the planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:
  - i. A risk assessment to be undertaken relating to human health
  - ii. A risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected.
  - iii. An appropriate gas risk assessment to be undertaken
  - iv. Refinement of the conceptual model
  - v. The development of a method statement detailing the remediation requirements
- b. The site investigation for that phase has been undertaken in accordance with details approved by the planning authority and a risk assessment has been undertaken.

- c. A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation for the relevant phase, has been submitted to the planning authority. The method statement shall include details of how the remediation works will be validated upon completion. This should be approved in writing by the planning authority prior to the remediation being carried out on the site. All development of the site shall accord with the approved method statement. If during development of each relevant phase, contamination not previously identified, is found to be present at the site then no further development within that phase shall take place until an addendum to the method statement addressing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the LPA. Prior to the commencement of each relevant phase of the development, a report shall be submitted to the Local Planning Authority that provides verification that the required works, regarding contamination for that part of the site, have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

#### *Housing Mix*

- 19) The mix of type and size of market dwellings submitted as part of any reserved matters application must accord with the recommendations contained within the most up to date version of the "Development Management Policy Guidance: Achieving Mix of Market Housing on new Development Sites".

#### *Energy*

- 20) No phase of the development hereby permitted shall not be commenced unless and until a scheme showing how at least 10% of the predicted energy requirement of the development of that phase will be produced on or near to the site from renewable energy resources, has been submitted to and approved in writing by the Local Planning Authority. The phase of development shall not be first occupied until all the works within the approved scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.

#### *Drainage and Fire Hydrants*

- 21) No phase of the development hereby permitted shall be carried out other than in strict accordance with the details of surface and foul water drainage works and a detailed scheme for the disposal of surface water (incorporating where possible Sustainable Urban Drainage principles) for that phase which shall have been submitted to and approved in writing by the local planning authority. Details to be submitted shall include:
  - a. a detailed design flood risk assessment for the site to incorporate both fluvial and pluvial flooding mechanisms and any effects on existing water bodies or drainage systems including:- plans showing the existing and proposed drainage systems including levels, sizes, material, fall and construction details and standards in comparison to finished floor levels along with Manhole schedules;

- b. Plans defining the water catchment areas for the site including the offsite catchment areas that contribute to the drainage areas. This plan should show areas of impermeable and permeable surfaces of the proposed site including calculations of these areas in a clear labelled table;
- c. The applicant is to provide calculations/models of pipe flows, discharge rates from the site and flood storage volume and design water levels reducing the off-site discharge rates to mimic existing greenfield run off rates. This should include calculations for 1 in 1 year, 1 in 30 and 1 in 100 year + 30% climate change allowance;
- d. Provide calculations and percolation test results carried out on the site for the infiltration of water (if used), i.e. soakaways, swales, ponds with photos and attached report;
- e. To provide plans long and across sections through the site and a plan showing overload flow paths with arrows for storm events that exceed the capacity of the drainage systems; (vi) To provide details of the proposed maintenance of water systems for the site into the future and a risk assessment for open bodies of water and structures, a plan showing the proposed phased development of the site together with details of discharge consents from the land drainage authority and Severn Trent Water.

22) No phase of the development hereby permitted shall be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes for that phase of the development, has been submitted to and approved in writing by the Local Planning Authority. No phase of the development shall be occupied until the scheme relating to that phase has been implemented to the satisfaction of the Local Planning Authority.

#### *Security*

23) No development shall take place under any reserved matters consent until a scheme for that reserved matters consent has been submitted to and approved in writing by the Local Planning Authority indicating how and when the 'Secured by Design' standards will be incorporated into that phase of the development. The scheme shall be implemented in accordance with the approved details of that phase and shall be retained at all times thereafter.

#### *Construction Method Statement*

24) Any phase of the development hereby approved shall only proceed in strict accordance with a construction method statement for the relevant phase, which has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of dust and dirt during construction; and a schedule for the movement of construction plant, associated equipment and deliveries.

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

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Date: 26 October 2015

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**Town and Country Planning Act 1990**

**Warwick District Council**

**Appeal by Gallagher Estates Ltd**

Inquiry held on 25-27 August 2015 & 2-3 September. Closed in writing on 16 September 2015.  
Site Visit held on 1 September 2015

Land South of Gallows Hill/West of Europa Way, Heathcote, Warwick

File Ref: APP/T3725/A/14/2229398

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**File Ref: APP/T3725/A/14/2229398****Land South of Gallows Hill/West of Europa Way, Heathcote, Warwick**

- 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 Gallagher Estates Ltd against the decision of Warwick District Council.
- The application Ref W/14/0681, dated 1 May 2014, was refused by notice dated 31 July 2014.
- The development proposed is a residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling.

**Summary of Recommendation: That the appeal be allowed.**

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## Abbreviations used in this Report

5YS	5 year's housing supply
AQMA	Air Quality Management Area
CA	Conservation Area
CIL	Community Infrastructure Levy
CMP	Conservation Management Plan for Castle Park
DL	Decision Letter Paragraph
dpa	Dwellings per annum
dph	Dwellings per hectare
EiC	Evidence in Chief
EiP	Examination of the Emerging Warwick District Local Plan
ELP	Emerging Warwick District Local Plan 2011-
ES	Environmental Statement
fn	Footnote
FOAN	Full objectively assessed need for housing
FP	Footpath
Framework	National Planning Policy Framework
GLVIA	Guidelines for Landscape and Visual Impact Assessment
ha	hectare
HMA	Housing market area
IR	Inspector's Report
km	Kilometre
LP	Warwick District Local Plan
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
m	Metre
NPPF	National Planning Policy Framework
OAN	Objectively assessed need for housing
PINS	Planning Inspectorate
PoE	Proof of Evidence
PPG	Planning Practice Guidance
RfR	Reason for Refusal
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SPD	Supplementary Planning Document
SUDS	Sustainable Urban Drainage System
SWG	Save Warwick Group
TSHA	The Setting of Heritage Assets – English Heritage
VP	Viewpoint
WDC	Warwick District Council
XX	Cross examination
Y	Year
§	Paragraph

## **PROCEDURAL MATTERS**

1. The Secretary of State has recovered the application because he is of the opinion that it is one that he ought to decide himself. This is because the appeal involves a proposal for residential development of over 150 units or on over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

## **ENVIRONMENTAL STATEMENT**

2. A 3-volume Environmental Statement (ES) with separate non-technical summary has been submitted under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No. 1824). A single ES was produced for the appeal site and for the land to the east known as Lower Heathcote which already has planning permission for a large mainly residential development. The environmental issues which are addressed are:
  - Site Description and Proposed Development
  - Planning Policy Context
  - Socio Economic Issues
  - Landscape and Visual Issues
  - Ecology and Nature Conservation
  - Archaeology
  - Cultural Heritage
  - Land Use and soils
  - Transport
  - Air Quality
  - Noise and Vibration
  - Drainage and Flood risk
  - Ground Conditions and Geology
  - Infrastructure Services
  - Waste Issues
3. Comments from statutory consultees are included with the LPA questionnaire as part of their comments on the planning application consultation.
4. In relation to air quality, the ES assessment concentrated on construction dust and road traffic near the appeal site. Following concerns raised by other interested persons a supplementary assessment was made concerning this development and other committed developments at 16 representative receptor location including 12 within the Warwick Air Quality Management Area and 4 in the Leamington Spa Air Quality Management Area. This is summarised in a note at Appendix 46 of Document ACB2 (File 3 of 3). The assessment concluded that

there would be a negligible impact on the AQMAs associated with traffic from the development. It also refers to mitigation measures.

5. The regulatory requirements have been met and this environmental information has been taken into account.

## **THE SITE AND SURROUNDINGS**

6. There is a full description of the site and its surroundings in the Planning Statement of Common Ground (Document AD2) that was agreed between the LPA and the Appellant.

### *The appeal site*

7. The appeal site of about 21.8ha is in the main a single large arable field traversed by a low voltage electricity line. It is mostly level but falls gently to the south towards adjacent woodland known as Turnbull's Gardens and more steeply towards the south east corner where there is a minor watercourse. Between that watercourse and another watercourse further south is a rectangular ridged area of pasture that is included in the appeal site and which would remain open as part of the proposed open space.
8. The site is mainly Grade 2 (best and most versatile) agricultural land. A characteristic which it shares with much of the agricultural land around the edge of Warwick and Leamington.
9. The appeal site is bounded to the north by a hedgerow along the Gallows Hill frontage. To the east along the frontage to Europa Way the appeal site is bounded by a hedgerow with trees. They were planted when that 2-lane road was built in the 1980s and they serve to screen or filter views to and from the road.
10. There is a useful topographical LiDAR map of the area at Stoten Appendix A1 Figure 4 (Document GS2). There is a similar contour map at Figure 5.4 of the Environmental Statement.
11. There are landscape and visual analysis context plans at Figures 5.5 and 5.6 of the ES (Volume 1). These are followed by photographs from 24 viewpoints (VP) which were taken in winter. The VP locations are on Figure 5.1 which also illustrates local rights of way. Key VPs referred to in the Conclusions are VP24, (View from Gallows Hill - looking east near the junction with Banbury Road), VP23 (View from a gap in the roadside vegetation on Banbury Road), VP10 & VP11 (Views NE from public footpath west of A452 Europa Way), VP20 (View south from Gallows Hill) and VP21 (View from Europa Way looking west).
12. The viewpoint photographs are followed by illustrative material including the site's relationship to the now consented Lower Heathcote development to the east.
13. The inquiry proofs and appendices contain other photographs taken from different locations and at different times of year. In particular the A3 document JEP-9 includes visualisations from VP4 (the same position as ES VP24) which include photographs showing the recent tree planting on the 'Hallam' land to the west of the appeal site and also indicate how the development would look as the intended screen planting on its western edge matures. The visualisations also

show how the development might appear from VP5 on Banbury Road (which corresponds to ES VP23).

*The surroundings*

14. There is currently no enclosure on the western site boundary where the appeal site adjoins other arable land in the control of the Rule 6(6) parties and hereafter referred to as the Hallam Land. That is an approximately triangular area of land which is bounded to the north by Gallows Hill and to the south by woodland and Banbury Road. A belt of young trees has recently been planted within that land along its frontage with Banbury Road. The Hallam land is in agricultural use but was previously the subject of a withdrawn planning application for residential development. It has been proposed by the Rule 6(6) parties as an alternative site allocation as part of their representations on the emerging Local Plan.
15. The land north of Gallows Hill opposite the appeal site is open agricultural land but has an extant planning permission for residential development (Ref W/14/0967). To the west of that land on Gallows Hill is the Warwick Technology Park. That is a development of large business premises set in a landscaped setting of trees and large shrubs. A footway/cycleway along the north side of Gallows Hill provides an alternative means of access to the technology park and would be connected to the appeal site by a traffic light controlled crossing.
16. Open land on the opposite east side of Europa Way is in the control of the Appellants and has outline planning permission for an extensive residential development known as Lower Heathcote (Ref W/14/0661). That would include a primary school, a local centre and a new country park along its southern edge. One of the accesses would be provided from a new traffic-light-controlled T-junction with Europa Way. The construction of that access would require the removal and replacement of some of the existing planting on the appeal site frontage. If the appeal site development is allowed that junction would be further expanded into a traffic light controlled cross roads and pedestrian/cycle crossing.
17. Europa Way was built in the 1980s to provide a new southern access into Leamington Spa from the M40 and from the Warwick bypass. The latter bypass lies to the south and west of Warwick. It allows traffic from the M40 and Stratford in the south to reach Coventry to the north whilst avoiding the built-up area of Warwick and Leamington. The construction of Europa Way has been followed by extensive new development. The road meets Gallows Hill at a roundabout adjacent to the north east corner of the appeal site. Another residential development is currently under construction on a triangular site to the north east of the Gallows Hill/Europa Way roundabout (Ref W/13/0607).
18. Warwick and Leamington Spa are closely related historic twin towns with different characters but many overlapping functions. Both have railway stations. The north east corner of the appeal site lies adjacent to the south west corner of the built up area of Leamington Spa. Leamington Spa has the larger town centre with more extensive retail and other facilities about 3km to the north east of the site. Land to the north east of the roundabout is within the administrative area of Leamington Spa and is now fully built up between the roundabout and the town centre including a large business park and the Leamington Shopping Park. The Shopping Park includes 2 large supermarkets and other retail facilities and it lies about 1.5km from the appeal site.

19. To the south the appeal site abuts the boundary of Bishop Tachbrook parish. However the site itself is within the administrative area of the town of Warwick. It is about 2km to the south east of Warwick town centre. The land between the appeal site and Warwick town centre includes open agricultural land, Warwick Technology Park, Warwick School with its extensive sports fields, an older housing area at Bridge End, and private parkland in mainly agricultural use that is known as Castle Park and was originally laid out to serve Warwick Castle.
20. The large and imposing Warwick Castle stands between the River Avon and the town centre. It is in part a Grade I listed building and in part a scheduled ancient monument. The tops of the castle towers can be seen in the distance from the appeal site above the intervening trees in Castle Park and in association with the tower of St Mary's Church in Warwick town centre (see upper photograph in Document RM2). This view is not currently available to the public. Similar partial views of the Castle are available from other private land in the wider area.
21. Warwick Castle is open to the public and is a major and much visited tourist attraction. There are 360 degree views from the castle's 2 towers. These views encompass: the town centre; the adjacent River Avon; Castle Park; Warwick Technology Park and other built development on the edge of, or between, the 2 towns; and some generally distant views of open countryside including the appeal site about 1.5km away. In this view from the castle the land beyond the appeal site at Lower Heathcote already has planning permission for residential development. In Document JEP-9 document, VP1 and VP2 are photographic visualisations taken from the 2 towers at Warwick Castle and they indicate how the development of the appeal site would appear as screen planting matures. These photographs also include some of the existing built development that can be seen as part of a 360 degree outlook from these towers.
22. Castle Park is a Grade I registered park. Its position relative to the site is shown on Figure 5.2 of the ES which also maps the boundary of Warwick Conservation Area that includes the Park. The park is not traversed by any public rights of way and is not open to the public (apart from a small area near Warwick Castle). The ES and proofs do not include photographs taken within the park as the owner denied access to the Appellant's representatives. The park was first laid out by Lancelot Capability Brown in the mid 18<sup>th</sup> century at a time when most agricultural land in the vicinity (including the appeal site) was being enclosed by hedges. Later in the 18<sup>th</sup> century the park was remodelled by the 2<sup>nd</sup> Earl of Warwick. He replaced some of the Brownian landscape and extended the park to the east, diverting Banbury Road to do so. The park has an open parkland character with woodland, tree belts or groves, pasture, arable fields and an artificial lake known as New Waters. When first constructed New Waters was crossed by the Banbury Road and a parallel carriage drive on a dam planted with trees between the road and the drive.
23. An adjacent area of water east Banbury Road may have been intended as a silt pond in order to retain clear water in New Waters. In any event that water did itself become silted and was eventually used for landfill. More recently planning permission was granted for its use as a caravan site. The adjacent woodland is known as Turnbull's Garden.
24. The ownership of Castle Park has been largely divided from that of the castle and some of the original landscape features are neglected. In particular: pasture

land has been converted to arable use; trees and woodland have not been actively managed; some conifer planting has been introduced; the New Waters lake has been partly silted up; and some paths and former carriage drives have become overgrown or obstructed. The recently prepared Castle Park Management Plan (Document AD18) supported a bid for public funds to restore various features of the park including: returning arable land to pasture; managing and replanting trees; and restoring paths and carriage drives.

25. The 18<sup>th</sup> century extension of the park by the 2<sup>nd</sup> Earl of Warwick included the diversion of the Banbury Road turnpike eastwards on a new alignment. A toll house was constructed at the junction of Banbury Road with Gallows Hill and is now listed Grade II. Recent junction alterations mean that the toll house and its garden are now isolated on a large traffic island surrounded by roads. A tall modern fence acts as a noise barrier.
26. Banbury Road runs outside Castle Park and there is woodland and other tree planting along the full length of the park adjacent to the road. One of the main matters of dispute between the heritage witnesses is whether these boundary trees and any understorey planting were intended to screen views out over the road and the surrounding enclosed fields or were planned to allow such views.
27. Another dispute is whether there were intended to be designed views along and from Banbury Road. Approaching Warwick the road is aligned with the spire of the Grade I listed St Nicholas' Church but other buildings in the town are hidden. The road at first used the original bridge over the River Avon under the castle walls. It was soon diverted to a straighter route to the north of the castle over a new bridge that is now listed Grade II. The castle is not readily seen from Banbury Road when approaching Warwick but from the bridge there is revealed a renowned view downriver to the castle. After crossing the bridge the castle is generally concealed by other buildings. There is a gatehouse beside the main road which leads to the 'rock-cut' approach to Warwick Castle. This was also constructed by the 2<sup>nd</sup> Earl after he extended the park. The curving route of that approach conceals the castle from view until it is revealed at relatively close quarters.
28. The Warwick Conservation Area encompasses: the medieval town (substantially rebuilt after a fire in 1694); a large number of listed buildings including the castle and the churches; and Castle Park. The boundary does not include Warwick School, Banbury Road or the land to the east of that road.
29. Sir Patrick Abercrombie was commissioned to prepare a town plan for Warwick in 1949. He commented then on the quality of the Banbury Road approach to the town through the countryside. However his recommendation for an Inner Ring Road around the town centre was not accepted.

## **THE PROPOSAL**

30. The application was made in outline to develop up to 450 dwellings. It includes access but appearance, landscaping, layout and scale are all reserved for subsequent determination.
31. The accompanying layout is only illustrative and could change at the reserved matters stage. However it indicates that there would be a 20m wide landscaping belt along the site's western boundary. This would be planted with deciduous

- trees to screen or filter views south east across the Hallam Land from Banbury Road, the edge of Castle Park and the Castle. At its closest the site is about 200m from Castle Park but there is existing intervening woodland known as Turnbull's Garden.
32. The indicative layout indicates that significant open space would be provided along the southern boundary of the site adjacent to and between the 2 watercourses and the woodland. At its eastern end this open space would be close to the proposed country park on the opposite east side of Europa Way. The submitted Design and Access Statement indicates how the site's development would otherwise relate to the development of the consented development east of Europa Way known as Lower Heathcote.
33. The removal of the site's eastern frontage vegetation along Europa Way will be necessary to implement access to the consented development on land East of Europa Way whether or not this appeal is allowed, as Document JEP4 and the accompanying Figure JEP12 explains. The appeal proposal will also require the removal of vegetation along the northern frontage to Gallow's Hill, as explained in the same document and Figure JEP13. There are indicative landscape proposals for new planting on both frontages (Figures JEP 14 and 15).
34. The evidence of the Appellant's landscape witness in the A3 document Figure JEP 9 includes:
- a location plan;
  - a plan of baseline consented schemes;
  - consented scheme parameters for the Lower Heathcote land to the east;
  - illustrative masterplan of the appeal site;
  - proposed parameters plan for the appeal site; and
  - photographic visualisations from 5 key viewpoints; they are based on photographs taken in March in dull weather with leafless vegetation; they indicate the current view from the viewpoint, the view including consented schemes, and how the development may appear at years 1, 7 and 15 to show the effect of landscape planting as it matures.
35. The evidence of the Council's landscape witness at A3 document RM2 (Appendix C) and in Document AD7 includes photographic visualisations in brighter weather conditions but with cruder graphics in which the proposed housing is represented in white. The AD7 visualisations include views north from a public footpath to the south of the appeal site towards the appeal site and across the foreground Asps site. The visualisations but do not show the consented development to the east at Lower Heathcote which would appear in the same views.
36. RM2 Appendix B also includes visualisations from a bird's eye angle with the buildings indicated in 3 dimensional form. However the latter visualisations are potentially misleading in that: the appeal site buildings are again shown in white; they do not show the buildings proposed on the adjacent consented sites; and all of the existing building and trees are shown in only 2 dimensions.
37. Access is not a reserved matter. Two vehicular access points are proposed, one to the north from Gallows Hill and one to the east from Europa Way. The Note

for the Inspector submitted by the Appellant's highway witness on the first day of the Inquiry (Document ID11) clarified the position with regard to whether the proposed development of the site is to occur before or after the implementation of previously consented residential developments on the opposite sides of Europa Way and Gallows Hill respectively.

38. For Europa Way there are 2 alternative drawings Ref SK-033 Rev I and SK037 Rev C. Both were attached to the revised Transport Assessment submitted on 4 July 2014.
39. For Gallows Hill 2 drawings were submitted with the above note on the first day of the Inquiry Ref C14171 614 P1 and C14171 615 P1. They supersede Plan SK-035 Rev B. The changes are very minor and no-one would be prejudiced by considering the appeal on the basis of the revised drawings.

## **PLANNING POLICY**

40. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the saved policies of the Warwick District Local Plan 1996-2011 (the LP).
41. The emerging Warwick District Local Plan (the ELP) is intended to replace the LP and would cover the period between 2011 and 2029. It was submitted for examination on 30 January 2015. After holding the initial hearings into the ELP (covering the duty to cooperate and housing supply) the Inspector published his initial findings on these matters on 1 June 2015 (Document SS2 Appendix C). The Inspector identified a number of housing supply issues and advised that the plan would be found unsound unless it was withdrawn. He did not consider suspension appropriate.
42. The Secretary of State subsequently declined a request by the LPA that he call in the Plan. That would have involved substituting his own judgement for that of his appointed Inspector.
43. On 13 August 2015 the LPA wrote to the ELP Inspector to ask that the Examination be suspended until March 2016 with a timetable for the necessary work to address housing supply. On 28 August 2015 (Day 4 of the Appeal Inquiry) the Inspector replied and reserved a decision on suspension until after a meeting planned for 29 September 2015 (Document AD9). He expressed concern about:
  - uncertainty as to the outcome of joint working;
  - the scale of additional housing site allocations that would be required and how they would be brought forward; and
  - the realism of the time scale to bring forward and appraise site allocations and broad locations for growth.
44. None of the other ELP policies have yet been considered at examination hearings and they can only be accorded limited weight as they are subject to representations and may change if and when the examination progresses.
45. The National Planning Policy Framework (the Framework) is an important material consideration. Paragraph 215 provides that: '*... due weight should be*

*given to relevant policies in existing plans according to their degree of consistency with this framework.*' The LP is an existing plan which predates the Framework. Paragraph 14 of the Framework refers to the presumption in favour of sustainable development and includes the provision that for decision taking this means:

- *'approving development proposals that accord with the development plan without delay' and*
- *'where the development plan is absent, silent or relevant policies are out of date, granting permission unless: - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted'.*

46. The Framework is supported by national Planning Practice Guidance (PPG).

47. Ministers have also issued Written Ministerial Statements (WMS) and letters that are also material considerations.

### ***Housing Policy***

48. The appeal site is outside any settlement boundary and is consequently in a rural area for the purposes of LP Policy RAP1. That policy would only permit residential development in very limited circumstances which would not apply to the appeal proposal. However the adopted LP only included planned provision for housing up until 2011 and settlement boundaries were defined on that basis. Policy RAP1 is consequently out of date as the main parties agree.

### ***National Policy***

49. Amongst other things paragraph 47 of the Framework provides that local planning authorities should: *'use their evidence base to ensure that their local plan meets the full, objectively assessed need [OAN] for market and affordable housing in the housing market area [HMA]'*. Paragraph 47 also provides that local planning authorities should: *'identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements'*. Paragraph 49 provides that: *'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites'*.

50. The Framework provides that land is only to be released from the Green Belt in exceptional circumstances and through the Local Plan process.

### ***The Housing Market Area***

51. In this case the HMA comprises the local authorities of Coventry, Warwick, North Warwickshire, Nuneaton and Bedworth, Rugby, and Stratford-on-Avon as defined in the Strategic HMA 2013. The 2012-based DCLG household projections increased the projected figure for Coventry by 144 dpa whilst reducing it elsewhere in the HMA. The 2014 SHMA addendum identified an OAN for 4,004 dwellings per annum between 2011 and 2031. That has been agreed between the authorities as the minimum figure which should be provided for. The SHMA

addendum only provided indicative figures for the distribution of this housing between the local planning authorities. It also advised that this distribution was sensitive to migration levels and to economic growth prospects such that further work would be required.

52. A proposal to defer a final distribution of housing supply between the authorities until a future review of the Warwickshire Local Plans was not supported by the Warwick ELP Inspector. The distribution had not been agreed at the time of the appeal Inquiry but there may have been some progress as a result of the meeting scheduled for 29 September 2015. The outcome of that meeting is not before me.
53. The need for a cross border distribution of housing between the LPAs in the HMA arises mainly because the Strategic Housing Land Availability Assessment (SHLAA) for Coventry has identified a substantial shortfall of land within the city to meet the identified need for housing. Moreover the land surrounding Coventry and lying between that city and the Warwick/Leamington built up area is designated as Green Belt. Indeed 80% of land in Warwick District is in the Green Belt including most of the land north and west of the main built up area of Warwick/Leamington. Land to the south and east of the built up area (including the appeal site) lies outside the Green Belt.

#### *The Emerging Local Plan*

54. Amongst other things the ELP Inspector's letter of 1 June 2015 (Document SS2 Appendix C) was critical of the windfall allowance in Warwick District for large housing sites. The Inspector reported that Warwick District Council considered that the OAN for Warwick District alone would be 606dpa but noted that the ELP seeks to provide for the delivery of 720dpa which would include a contribution to the needs of the wider HMA. The Inspector found that there is an existing shortfall in housing delivery since the start of the ELP period in 2011 and also persistent under-delivery over a longer period which justified the application of a 20% buffer. On that basis the Inspector calculated a 5 year requirement as of 1 April 2015 as 6,528 dwellings. The LPA had calculated a 5 year supply at that point of 5,968 dwellings and therefore the Inspector concluded that it could not demonstrate that it had an adequate 5 year supply to meet the need.
55. Another key concern of the Inspector was that the supply figure of 720dpa included an excessive windfall allowance. Whilst he considered the contribution of windfalls from rural sites, changes of use and urban sites of less than 5 dwellings to be reasonable, the forecast contribution from large urban sites not included in the up to date SHLAA was not. Some other double counting was also identified.
56. The Inspector concluded that this supply was not robust and therefore the ELP would not supply sufficient houses to meet even the needs of Warwick District over 5 years or the plan period. The distribution of the identified requirement for the HMA as a whole had not been agreed and there was thus a risk of an overall shortfall against the OAN for the HMA.
57. The Inspector concluded that there were serious issues with housing supply both for a 5-year period and for the plan period as a whole such that additional housing land on a significant scale would need to be identified. A meeting of the

HMA authorities to consider the amount and distribution of housing supply between the authorities was scheduled for 29 September 2015.

58. Matters still to be resolved therefore include:

- how much housing is to be accommodated within Coventry,
- whether any surplus need for the HMA is to be provided for by the further release of land from the Green Belt,
- whether any of that release would be within Warwick District (where the ELP already proposes some housing development in the Green Belt at Kenilworth and Lillington as well as a sub-regional employment site at The Coventry Gateway<sup>1</sup>) and,
- if housing cannot be accommodated in Coventry or by release of Green Belt land, where provision to meet unidentified need OAN of at least 234 dpa for the for the HMA as a whole will otherwise be met by provision outside the Green Belt, and
- the identification of additional site allocations in Warwick in place of part of the assumed supply from large windfall sites.

### **Heritage Policy**

#### *The Adopted Local Plan*

59. Saved LP Policy DAP4 *Protection of Listed Buildings* provides amongst other things that: *'Development will not be permitted that will adversely affect the setting of a listed building'*.
60. Saved LP Policy DAP8 *Protection of Conservation Areas* provides amongst other things that: *'Development will be expected to respect the setting of Conservation Areas and important views in and out of them.'*
61. Saved LP Policy DAP11 *Protecting Historic Parks and Gardens* provides amongst other things that : *'Development will be strongly resisted if it would harm the historic structure, character, principal components and setting of parks and Gardens of Special Historic Interest included in the English Heritage Register, as defined on the Proposals Map'*.

#### *National Policy*

62. The Framework is more up to date than these policies and it provides at paragraphs 128, 129 and 132 that consideration should be given to the significance of such designated heritage assets. Paragraph 132 further provides that: *'Substantial to or loss of designated assets of the highest significance, notably scheduled monuments ... grade 1 .. listed buildings, grade 1 ... registered parks and gardens ... should be wholly exceptional.'* Paragraph 133 provides that substantial harm to a designated should lead to a refusal of consent unless outweighed by substantial public benefits or when a series of other criteria are all met. Paragraph 134 provides that: *'Where a development proposal will lead to*

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<sup>1</sup> A planning application to develop the Coventry Gateway Site was supported by Coventry City Council and Warwick District Council but was called in and refused by the previous Secretary Of State Eric Pickles earlier this year.

*less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, ...' . That is an important provision which is not included in the development plan policies. Those policies are thereby not consistent with the Framework.*

### **Landscape Policy**

#### *The Adopted Local Plan*

63. Saved LP Policy DP3 *Natural and Historic Environment and Landscape* provides that: *'Development will only be permitted which protects important natural features and positively contributes to the character and quality of its natural and historic environment through good habitat/landscape design and management. Development proposals will be expected to demonstrate that they: - ....(b) protect and/or enhance features of historical, archaeological, geological and geomorphological significance.... (c) protect and enhance the landscape character of the area, particularly respecting its historic character.... (g) protect best and most versatile agricultural land.'*

#### *National Policy*

64. The above policy is broadly consistent with the Framework in these regards. However in relation to (g), whereas the Framework at paragraph 112 requires account of the economic and other benefits of the best and most versatile land and prefers the use of poorer quality land, it does not preclude all development on higher quality land. Some representations from interested persons have referred to provisions in paragraph 143 of the Framework. However they relate to minerals planning policies and are not material here.
65. The local planning authority has drawn attention to a letter from Brandon Lewis, Minister of State for Housing and Planning, to the Chief Executive of the Planning Inspectorate dated 27 March 2015 citing instances where appeals had been dismissed on landscape grounds, notwithstanding that the sites were in undesignated landscapes. That underlines (but does not alter) established Government policy.

### **Traffic and Transport Policy**

#### *The Adopted Local Plan*

66. LP Policy DP7 *Traffic Generation* provides that: *'Development will not be permitted which generates significant road traffic movements unless practicable and effective measures are taken to avoid adverse impact from traffic generation' and 'In appropriate circumstances, development proposals will be required to demonstrate how they comply with this policy by way of a Transport assessment and, where necessary, a Travel Plan'.*
67. LP Policy SC12 *Sustainable Transport Improvements* seeks contributions to such improvements where development would lead to a material increase in traffic.

#### *National Policy*

68. The Framework at paragraph 32 provides amongst other things that development decisions should take account of whether:

- *'the opportunities for sustainable travel modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- *safe and suitable access to the site can be achieved for all people; and*
- *improvements can be undertaken within the transport network that cost effectively limit the significant impacts of development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'.*

### **Air Quality**

69. Warwick town centre and Leamington town centre are both Air Quality Management Areas (AQMA).

#### *The Adopted Local Plan*

70. LP Policy DP9 Pollution Control provides amongst other things that: *'Development will only be permitted which does not give rise to ... air... pollution where the level of discharge, emissions or contamination could cause harm to sensitive receptors'.*

#### *National Policy*

71. The Framework at paragraph 120 provides amongst other things that: *'... planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health... and the potential sensitivity of the area .... To adverse effects from pollution, should be taken into account.'*

### **PLANNING HISTORY**

72. In 2006 the Inspector for the adopted LP did not accede to a request by an objector that he should recommend that the appeal site be included in the settlement boundary. He would have had regard to the scale of the need for development then identified in that Local Plan and must have been satisfied that it was being met elsewhere.
73. In May 2012 the LPA issued the *Local Plan Preferred Options* which included a strategic development of a site comprising: the appeal site; the land to the west; and the land to the south (the Asps). That site would have provided 1,600 dwellings plus employment and other development. In the same year the LPA commissioned a landscape report on that and a number of other key sites for development potential. The Report entitled *'Considerations for Sustainable Landscape Planning'* concluded that the Asps site was unsuitable for development on landscape grounds but that the appeal site and the land to the west could be suitable subject to recommended landscaping measures.
74. In May 2013 an outline planning application (W/13/0603) was made to develop the appeal site for up to 370 dwellings, up to 7,880sqm of B1 employment, and space for a primary school. The application was withdrawn in July 2013.
75. The revised Preferred Options consultation version of the ELP (*Revised Development Strategy June 2013*) included the appeal site and the Hallam land

to the west as a single proposed development site but excluded the Asps site to the south.

76. Following representations including an objection from English Heritage to the development of that larger site, the ELP submitted for examination on 30 January 2015 deleted the proposed allocation of the appeal site and the adjoining Hallam land to the west and instead substituted the Lower Heathcote development site to the east of Europa Way.
77. Prior to the examination and adoption of the ELP, and in order to boost the supply of housing, the LPA has permitted a number of large housing developments on sites that are proposed for allocation in the ELP. There is a map of the sites at Appendix E of Mr Sahota's evidence (Document SS2). The sites include the adjoining sites to the east (Lower Heathcote) and north of the appeal site.
78. Planning permission was refused by the LPA for a proposed development on the adjoining Asps land to the south of the appeal site. That development for 900 houses is the subject of an appeal (ref: APP/T3725/A/14/2221613). The public inquiry was held in April 2015 and the Inspector's Report is currently with the Secretary of State for a decision. At that inquiry the LPA maintained that it had a 5 year supply of housing. That is no longer the case.
79. The Hallam land to the west of the appeal site is owned or controlled by the Rule 6(6) party William Davis Ltd & Hallam Land Management. An application for planning permission for its residential development (LPA Ref W/13/1434) was withdrawn but the site is being pursued by representations seeking its allocation through the Local Plan process. The Rule 6(6) parties also appeared at the Asps Inquiry.
80. Gallagher Estates Ltd has also submitted a representation on the ELP which seeks the allocation of the appeal site for the same development as that proposed in this appeal.

#### **OTHER AGREED FACTS**

81. The bespoke timetable provided that statements of common ground (SoCG) were to be submitted with the statements of case by 27 January 2015. None were. Only 1 of 4 SoCGs was submitted before the Inquiry opened. 3 were submitted during the Inquiry:
  - LHA/Appellant – Highways & Transportation (Document NB4 – dated 29 July 2015)
  - LPA/Appellant – Planning (Document AD2 – submitted 25 August 2015)
  - Appellant/Rule 6(6) Parties – Heritage (Document ID13 – submitted 26 August 2015)
  - LPA/Appellant – Housing (Document AD3 – submitted 28 August 2015)
82. The **Planning SoCG** includes: a description of the site and surrounding area; a description of the appeal proposals; a table listing the application material and drawings; the reasons for refusal; relevant planning policies and guidance; the matters not in dispute and the disputed matters. The matters not in dispute include:

- The District Council cannot demonstrate the 5 year supply of housing required by the Framework and Policy RAP1 of the adopted Warwick District Local Plan is consequently out of date.
- There has been under-provision of affordable housing and an urgent need for its provision which the appeal proposal would help to address at 40% provision. This merits significant weight.
- Whilst some loss of wildlife habitats would require bio-diversity off-setting, ecology impacts are not a reason for refusal.
- There would be adequate open space provision and public access to additional green infrastructure would be a benefit but of limited weight.
- There are no adverse residential amenity impacts as reasons for refusal
- The submitted Air Quality Assessment has been agreed by relevant officers and air quality is not a reason for refusal
- The majority of the site is Grade 2 agricultural land and part is Grade 3. Much of the agricultural land adjoining Warwick and Leamington is similarly classified as best and most versatile land and its loss is not included as a reason for refusal.
- There is no archaeology objection subject to a suitable condition.
- The setting of heritage assets should be defined according to the Framework definition. There would not be substantial harm to heritage assets in the terms of the Framework but the degree of harm is disputed.
- The key characteristics of the Feldon Parklands landscape character area are agreed as:
  - a large scale, rolling topography with occasional steep scarp slopes
  - large woodlands, often associated with rising ground
  - many small coverts with belts of trees
  - mature hedgerows and roadside oaks
  - large country houses set in mature parkland
  - a nucleated settlement pattern of small estate villages, and large isolated brick farmsteads.
- It is agreed that the presence of the above characteristics varies and that the existing and emerging urban edge and other features further influence the character of the local landscape. The main parties also agreed at the Inquiry that the landscape has been degraded in the vicinity of the appeal site by the removal of hedgerows and that it has been identified as an area in need of landscape enhancement.
- No designated landscapes would be affected. Recent permissions for development on surrounding sites should form part of the baseline. The Appellant's views VP1-24 at Chapter 5 of Volume 1 of the Environmental

Statement are agreed to be relevant but views towards Warwick Castle also need to be considered. The photographs were taken in February 2014. Viewpoints 23 and 24 do not show the recent planting of a tree belt close to the junction of Banbury Road and Gallows Hill.

- The 3<sup>rd</sup> reason for refusal relating to the provision of affordable housing and infrastructure contributions is capable of being addressed by a satisfactory planning obligation. There is now an agreed obligation.
83. The remaining disputed matters relate to landscape impacts, harm to heritage assets, and whether the planning obligation provisions have been adequately justified.
84. The **Housing SoCG** submitted on the fourth day of the Inquiry reaffirmed that there is not a 5 year supply of housing land. The weight attached to the shortfall is agreed to increase as the shortfall increases. Whilst paragraph 47 of the Framework requires the Full Objectively Assessed Need (FOAN) for the wider Housing Market Area to be met, in the context of a S78 Inquiry and in the absence of an up-to-date Local Plan, FOAN should be established at the district level (reference is made to the cases of Hunston or Oadby & Wigston). The Council considers the FOAN to be 606dpa but this is not agreed. The Appellant suggests that it is between 732 and 817 dpa. The Local Plan Inspector used a figure of 720dpa. This would be a matter for submissions. The 5 year supply should be calculated using the Sedgefield approach (addressing the shortfall within 5 years) and a 20% buffer. There is no dispute over the number of housing completions from April 2011 to 28 February 2015.
85. Document ID15 tabulates the respective positions on housing supply of the LPA, the Appellant, and Bishops Tachbrook Parish Council (Cllr Bullen).
86. In relation to the **Highways & Transportation SoCG** (29 July 2015), the highway authority (Warks CC) did not object to the original application subject to specified planning conditions and a planning obligation. However with effect from 6 April 2015 the latter obligation would not have met the requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. The proposal was therefore remodelled on the basis of the agreed Transport Assessment Report (April 2014 as amended July 2014).
87. Agreed highways mitigation would include improvements to the immediate local network around the appeal site to include road widening on Gallows Hill and Europa Way. Junctions would be constructed at the developer's expense using an agreement under S278 of the Highways Act. A contribution to off-site cycle and pedestrian accessibility improvements would be included in the S106 obligation. The SoCG also includes an agreed public transport contribution to provide additional bus services linking the site to Leamington Shopping Park, the railway station and the town centre as well as a proposed travel plan to promote sustainable travel. Finally there would be a Construction and Environmental Management Plan to be secured by a planning condition.
88. The **Heritage SoCG** between the Appellant and the Rule 6(6) parties refers to relevant legislative provisions, national policy, guidance on setting from Historic England and the adopted Local Plan. Key issues are whether heritage assets would be harmed and the extent of that harm. The Rule 6(6) parties agreed that they would only provide evidence concerning the cultural significance of the

assets. A number of detailed matters were agreed in relation to particular assets which are covered elsewhere in the evidence.

## **THE CASE FOR WARWICK DISTRICT COUNCIL**

*[This is an edited version of the written closing submissions by the Council's advocate]*

### **Introduction**

89. The Appellant proposes to develop up to 450 new homes in the open countryside adjacent to the Grade I registered Warwick Castle Park and within the setting of the Grade I listed Warwick Castle. A more sensitive location is difficult to imagine. The scheme would establish a new axis of development to the south of Warwick along the Banbury Road. That would establish a precedent for unlocking neighbouring sites to the south of Gallows Hill, pre-empt the Local Plan and urbanise a noted (and the last remaining) picturesque approach to the town's historic core. There is an objection by Historic England and strong opposition by the Council and the general public. Thanks to the Council's recent policy of granting planning permission for large housing sites in advance of the local plan there is no pressing need to release the appeal site now. Indeed, that would be the antithesis of the plan-led approach advocated by the Framework. These closing submissions focus on shortcomings to reveal the compelling reasons for dismissing this appeal. This is done under six main headings: -

- a) The planning policy framework and approach
- b) Impact on designated heritage assets and the historic approach to Warwick
- c) Impact on landscape
- d) Precedent and prematurity
- e) The supply of market and of affordable housing
- f) Planning obligation
- g) The planning balance

#### **a) Planning policy framework and approach**

90. The development plan for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004 comprises the saved policies of the adopted Warwick Local Plan (2007). The most relevant provisions are a suite of heritage policies comprising DAP4, DAP8 and DAP11 and a landscape protection policy, DP3.

91. The first three policies provide a high level of protection to listed buildings, conservation areas and their settings and historic parks and gardens. Since the publication of the Framework inspectors have accorded "significant" and "considerable" weight to DAP4 and DAP8<sup>2</sup> (DAP11 has not been tested).

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<sup>2</sup> See for example APP/T3725/A/14/2229398 (Radford Semele) dated 10 March 2015 (Corbett Appendix 12, para 17) [re DAP4] and APP/T3725/A/12/2186672 (Homewood, Leamington Spa) dated 12 July 2013 at paragraph 8 [re DAP8]

92. DP3 requires proposals to *“protect and enhance the landscape character of the area, particularly respecting its historic character.”* This policy accords closely with that of section 11 of the Framework, especially paragraph 109, Ministerial Statement of 27 March 2015 and with the PPG<sup>3</sup>. It has been supported by inspectors<sup>4</sup>. It therefore attracts full weight.
93. The Plan’s housing land supply policies are out of date. Whilst it is arguable that footnote 9 to paragraph 14 of the Framework ousts the presumption in favour of sustainable development, Mr Sahota properly conceded that there are a small number of inspector’s decisions which take a contrary approach and for the purposes of this inquiry he follows suit.<sup>5</sup>
94. The correct approach is therefore to test the proposal against the relevant development plan policies, whilst according significant weight to paragraphs 14, 128, 132 and 134 of the Framework. Ultimately that means planning permission should be granted notwithstanding conflict with the development plan if the harm that will be caused to designated heritage assets and the countryside is clearly outweighed by the public benefits the scheme would deliver.

## **b) Impact on designated heritage assets**

### ***Approach***

95. The parties agree that the appeal proposals affect the setting of the Castle, the Park and the Conservation Area. In determining this appeal the Secretary of State is required by statute to have special regard to the desirability of preserving the Castle as a listed building.<sup>6</sup> “Preservation” in this context means “to cause no harm”.<sup>7</sup> That is so even though the principal parties agree any harm that is caused to the Castle is “less than substantial harm”.<sup>8</sup> The Framework also requires the Secretary of State to give “great weight” to the conservation of each asset.<sup>9</sup>
96. That weight is increased in this case because (as is agreed<sup>10</sup>) each asset is of the highest importance. Harm to the setting of the Park and the Conservation Area is material to the extent it injures their significance.<sup>11</sup>

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<sup>3</sup> Paragraph ID: 8-001-20140306.

<sup>4</sup> See the Radford Semele decision *ibid*

<sup>5</sup> The draft Warwick Local Plan has been submitted for examination. However, objections have been made to the relevant policies. Mr Sahota accords those policies little weight. For the purpose of this appeal precedence is therefore accorded to the adopted plan and the Framework

<sup>6</sup> S66 of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990

<sup>7</sup> *South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 All ER 573

<sup>8</sup> See paragraph 134 of the Framework and *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137 at [29]

<sup>9</sup> NPPF paragraph 132

<sup>10</sup> Miele proof p.10, para 4.5

<sup>11</sup> Paragraph 132, *Supra*

### ***The heritage issues***

97. The setting of an asset is not fixed.<sup>12</sup> Mrs Stoten accepted that it may change as it is better understood, which may affect its significance.<sup>13</sup> That consideration is important in this case. The appearance of the listed Castle Park owes much to the work of the Second Earl of Warwick. He was familiar with Capability Brown's earlier work at Warwick and aspired to emulate and exceed his achievements; to "out Brown Brown" as Gilpin put it. That has generated substantial evidence about whether he: -
- a) intended that the perimeter tree belt of the Park should allow glimpses of the surrounding countryside.
  - b) planned an extended Picturesque approach to the Castle past the Park along the Banbury Road which utilised the adjoining countryside as a foil.
98. There is a third issue, which is even absent any designed inter-visibility or Picturesque intent, does the Park's immediate agricultural setting contribute to the significance of it, the Castle and the Conservation Area?
99. The Council contends that if the answer to any of the three issues is "yes" the development would cause less than substantial harm at the upper end of that scale.

### ***Inter-visibility and integration of the Park with the countryside***

#### The nature of the issue

100. It is known that Brown planted very narrow perimeter belts when he remodelled the Medieval Park. Jacques' research (cited by Dr Miele) concludes that to the south of Ford Mill they were only 1 tree deep. Cartographic evidence suggests the Earl adopted a similar style. The Sale map of 1791<sup>14</sup> and James' map of 1806<sup>15</sup> indicate the Earl planted narrow belts along Banbury Road in the vicinity of the appeal site, notably at the "Long Thins" and on the bridge at New Waters. The depth of that planting is important because it creates uncertainty about the function of the circumferential belts planted by the Earl and the strength of the relationship between a park and its immediate agricultural setting.
101. The legitimacy of the debate is recognised by Historic England. Historic England's Research Report 50 records that Brown usually recommended perimeter tree belts should be planted to a depth of 150 to 300 feet and augmented by an understorey to create a screen<sup>16</sup>. Phibbs terms this "woodland". However, Brown also planted much thinner belts. Phibbs' research indicates they were managed as "groves". A grove was not planted with an understorey. Instead it was grazed by stock, which was retained by fences. Branches below the canopy were pruned. Consequently a grove would be

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<sup>12</sup> Historic England. The Setting of Heritage Assets. Historic Environment Good Practice Advice in Planning: 3, p.7, para 4(1) at Corbett Appendix 1

<sup>13</sup> Stoten XX

<sup>14</sup> Stoten Fig 7

<sup>15</sup> Stoten Fig 8

<sup>16</sup> Historic England Research Report no 50-2013 at Corbett, Appendix 2, p.47

visually permeable and operated to integrate the interior of the park with the adjoining agricultural landscape.

102. Phibbs' work challenges the majority view of the belt as a visual screen. However, Historic England treats it seriously and neither Mrs Stoten nor Dr Miele<sup>17</sup> argued that Phibbs conclusions should be ignored. On the contrary, Mrs Stoten accepted Phibbs' work should carry weight because it is peer reviewed<sup>18</sup> whereas Historic England caution that most research on this issue has not been validated in that way. Critically, she agreed that the understanding of Brownian tree belts has not advanced since Historic England published its Research Report Series no. 50-2013. Nor can this issue simply be dismissed as overly-technical; it underpins Historic England's strong objection to the appeal proposal and the proposed allocation of the site in the Preferred Options version of the draft ELP.

#### The evidence

103. The Second Earl did not record his design intent for posterity. It must therefore be inferred from what may be seen on the ground, cartographic and literary sources.
104. On the ground it is possible to see into and out of the Park through the Long Thins even though the land is unmanaged and overgrown with what appears to be a self-sown understorey. Whilst this may not be the original tree belt it is of approximately the same depth. Therefore it provides a useful indicator of the intended inter-visibility between the Park and the countryside beyond.
105. The Sale and James maps show that the tree belt in the vicinity of the Long Thins and New Waters was narrow. Mrs Stoten estimates the Long Thins was only about 60 feet thick. On the basis of Historic England's research, that is likely to have been regarded by Brown and the Second Earl's contemporaries as too thin to create a screen. Dr Miele also stated that the Sale map indicates the belt was probably fenced.<sup>19</sup> That is consistent with a grove<sup>20</sup>. The Sale map shows the belt was densely planted. However, that is of relatively little evidential value because a thin, dense belt could have been visually permeable, and it sheds no light on whether there was an understorey or whether the lower branches of trees were pruned.
106. Both Dr Miele and Mrs Stoten relied heavily on Field's account of a ride around the Park as evidence of an impermeable screen because it includes a description of: *"a broad belt trees, among which are seen various species of evergreens and deciduous shrubs"*.
107. Mrs Stoten concludes that phrase evidences the planting of an understorey. Her inference may be right, but even if it is, it is of little probative value because we do not know which belt of trees Field was looking at. However, it is unlikely to have been the Long Thins or the boundary at New Waters: cartographic evidence allows us to be certain that they were planted as a narrow rather than a broad belt. Instead he is more likely to have been looking at a wood planted with an understory. Field also describes the Park as "deeply shaded with

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<sup>17</sup> Dr Miele recognised Phibbs' has written extensively on such matters.

<sup>18</sup> Stoten XX

<sup>19</sup> Miele answer to the Inspector

<sup>20</sup> Miele, Appendix 32 pp.182-183

groves". That is good evidence that it was laid out with both kinds of tree belt even if we cannot be sure where they were. Mrs Stoten also argues that the syntax of Fields' writing proves that the: *"pleasing views....caught at intervals, of rich pastures, fertile corn fields and browsing flocks and herds"* must be a description of the interior of the Park. She may be right; we simply cannot be sure either way. However, even if she is that would not prove the perimeter belt was visually impermeable. It might just mean Fields chose not to mention those views in his "slight sketch" of what he saw.

108. Other inferences that Mrs Stoten draws from the physical and cartographic evidence are equally speculative. Her argument that views of agriculture held no visual interest and so could not have been intended sits uneasily with her case that the Second Earl chose to provide guests with exactly the same kind of views within the Park. Conversely, if such views were merely intended to be a foil it is more likely that they were designed to be glimpsed outside the Park through a grove. Mrs Stoten also argues that the vast expense of planting a belt means that unless it functioned as a screen it would be incurred for "no real purpose". As she conceded, that is not right. It could also act to mark the boundary, create beauty and provide some privacy. Moreover, a thin, permeable boundary would actually minimise the expense incurred to secure each purpose and a design intent of visual integration. Mrs Stoten's final point was that because the Earl sought to remove traffic on the Banbury Road from the line of sight of the Castle he would have planted an impenetrable screen to stop guests seeing it from the carriage drive. That non-sequitur overlooks the obvious difficulty that if he had wanted to do that he could have pulled the ride away from the boundary or planted a broad belt along the whole of its length.

### Conclusion

109. The fundamental point to emerge from this review of the evidence is that the most reliable sources are what can be seen on the ground today and contemporary maps. That evidence lends support to Historic England's opinion that the belt was planted to afford views out of the Park. The literary sources confuse rather than negate that contention. The real possibility that the Second Earl intended to create a visual link between the Park and its agricultural surroundings should therefore be taken to contribute to the significance of the asset.

### ***The extended Picturesque approach***

110. Work carried out by Dr Christine Hodgetts postulates the Earl planned and laid out the Banbury Road as an extended Picturesque approach (in a technical sense) to the Castle travelling north from its junction with Barford Road. Mrs Hodgetts is a professional historian. Her work cannot be dismissed as having been contrived to defeat this scheme and proposals for the Asps. Her research into the history of the Park spans a period of more than 20 years. It is manifestly well researched and rigorous. Whilst her conclusions have not been published or subject to peer review the same criticism may be levelled at the work of Mrs Stoten and Dr Miele. This serves to further illustrate the legitimate difference of expert opinion over the contribution of the Park's setting to its significance.

111. The Council adopted and developed Dr Hodgetts' work when it prepared its heritage assessment of land south of Gallows Hill and its evidence for the Asps, and it does so here.

The evidence

112. Mrs Stoten and Dr Miele admit the approach along the Banbury Road was "planned" in the sense it was laid out. They also accept the approach to the Castle along the Banbury Road contains Picturesque elements, namely the view from Castle Bridge and the rock entrance to the Castle. However, they deny the existence of an extended Picturesque approach in spite of the evidence.
113. Approaching Warwick from the south "Barford Wood", "The Belt" and "Nursery Wood" would have been conspicuous and attractive features in the landscape. The Banbury Road then curves and falls towards New Waters. The lake would have been visible on both sides of the road set against the Background of Turnbolls Garden. The bridge itself would have been striking, because (unusually) its western side was decorated by a thin line of trees. The road turns again at the top of Temple Hill to reveal the spire of the Church of St Nicholas, although much of the old town is still hidden from view. That is still an attractive and striking view even though the trees that line the road have not been managed in recent years to frame it to best effect. The road then falls to Castle Bridge to reveal the spectacular view of the Castle along the Avon. The journey is terminated by the equally impressive rock cut entrance into the Castle's courtyard. The agricultural setting of most of these elements creates a unifying rural backcloth to this Picturesque approach.
114. The journey along Banbury Road is certainly picturesque in the colloquial sense. It is implausible to regard this as fortuitous. Gilpin shows the Earl aspired to be recognised as a landscape designer. The Banbury Road was the main road to London. It seems unlikely that the Second Earl would have been indifferent to the appearance of this principal route to the Castle. The Appellant's case is that every attractive element along the approach should be regarded as accidental or utilitarian. For example, Mrs Stoten argues the extension of New Waters to the east of Banbury Road was a silt pond. There is no evidence to support that bald assertion. It might also be thought improbable that the Earl would wish to create an eyesore along the approach to the Castle. Mrs Stoten also denies Turnbolls Garden had any Picturesque function. In her view, it was just an economic resource. She attributes no importance to its obvious landscape value and overlooks its description as a "Garden", which if interpreted objectively might be thought to connote a modicum of the ornate. The view of the Church of St Nicholas that is revealed at the top of Temple Hill is similarly dismissed as the work of a surveyor's pen; as too straight to be Picturesque. However, she conceded her "own designed reveal"<sup>21</sup> would have been longer and more expensive. And the fact that the view of the church from Temple Hill may not be of the same order as that obtained of the Castle from Castle Bridge does not mean it was not designed to surprise or delight.
115. Then there is (to quote Dr Miele) the "Gilpin Crucial letter" of 1778 which anticipates the Second Earl carrying out works at Warwick Castle: - "...which I dare

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<sup>21</sup> Stoten Fig 4

*say will out-Brown anything that is done there, particularly with regard to the approach”.*

116. That statement might be thought to support Dr Hodgetts' Picturesque approach thesis Dr Miele and Mrs Stoten assert Gilpin is writing about the rock cut entrance. However, there is no evidence that the Earl even contemplated a rock cut entrance at that date. The earliest evidence of its line is a plan of 1788, which merely illustrates the route of a pre-existing curving path through a kitchen garden. The path ran alongside a spectacular green house. That may explain why it was not simply straight. Since the green house was a source of pride to the Earl and the path avoided it, it is just as likely that the location of the rock cut was determined after 1788 because it was obvious and convenient, not because the Earl had it in mind 10 years previously.

#### Conclusion

117. In conclusion, there is evidence of a planned Picturesque approach. Dr Hodgetts thesis and the rebuttals provided by Dr Miele or Mrs Stoten could and should be peer reviewed. Until then Dr Hodgetts' research deserves to be attributed some weight when the Secretary of State determines the contribution that the rural setting of Banbury Road makes to the Park's significance.

#### ***Grappling with uncertainty in the development management process***

118. The uncertainty about the extent to which the Park's agricultural setting imparts significance begs the question, what is the correct approach in cases where there is an acknowledged lack of understanding about how a key element of a heritage asset of the highest importance interrelates with, and draws significance from its setting?
119. The starting point is paragraph 128 of the Framework which requires a proportionate assessment sufficient to understand the potential impact of a proposal on significance. It follows that if a proposal affects the setting of a heritage asset of the highest importance, and the effect on its significance cannot be understood because of uncertainty about how it relates to its setting, the requirement to give "great weight" to its conservation indicates planning permission should usually be refused. The LPA terms this common sense interpretation and application of paragraph 128 a "precautionary approach" (it is not suggested it would be proportionate to approach less important assets in the same way).

#### ***The LPA's fall-back position***

120. Whether or not views between the Park and the countryside and the picturesque approach were planned, they are real. They tie the Park to its historic agricultural setting visually and associatively. That contributes substantially to its significance.
121. Land south of Gallows Hill also contributes to the significance of the Castle. The appeal site is one of a very few locations from which the Castle may be viewed in its historic agricultural setting alongside St Mary's Church. The appeal site is also clearly visible from the Castle as part of a remnant of open land that separates the Park from the town. That underlines the Castle's historic visual and associative relationship with its agricultural hinterland.

122. Agricultural land south of Gallows Hill makes a particular contribution to the significance of the Conservation Area. It draws the countryside close to the historic core of Warwick and its rich collection of heritage assets. It is the only main road into Warwick which preserves the historic rural approach into the heart of what used to be a small market town. This is of strong visual, associative and communal value.

***Final observations on certain evidential issues***

123. On behalf of the Rule 6 Parties it was suggested that because Dr Mile's evidence was not tested by lengthy cross-examination it ought to be accepted. That is wrong. The Appellant's heritage witness Mrs Stoten was asked whether her evidence differed in any material respect from that tendered by Dr Miele. Her answer was that it did not. Neither Dr Miele nor his counsel quibbled with Mrs Stoten's answer for the very good reason that it was patently correct. In the circumstances, it would have served no useful purpose to put the same points to Dr Miele. On the contrary, that would have caused the inquiry to overrun and offended the cardinal rule that repetitive questioning on the same point should be avoided. The points made by Dr Miele stand or fall with those made by Mrs Stoten.

124. Much was made of the fact Mr Corbett did not give up the full the Castle Park Conservation Management Plan until pressed to do so. He explained that he believed it was "copyright" and could not be disclosed save to the extent he had been authorised to do so by Mrs Fryer. However, although much time was spent on the Plan it is of relatively little probative value because:-

- a) The Plan is inward looking; it is concerned with restoring the interior of the Park rather than its wider setting.
- b) There is no evidence that Historic England has been significantly involved in formulating any of its proposals; certainly, it is not named as a contributor.
- c) Whilst the Plan includes a proposal to re-plant the Long Thins at a higher density that is not inconsistent with maintaining visibility through what will remain a relatively narrow tree belt.

***Summary: The effect on heritage assets of development on the appeal site***

125. The grant of planning permission for the appeal proposals would weaken the Park's and the Castle's historic visual and associative relationship with its agricultural hinterland. This harm is magnified by evidence that the inter-visibility between and integration of the Park and the surrounding countryside was a conscious design objective. The development would also urbanise the historic approach to the heart of Warwick's Conservation Area along the Banbury Road. That harm is exacerbated by evidence that the road was designed to provide an extended Picturesque approach to the town and the Castle. This combination of factors would cause less than substantial but serious harm to heritage assets of the highest importance. Historic England's conclusion that planning permission should be refused on the basis of the scheme's heritage impact alone is therefore clearly justified.

### **c) Impact on the landscape**

126. The appeal site sits within an area of open agricultural land that is contained by Gallows Hill, Banbury Road and Europa Way (“the Gallows Hill Segment”). This land provides the immediate setting to Warwick Castle Park, the Conservation Area and the approach to Warwick along the Banbury Road.<sup>22</sup> It is distinctly rural in character. Abercrombie noted the particularly attractive qualities of this entry to the town as long ago as 1949. Mr Peachey accepted that to the south of the Toll House that character has remained essentially unchanged, although close to the Toll House it is possible to obtain glimpses of the Technology Park. The appeal site is an integral part of this historic approach to Warwick. It serves an important function in preserving the town’s rural setting and special character.
127. The Gallows Hill Segment exhibits a range of the characteristics that are associated with the Feldon Parklands landscape type. Mr Peachy agreed it is separated visually and physically from the same landscape type to the east of Europa Way by the road and the substantial woodland belt that adjoins its eastern edge. That separate identity is significant. In recent years the southward expansion of Warwick and Leamington has extended no further than a line that runs north-west to south-east along Gallows Hill and Harbury Lane. The emerging baseline breaches that boundary to the south of Harbury Lane south to the Tach Brook. It also infills open land to the north of Gallows Hill and west of Europa Way. However, the development of the Gallows Hill Segment has been resisted because of its particular contribution to the setting of the Park, the Conservation Area and the approach to Warwick.
128. If the appeal site is developed it will appear as a prominent and isolated pocket of development, especially when viewed from Gallows Hill and Europa Way.
129. The development would be conspicuous from Gallows Hill for four reasons. First, it cannot be screened by frontage planting. On the contrary, views into the site would be opened up by the proposed access road. Second, it would read as a distinct and isolated extension of the urban area. No other development has “jumped” Gallows Hill to occupy land south of the road. Third, the new houses would stand out against the wooded backdrop that is provided (moving east to west) by the Asps, Turnbull’s Garden, the Rule 6 parties’ land and Castle Park. The site is not visually or physically linked with existing or proposed development east of Europa Way, nor can it be integrated with that land. Fourth, the new housing, narrow landscape bund along the western edge of the site and the Rule 6 Parties’ land and Castle Park would form part of the same vista.
130. The site would be conspicuous from Europa Way for the similar reasons. First, the eastern boundary cannot be landscaped to screen out views of the new houses because the land rises to the west from Europa Way to form a plateau. Second, the new access road would open up the eastern boundary of the appeal site. Third, the new houses would contrast with the substantial tree belt to the east of Europa Way.

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<sup>22</sup> Peachey XX

131. It is to be noted that when cross-examined Mr Peachey very fairly agreed that the development would be “prominent”, although he argued that would not matter because the site is well contained. The latter contention must be wrong: if development is prominent, it cannot be visually well contained.
132. The scheme would also be visible from other perspectives.
133. Viewed from the Asps, the appeal proposals would be seen as a narrow finger of housing sloping down towards the Tach Brook south of Gallows Hill into open countryside.
134. New houses would also be seen from Banbury Road. They would be most conspicuous from land in the vicinity of the Toll House; the 10m – 20m barrier along the western edge of the appeal site would be visually permeable, especially in winter, even after it has matured. Other views into the site will be obtained along the gappy eastern boundary of Banbury Road, albeit they will be filtered by existing trees and new planting.

#### ***Landscape summary***

135. New houses will be a prominent, isolated intrusion into a physically distinct, undeveloped sector of open agricultural land that frames the historic approach to Warwick. Whether viewed on plan or in the field it marks a significant departure from the existing and emerging pattern of development to the south of Warwick and Leamington. The scheme is not integrated with the wider pattern of development because of the “barrier effect” of Europa Way. It is sprawl that is not contained by any permanent defensible boundary where it adjoins the Rule 6 Parties’ land and The Asps. Thus if the appeal is allowed it would threaten the integrity of the last remaining and acclaimed rural approach to Warwick. That is a compelling reason for dismissing this appeal.

#### **d) Precedent and prematurity**

136. If the appeal site is unlocked that will undoubtedly create pressure for the development of other land south of Gallows Hill and east of Banbury Road. All of the land in the Gallows Hill Segment is controlled by developers, who are each promoting their sites for housing. The Council, supported by Historic England, has consistently resisted development south of Gallows Hill and east of Banbury Road as far as Europa Way because of its impact on the setting of heritage assets, especially Warwick Castle Park, and the historic approach to Warwick. If this appeal is allowed those objections will be overridden. That would be bound to undermine the same objection to the development of other land within the Gallows Hill Segment.
137. The development of the appeal site would also be premature.
138. The Warwick Local Plan has been submitted to the Secretary of State and the examination in public has been opened. The Council has responded positively to the Inspector’s interim report. It is committed to resolving swiftly the question of where Coventry’s unmet need should be accommodated and identifying the land that is required to secure a 5 year housing land supply. There remains a

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reasonable prospect that the Local Plan examination will be completed and the Plan adopted without undue delay.<sup>23</sup>

139. To make good its 5 year supply the Council will need to identify land sufficient to accommodate between about 750 and 1000 new homes. They might be accommodated in a range of locations. Consequently the issue of where additional housing land should be found is central to the emerging local plan and will be a key topic for discussion when the EiP is reconvened. If the appeal is allowed that could (taken together with the precedent that would be established for the whole Gallows Hill Segment) pre-determine the location of the whole or a substantial part of the additional requirement. It would also establish a new axis of development running south out of Warwick along the Banbury Road that could have long term implications for the pattern of development between Warwick, Leamington and Whitnash. A decision of this magnitude is of such importance that in a plan-led system it ought properly to be considered as part of the Local Plan process.

### **e) The supply of market and affordable housing**

140. The Council has embraced the Secretary of State's policy to boost significantly the supply of housing. That is reflected by its several decisions to grant planning permission for large scale housing development to the east of Warwick and the south of Leamington in advance of the adoption of the submission draft Warwick Local Plan. Notwithstanding those strenuous efforts, a report on the preliminary examination of the draft Local Plan found the Council is unable to demonstrate a 5 year housing land supply because of its over-reliance on windfall sites. The Council accepts that finding. On that basis its position is that it is only able to demonstrate a 4.72 year supply of land.<sup>24</sup> In that context, it accepts the contribution that would be made by the appeal proposals to making up that shortfall ought to be accorded considerable weight.

141. The Appellant argues that the Council is only able to demonstrate a supply of between 2.99 and 3.64 years.<sup>25</sup> The difference between the parties is accounted for primarily by their assessment of the FOAN. Mr Bateman relies on a figure of 1,147 dpa.<sup>26</sup> That is very substantially higher than the figure of 606 dpa which is relied on by the Council and considered by the Local Plan Inspector. He heard and tested detailed evidence on this matter and does not express any strong reservations about it. Moreover, Mr Bateman's figure is wholly inconsistent with the FOAN for the HMA, which was assessed as robust. Therefore it is submitted that the Council's estimate of the FOAN is to be preferred for the purposes of calculating the 5 year supply. It may be that the requirement for Warwick will be higher than the FOAN, or that the re-apportionment of OAN across the HMA will affect Warwick's FOAN, but neither of those matters is relevant to an assessment of the FOAN used to assess the 5 year supply for the purposes of a s.78 appeal.<sup>27</sup>

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<sup>23</sup> AD9

<sup>24</sup> AD15, para 4

<sup>25</sup> Bateman, p.63, Table 3

<sup>26</sup> Ibid, p.62, para 7.8 and p.63 Table 3

<sup>27</sup> Oadby and Wigston Borough Council v Secretary of State for the Environment and Bloor Homes [2015] EWHC 1879 [Admin] at [35]

142. In any event, the differences between the parties on the 5 year supply issue are not decisive in this case. The important point is that there is a significant shortfall in the 5 year supply, which ought to be accorded considerable weight. The precise amount of the shortfall is not significant. That was accepted by both parties, who agreed that cross-examination of their witnesses on this issue would not be a productive use of inquiry time. That concession having been made, the Council invites the Secretary of State not to elevate the considerable weight the Council places on the shortfall of supply for two reasons. First, the supply of land has increased significantly in recent months, reflecting the priority that the Council places on ensuring every household in its district should have access to a home they can afford. Thus when the Bishops Tachbrook appeal was decided in 2014 supply stood at 2.8 years<sup>28</sup>. Even allowing for the reduction imposed by the Local Plan inspector the Council is still able to claim a 4.72 year supply. By any standard, that is an impressive achievement that bodes well for the future. Secondly, matters are likely to continue to improve; the Council has made a public commitment to find additional land immediately to make good the shortfall in supply identified by the Local Plan inspector and to meet its share of Coventry's unmet need. In view of its past performance it may be trusted to do so.

#### **f) Planning obligations**

143. The obligations that are offered by the Appellant are welcomed. However, each is required to mitigate the harm caused by the development if it proceeds. They are not benefits *per se*. Therefore they do not affect the planning balance.

#### **g) The planning balance**

144. There is an overwhelming policy objection to this proposal.

145. The scheme will harm the countryside, the historic setting of Warwick, the setting of the Grade 1 Listed Warwick Castle, the Grade 1 Registered Castle Park and the Warwick Conservation Area. It therefore conflicts with saved Local Plan policies DP3, DAP4, DAP8 and DAP11. Recent appeal decisions at Radford Semele, Bishops Tachbrook and Barford indicate the first three are broadly consistent with the Framework and each has been accorded considerable weight by the Secretary of State's inspectors. That is a material consideration and there is no principled basis for attaching less weight to the same policies in this instance. Therefore, in accordance with s.38(6) of the 2004 Act planning permission should be refused unless other material considerations indicate otherwise.

146. The presumption under s.38(6) is reinforced by that which arises under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The scheme's less than substantial harm to the setting of the Castle must be given "considerable importance and weight".<sup>29</sup> Paragraph 132 of the Framework also

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<sup>28</sup> Corbett, Appendix 13

<sup>29</sup> See Ivan Crane v Secretary of State for Communities and Local Government and Harborough District Council [2015] EWHC 425 (Admin) at [70] per Lindblom J

requires great weight to be given to the protection of the Park and the Conservation Area, each of which is of the highest importance.

147. Further, Ministerial Guidance of 27 March 2015 indicates the impact of the scheme on the landscape may be regarded as an important material consideration. That approach is especially apt in this case because the attractive Feldon Parklands Landscape which wraps around the Castle Park and the historic approach to Warwick remains relatively unchanged since it was commended by Patrick Abercrombie in 1949.
148. On the other side of the balance the scheme would make a significant contribution to meeting the need for housing and affordable housing in the district. That attracts the presumption in favour of sustainable development and should be afforded considerable weight. However, that weighting ought to be tempered by the likelihood that the Council will make good that shortfall in the near future through the Local Plan. In this plan-led system it would be wrong to risk pre-empting further important decisions that must be taken on the most appropriate location for additional housing outside the Local Plan process. Indeed, if planning permission is granted it could establish a precedent which would irretrievably harm the setting of internationally famous assets and a historic town even though such damage might subsequently be shown to have been entirely avoidable.
149. Therefore, on this occasion the absence of a 5 year supply of housing land and the potential to deliver more affordable housing ought not to be determinative of the appeal. The Secretary of State may be confident that further land will be found for this purpose well before the substantial stock of existing greenfield sites with planning permission around the edge of Warwick and Leamington are exhausted.
150. None of the other public benefits associated with the scheme weigh heavily in the balance, which remains tipped against the grant of planning permission.
151. If (which is not the case) this most sensitive of sites might be suitable for development the case should be made through the Local Plan so that it may be tested against potentially less challenging alternatives. That has been the approach of the Rule 6 Parties on their own land and it is commended to the Secretary of State, who is therefore asked to dismiss this appeal.

## **THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY TO OPPOSE THE DEVELOPMENT**

152. **Warwickshire County Cllr Holland** read a statement (OIP12) to the Inquiry that had been prepared jointly with 2 fellow county councillors. They are concerned that additional traffic from the development will add to air pollution in Warwick Town Centre and consider that no more traffic should be added until a *'properly linked public and active transport system is offered and .. Warwick has gained control of its existing problem.'*
153. Mr J McKay of the **Warwick Society** read a statement (OIP16) which points to the high architectural and historic significance of Warwick Town Centre. The future of the town centre is said to depend on its attractiveness to residents, businesses and visitors. The volume of traffic passing through the town centre and the 'mitigation measures' proposed to accommodate the increase in traffic

from this and other developments threatens substantial harm to the town centre, the economy, the health of those spending time in the centre, and to the heritage assets. Mr McKay also asked a series of written questions of the Appellant's highway witness (OIP17). These relate to the cumulative impacts on Warwick Town Centre of development in the submitted Local Plan. No additional mitigation measures are proposed in Warwick Town Centre in association with the appeal proposal.

154. **Save Warwick Group** (SWG) submitted a Statement of Case but then withdrew their original request to be a Rule 6(6) Party. They had previously appeared at The Asps Inquiry in April 2015. However evidence to the current Inquiry was submitted independently by group members, some of whom submitted advanced statements following a request from the Appellant that was endorsed by the Inspector.
155. **Mr Crips** of SWG is a retired chartered engineer who submitted a written statement and appendices (OIP5). He lives on a main road in Warwick town centre. He considers that the site's location is unsustainable in terms of its relationship with essential amenities such as shops and schools. He considers the traffic analysis to be flawed and misleading with no credible measures to mitigate the effects of traffic in Warwick. There would be worsening congestion, air pollution and gridlock which would be contrary to the traffic reduction policy in the Local Transport Plan (not supplied in evidence). The traffic would harm the conservation area, its attractiveness as a tourist destination, and therefore the economy. The proposal is also considered to conflict with the Framework. Whilst the highway authority does not object he points out that its elected members were not involved as comments were delegated to officers.
156. **Professor Bishop** of SWG is a retired professor of medicine who has a general concern about air pollution, particularly in respect of diesel vehicles. He read from a statement (OIP14). The World Health Organisation recommended annual mean value for nitrogen dioxide of 40ugm/m<sup>3</sup> had been exceeded at Pageant House in Warwick town centre for 2 years from 2006-2012 with a mean of 58.3 and had also been exceeded at other locations in the town centre. Particulates are also dangerous but had not been monitored. Extensive housing development south of Warwick including the appeal site would only worsen the situation. The most effective action is to take measures not to worsen pollution by not building in critical areas with the associated increases in polluting traffic.
157. **Mr Birkbeck** of SWG is a retired landscape architect who submitted a written proof and appendices on Landscape and Visual Matters (OIP1) together with a summary (OIP2). The appendices to OIP1 include Viewpoint photographs from the vicinity of the Toll House junction on Banbury Road looking east towards the appeal site across the Hallam land. There is also a photograph taken from a Castle tower which zooms in on the appeal site until it fills the page. Mr Birkbeck considers that the development would create an unattractive unsustainable urban sprawl in the countryside and would fail to deliver an integrated residential community. Vegetation in the landscape is in poor condition but could be restored to a reasonable standard by modest positive management. There would be an unjustified loss of best and most versatile agricultural land. The development would destroy the approach to the Warwick Conservation Area and damage the settings of heritage assets. There would be high magnitude of change to the landscape and minor to high adverse visual effects. The

development is objected to by English Heritage/Historic England and would contravene the strategic objectives of the extant saved Local Plan policies, the Framework and the emerging Local Plan.

158. **Cllr Bullen of Bishops Tachbrook Parish Council** is a retired architect who previously worked in Coventry. Cllr Bullen is of the opinion that the communities of Warwick, Whitnash and Bishops Tachbrook *'are totally opposed to development in this location'* but did not support those claims with evidence other than that he represents the Bishops Tachbrook PC.
159. Cllr Bullen submitted a statement with appendices (OIP3) a summary (OIP4) and spreadsheets (OIP18) to support his claim that the Council has more than 5 year's supply of housing land. The emerging Local Plan would be unsound and is likely to be substantially changed. Therefore the appeal scheme should only be assessed against the 2007 Local Plan. Cllr Bullen points out that the Inspector for the Local Plan Inquiry in 2006 rejected this rural site for development and no exceptional circumstances have been demonstrated to alter that decision. The OAN for the Housing Market Area includes a large increase in the projected need for Coventry but the site would not be suitably located to meet that need for market or affordable housing. One option would be to relax the Green Belt around Coventry.
160. Cllr Bullen interprets the Local Plan Inspector's interim findings as supporting a requirement for only 606dpa for Warwick District. He also considers that the Inspector endorsed a windfall contribution to supply of 175 dpa. Together with an enhanced contribution from bringing empty properties back into use and a different calculation of supply from that of the LPA and on a different date, Cllr Bullen concludes that there is more than 5 years supply of housing and that Framework paragraphs 14, 15 and 49 are not engaged. Housing allocations in excess of the Warwick District OAN have been identified and 65% already have planning permission.
161. Cllr Bullen attaches to his summary a photograph of the site taken from the tallest tower at Warwick Castle and which zooms in on the appeal site. He considers that there would be substantial harm to the heritage assets of the Grade 1 listed Warwick Castle and its Grade 1 listed park. Wholly exceptional circumstances do not exist to outweigh that harm.
162. Cllr Bullen considers the loss of Grade 2 agricultural land to be unnecessary and inconsistent with Framework paragraph 112. To meet the Framework Section 8 objective for promoting healthy communities it is important to retain this site as rural and agricultural. The cumulative effect of this and previously approved development would have a severe impact on existing infrastructure including traffic, transport, health and hospitals, jobs and schools. The development would be unnecessary and damaging.
163. **Mrs Russell** lives in Mill Street, Warwick adjacent to the Castle and owns a garden adjacent to the former mill that is open to the public. She read from a statement (OIP10) that expresses concerns mainly about increased traffic from all the proposed housing developments south of Warwick, associated congestion and air pollution, and harm to heritage assets and the approach to the town that it will make Warwick less attractive to visit. She considers that the proposed development is not needed in order for Warwick to supply its quota of housing, (apparently this is on the basis of Cllr Bullen's housing land supply evidence).

164. **Dr C Hodgetts** is a professional historian who appeared on behalf of the **Warwickshire Gardens Trust**. She submitted a lengthy statement and appendices on 18 August (OIP6), only 1 week before the Inquiry opened. However she had appeared previously at The Asps Inquiry on April 2015 and her evidence to that Inquiry had been extensively referenced in the submissions from the other heritage witnesses for the current appeal. They were accordingly aware of her main thesis. In summary the second Earl of Warwick in the late 18<sup>th</sup> century had extended the Castle Park that had been previously laid out by Capability Brown. The Earl diverted the Banbury Road turnpike, enlarged the lake as 'New Waters', removed some tree belts planted by Brown and carried out new tree planting around the edge of the park and alongside the turnpike. Dr Hodgetts considers that the Earl intended that visitors using a private carriage drive around the park were intended to have outward views of the Earl's improved and enclosed farmland beyond the park (including what is now the appeal site). She also claims that the turnpike was laid out so that those approaching the castle would benefit from a designed approach through the countryside between the park and the farmland and focussed on the spire of St Nicholas Church. The castle itself would only be revealed when crossing the new bridge into the town across the Avon.
165. **Mr Ashworth** of the **Leamington Society** read a statement (OIP11). He queries whether it is wise or effective planning to meet the growing need for housing for Coventry in a location to the south of Warwick and Leamington Spa? Coventry and Warwickshire are in urgent discussions to resolve the tensions between conflicting pressures and policies including: a review of land in Coventry City; some possible use of the Green Belt; and any resulting need for redistribution to the other authorities. He considers the appeal scheme to be suburban sprawl that would be highly dependent on use of the car. It would push families into increased multiple car dependency and squeezed budgets. This would not be a sustainable development as that would require higher urban densities and alternative means of transport.
166. **Cannon Stewart** read a statement (OIP13) which relates to the origin of the road name as Gallows Hill. Catholic martyrs were hung drawn and quartered at the north west corner of the appeal site in 1595 and 1604. They were beatified in 1929 and 1987. There were processions to the site in the 1950s and again in 2004. Canon Stewart supports the other objections to the development. However, if it proceeds he seeks that the developers are required to provide a memorial or that they do so as a gesture of goodwill.

## **WRITTEN REPRESENTATIONS FROM INTERESTED PERSONS OPPOSED TO THE DEVELOPMENT**

167. Written Representations at the application stage were summarised in the LPA officer report. There were 74 objections from local residents, mainly on similar grounds as those raised by participants at the Inquiry. Some objections on design grounds to density, plot size and the lack of bungalows related to the illustrative layout. However scale, layout and appearance are reserved matters. The representations were forwarded with the questionnaire and have in general not been duplicated by further representations at the appeal stage.
168. Notable representations from other consultees included an undated objection from **English Heritage** (now Historic England) which is included in the LPA

Questionnaire responses. The letter refers to Warwick Castle but does not cite any direct harm to the setting of the Castle. English Heritage concluded that there would be less than substantial harm to Castle Park. EH considered that this would be sufficient to merit refusal but did not include any assessment of public benefits to weigh with the harm as required by paragraph 134 of the Framework. EH considered that there were intended to be views out of Castle Park from the carriage drive (but did not cite an evidential source). Housing would appear over the ridge and the indicated thick band of woodland planting would bear little relationship to post enclosure field boundary planting. Traffic and highway works would also need to be considered if they affected heritage assets.

169. **District Councillor Neale Murphy** submitted a written statement at the Inquiry which generally supports the LPA reasons for refusal. He adds that further development in the gap between Bishops Tachbrook and Warwick Gates will mean that both communities will lose their identity. He is concerned about peak hour traffic gridlock and air pollution and was under the impression that the LPA already had a 5 year supply of housing. This is not a suitable and sustainable location to meet Coventry's housing needs and it would be premature to the Local Plan to do so before a study of housing options including the green belt.

## **THE CASE FOR THE APPELLANT – GALLAGHER ESTATES LTD**

*[This is an edited version of the written closing submissions by the Appellant's advocate]*

### **Introductory Matters**

170. The starting point for the appeal is the acknowledgement by WDC that it has an immediate need for additional housing to meet the minimum policy requirements of national guidance of §47 of NPPF in order to demonstrate a deliverable 5 year supply of housing. That need relates to both affordable and market housing, and it has been properly conceded that the deficit against that minimum requirement in both respects is a significant one.
171. There is a significant issue between the Appellant and the LPA as to the extent of that deficit; however, consistent with the position taken by the SoS in repeated decisions, it is agreed that substantial weight should be afforded to the provision of market and affordable housing in these circumstances.
172. No doubt has been expressed as to the deliverability of the units once they have been consented.
173. The proposals will deliver substantial benefits in terms of the social and economic dimensions of sustainability by the delivery of affordable and general market housing at a time when it is needed.
174. There is no prospect of matters being remedied by the imminent adoption of a district wide local plan. The release of large greenfield sites outside of the plan led system should only be undertaken if there is the clearest evidence of need. That means both that there is a social need for immediate housing release and that the plan led system is not on the verge of addressing that deficit.
175. At the close of this inquiry the prospect of an imminent resolution to the problems which led to the stalling of the local plan seems remote.

176. The ELP Inspector invited withdrawal of the local plan because it failed to demonstrate how the FOAN for the HMA (which transcends WDC) will be met. The LPA then asked the SoS to intervene and received a polite refusal, it has now gone back with a request for a suspension. The Inspector has written a downbeat letter expressing scepticism over the realistic timescale for any suspension, and invited a further review of the position after 29 September 2015. The future of the plan is profoundly uncertain. It is common ground that Warwick is now charged with a search for additional housing to meet its immediate needs.
177. There are powerful considerations which weigh in the scales in favour of the proposed development. Equally powerful adverse material considerations would have to be established before this appeal should be dismissed.
178. In opening, the LPA acknowledged that the main issue in this case was that of the potential heritage impacts of the proposed development. That is presumed to be for the following reasons:
- (a) the settlement boundaries of the adopted LP [1996-2011] are agreed to be out of date, having been established to address the development needs of a now expired plan period;
  - (b) it is common ground that in order to meet the needs of the district and the wider HMA there will be a need for substantial greenfield development around Warwick and Leamington;
  - (c) there are major constraints to the expansion of either town by reason of green belt, heritage assets and landscape;
  - (d) it follows that any major development site is likely to give rise to some adverse impacts;
  - (e) having balanced such factors, development has recently been consented to the north and the east of the appeal site;
  - (f) the appeal site has been previously identified as appropriate for development within an earlier iteration of the Local Plan, based upon the landscape capacity work of Mr Morrish; and
  - (g) the reason why development was not taken forward on the appeal site was as a result of heritage concerns and not landscape considerations.
179. On that basis it is firmly submitted that heritage impacts are indeed the determinative issue in this case. The LPA's case failed to come close to substantiating its concerns in this regard and was largely shown to be without any proper evidential basis.

## **5 Year Housing Supply**

### ***Policy***

180. It is agreed by Sandip Sahota (SS) for the LPA that the adopted LP is out of date insofar as it relates to settlement boundaries, and that in any event by reason of the absence of a 5YS that §49 of NPPF is engaged (SS §2.10) and that the restrictive approach to development in the open countryside within policy RAP1 should be treated as a policy for the supply of housing and therefore out of

date. As a matter of law the policies of the emerging plan which control the supply of housing are also therefore presumed to be out of date<sup>30</sup>.

181. SS contended in his evidence that §14 of NPPF is not engaged because of the conflict with heritage issues and therefore the footnote of §14 applies. In XX he appeared to abandon that position, and conceded that §14 is engaged. Nonetheless his written evidence is wrong since he expressly considers in the circumstances of this case that the correct test is whether or not there are circumstances which “*significantly and demonstrably*” outweigh the benefits of the proposal. Inadvertently he has therefore addressed the correct test and implicitly accepted that §14 is indeed engaged. However the Appellant’s position is that the effect upon heritage assets before mitigation is de minimis and after mitigation is nil, in which case the caveat to §14 is not engaged.
182. If that approach is wrong, then the extent of heritage impacts fall within the ‘less than substantial’ bracket, albeit at the lower end, and thus §134 of NPPF is engaged. That requires a balance to be struck between such impacts and the public benefits of the proposal. Given the limited impacts and the substantial benefits, then the balance decisively falls here in favour of the grant of permission<sup>31</sup>.
183. It should be no part of the LPA’s case that permission is to be withheld for major greenfield residential development in advance of the endorsement of such a site through the plan process – since it has actually granted permission for such sites on land to the East and North of the appeal site already. It is also no part of the LPA’s case that the loss of part of the countryside beyond the settlement boundaries is of itself a reason to withhold consent since those settlement boundaries are palpably out of date and there is a need to release such land in order to meet immediate needs.
184. It is also no part of the LPA’s case to seek to argue that if there is a need for such sites to be released then there are better and/or less constrained sites elsewhere in the district. The height of the LPA’s case is that the release of the appeal site should not be countenanced outside of the Local Plan process since it would make it more difficult to withhold consent on the adjacent parcels of land. The factual position is that the LPA accepts that there is a need for additional housing land beyond the settlement boundaries to be released in order to meet the LPA’s immediate needs and yet it does not seek to point to any better sites elsewhere in the district to meet that need.
185. SS accepts that given its somewhat troubled status that only “some limited weight” can be afforded to the ELP policies. The policy context for this appeal is largely driven by the policies of NPPF, since almost all of the relevant policies of

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<sup>30</sup> See *Woodcock v SOSCLG* [2015] EWHC 1173, per Holgate J. at §95: “...it would be inappropriate to treat paragraph 49 as restricting the circumstances in which national policy lends additional support to a housing proposal because of the lack of a 5 year supply of land, to cases where the “relevant policies for the supply of housing” are contained in statutory, but not draft, development plans. Such a change in national policy regarding the importance of maintaining a 5 year supply of housing land would require explicit language to that effect...”

<sup>31</sup> It is to be noted that SS accepts in terms in his evidence §2.21 that the heritage policies of the adopted LP – DAP4, DAP8 and DAP11 are not compliant with NPPF and therefore carry diminished weight.

the adopted LP are out of date (in the §215 NPPF sense) and the emerging plan is at a deeply uncertain stage of its gestation.

### **Requirement & OAN**

186. It is clearly established that in determining how to calculate the 5 year supply for the purposes of a s.78 inquiry in advance of the adoption of a LP that it is the Full Objectively Assessed Needs (FOAN) (policy off) figure that should be used. In this case the LPA contend that the figure which should be used is 606dpa. However the following is to be noted:
- a) that is not the figure used by the LP Inspector in his interim letter to assess 5YS – he concluded that 720 should be used;
  - b) the LP inspector concluded that 606 was the demographic based figure for that part of the HMA which arose from WDC and was to be treated as ‘*very much a minimum*’ since it did not take account of an allowance for affordability, economic factors or market signals;
  - c) at the Asps inquiry (which preceded the Inspector’s interim letter), on the same evidential basis Mr Gardner (JG) contended for the LPA that the correct figure to use was 660, comprising essentially the demographic led component of the FOAN for the HMA but with a 10% uplift to take account of such factors;
  - d) absent a determination of the correct approach to FOAN, Mr Bateman (AB) has sought to present a reasonable range of alternatives as to how the FOAN should be assessed, in large part based upon the industry standard Chelmer model. All are well in excess of the LPA’s 606 figure.
187. In his evidence JG now seeks to contend that 606 is about right, taking account of his reassessment of the other components which go to make up the approach to FOAN. However, he does not address at all the substantial change in his position from the time of the Asps inquiry when he contended for a figure which was 10% higher. Nor does he grapple with the fact that his contention that 606 is ‘about right’ conflicts directly with the conclusions of the LP Inspector. In fact his approach is a reworking of the approach which seeks to go behind the 2014 Addendum SHMA which the LP Inspector concluded was a robust evidence base.
188. It might be that if the LP examination ever resumes that JG will be called upon to try convince the LP Inspector not to go with the 606 as ‘*very much a minimum*’ for which we wish him good luck. However on the evidence as it stands the rational starting point is to use the conclusions of the LP Inspector that the 2014 SHMA Addendum is robust and that 606 is a demographic only figure and is, at that, “*very much a minimum*”. The approach of JG at the Asps inquiry makes far more sense to apply an uplift to take account of those additional factors which inform OAN and do not amount to ‘policy-on’ factors by adding 10%.
189. The evidence of AB is more convincing since his work is more consistent with the findings of the LP Inspector.
190. At the LP Inquiry the LPA sought to argue that its 5 YS should be calculated using a figure to take some of the housing need which arises from the adjacent

district of Coventry within the same HMA. Logically one might think that the same approach should be taken by this inquiry. Not a bit of it says the LPA. That is despite the fact that §47 of the Framework says that the FOAN is the need for the HMA. It is agreed by all parties that the HMA includes Coventry. It is also agreed amongst all of the LPAs in the HMA that Coventry cannot meet its needs within its area such that there is a need to accommodate some of that need elsewhere. The LP Inspector's interim note found that the uplift (to 720dpa) to take account of this in Warwick District is unsubstantiated. It is recognised by everyone that Warwick will have to increase that figure if it is to convince the Inspector that it is doing its bit to meet the unadjusted requirements of the FOAN for the HMA.

191. The answer from the LPA is to point to the case of *Oadby & Wigston v SOSCLG* [2015] EWHC 1879 (Admin), in which Hickinbottom J. said:

*"35 Given the Council's reliance on adjacent authorities providing housing deriving from employment need and from those who require affordable housing, I understand why the Inspector described the SHMA as possibly policy off when the HMA was looked at as a whole. Mr Leader submitted that, although the FOAN for housing had to be understood at local authority level, it had to be assessed at HMA level; so that what was important was whether it was policy off at that level. In support of that proposition, he relied upon *Satnam Millennium Limited v Warrington Borough Council* [2015] EWHC 370 (Admin) at [25(iii)], where Stewart J said in terms:*

*"... [The local planning authority] has to have a clear understanding of their area housing needs, but in assessing these needs, is required to prepare an SHMA which may cross boundaries."*

*However, Stewart J's comments were made in the context of a challenge to a local plan under section 113 of the 2004 Act. Housing requirements in such a plan are, of course, policy on. The judge in that case was not looking at housing requirements in a development control context – as I am. In that context, paragraph 49 of the NPPF refers to relevant policies for the supply of housing not being considered up-to-date "if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites" (emphasis added). In a development control context, a local planning authority could not realistically demonstrate such a thing on a HMA-wide basis, which would require consideration of both housing needs and supply stocks across the whole HMA. Paragraph 49 is focused on the authority demonstrating a five-year housing land supply on the basis of its own needs and housing land stocks.*

*36 Therefore, in my view, the Inspector was right – and, certainly, entitled – to conclude that the SHMA figures for housing requirements for Oadby & Wigston, as confirmed by the 2012-based SNPP and supported by Mr Gardner, were policy on and thus not the appropriate figures to take for the housing requirement for the relevant five year period."*

192. Two points arise. Firstly that Hickinbottom J. said that the Inspector was entitled to arrive at his conclusions based upon the LPA area, not that he was obliged to ignore the OAN for the HMA. Both AB and the LPA contend that the 5 YS should be calculated by reference to the local authority area. Therefore Hickinbottom J.'s practical objection to assessing 5YS does not arise in this case.

Rather the issue is whether on the peculiar facts of this case an adjustment ought to be made:

- a) to take account of affordability/market signals/economic elements, and if so would that be 'policy on'; and secondly
- b) to take account of the fact (as everyone is aware), that WDC will have to accommodate significant housing needs from elsewhere in the HMA and that it will have to accommodate materially more than it proposes to now.

193. The second proposition is factually agreed, but the LPA's position is that this is another material consideration and not a factor which should inform the 'top line' for assessing 5YS in a s.78 context. It is strongly submitted by the Appellant that the Oadby case does not preclude consideration of incorporation of an element of Coventry's needs in Warwick DC given that this is part of the FOAN of the HMA. Whatever may have been the circumstances in Oadby and Wigston, in this case it is unequivocally agreed:

- a) that the SHMA addendum 2014 was considered to be robust by the Warwick LP Inspector;
- b) that the relevant HMA within which the appeal site lies is much wider than Warwick District and encompasses Coventry;
- c) that Coventry cannot accommodate its component of the FOAN in the HMA and therefore some of that need has to be accommodated in adjacent authorities, of which Warwick is one;
- d) that WDC contended before the LP Inspector that the appropriate uplift led to a requirement in Warwick District of 715-720dpa;
- e) that the LP Inspector concluded that the LPA hadn't demonstrated how the FOAN within the HMA would be met;
- f) that to seek to address the Inspector's concerns it is inevitable that WDC will need to increase its component of FOAN above 720 in order to address that need for the HMA;
- g) that will require the identification of significant additional land release within WDC – the location of which has not yet been agreed by the LPA.

194. There is no policy uplift or constraint proposed to the FOAN for the HMA as a whole. The issue is therefore how the full OAN will be divided between the 5 LPAs in the HMA. The 5 authorities will have to arrive at an agreement under the duty to co-operate as to how Coventry's unaccommodated needs will be divided up between themselves.

195. It is not right to claim that how the unmet Coventry needs are met is a 'policy on' matter. The 'policy' decision is instead how the residue of the FOAN will be divided up within the HMA. It is agreed that the component of the FOAN which WDC will meet will be at least that contained in its emerging Local Plan together with an as yet unknown uplift. That is, is not a "policy-on" manipulation of the FOAN, it is addressing that part of the FOAN which WDC should accommodate. Given that it is agreed (and has been determined by the LP Inspector) that this component should increase, it is unreal to contend that when assessing 5YS to address §47 of the Framework this element of the FOAN should be ignored.

196. In short the emerging LP figure is not “policy-on” properly understood and the Oadby case relates to quite different circumstances.
197. Furthermore the LP Inspector in a recent letter, and in reliance upon the 2014 SHMA, considers that the 606dpa figure is the least that needs to be provided for since it does not include any adjustment for:
- affordability
  - market signals
  - economic elements.

One would have expected the LPA’s stance at this inquiry (even if they remained wedded to the 606 figure) would be that some uplift to that figure would be needed to take account of those components<sup>32</sup>.

198. The proposition that those three elements are ‘policy on’ adjustments is wrong. The PPG makes it clear that in assessing OAN the starting point is the FOAN and that account should be taken of those three factors in determining OAN. Of course, policy decisions could be taken which assume greater or lesser economic growth (for example) than is predicted, or alternatively that to accommodate affordability and market signals might give rise to adverse consequences and therefore should not be met in full. It is the latter adjustments which are ‘policy on’. But not taking account of those three factors is to ignore important components of the FOAN.
199. Based on the Interim LP Inspector’s conclusions, an upwards adjustment must be made to the 606 figure to take account of those factors. At the Asps inquiry the LPA contended that the appropriate adjustment should be 10% as a ‘rule of thumb’. That raised the annual figure from 606 to 660. There is sense in that approach albeit the LP Inspector merely said that account must be taken of those factors.
200. The appropriate course of action in this case is to place very substantial weight upon the interim LP Inspector’s conclusions. However what the LPA has sought to do is to engage Mr Gardner to rework the demographic evidence to seek to argue that the figure of around 600dpa is not just a demographic figure but also takes account of those other elements. With respect that evidence ought to be regarded with some circumspection. Firstly it is quite different to the approach urged by him upon the Inspector at the Asps (when he argued that the OAN was 600 with a 10% uplift); secondly, it deviates from the 2014 Addendum SHMA which has been considered by the LP Inspector to be an appropriate evidential basis upon which to draw conclusions; third, and necessarily the recently expressed views of JG are as yet untested; fourthly, one has to view with caution evidence presented by the same witness to two inquiries both before the SoS which differ markedly in their conclusions without a convincing explanation to justify why that might be.

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<sup>32</sup> The need to make adjustments for local demography or household formation rates and for market signals has been confirmed in the recent judgment of Borough Council Of Kings Lynn And West Norfolk v Secretary Of State For Communities And Local Government [2015] EWHC 2464 (Admin) at paragraph34

201. On the basis of the above the appropriate starting point is not 606dpa which is described by the LP Inspector as the absolute minimum, but rather 720 which is the least component of FOAN which WDC can be expected to accommodate. To do otherwise in the circumstances of this case would be a travesty of the exercise impelled by §47 of the Framework.
202. In addition it is submitted that if one wishes to look at the latest evidence of FOAN (i.e. engage with the case now put by JG) then the evidence of AB in appendix 2 is to be preferred over that of JG.

### **Supply**

203. It is not intended to make detailed submissions on the issue of supply, but rather reliance is placed upon the evidence of AB. As between the LPA and AB the issue which makes the greatest difference to the 'bottom line' is that of the appropriate 'top line' – i.e. the relevant OAN. On supply however, the essential differences between AB and the LPA only relate to windfalls and the application of the 10% discount rate.
204. As between Cllr Bullen (of the adjacent Bishops Tachbrook Parish Council) and AB there are important differences on supply:
- a) windfalls – Cllr Bullen has presented his views on windfalls which, regrettably is inconsistent with the conclusions of the LP Inspector. AB has adopted the approach of the LP Inspector.
  - b) vacancies - Cllr Bullen has assumed that vacancy rates will be reduced beyond that assumed by the LPA. There is no evidence for arriving at that conclusion which would in any event require a policy decision of some kind and therefore, even if warranted (or evidenced) this would be a policy-on figure which should not be used at this stage.
  - c) differential permissions – Cllr Bullen uses a different (and moving) base date – whereas AB and the LPA use a consistent base date (consistent with the approach of assessing 5YS annually in PPG). In addition he seems to have managed to count 1041 additional permissions – unless there was confirmation from the LPA that it resiles from its formal position on supply put to the LP Inspector and in its evidence – the SofS should afford far less weight to Cllr Bullen's counting of permissions than that of the LPA.
205. Furthermore Cllr Bullen makes other errors in his approach, for example applying the buffer to the requirement but not the backlog and using a 5% slippage rate and not the more usual 10%.
206. Whilst Cllr Bullen's dedication is commendable, preference should be given to the orthodox assessment of supply undertaken by the LPA in the first instance as critiqued by AB.

### ***Conclusions on 5YS***

207. In conclusion, on the LPA's (incorrect) case then the supply is 4.72 yrs<sup>33</sup>. On the basis of the AB's assessment of supply that drops to 4.37 years. On the LPA's case the deficit is material, and serious, and needs to be redressed immediately. Given the seriousness of the shortfall on the LPA's own case it is unclear to the Appellant how TL thinks it plausible to assert there is no pressing need to release the appeal site. He appears to suggest that the grant of permission for other large housing sites elsewhere has vitiated any need for the appeal site to come forward, such an argument contradicts the LPA's own case on the seriousness of the shortfall.
208. On AB's assessment of supply, as against the 720pa figure from the SHMA addendum (i.e. the least that WDC should provide to meet its component of FOAN in the HMA) then the supply would be 3.5 years. Though it should be noted that the real range on his evidence is 3 to 3.65 years.
209. On Cllr Bullen's case there is a 5.63 year supply on his assessment and 5.09 on the LPA's supply. However his approach is demonstrably not a robust one and should not be followed.

### **Landscape & Precedent**

#### ***The Environmental Statement***

210. In brief summary the ES acknowledges that there will be some adverse landscape and visual effects as should be expected by a development of this scale and form. There would be a high magnitude of impact at site level, due to the change of use, but the magnitude would be low at a contextual landscape character level resulting in a minor adverse effect. The majority of visual impacts are considered to be neutral to minor adverse but with minor to moderate adverse effects at some specific viewpoint locations including in views from the frontage roads and from Banbury Road. The adverse effects will be limited through the delivery of substantial green infrastructure and will reduce as planting matures.

#### ***The Resolved Position of the LPA***

211. In refusing this application the LPA sought to argue that the landscape implications of the proposed development were unacceptable and that there were better sites to meet the needs of the district.
212. In closing this inquiry its case has evolved, presumably in the light of the collapse of its emerging LP examination. It is now properly accepted that the primary concern in this appeal is that of heritage. Thus, whilst there will inevitably be landscape implications of the proposals it is not now contended that the site is in principle objectionable for any sort of development on those

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<sup>33</sup> It is of note that this figure is superficially similar to the figures referred to by the LP Inspector at §42 (i.e. requirement of 6258 and supply of 5,968) which gives a 4.7 years supply, but from that supply there is a need to remove 701 dwellings from the double-counted windfall allowance and an allowance needs to be made for non-delivery of permissions.

grounds; rather the point is now made that the future direction of growth of Warwick should be determined in a development plan context and not a s.78 appeal.

213. That proposition is put forward as a hybrid of precedence and prematurity. The first since it is said that to allow the appeal will have ramifications for the acceptability of the two adjacent sites on which there are development pressures; and prematurity since the decision as to where urban extensions should go is best taken in the context of the emerging local plan. SS accepted in XX that this hybrid point is not maintained as a free standing reason for refusal but merely something to be weighed into the balance. As such, it is firmly submitted that heritage remains the determinative issue, as SS expressly accepted.

214. In any event the Council's stance on prematurity/precedence is wrong for a number of reasons:

- a) where an LPA cannot meet the minimum housing supply requirements of the Framework, and where the LP preparation is stalled, the LPA does not have the luxury of inviting deferral of this issue to an as yet unknown future date, it needs to meet its immediate needs now;
- b) the appeal site is not encroaching into some new tract of landscape and taking development in a wholly new direction – it is bounded by two recently consented developments (north and east), both of which derived support from the strategy of the emerging LP;
- c) the emerging LP has previously identified this parcel of land as being suitable for growth, but drew back only because of misplaced heritage concerns; it would be bizarre to resist permission on other grounds, if it is agreed that those concerns do not now arise;
- d) precedence has a very particular meaning in a land use and planning context. It can only warrant the rejection of an otherwise acceptable development if the grant of permission would make another otherwise unacceptable development on a different site, acceptable. The LPA's evidence has not begun to grapple with that proposition in relation to either the Asps or the Hallam land. To the contrary it maintains a free standing objection to both. Thus it has never been contended by the LPA that if permission is granted on this appeal that permission would inevitably follow on the other two sites – its position is precisely to the contrary. Indeed the LPA's advocate accepts that there is no systematic evidence before this Inquiry that sets out why there is sufficient similarity between this site and the others that a successful appeal here would automatically result in the grant of permission on those sites. The evidence only alleges geographical proximity.
- e) there is thus no reason why this appeal should not be determined on its own merits in the conventional way;
- f) a 'prematurity' concern does not have a freestanding life from the concern over precedence. In any event it would comprise bad planning to defer consideration of these proposals until the LPA have finally 'got their act together' on the LP. There is no clear indication of when the examination might resume let alone when the plan might be adopted. By then it is clear

from the LP Inspector's latest letter as well as the LPA's evidence that further sites will have to have been identified and consulted upon, and even then the LP might fall. Thus deferral of consideration of an otherwise acceptable site would be illogical when there is a need to meet the minimum housing supply requirements of national policy now.

215. Applying the SoS's guidance properly and in the circumstances of this appeal there is no proper basis other than to determine this appeal on its own merits. The reasons for refusal indicate that this is the resolved position of the LPA.

### ***The Landscape Case – Past History***

216. For the LPA Mr Morrish (RM) accepted that the role of a landscape architect is to advise upon the significance of the change as a result of the proposals, the extent of mitigation and the likely residual effects. That judgment then feeds into the overall planning balance to determine whether or not consent should be granted. It is not the role of the landscape architect to gauge whether or not impacts are or are not 'acceptable' since that requires a weighing of the planning balance, unless of course the adverse effects of a proposal were so great as to render a proposal necessarily unacceptable.
217. In 2009 RM was engaged by the LPA to consider the capacity of a number of sites around the urban areas of the district in landscape terms. In 2012 he was invited to reappraise the capacity of 5 of those sites for development and 5 'areas' of potential growth. In relation to none of those sites/areas did RM contend that development would not be acceptable.
218. However in relation to the wider area South of Gallows Hill he appears to have concluded that any development of the Asps would be in principle unacceptable, but that both the appeal site and the adjacent Hallam site to the west had capacity for some development, subject to appropriate mitigation.
219. In evidence RM has sought to distance himself from those conclusions in a number of ways, none of which are convincing:
- a) Employment Capacity
    - firstly in his written evidence RM sought to argue that the appeal site ought to come forward for employment development since that would have a lesser impact than residential development. His 2012 appraisal contained no such qualification.
    - RM appears to equate the sort of development which might be accommodated on the appeal site with that on the nearby technology park. Whilst that has extensive landscaping it also contains very large structures on site which are difficult to integrate into the landscape, unlike the more 'fine grained' built form of residential development.
    - finally it is also not a view that was shared by his client since his advice was used to designate the appeal site in the draft plan for mixed use and not an exclusively commercial site.
  - b) Extent of Structural Landscaping
    - RM claimed that the extent of structural landscaping he proposed in 2012 was greater than that now proposed in the appeal site. That distinction is

misplaced. Firstly, the proposals are in outline. If more landscaping was thought to be needed then it could be required at reserved matters stage. Secondly, RM proposed in 2012 that the developable area encompassed both the Hallam site and the appeal site. What is now proposed is the development of the appeal site alone with structural landscaping across 4 sides and not just three.

c) Different Need Case

- in his written evidence RM also suggested that the extent of the need might have been different. That is a non-point for a landscape architect. In 2012 the LPA asked RM to look at the capacity of a number of sites because additional land was needed for the plan period. In 2015 it is agreed at this appeal that there is an immediate need for the release of additional land to address a failure to meet the least requirement of Government. If anything the need case in 2015 is more acute than in 2012.

220. The LPA now raise the issue of precedent. Yet in 2012 RM considered that land in excess of the appeal site could be released to the west, but that release of land to the south (the Asps) should be resisted. It is incomprehensible why he forms the view now that release of the appeal site necessarily renders the release of the Asps site more likely.

***The Landscape Case – Baseline***

221. If one looks at a map of the land south of Warwick in 1950 it becomes immediately obvious that there has been a significant expansion in the last half a century to the south east of the town. That change has been secured, notwithstanding the view of NC that Banbury Road retains an essentially rural character south east of the New Bridge.

222. As a result of consents to the north and east of the appeal site, that process of planned urban extension continues. Adjacent land to the north and east of the appeal site will come forward in the near future, and both sites will alter the baseline against which any development of the appeal site should be judged. Both sites will be properly landscaped to minimize impacts, but inevitably both the character and appearance of both Gallows Hill and the north of Europa Way will alter as a result of the grant of PP.

223. RM seemed to be under the misapprehension that the frontages of Gallows Hill and Europa Way would remain largely unaltered but for the proposed development. In fact Europa Way will lose much of its frontage planting and will gain a new entrance onto the land to the East which will be accompanied by road widening to facilitate a new signal controlled right turn. In short the character of the road will alter. Similarly on Gallows Hill, whilst the extent of vegetation loss will not be as marked, the character of the road will alter, such that the claimed 'rural feel' of both roads will change.

224. Furthermore, the public views of the appeal site looking NE from the Toll House junction on Banbury Road are now from a recently much altered and engineered large scale road junction. The listed Toll House would have been a mere incidence on the road and is now on a traffic island sandwiched between 4 lanes of traffic and bounded to the south by a large modern close boarded fence. On CM's evidence, had one looked towards the appeal site before those works

had been undertaken then there would have been dense vegetation on the junction edge of the Hallam Land. In order to create a similar effect a large area of planting has recently been undertaken on that land, in addition to a wide strip of planting on the Hallam Land on the inside of the existing fence line. Once both areas of planting become established then views of and to the Banbury Road and the junction with Gallows Hill will be substantially filtered.

225. The map regression exercise presented by the heritage witnesses also demonstrates that both the appeal site and the Hallam land are in a very different state compared to how they would have appeared for much of the time post-enclosure in the eighteenth century. Thus the adjacent Hallam land appears to have been originally divided into small fields by around a dozen internal hedges. These dividing hedges were lost in the second half of the twentieth century to modern large scale farming. Their loss has degraded the landscape and substantially altered the nature and context of the appeal site. It follows that views of the appeal site from public vantage points are much changed and will change yet further as a result of urbanizing influences.
226. Thus, where the appeal site can be seen from outside the degree to which it retains sensitivity to change is influenced by changes within and beyond its bounds. To suggest that the appeal site represents an unchanged and unspoilt remnant of eighteenth century rural Warwickshire, barely influenced by modern features is an exercise in wishful thinking. Thus the open aspect from the junction is a modern construct; the very limited open views across the Hallam Land to the appeal site from Banbury Road are as a consequence of modern hedge loss, and will be filtered by the planting; views from the modern Europa Way of the appeal site are of modern planting from a road which severed the appeal site from land at Lower Heathcote Farm of which it was until recently part, and will in future be of a more open appeal site and development to the East. Views from Gallows Hill are of a road which will pass alongside a modern estate to the north and then an existing Technology Park.
227. Finally Mr Birkbeck for SWG was clear that the appeal site is not a typical area of the Feldon Parklands LCA, but is rather a degraded example, as a result of the loss of a number of typical features, and the presence of atypical and urbanizing features such as the electricity lines which cross the site.

### ***The Landscape Case – impacts***

228. The extent of change as against that baseline is a matter best judged on site. Nonetheless the following points are worthy of note:
- a) Landscape Features
    - other than the field itself the development will not result in the loss of any important landscape features. Rather it will enhance features especially by reason of the retention of open land and additional planting;
  - b) Atypical Planting
    - NC and RM sought to argue that proposed woodland planting and tree planting would be out of character with this area. That is untenable. The area is replete with woodland planting (e.g. Turnbolls Gardens) and such planting is an integral part of the proposed urban parkland to the east with which the appeal proposals will link. The new boundary planting to the west

would be redolent of the once existing divisions within the site whose re-establishment will add to and not detract from the area.

- furthermore to suggest that structural planting is problematic would seem to cut across RM's 2012 assessment of how the appeal site (and other sites he considered) could be successfully integrated into the landscape.

c) Extension of the Parkland

- what has always been seen by the Appellants and JP as a key benefit of the proposals is that they allow the creation of an extension of an urban park, connecting the south of the large scale development to the south east of Warwick all the way to conjoin with Turnbull Gardens, creating for the first time a clear rural edge to the built form of the town.
- that approach was originally championed by RM in his assessment of sites and it is odd that he has now recanted his support insofar as it relates to the appeal site.

d) Planned Views

- in XX the Council's advocate wrongly alleged that the appeal site was the last parcel of undeveloped farmland from which views of the castle would be evident. It is not as views can be gleaned from the Asps, from the Hallam land and from the extensive areas beyond the park that are evident from a trip up the Towers of the Castle. However that wrong-headed point illustrates the opportunity presented by the development of the appeal site to facilitate public views of the castle which are not presently available.
- in particular it would be possible to create such views of the castle from the area of planting to the west of the site, and, if the LPA considered it to be appropriate, such views could be contrived within and through the development itself. Whether that would mean a view through the appeal site from the modern Europa Way is a matter best left to reserved matters. However the point is that the development of the appeal site presents an opportunity to create such views from within the appeal site.

e) Montages and visualisations

- visualisations are only to be viewed as tools to aid judgment and no more.
- RM's visualisations give the impression of an obtrusive development of white rendered houses with white roofs. They are photographed from the air with no attempt to render the development of the adjacent consented developments. The effect is to emphasise the change wrought by the development.
- the properly rendered visualisations of JP demonstrate quite how well integrated the appeal proposals will be. Where clear views are obtained they will be, limited, filtered and/or seen against the backdrop of consented development.

229. As for the particular views the following brief comments are proffered, since this is essentially a matter that will have been judged on site:

a) from Banbury Road South of Gallows Hill

- travelling north along Banbury Road, one has to make an effort to see the appeal site by looking over one's shoulder as one passes up the hill rising from the silted up remnants of New Waters. That view is hardly an important one. The planting on the Hallam land will further limit that view to negligible opportunities. Where there are presently such views one's eyes are all too often drawn to the large buildings on the Technology Park and not the appeal site.
  - that doesn't mean that the change will be invisible from Banbury Road, but rather that such views will be oblique, limited by existing vegetation, further mitigated by the planting on the Hallam land and yet further mitigated by the planting within the appeal site. Such change as will be evident will be limited indeed, on any fair view.
- b) Junction Gallows Hill and Banbury Road
- the open view across the Hallam land to the appeal site is an entirely modern construct caused by the removal of all of the internal hedgerows generating a poverty of interest and then by the expansion of the junction resulting in the removal of boundary vegetation.
  - the current view from this location will however change irrespective of the outcome of this appeal by reason of the planting to the SW of the Hallam land. Thus, in time this limited view, available from the context of a modern traffic junction will be heavily filtered in the foreground and filtered by planting on the west of the appeal site. Development would not be invisible, but would not be intrusive.
- c) Gallows Hill and Europa Way
- the context/baseline of each will be altered significantly from where it is now, and it is against that baseline that the appeal proposals are to be judged.
  - whilst initially the proposed development will be visible, in time judicious planting will mitigate the impacts of the development from both roads, neither of which will have the character of rural lanes irrespective of the outcome of this appeal. In particular a new traffic light junction and road widening on Europa Way with associated vegetation removal are proposed to serve the permitted development to the east whether or not the appeal development goes ahead.
- d) From the Asps
- the development of the appeal site will be evident and result in a harmful change to the view which includes views for a public footpath. But the view is of an unremarkable field with few distinguishing features, such that the loss, whilst regrettable, is no more harmful than would be the loss of such a field anywhere else adjacent to the urban area in the context of a development that needs more housing.
- e) from the Castle
- From the Castle towers there is a huge panorama of much of this part of Warwickshire involving a mosaic of land uses, as well as new and old land

uses. The hills stand out in the distance and the Castle Gardens are a notable and important feature in the foreground.

- the appeal site is evident, and once developed the change will be perceptible, but the appeal proposals are distant, physically separated from the Castle Gardens and, will, more importantly, be viewed against the backdrop of existing consented development.

## Heritage

### ***The Environmental Statement***

230. A Heritage Statement was included in the Environmental Statement (ES) that was submitted by the Appellants with the planning application. The Statement was prepared by Turley Heritage who did not give evidence at the Inquiry. The conclusions were not included in the Appellant's closing submissions but are summarised here.
231. In relation to Warwick Castle, in summary the ES assessed the significance of Warwick Castle as an exemplary English medieval fortification and latterly an aristocratic country residence. It occupies an elevated defensive position and has a complex relationship with other heritage assets of which the most important is with Castle Park for which it forms the focal point in a designed landscape. Wide ranging views from the castle towers and walls of the park, agricultural land and modern development contribute to its historic and aesthetic value.
232. The ES concluded that the proposed development would represent a further modern addition to the landscape visible from the castle towers but would not harm the appreciation of the castle as a stronghold and the overall significance of the castle would remain unharmed.
233. In relation to the other main heritage assets the ES describes the experience of the Conservation Area as identical to that of Castle Park. In summary the park is significant as an example of 18<sup>th</sup> century garden and landscape design. Its significance is primarily derived from its considerable aesthetic and historical value as well as its evidential and communal values. The setting of the Park enhances these values.
234. The ES states that Banbury Road is a key approach to the Conservation Area, with significant views aligned on St Nicholas' Church that the appeal proposal would not alter. The ES describes this approach to Warwick as unique in that it offers a green approach into the heart of the historic town with no comparable approach into the historic core.
235. The ES concludes that the proposed development will not alter this attribute of the Conservation Area's setting. However at paragraph 5.26 the ES considers that the development will harm to a limited degree the historic association between the park and its surrounding historic agricultural hinterland but that the relationship will remain intelligible and the degree of harm to its overall significance is very limited. It goes on to conclude at paragraph 6.2 that: *'Due to the visibility of the proposed development from Gallows Hill and Banbury Road, at the edge of Castle Park, it is concluded on the balance of considerations, that there will be some limited harm to the setting and significance of the registered park and garden and Warwick Conservation Area'*.

236. The overall conclusion of the Heritage Statement in the ES is that this would be a moderate/minor magnitude of effect on the Registered Park and the Conservation Area which is not significant in EIA terms. It is less than substantial in the terms of the Framework and therefore to be weighed with any public benefits.
237. The magnitude of impact on all other identified heritage assets including Warwick Castle and the other listed buildings was assessed by the ES as imperceptible resulting in a negligible effect.

### ***The LPA's evidence***

238. In an oral addition to his opening the LPA's advocate accepted that Heritage was the primary issue for this Inquiry. The Appellant considers that heritage is the determinative issue. Thus, if it is concluded that the LPA has not established its case that there are significant heritage impacts then the appeal should succeed. This is a point accepted by the LPA's planning witness SS in XX.
239. The inquiry has heard from four heritage witnesses. When considering the weight to be placed upon the evidence of each witness and before forming a view on the resolution of the matters in dispute, it is firmly submitted that there is something of a credibility issue when assessing some of Mr Corbett's (NC) judgment for the LPA. Having initially submitted a PoE and summary PoE in accordance with the Inquiry timetable, NC then submitted a second "summary" PoE in the week before the inquiry. It is not a summary but raises a range of entirely new arguments that do not appear in his main evidence<sup>34</sup>. It is entirely inappropriate for an expert witness to submit his evidence and then having had sight of the other side's evidence to produce a document which purports to be a summary but is in reality a rebuttal which raises entirely new arguments that are unsupported by the evidence previously submitted by that witness<sup>35</sup>.

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<sup>34</sup> In summary the new issues raised are as follows :

- . Issues of coalescence (para 1.5)
- . Conjectured 'Urban Park' result of development (para 1.6)
- . Statement that Banbury Road was the main route from London (2.3)
- . Purpose of approaches to great houses (para 2.5)
- . Royal visitors (para 2.6)
- . Purpose of rock cut approach (para 2.7)
- . Purpose of Banbury Road, to show off Earl's artistic sensibilities (para 2.10)
- . Sequential description of postulated Banbury Road 'Approach' (paras 2.11 onwards)

<sup>35</sup> Question of where the Earl worshipped (para 2.13)

- . Discussion of alternative to the tree belt of a wall (para 2.17)
- . Discussion of shade and flowers at the edge of the trees (para 2.19)
- . Mention of the gothic toll house (para 2.22)
- . Discussion of rock-cut passage, including its length and how it is described by EH (paras 2.23, 2.27, 2.28)
- . Discussion of cost of 'approach' (para 2.24)
- . The experience of the circumferential belt (Section 3)
- . The different purposes of the belt (para 3.2)
- . The possibility of views out from the belt relating to the presence/absence of an understorey (para 3.4)
- . Discussion of whether there would have been cornfields within a naturalistic park (para 3.5)
- . Gilpin quote not previously in his evidence (para 3.6).

240. The Castle Park Conservation Management Plan appeared in part in NC's proof of evidence. However, the document was not provided to the Appellant until the week before the inquiry despite numerous previous requests, over very many months. NC sought to explain this on the basis that he had been shown the whole document by Mr Mayes but he had concerns about a breach of copyright<sup>36</sup>, and that he didn't have the owner's consent to disclose more than the first section. Yet the document appears to have been used to secure public funding.
241. NC made clear in evidence that he has not read the document and yet he places significant reliance on it in his PoE and in his EiC. Parts of the document are at odds with the case he has put at this inquiry. The points that NC attempted to rely on in the Management Plan in his EiC were undermined in XX when NC was taken to parts of the Plan which he had not read. In particular this demonstrated that far from 'thinning out' the peripheral planting in the area of the Long Thins, page 107 of the CMP provides that the intention is to increase the density of the planting of this part of the Castle Park.
242. Dr Hazel Fryers was the lead author of the Management Plan and in her proof of evidence to the Asps inquiry<sup>37</sup> at §4.7 states that the tree lined boundaries of the Park "...define the perimeter of the park and **exclude** views into and out of the park".
243. NC is employed as a Conservation and Design Officer and professed no specific qualifications in heritage. His level of expertise is not to be equated to that of these witnesses who benefit from specific qualifications in the field. Secondly, Mrs Stoten (GS), Dr Miele (CM) and Dr Hodgetts were plainly mindful of the historic method of ensuring that where conclusions are provided they are evidenced based and not speculative. NC often provides views within his proof which are unevidenced and unreferenced. He and Dr Hodgetts failed to engage with the primary source material that has informed both GS' and CM's views.

### ***The LPA's case***

244. It is common ground between all, save Dr Hodgetts, that where there are impacts upon heritage assets that those impacts fall into the category of "*less than substantial harm*", and thus §134 of the Framework is engaged. That requires consideration of any public benefits to weigh with identified harm.
245. However NC contends that the impacts upon the three assets referred to in the RfR (Castle, Castle Park and Conservation Area) are at the top end of a scale of less than substantial harm. But the case of *Bedford v SOS and Nuon* [2013] EWHC 2847 (Admin), Kay J. at §24 and §25 makes it clear that "*substantial harm*" in NPPF is to be equated to an impact which is tantamount to the position where "*...very much, if not all, of the significance was drained away*". To contend here that the effect of the proposals would be almost to "*drain away*" much of the significance of those three assets is an untenable position.
246. Much of the heritage evidence has focused upon the twin propositions:

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<sup>36</sup> In fact s.46 of the Copyrights Designs and Patents Act 1988 provides an exception in respect of Statutory Inquiries, so the concern in fact did not arise.

<sup>37</sup> Provided to the inquiry by Save Warwick on day 5

- a) that it was intended that the peripheral tree belt was intended to be visually permeable and to permit views through to farmland beyond; and,
- b) that Banbury Road north west of the Asps was a deliberately designed route into Warwick.
247. The presumed reason is that it places an additional sensitivity on any visual change arising from the development of land to the north east of Banbury Road. Both propositions are groundless and there is a prior need for a reality check of actual impacts.
248. On the landscape evidence it is agreed that there will be perceptible changes to the character and appearance of the appeal site. However, from Banbury Road, travelling in either direction south of the junction of Gallows Hill, RM stated that there would be 'glimpsed' views of the appeal proposals behind strengthened planting behind the hedgerow in the foreground and behind the 20m belt of planting along the western side of the appeal site. From the Gallows Hill/Banbury Road junction both he and JP contend that there would be a perceptible change, but again both consider that the change will be significantly mitigated behind the proposed planting in the foreground of the view and in the near ground of the appeal proposals. More importantly the open view from that junction, as is evident from the aerial photographs, is an entirely modern construct arising from the construction of the road junction, and which, in time will be closed up by the planting on the Hallam land.
249. It follows that the degree of change from the points where there will be any inter-visibility between the appeal site and the Castle Park/edge of the CA will be profoundly limited. Yes, change there will be, and at least at the outset GS accepts that there will be a marginal impact upon significance, but in the medium to long term the change will verge on the trivial and it is to grossly over-state the case to argue that it verges on the substantial.
250. It is recognised that there are a number of disputes between the parties as to the history of the heritage assets with which this Inquiry is concerned. It is accepted that it is not the purpose of this Inquiry to come to a definitive assessment as to the final resolution of those issues. However, a view does have to be formed *on the evidence* in order that the impact of the proposal can be assessed. Contrary to the LPA's opening statement there is no warrant in the Framework for taking a precautionary approach to heritage – to do so would result in stagnation in the development industry in lowland Britain where heritage concerns are ubiquitous. It is important such questions of history are answered using evidence rather than assumptions, or wishful thinking.
251. The Council's case primarily focuses on the impact that the proposal has on the setting of the three heritage assets, rather than the assets themselves, most significantly Castle Park. The primary argument raised by NC is that the setting is undermined by development on the Appeal site due to three key designed historical features;
- intended inter-visibility of the site from Castle Park through the Thins;
  - the line of the Banbury Road is a planned approach;
  - that the agricultural fields formed part of the overall design by the Earl of Warwick.

252. Dr Hodgetts is the first person in history to argue that the Banbury Road from the Asps is a deliberately designed approach focusing on the spire of St Nicholas. With respect to her the proposition has been raised and tested by reference to the evidence and has been found wanting, despite NC's support.

### ***Inter-visibility***

253. The main area where it is alleged by the Council that there is inter-visibility from Castle Park to the historic agricultural land beyond, including the appeal site, is through the area known as "the Long Thins". Given that this section of woodland is named "the Thins" there is a temptation to assume they are in fact thin and imply from that there is an intention that they are to be visually permeable. Such a temptation is a lazy one and should not be followed.

254. As the Management Plan tells us<sup>38</sup> "the Thins" is a modern name that has emerged in the last 60 years. Moreover map regression and the recently introduced aerial photos (Document ID19) demonstrate that the "Long Thins" opposite the Hallam land are not the remnant of eighteenth century parkland planting, but of twentieth century mitigation planting, and planting to a wider depth than had been the case at least in the mid twentieth century. Accordingly the name "Long Thins" tells one nothing at all about the original purpose of this part of the Park, and still less about the trees that are actually there now.

255. Contrary to its modern name the historic evidence suggests that the intention behind this belt of trees is that it is intended to be a screen, as explicitly recognised by Dr Fryer and the CPMP. The map of the Park from Sale, 1791<sup>39</sup>, shows that the Thins were originally 60 feet thick. The reproduction of this map at page 7 of Stoten appendix 1 includes an exploded detail that shows that the belt was the same width as the adjacent turnpike road. This is a fact that was accepted by all of the Heritage witnesses before the inquiry. Somewhat confusingly, in XX NC refused to accept that a 60 feet thick belt of trees could be described as "thick" or "broad", despite Field describing it in exactly those terms. On any view a belt of trees that is 60 feet thick is a substantial one.

256. In an attempt to justify his refusal that a 60 feet wide belt of trees was not "thick" nor "broad" NC sought to assert that that width could be covered entirely by one solitary beech tree. Such an assertion is implausible and entirely lacking in credibility. In any event, the 1791 Sale map of the Park plainly shows that the width of the Thins was originally made up of multiple trees.

257. There is further primary historical evidence to support the Appellant's position that the Thins did not provide a view beyond the Park in the form of the account provided by Field, 1815<sup>40</sup>. Field describes a journey round the circumference of the Park as follows: *"On one side, the principal Ride is shaded, by a broad belt of young and flourishing trees, among which are seen various species of evergreens and deciduous shrubs, intermingled with the oak, the beech, the ash, and other trees of the forest exhibiting almost every gradation of tint, from the lightest and gayest to the darkest green. On the other side, opening to the Park, delightful*

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<sup>38</sup> p. 107, para 1.3.6.4.9

<sup>39</sup> GS, appxA1, fig.7

<sup>40</sup> GS, appxA11

*views are commanded, in passing, over its undulating surface; in some parts; thickly sprinkled with trees; in others, deeply shaded with groves..."*

258. This description must include the Thins for as illustrated by the 1791 plan from Sale, on a journey round the circumference of the Park, where there is open land on the inside there is a tree belt on the outside. There is no reference in Field's account to a section of the Park where the land beyond its boundary is visible. To seek to characterise the Thins as maybe once having been a 'grove' ignores the evidence, indeed Field actually uses the term 'grove' to describe a quite different part of the park<sup>41</sup>.
259. What Field also provides is an explicit reference to the presence of an understory throughout the tree belt. As GS set out the presence of an understory is strongly indicative that the intention was that the tree belt was designed, contrary to NC's opinion, to prevent views in and out of the park. NC in XX hung to the idea that on the basis of Field's account you couldn't be certain to what part of the Park this description referred. Crucially, NC could not point to any primary evidence which supported his view that there was not an understory.
260. NC sought to rely on the Phibbs<sup>42</sup> article to support his theory that if the tree-belt was designed in the Brownian tradition it would have been designed to provide inter-visibility. His reliance on Phibbs is misplaced as he has not understood Phibbs or has failed to correctly apply his ideas to the situation here. The two figures to which Phibbs refers<sup>43</sup> show that where inter-visibility is intended physical gaps are included in the tree belts. Figures 7 and 8 at GS appendix A1 show that there are no such physical gaps on the Eastern edge of the Park and consequently the Park has not been designed in accordance with the principles to which Phibbs refers.
261. Furthermore, when considering the ideas of Phibbs and his theories about Brownian tree belts it is important to bear in mind that his ideas are agreed to be in the academic minority. CM rightly invited the inquiry to read the entire article – if one does then one realises that Phibbs is actually positing ideas and raising questions rather than actively supporting the positive case characterised by NC.
262. NC also seeks to rely upon the Management Plan to support his contention that the Thins were designed to be permeable. Had he read the Plan, he would have realised that it does the opposite. In particular:
- a. Under "Views and Vistas" no views through the eastern tree belt are referred to (p.86-89)
  - b. The recommendations of the Management Plan at p.108 and p.109 are commended to the Inspector in full, specifically the Appellant draws

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<sup>41</sup> Much was made in XX by TL of the description by EH of Brown typically using belts of 150' to 300' in order to achieve a screen. That is a matter of indifference, since firstly the tree belt is not a Brownian belt and secondly it is wrong to infer that a lesser width of planting cannot achieve a screening purpose – that is contrary to the experience of at least RM who was unchallenged on his point. Indeed he pointed to the very effective nature of the screen that the Thins actually provides as well as the planting on the Europa Way frontage.

<sup>42</sup> GS, appxA13

<sup>43</sup> GS, appxA13, p183

attention to the statement that the intention is to replant the Thins at a higher density than currently exists. The clear intention of the Management Plan is to (re)establish the Thins as a screen between the Park and the outside world.

- c. In the "Statement of Significance" (p.166-172) no reference is made to inter-visibility or any views through the Thins.

263. Throughout XX NC was mostly unable to point to any actual evidence that supports his argument of intended inter-visibility through the Thins. When he was it was either based on a misreading, or a very narrow reading, of the evidence.

### ***The Banbury Road***

264. The premise put forward by NC is that the line of Banbury Road and its alignment with St Nicholas church is an intentional design by the Earl of Warwick and it is design consistent with the "P"icturesque movement of the 18<sup>th</sup> century. It is rightly asserted by NC that the Earl was very concerned with the Picturesque, indeed Dr Hodgetts seems to put it higher that the Picturesque movement was at the heart of the Second Earl's motivations to the point of near financial ruin. On the evidence, it is the Appellant's case that the line of the Banbury Road and the approach to the Castle is not designed to be "P"icturesque, a point accepted in terms by Dr Hodgetts.

265. Given that this is the issue between the main parties it is odd that the prime focus in XX of GS on this topic proceeded on the basis that it was "p"icturesque rather than "P"icturesque. Such questions are irrelevant to the historic significance of the Heritage assets. In any event if the Council wishes to take a "p"icturesque point that is evidently not a matter for GS to comment on. This is a point TL attempts to take again in closing, characterising the Banbury Road approach as *"the last remaining picturesque approach to the town's historic core"*. Such an assertion is unsupported by evidence<sup>44</sup>.

266. The firm evidence of GS is that "P"icturesque approaches are not straight lines. If the Banbury Road were designed to have been "P"icturesque it would have been designed to be winding so as to create a grand reveal of the Castle at its end. The Banbury Road provides no such grand reveal and it cannot be properly described as "P"icturesque. GS's description of the "P"icturesque and what a "P"icturesque road would look like is entirely supported by CM. NC's ideas are unsupported by historical evidence.

267. NC seeks to bolster his argument by establishing that the Second Earl worshipped at St Nicholas Church and therefore had a particular affinity for it and resultantly designed the Banbury Road to align with it. There is no evidence to support the idea. NC's oral evidence was that he thinks it is based on information on the St Nicholas church website. This is insufficient from an expert witness. GS provides the evidence to show that instead it is St Mary's Church where the Second Earl worshipped. The Earl's pew is cited in the list description

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<sup>44</sup> Inspector - However it is backed up by the Appellant's Environmental Statement which makes a similar point.

of St Marys as well as in the evocative description of Queen Adelaide to Warwick<sup>45</sup>.

268. GS provides the evidence which explains why the Banbury Road follows the line that it does:
- a. The LiDAR data at figure 4 of GS,A1 shows that Banbury Road follows a raised finger of land.
  - b. The route of the Banbury Road provides the shortest possible route following the expansion of the Park.
  - c. Cost – it is common between all Heritage witnesses that the cost of building such a road was a factor at the time, notwithstanding the Earl's financial profligacy elsewhere.
  - d. The turnpike trustees would have required this road to be a functional and not a 'Picturesque' route
269. Taken in conjunction these factors plainly demonstrate that the line of the Banbury Road is overwhelmingly likely to be a product of functionality of a turnpike and the expansion of the park rather than aesthetic design.
270. That said all of the historical sources, where it is mentioned at all, praise the approach along Banbury Road from the new Bridge up to the rock cut approach, with simply no-one before Dr Hodgetts contending that the planned/designed route started a mile further south. The theory is obtuse, and appears to have been founded upon a single word 'approach' in an eighteenth century letter together with wishful thinking and a desire to ignore the contrary evidence which points to the Earl's real achievement being the rock cut approach not the straight line of the turnpike.
271. Where there are references in the historical sources to a designed approach the evidence suggests that they are references to the rock cut approach. The Rock Cut approach is a curved approach unlike the straight line of Banbury Road, and it creates a grand reveal within the castle grounds consistent with the "P"icturesque movement. Moreover the 11<sup>th</sup> hour proof from Dr Hodgetts reproduces the Earl's slightly moaning letter towards the end of his life he lists as his achievements the *"....noble approach to the castle, thro' a solid rock..."* (p65). Dr Hodgetts' thesis plainly conflicts with this contemporary evidence.
272. Instead Dr Hodgetts has sought to argue why the alternative thesis that the reference to an 'approach' in the letter which contains the evocative, *future tense* indication of works which would 'out-Brown Brown', could not be the rock cut

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<sup>45</sup> The Listing description is given in Dr Miele's appendices. The description of Queen Adelaide's visit to Warwick is given in GS Appendix 15 (extract from Warwick Castle and its Earls, 1903, p794 *"On Sunday morning last Her Majesty attended Divine Service at St Mary's Church where a sermon was preached by the Rev. John Boudier, the vicar. A crowded congregation was in attendance and all were delighted by the affable and condescending demeanour of the Queen Dowager. From the principal entrance of the Church up the aisle to the Earl of Warwick's pew was covered with crimson cloth, over which Her Majesty walked, leaning on the arm of the Earl of Warwick, the Countess of Warwick, and Lady Clinton and the rest of the distinguished party following immediately after"*

approach. Firstly she contends that the route shown through the kitchen garden in 1786 doesn't align with that of the later 1836 plan. With respect, the overlay plans provided by GS (ID20) show a striking correlation, within the tolerance to be expected of hand surveyed plans of that era. That doesn't mean that the rock cut route was completed at that time, but rather that it had, to an extent been laid out and that works had at least begun.

273. Secondly she suggests that the unusual alignment of the path shown in 1786 would not have been very practical for the Earl's servants if there was actually a cutting at that time. There is no reason at all why the convenience of the Earl's servants would have resulted in the Earl deferring works to achieve his sublime objectives. That too disposes of the suggestion that he would not have begun work on the rock cut approach until he had acquired all of the land for a replacement market garden. That imports an assumption of twenty-first century practicality into the mind of a man whose life works did not betray an especially practically minded approach to his grand designs. Similarly the suggestion that works would not start on the rock cut approach until the Act was in place to enable the construction of the New Bridge relies upon a cautious practical risk averse mindset which there is no evidence that George Greville, 2<sup>nd</sup> Earl of Warwick possessed. None of Dr Hodgetts' objections to the alternative thesis of the meaning of 'approach' hold good, and it has the added charm of being consistent with the Earl's own words.

274. The final nail in the coffin is the most obvious. There are multiple routes into Warwick and consequently the Earl would have been unable to control which visitors use the Banbury Road<sup>46</sup>, however, he could direct visitors to use the rock cut approach as the final spectacular approach to his home. The alternative thesis of planning a grand approach would presumably have visitors directed away from the town centre to the Asps, and then re-entering the town if they were to enjoy Dr Hodgetts' claimed grand approach. The idea is implausible. References to designed approach are plainly and obviously to the rock cut approach.

275. It is of note that Banbury Road itself does not form part of the Conservation Area. One would expect that if those drawing up the boundaries for the Conservation Area were of the view that it was a designed approach, they would have sought to protect it by inclusion within that designation.

276. The evidence demonstrates that the Banbury Road, south of the New Castle Bridge is not a designed approach and consequently any concerns raised by the Council regarding the impact on such a designed approach fall away. Any distant alignment with the spire from the top of the hill north of Turnbull's Gardens is likely to have more to do with the ease of surveying a line from that point and the use of topography than any aesthetic objective south of the bridge.

### ***Agricultural Fields***

277. There is no evidence that the agricultural fields, including the appeal site, form any particular part of an overall design for the setting of Warwick Castle or Castle Park. The Sale, 1791, plan is titled "Map of Warwick Park" and yet the agricultural fields to the east of the Park are nowhere to be seen in this map.

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<sup>46</sup> GS, A15

Indeed the silt pond and Turnbull Gardens are also plainly not shown as part of the designed parkland on that plan.

278. The Management Plan does identify features outside of Castle Park as being important to the setting of the Park but it does not identify agricultural fields in generality as being important. Further, there is no identification of any features on the appeal site, or adjacent land as being of any importance. NC attests without evidence that it was beyond the scope of the Management Plan to consider features beyond the boundary of the Park. However such a caveat is not set out anywhere in the Management Plan, which does consider sites beyond the Park And yet it does not pick out the appeal site for any comment.
279. CM in EIC, based on the experience of writing dozens of such plans explained how it would be incumbent upon the authors to the Management Plan to set out any such limitations to its scope. GS, relying upon the Historic England guidelines points out that not to assess the setting properly in such a plan would be a dereliction of duty verging on incompetence. Assuming that the CMP was properly drawn up then the only conclusion is that the authors of that document do not share NC's view that the appeal site is of any particular importance to the significance of the Park *or they would have said so*.
280. NC when asked in XX was unable to identify any reason why the appeal site or the adjoining fields were any different to any other fields in the surrounding area. One can only draw the conclusion that they were not. There is therefore no reason why there would be any particular design to draw attention to these fields. Whilst the 2<sup>nd</sup> Earl may have been rightly proud of his commitment to modern farming methods – to equate that to a wish to provide occasional glimpses of fields beyond the park to his guests sat in carriages is unconvincing even if there was something that could have been seen other than sheep in a turnip field.
281. Within the 60' closely planted tree belt on the edge of the Park there is no evidence of bucolic walks. That elsewhere Lancelot Capability Brown constructed such walks does not help – not least since these trees and this belt were not planted by Brown. There is no evidence to support NC's claim that there would have been pathways which enabled views beyond the trees. With respect Dr Fryers and the CPMP are convincing, the tree belt is far more likely to have been intended to close off views beyond the Park than facilitate them. The Banbury Road was moved to get rid of the line of sight problem of a public road passing close to the castle – so why would the Earl want to create filtered views of the diverted road? Indeed even on the New Waters bridge he contrived to plant trees. This was a huge park with immensely expensively crafted features within it consistent with the Picturesque movement – the idea that incidental glimpsed views of land beyond the park were or are importance to its significance is risible.
282. Other evidence is the Earl's own list of his personal achievements. There is no reference therein to the agricultural fields forming any part of an overall design for his Park.

### **Other Historical Matters**

283. There are also a number of other differences between the Council and the Appellant regarding the significance of a variety of discrete features.

284. Whilst it is accepted that there are no designed features in the appeal site there is an issue as to whether the continuation of the New Waters lake which historically adjoined the site east of Banbury Road was a part of the designed Park or a functional element. There was not intended to be an attractive bridge crossing for those traversing the Banbury Road as the carriage route through the Park was lower than the turnpike at this point and thus there would have been no view from carriage drive towards the waters to the east of Banbury Road.
285. GS described in evidence the physical process that would lead to silt being deposited in the water to the east of Banbury road resulting in 'pellucid' clear waters in the lake within the Park. The fact that this eighteenth century hydrology device has not been managed and has now been lost explains why New Waters within the park is now heavily silted up at its eastern end (evident on the LiDAR plan<sup>47</sup>)<sup>48</sup>. In any event, as the inspector will have seen on the site visit, this likely silt pond has been lost in any event as a result of modern landfilling. The adjacency of the appeal site to a landfill on what was once a functional part of the hydrology of the park is a matter of heritage indifference.
286. Spiers Lodge is an isolated listed building that occupies high ground on the edge of woodland within Castle Park. There is no evidence before the Inquiry of the view from Spiers Lodge being significant. As was evident from the site visit, the Appeal Site is not visible from this point.
287. It was suggested to GS that the Appeal site is the only location from which there are unobstructed views of the Castle. In fact it is only partially visible. The Appellant has produced photographs from a number of sites which have a clear view of the Castle (ID16).
288. Views from the Castle itself were in part relied upon. However the views that can be obtained of the appeal site show the appeal site as part of a huge panorama of which the appeal site is only a small part. The change will be distant from any heritage asset, it will be mitigated by extensive planting and it will be seen against the backdrop of the consented development at Lower Heathcote Farm. Extensive views of undeveloped countryside will remain, and the appeal proposals will make no difference to the significance of the Castle as a heritage asset.
289. Finally at the end of GS's evidence the Inspector asked whether the development of the appeal site would change the character of this part of the CA. GS said in reply it is important to remember that change, even evident change does not alter significance. Thus in the light of the above the significance of the Castle Park and the Castle as heritage assets will not be affected other than to a de minimis degree (and after mitigation not at all). Since the Conservation Area in this part of Warwick comprises the relationship of the principal buildings of the historic town and the open spaces that encompass them, and here the most obvious and important ones are the castle and its park – thus if they are not harmed individually it cannot be the case that the relationship between them is harmed. Similarly, as noted above, if Banbury Road is not a designed route at

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<sup>47</sup> Indeed as would no doubt have been evident on site, New Waters has now partly silted up and the remaining water is murky and anything but 'pellucid'

<sup>48</sup> GS,A1, fig 4

this point then an alteration (especially a de minimis alteration) to the experience of passing down it will not impact upon the significance of entering this part of the CA.

290. Ironically NC, made the point that the 'essentially rural character' of Banbury Road is preserved by Warwick School as a result of a combination of set back of its buildings and mitigation planting. He was unable to provide a convincing reason as to why those same features would not be equally successful in relation to the appeal site, lying 190 metres distant from the edge of Banbury Road.
291. In opening the Appellant characterised the LPA's case on heritage as paper thin. The LPA refuted this on the grounds that English Heritage (now Historic England) had objected, a point that was reiterated in closing. Historic England have not appeared at this Inquiry and in their absence it has been illustrated that their representation (GS appx 18) is based on an incorrect factual assertion that the Park carriageway proceeded through the tree belt on the south west side of Banbury Road and there were therefore views through the tree belt towards the appeal site. This is simply wrong as a matter of fact. Consequently the representation of Historic England should be afforded no weight.

## **Other Matters**

### ***Air Quality***

292. No objection is raised by the Council on air quality grounds to the proposal. The concerns come from local residents. Air quality is a highly complex topic and the only technical evidence on this matter is that produced by the Appellant (and this has not been questioned by the Council's experts).
293. The assessment carried out by the applicant satisfied the LPA that air quality was not a cause for concern and therefore should not influence the planning outcome. The 3<sup>rd</sup> parties raised air quality concerns particularly regarding possible worsening of existing pollution levels in Warwick and Leamington Spa town centres from increased vehicle movements associated with the proposed development. To address these concerns, further more detailed air quality modelling and assessment works have been carried out, in consultation and agreement with the LPA, which demonstrates there will be a negligible or no impact on air quality in the town centres associated with the proposed development. Such concerns can therefore be dismissed.
294. This further assessment did not include the positive impact of any mitigation measures. Mitigation measures are in fact proposed which significantly exceed the minimum requirements of Warwick District Council's Air Quality Action Plan (Addendum) – Low Emission Strategy. In reality therefore the actual air quality impacts of the scheme will be even lower than modelled.

### ***Highways***

295. Highways matters are not raised as a reason for refusal. The Inquiry has the benefit of the proof of evidence of NB, an extensive highways statement of common ground with WCC, and a number of technical notes from NB aimed at responding to matters raised by 3<sup>rd</sup> parties. All of this technical evidence shows that at worst the highways impact of the appeal scheme can be described as negligible.

296. Mr Crips sought to raise concerns about the impact of the appeal scheme on the Myton Road/Banbury Road junction and Castle Bridge. As Mr Crips stated in response to questions from the Inspector he is not an expert. Further Mr Crips does not present any alternative model or technical evidence to the Inquiry. NB's evidence demonstrates that the increase in traffic on Castle Bridge arising from the appeal scheme equates to 1 vehicle every 1 minute and 20 seconds at peak times. It is implausible to suggest that this is anything but a negligible impact.
297. The concerns raised by other 3<sup>rd</sup> parties primarily focus on: the traffic impact on Warwick town centre; sustainability; and cumulative impacts. Rather than revealing any concerns about impact on Warwick Town the modelling work conducted by the Appellant shows that the proposed access works and mitigation works will create a position of at least nil detriment and some betterment. The appeal site is highly accessible being located adjacent to high quality and relatively new highway infrastructure. The financial contributions secured through the s.106 will have a positive impact locally. NB refers to the Stagecoach bus company as having described the appeal site as the missing link in the local bus network. A financial contribution will be made to complete that link.
298. In agreement with WCC Highways their 'Extended M40 Corridor' PARAMICS Model has been used to assess the development proposals at Gallows Hill. WCC has confirmed that the model has been calibrated a high degree, exceeding those set out in the appropriate technical standards. Therefore, the model can be considered as reliable and accurate for the purposes of assessing the impacts and degree of mitigation achieved by the Appeal scheme.
299. The model, in agreement with WCC and subject to their auditing, has been brought fully up-to-date with regards to: cumulative impacts of extant consented development; other traffic growth; and changes in the highway network that in their view will occur within the model timeframe up to 2023 (Reference Case Scenario).
300. With the inclusion of the appeal scheme and its associated access proposals and off-site highway mitigation works (Do Something Scenario), which are agreed with WCC in terms of preliminary layouts and which have been subjected to technical and Road Safety Auditing, delay and travel time to vehicles within the modelled network are comparable to the Reference Case. This has demonstrated to the satisfaction of WCC that no severe adverse impact will occur on the modelled highway network.

### ***Gallows Memorial***

301. The Appellants have not found any physical remains relating to the site's history as the location of a gallows. The Appellant has not offered any view about the memorial requested by Canon Stewart.

### **Appellant's Conclusions**

302. Mr Sahota unequivocally accepted that the determinative issue in this case is that of heritage. Moreover he accepted that if the Appellant's evidence on heritage and landscape is accepted then permission ought to be granted. Given that the LPA's heritage evidence proved to be every bit as thin as expected and

that RM conceded the principle of development of the appeal site, it is firmly submitted that there is no robust basis to withhold consent.

303. Indeed the Appellant, after the evidence of the LPA's heritage witness, put the LPA on notice that it thought that the LPA had failed to substantiate that reason for refusal and that it was, at that stage minded to apply for costs. On reflection it has decided not to make such an application, not because the Appellant considers that the LPAs case was a reasonable one, but rather because Gallaghers is a locally-based developer who wishes to continue to work with the LPA to bring forward development proposals in a sustainable manner. We are instructed not to make an application for costs therefore, but rather to lay down a marker that the Appellant considers that the evidential foundations of the LPA in this case were very deeply flawed.

304. Thus there can be little doubt that the overall planning balance weighs decisively in favour of allowing this development appeal which will deliver significant benefits, most notably much needed affordable and general market housing with §49 and §14 of NPPF firmly engaged. The Appellant invites the Inspector to recommend that the Secretary of State allows this appeal.

## **THE CASE FOR THE RULE 6(6) PARTIES – WILLIAM DAVIS AND HALLAM LAND MANAGEMENT**

*[This is an edited version of the written closing submissions by the advocate for the Rule 6 Parties]*

### **Introduction and Overview**

305. The scope of the case brought by William Davis Ltd and Hallam Land Management at this Inquiry (in common with that brought at the Asps Inquiry earlier this year) is narrow, but it is important in light of Warwick District Council clarification in its opening that its case stands or falls on heritage evidence.

### **The Ambit of the Heritage Issues**

306. This narrowly drawn case, and indeed the need for Rule 6 status at all, arises out of the combination of WDC's second reason for refusal<sup>49</sup> and the emergence of a theory promulgated by WDC through its witness Mr Nick Corbett (NC) together with Dr Christine Hodgetts (CH) that:

- c) land to the east of the Grade I Registered Castle Park (the Park) within which the appeal site is situated forms part of a designed view to and from heritage assets; and
- (ii) that the Banbury Road presents a designed approach to the Park and Warwick Castle (the Castle).

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<sup>49</sup> i.e. "The proposed development by reason of its location, extent and nature would: -  
(1) ...  
(2) Irreversibly harm the setting of designated heritage assets, specifically the Grade I Listed Warwick Castle and (part) Scheduled Ancient Monument; the Grade I Registered Castle Park; and the setting, appearance and character of the Warwick Conservation Area contrary to paragraph 134 of the NPPF and the policies listed below."

## The Rule 6 Parties' Evidence

307. The evidence by Dr Chris Miele (CM) is correspondingly narrow in scope. Its relevance and importance to the inquiry was made clear by the (perfectly legitimate) use made of it by the Appellant and the (less legitimate) only partial use made of it by both NC and CH, despite both witnesses acknowledging the importance of considering all available evidence before reaching conclusions<sup>50</sup>.
308. CM's written and oral evidence therefore addressed these two key issues in addition to a possible third which WDC appeared to raise in writing but did not seem to pursue at inquiry. This third issue, not raised at the last inquiry, was the notion that agricultural land to the south and east of the Banbury Road forms a designed so-called 'Arcadian landscape' (as NC described it) with the resulting contention being that the large post-WW2 fields which contain the appeal site are properly to be understood as part of a single aesthetic intention.
309. The Inquiry has had the benefit of CM's considerable expertise and research, both of which have led him to the conclusion that each of these two key issues is to be answered in the negative. As for the possible third issue, this too has in any event been considered by CM in his written evidence (including to the last inquiry) and has been dismissed by him as untenable on the available evidence. None of these conclusions, or the evidence which supports them, was materially harmed in XX. In fact CM was not XX'd at all in respect of most of his evidence.
310. The absence of any substantive XX means that CM's evidence for the Rule 6 Parties simply stands and should, it is submitted, be afforded the greatest weight both because of its quality and because of the opportunity given (but not taken) for it to be tested. It is not sufficient, as WDC sought to do, to rely on the fact that Mrs Stoten (GS) gave evidence on similar matters, since CM and GS are different independent expert witnesses who gave different (albeit mutually supporting) evidence on behalf of different parties. Furthermore on the relatively few matters which did form the subject of XX questions, CM's answers served only to strengthen the case of the Rule 6 Parties rather than to weaken it. Examples of this included the line of questions CM received about Howe Malcolm's failure to include in their research the work of the Reverend William Gilpin.
311. It is correct to observe that Howe Malcolm did indeed omit the Gilpin sources from their preliminary research, and CM acknowledged this, but as he also pointed out in XX, the omission was immaterial because he himself had rectified it. More pertinently, even with the benefit of his work and the resulting availability of a range of Gilpin sources, both NC and CH included only the first of the Gilpin sources (i.e. the Bodleian letter) apparently preferring not to consider the inevitable effect of subsequent Gilpin documents, namely to thoroughly undermine the theory that his reference to an approach to the Castle was anything other than the pathway cut through the rock in its immediate vicinity. Similarly, when it was put to CM in XX that his opinion in relation to the tree belt, namely that it was intended to provide screening both into and out of the park amounted to an assertion, he rightly stood his ground until the premise of the

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<sup>50</sup> XXs of NC and CH by RW

question appeared to be abandoned and replaced with an expression of “*respect for...[his]...very great experience.*”<sup>51</sup>

312. The LPA advocate was right in XX to acknowledge and offer respect for CM’s experience and by inference for the evidence he provided to the Inquiry. The advocate either elected not to challenge CM’s expert evidence or simply failed to make in-roads into it. It is submitted that overall CM provided detailed evidence of the highest quality which deserves to be afforded great weight.

***Issue (i): No designed views***

313. Archival material (which includes historic maps and written accounts, and which both NC and CH agreed were in particularly abundant supply in this case<sup>52</sup>) confirms that land to the north east of the Banbury Road (including the appeal site) was never intended to be and never was part of any designed views to and from heritage assets or their settings.

314. On the contrary there are clear indications of an intention to separate land within the Park from that which lies beyond, through a combination of a tree boundary and differing land uses, including, in recent times, the introduction of built form which sits in marked contrast to that part of the Park which lies to the south west of the former toll road.

315. On proper scrutiny of the available evidence it is apparent that in fact the Banbury Road alignment is the product of the second Earl of Warwick’s desire to extend his parkland, thereby removing the turnpike from the immediate setting of the Castle. Ultimately there is no basis for the assertion that the Park was planned and laid out with any intended inter-visibility with the Banbury Road.

316. The evidence tested at Inquiry served only to support this position. NC accepted that there were “*no eye-catchers on the eastern side of the tree belt*”, that there was “*no separation of the trees to provide views through*” and that the land on which the appeal site is situated contains no “*obvious characteristic...which reflects its history*”<sup>53</sup>. He conceded in any event that in some cases contrasting landscape types serve to enhance rather than undermine the features of each<sup>54</sup> and that if the Second Earl possessed enthusiasms for both land improvement and the Picturesque Movement, there was “*no need to combine them into one view*”<sup>55</sup>. He also confirmed (to the Inspector) that he had not attended the Asps Inquiry but that he nonetheless knew that Dr Fryer had there accepted that there was no evidence of designed views into or out of the park and that any loss of understorey in the tree belt did not reflect the condition of that tree line and it would have been in the 18<sup>th</sup> century.

317. CH followed suit. She confirmed that the belt was formed of a continuous line of trees which were not planted by Capability Brown and that the available evidence from William Field<sup>56</sup> as to this is the only contemporaneous source

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<sup>51</sup> XX of CM

<sup>52</sup> XXs by RW

<sup>53</sup> XX by PTQC

<sup>54</sup> XX by RW

<sup>55</sup> Qns from the I

<sup>56</sup> See ‘Guide to Warwick’, 1815 at CM App 20

available<sup>57</sup>. That source makes it abundantly clear, through its attention to the detail, that *“On one side, the principal Ride is shaded, by a broad belt of young and flourishing trees, among which are seen various species of evergreens and deciduous shrubs...”*<sup>58</sup>. The 1791 plan of the Park by Sale reproduced in various sources before the Inquiry corroborates Field’s description and so confirms that the purpose of the tree-belt running alongside the Ride was to screen out view inwards and out.

318. CH confirmed in XX that in any event the appeal site contained no designed features and that she had no idea whether there were or had been views of the appeal site from the Park<sup>59</sup>. It is therefore difficult to fathom what the basis of any intended inter-visibility between the park and the appeal site or its effect might be. It is hard not to draw the conclusion, as CM has in written evidence, that CH’s novel proposition has been pressed past the point the available evidence will bear in order to provide a ‘heritage’ reason to object to the principle of housing on the south side of Warwick. All the objectors’ roads lead back to CH, and to a novel allegation, which was behind the LPA’s removal of the former housing allocation on this side of the town.

319. Overall the effect of the oral evidence was to support the case made by the Rule 6 Parties (and shared by the Appellant) that there is simply no evidence upon which to reasonably base a conclusion that there has ever been an intention to create views to and/or from the appeal site and heritage assets. In fact the available evidence is to the contrary effect, i.e. that the combination of wide planted treeline with understory, fences, hedges and a heavily trafficked turnpike road has, ever since the change of position of the Banbury Road from within the Park to along the perimeter of its expanded form, served to (and was intended to) create a visual and functional separation between, on the one hand the Castle and its Park, and on the other, the land beyond.

***Issue (ii): No planned Picturesque approach along the Banbury Road to the Castle/Town***

320. Whilst the picturesque (with a small “p”) nature of the Castle and its surrounds is acknowledged, it is not accepted that there is or was any planned or actual sequence of Picturesque (with a big “P”) views such as to constitute a devised approach along the route of the diverted Banbury Road turnpike.

321. This is not to say that the diversion itself was not planned. Of course it was but, as the available historical sources tell us and CM explains, it was part of a set of works carried out to expand the Earl’s park, providing a better parkland setting for his castle, and to remove the turnpike from his view rather than any attempt to create a devised approach to the Church of St Nicholas or to the Castle. On the contrary, a key feature of most of the Banbury Road is the absence of any indication that one is approaching a great building or its park. That absence of any notable visual incident and indeed the very unremarkable nature of the Banbury Road boundary, only serves to enhance the eventual effect of catching sight, for the first time, of the Castle from the New Bridge.

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<sup>57</sup> XX by PTQC

<sup>58</sup> See Field excerpt at p234 of App 20 of CM PoE

<sup>59</sup> XX by PTQC

322. CH appeared to take pride in the fact that she was the first in over 200 years to devise this theory. She clarified in XX that the basis of this theory was the single word “approach” taken out of context from a 1778 Gilpin letter currently kept in the Bodleian Library in Oxford<sup>60</sup>. But CH’s failure (in common with NC’s) to consider subsequent Gilpin material was telling indeed. Those later sources put beyond doubt that the interpretation which she gives to the word “approach” is one which cannot find support in the abundant available evidence. And in any event, whilst certain theories should not be regarded as implausible merely by virtue of the fact that no one has alighted upon them before, this is not such a case. We are here concerned with past intentions and given the abundance of contemporaneous detailed commentaries, it is entirely appropriate to see the lack of any mention of the alleged ‘planned approach’ as confirmation there simply was no such intention. CH has been tireless in her pursuit of every minute archival source (indeed her late submission contained a significant amount of new information) “obsessed”, as she herself put it, to find evidence to prove her theory. And yet CH’s diligence only works against her. In part because it serves to emphasise those historical sources which are notably absent from her evidence (the less than credible explanation for this which she provided in XX was that she was concerned that by their inclusion she would risk trying the patience of the Inquiry<sup>61</sup>), but in part also because she found an entirely new source, a posthumously published memoir of the second Earl, which at once makes no mention of any Picturesque approach on the Banbury Road and confirms by use of the Earl’s words: *“I made a noble approach to the castle, thro’ a solid rock”* that the true approach is the one to be found today meandering through rock and arriving at the entrance to the castle. Both of these points appeared to have been lost on or at least overlooked by CH.
323. There was, then, simply no approach along the Banbury Road planned with an aesthetic intention in mind. It was no more than a turnpike with dense screen planting to isolate the park on one side and ordinary fields, farmed by tenants, on the other. When we add to this the agreement offered by HC that a Picturesque approach would favour the curved alignment rather than the relatively straight one we see along the Banbury Road, no plausible basis remains for asserting (and here it is indeed no more than a mere assertion, because unsupported by evidence or sound judgment) that the approach to the Castle to which Gilpin refers is anything other than the route cut through the rock at its entrance.

### ***The Conservation Management Plan***

324. The Conservation Management Plan (CMP) is a key document which was only recently made available to the Appellant and the Rule 6 Parties but which had apparently available to WDC for some time). It serves to confirm the conclusions reached in respect of both of these issues and is worthy of particular attention.
325. The timing of its release has meant that it was not possible for CM to address its provisions in his written evidence but he, in common with GS and in marked contrast to both NC and CH, has addressed it in oral evidence. Indeed, CH claimed she had refused to read it and dismissed it as irrelevant. It plainly is

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<sup>60</sup> XX by RW

<sup>61</sup> XX by RW

- highly relevant, having been prepared by a qualified landscape historian, Dr Fryer to support a countryside stewardship grant.
326. Some time was spent on this document at the Inquiry and for good reason. It is a carefully researched and devised assessment of Warwick Castle Park intended to inform a Parkland Restoration Plan.
327. NC contended that the document was of limited value to the Inquiry because it was constrained by the terms of its commission to consider land within the Park only. Albeit he nonetheless accepted the document's overall relevance and confirmed that he had looked at the contents page<sup>62</sup>.
328. In defence of this inherently improbable position NC pointed (during XX by RW) to the first two paragraphs of the CMP. But these say nothing of the sort. And besides, the third paragraph of the Introduction (in common with various parts of the document itself) makes plain that: "*The study area extends beyond the land owned by C & S Taylor LLP and incorporates elements of the designed landscape...*". NC also described the CMP as "contentious" explaining that there "*were issues over copyright ownership.*"<sup>63</sup> Any such issues (which are in any event not accepted) could not withstand the effect of a document entering into evidence (and therefore the public domain) through this Inquiry process (and in respect of which no objection was made by WDC or anyone else) no matter what NC said about it in ReX.
329. Given this status and the accepted relevance of the document, it was more extraordinary still that NC had barely read the document, including at his appendix 4 those parts which he had considered but finding himself able (somehow) nonetheless to offer bold opinions about the relevance (or lack of it) of the remaining parts, which he had not. When asked, for example, why he supposed that the CMP did not mention views out of the park in its statement of significance (p166), he confessed that he "*...didn't know because [he hadn't] read it.*"<sup>64</sup> The same answer was given in relation to other questions posed about the CMP. He later clarified that he had read the table of contents but not the single page in question.<sup>65</sup>
330. Remarkably, NC did not appear to have even read the email sent by the Appellant shortly before the start of the Inquiry, identifying 19 examples of different evidence offered in his so-called 2<sup>nd</sup> Summary<sup>66</sup>. And when pressed on one of these points (the new argument he raised at paragraph 1.5 of his 2<sup>nd</sup> Summary that development of the appeal site would result in coalescence of Warwick Town with the suburban development of Leamington and Whitnash) NC simply found the use of that word in his main proof, albeit in a completely different and therefore irrelevant context.

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<sup>62</sup> XX by RW

<sup>63</sup> XX by RW

<sup>64</sup> XX by PTQC

<sup>65</sup> XX by RW

<sup>66</sup> XX by PTQC

## Rule 6(6) Parties' Conclusions

331. NC asserted, without evidence, that the Earl worshiped in St Nicholas Church. On a number of occasions he disregarded relevant evidence which ran counter to his client's case (the later Gilpin documents and the CMP as a whole are examples of this). These unsupported contentions amount to a case which is indeed "tissue thin"<sup>67</sup> at best and should therefore be dismissed as the weakest of evidence in support of an untenable position.
332. Similar submissions can be made of the very late evidence introduced by CH. It contained key omissions relating to evidence which had been available since long before the official deadline for the filing of evidence and which runs counter to her case. CH simply overlooked it and instead relied heavily on a single word ('approach') in a 1778 letter from Reverend Gilpin which was taken out of context and removed from its natural meaning.
333. Overall therefore, the evidence in support of the conclusion's reached by CM in respect of Issues 1 and 2, together with the absence of evidence to substantiate WDC's contention in relation to these, means that it cannot reasonably be said that the proposed development of the Appeal Site would cause harm to the setting of a heritage asset, since it lies beyond and forms no part of that setting. The possible third issue of a unified "Arcadian" landscape, if pursued at all, is subsumed into that relating to inter-visibility between the Castle Park and the appeal site and was addressed in any event by CM. Like issues 1 and 2, it is untenable on the available evidence.
334. Further support for this conclusion comes in the form of certain key 'non-appearances' in these proceedings by individuals who appeared and gave heritage evidence at the Asps Inquiry. These include English Heritage (Mr Molyneux) and Save Warwick Group (Dr Fryer). It is fair to infer that this non-attendance of heritage groups and individuals reveals a weakening of the LPA's heritage case since Spring of this year and that the view of WDC's case as "tissue thin" is shared even by those formerly prepared to give evidence in support of it.
335. Accordingly, when considering heritage evidence, the Inspector is respectfully invited to find that:
- (i) land to the north east of the Park (within which the appeal site is situated) forms no or no material part of a designed view to and from heritage assets; and
  - (ii) the Banbury Road presents no designed approach to the Park and Castle.

## WRITTEN REPRESENTATIONS FROM OTHER INTERESTED PERSONS SUPPORTING THE DEVELOPMENT

336. During the Inquiry a written submission dated 27 August 2015 (Document AD10) was accepted from How Planning LLP on behalf of **Barwood Strategic LLP** who are the Appellants in respect of the Section 78 appeal at the adjacent Asps site which is also before the Secretary of State (2221316). Barwood supports the Appeal proposal but does not consider that the release of the appeal site is the key to unlocking the development of the Asps site as was suggested by

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<sup>67</sup> Para 13 of Appellant's Opening

the LPA. Barwood has written to the Secretary of State to request that he should consider the two appeals in knowledge of each other.

337. Barwood points out that the Castle Park Management Plan submitted for the Gallows Hill appeal (Document AD18) was withheld from the Asps Inquiry. The CPMP provides a comprehensive review of the available evidence of the origins and historic development of the Castle Park. It provides no support for the claims of others that that there were intended views out eastwards from the Park towards or beyond Banbury Road and there is no mention of a designed approach to Warwick along Banbury Road.
338. Barwood refers to the letter of the Local Plan Inspector of 1 June 2015 (which post-dated the Asps Inquiry) and draws particular attention to the following conclusions of the Inspector:
- Serious concerns given the significant work still to be undertaken jointly with other HMA authorities to assess housing capacity, Green Belt and an agreed distribution of the OAN for the HMA
  - The overall windfall allowance in the ELP is not justified or realistic
  - The identified lack of a 5 year housing supply [the LPA argued at the Asps Inquiry that it had a 5 year supply]
  - Additional housing land on a significant scale would need to be identified
339. Barwood considers that the Asps and Gallows Hill sites are both consistent with the ELP spatial strategy and well located to the settlement edge in the chosen direction of growth.
340. On the matter of alleged prematurity, and with reference to the PPG guidance, the Local Plan is not at an advanced stage given the Inspector's findings and the further work needed to progress the ELP. Also the development of both appeal sites would result in consent for up to 1,350 dwellings which equates to only 10% of the level of housing growth promoted through draft ELP policy DS6. The Gallows Hill site and the Asps site present the opportunity to deliver sustainable development supported by necessary infrastructure and the development would not be so substantial as to undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development.
341. Barwood considers that both appeals should be determined in accordance with the presumption in favour of sustainable development.

## **CONDITIONS**

342. Draft Conditions are attached as a schedule in the event that the Secretary of State decides to allow the appeal. Reasons are included for each condition. The Schedule is based upon draft conditions submitted by the LPA, commented upon by the Inspector at the Inquiry, and mainly agreed by the Inspector. However some further changes and rewording have also proven necessary in the interests of clarity or because of national policy.
343. Following discussion at the Inquiry a provision has been deleted that could have required a 10% reduction in carbon emissions. This would be likely to conflict with a Written Ministerial Statement that was issued on 25 March 2015

- and which seeks to limit the circumstances in which local planning authorities can require reductions in such emissions beyond the requirements of the Building Regulations. There is no adopted development plan policy which refers to the Code for Sustainable Homes or which otherwise specifies such a reduction.
344. The submitted draft conditions provided that of the two alternative drawings for the Europa Way access, only the Interim T Junction Layout Ref SK033 rev I would be approved. There was no reference to submitted Drawing Ref SK037 Rev C which is the full crossroads layout with pedestrian crossing. The T junction layout could be adapted to a full cross roads in the event that the Lower Heathcote development came later.
345. In practice it is unlikely that the appeal development would precede the Lower Heathcote development. Both sites are being promoted by the same developer. The Lower Heathcote site already has planning permission and is more advanced (as the proof of the Appellant's highway witness conforms in Document NB1). Moreover it closely abuts existing housing and would itself provide the local facilities that are to be relied upon by both developments. On the balance of probabilities the Lower Heathcote site will be developed first including the junction with Europa Way.
346. The Appellant's Highways Proof of Evidence does reference both drawings in a suggested condition at paragraph 4.5.10. However it lacks a mechanism for securing how and when the full crossroads scheme including the pedestrian crossing would be implemented. That crossing would be necessary for residents of the appeal development to reach the local facilities and country park on the Lower Heathcote site, as and when they are provided, and therefore its provision should be secured before the proposed dwellings are occupied. However it would not be needed by the Lower Heathcote scheme residents and therefore its implementation should be secured as part of the appeal scheme.
347. The draft condition has accordingly been amended to refer to both drawings and to provide that no dwellings would be occupied until the pedestrian crossing had been constructed.
348. Whilst landscaping is a reserved matter, in this case the Appellant has relied at the outline stage on the mitigation which would be provided for adverse landscape impacts by the proposed 20m planting belt along the site's western boundary. It follows that a condition should ensure that the reserved landscaping matters include that planting belt as a minimum requirement. The only circumstance in which such planting may not be needed would be if the land to the west is allocated for, or consented for, development before the submission of reserved matters for the appeal site development. An additional condition has been recommended for that purpose. The wording of the condition should not be taken as any endorsement of the principle of residential development on the adjoining land.

## **OBLIGATION**

349. There is a completed and signed Planning Obligation by Deed of Agreement between the Appellant, the landowners, Warwick District Council and Warwickshire County Council (Document AD12). It was made under S106 of the Town and Country Planning Act 1990 (as amended).

350. The definitions (including the sum of each financial contribution) start at page 2. Amongst other things these include a monitoring fee of a maximum of £11,099.20 as a contribution towards the District Council's costs of monitoring the implementation of the deed.

351. Clause 4 provides that the deed will come into effect on the grant of planning permission and the commencement of development. However, if the '*Planning Inspector or Secretary of State in the Decision Letter*' concludes that any of the planning obligations or the monitoring fee or any part of the obligation are incompatible with Regulations 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) then that shall cease to have effect.

352. The main provisions in the Schedules are as follows:

*First Schedule of Owners' Covenants with the District Council*

- Part 1 makes provision for 40% affordable housing comprising 60% Social Rented, 25% affordable rented and 15% intermediate dwellings.
- Part 2 makes provision for open space to meet the standards in the Council's Open Space Supplementary Planning Document 2009 (unless otherwise agreed in writing by the Council) and including amenity open space and play areas. It includes a formula for calculating commuted maintenance sums.
- Part 3 makes provision for biodiversity offsetting.
- Parts 4, 5 and 6 make provision for sustainable urban drainage (SUDS) including for future maintenance.
- Part 7 provides for the submission for approval of a local employment and training strategy.
- Part 8 (unnumbered in the Document) makes provision for financial contributions to: the expansion of the Warwick Gates Health Centre 9GP Surgery); other acute and planned NHS health services; and itemised police services and equipment.
- Part 9 provides for financial contributions to Indoor and Outdoor Sports Facilities.

*Second Schedule of Owners' Covenants with the County Council*

- Education Contribution for early years, primary and secondary education.
- Highways Obligations concerning works to improve Gallows Hill and Europa Way - this includes road widening to increase junction capacity and to accommodate queuing vehicles. In the Annex there are drawings of the works which are mainly within the public highway and which are included in the planning application for which planning permission is sought.
- Welcome Pack Contribution to encourage sustainable travel by new occupiers and to deliver road safety information.
- Footpath Contribution towards new lengths of footway in the highway adjacent to the site frontage.
- Public Transport Contribution to secure and improve bus services to serve the development – this includes the diversion of existing No 68 buss service with a new vehicle and the provision of a new bus service linking the development with Leamington shopping park, town centre and railway station

*Third Schedule of District Council's and County Council's Covenants*

- In relation to the District Council this provides for the repayment of unexpended contributions and for confirmation of the discharge of obligations and includes detailed provisions relating to the handling of the GP surgery, other health services and police contributions.
- In relation to the County Council this similarly provides for the repayment of unexpended contributions and for confirmation of the discharge of obligations.

*Fourth Schedule – Mortgagee in Possession*

This makes provision to exclude liability on mortgagees in certain circumstances.

*Fifth Schedule*

Provides for indexation of the financial contributions.

*Sixth Schedule*

This regards the calculation of an uncontentious 'housing contribution' which is defined in clause 1.13 of the First Schedule and is part of the fallback arrangements for affordable housing provision.

353. The Council has submitted a summary table of S106 contributions (Document AD13) to demonstrate that the Regulation 123 limit of a maximum of 5 contributions to infrastructure would not be exceeded. The Council has also submitted a CIL Regulations Compliance Statement (Document AD14) which sets out the justification for each obligation, matters of agreement and matters of dispute. Appendix D explains that the monitoring fee is necessary as the large scale housing site with multiple contributions requires additional monitoring work. It sets out how the sum has been calculated including the activities to be carried out and the hourly rate of the officer.
354. **Mr T Jones** represents **Warks and West Mercia Police Authority**. He appeared at the Inquiry in a round table session to further provide evidence in support of the need for the financial contribution for police services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP7, OIP22, and OIP23. The contribution is sought to support police services for the local area to accommodate the rising need generated by this new development. Appeal decisions by the Secretary of State have been submitted in support of such contributions APP/X2410/A/12/2173673 (Document OIP22) and APP/X2410/A/13/2196928/APP/X2410/A/13/2196929 (Document OIP23). In each case the Secretary of State agreed with the Inspector that the contributions were compliant with Regulation 122 of the CIL Regulations. The Inspector's Report for the first case noted that contributions had previously been supported in some appeals and not in others.
355. **Ms A Graham Paul** represents the **South Warks NHS Foundation Trust** which covers Warwick and Stratford but not Coventry. She appeared at the Inquiry in a round table session to provide further evidence in support of the need for the financial contribution for health services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP9 and OIP24 including Counsels' opinion. The financial contribution would be used for staff, equipment and medicine rather than for accommodation. NHS funding is provided through an activity based payment. However the sum is calculated according to the demographic figures for the

previous year. When the local population rises during the year as a result of new housing development a funding shortfall arises and this is not made good subsequently by any retrospective payment. The financial contribution would address the funding gap.

356. This approach is considered by the Trust to be crude but effective. It has been supported in principle by the Inspectors for 2 appeals for which the decisions are included in Document OIP9( Refs APP/T3725/A/14/2221858 and APP/J3720/A/14/2221748). However the Inspector for the latter appeal concerning Campden Road, Shipston on Stour had not understood that there were no retrospective payments. That decision is currently subject to a High Court challenge on that point which would be heard in December 2015. The parties for the present appeal dispute whether the Secretary of State is intending to defend that decision.

## **INSPECTOR'S CONCLUSIONS**

*[The figures in square brackets refer to paragraphs elsewhere in the Report]*

### **The Main Considerations**

357. The Secretary of State would need to consider whether the development accords with the provisions of the development plan and also whether there are any other material considerations such as national policy and guidance for sustainable development (environmental, economic, and social). The main considerations upon which it is likely that the Secretary of State will base his decision are therefore:

- a) Whether in Warwick District there is a 5 year supply of suitable and deliverable housing land; and, if not, whether adopted development plan policies for housing supply are up to date;
- b) Whether the adopted development plan heritage policies are consistent with national policy and what effect the development may have on the setting and significance of designated heritage assets, in particular the Grade I Listed and part Ancient Monument of Warwick Castle; the Grade I Registered Castle Park; and the Warwick Conservation Area, including their character and appearance, where relevant.
- c) What effect the development may have on the landscape character and visual amenity of the area and whether the development would be integrated with the existing and proposed pattern of development.
- d) Whether the development would create a precedent for the development of adjacent land or whether to grant planning permission would be premature to the emerging Local Plan.
- e) Other matters that are not disputed by the Council but have been raised by other interested persons and which may be relevant to whether this is a sustainable development include: agricultural land quality, traffic impacts, and air quality.
- f) Whether the development would be acceptable in relation to the provision of affordable housing and any necessary supporting infrastructure, having regard to the completed legal planning obligation agreement, and whether the provisions of that agreement accord with the CIL Regulations 2010 (as amended).
- g) Whether any identified harm should be weighed with any public benefits of the development.

### **Housing Need and Supply**

*Agreed lack of a 5 year housing supply*

358. At the Asps Inquiry in April 2015 the LPA argued that it had a 5 year supply of housing [78]. However in his letter of 1 June 2015 the Inspector for the emerging Local Plan was critical of some aspects of housing supply, particularly an over-generous windfall allowance. He concluded that, even on its own assessment of need (which was also criticised) the LPA did not have a 5 year

supply of sites [54-57]. The LPA now agrees with the Appellant that it lacks a 5 year supply [82, 140]. The main parties also agree that there has been under-provision of affordable housing and that there is an urgent need for such housing [82].

359. Bishops Tachbrook Parish Council nevertheless argues that the LPA does have a 5 year supply [160]. Document ID15 tabulates the respective positions on housing supply [85]. The Appellant has set out the main differences with the Parish Council on the supply issue [204]. I consider that the Parish Council's reasoning and calculation is flawed. In particular it has misinterpreted the Inspector's letter of 1 June 2015 as supporting a windfall allowance of 175 dwellings a year. In fact he was only supporting the portion of that allowance that related to small and rural sites and conversions. Neither did that Inspector endorse the view now taken by the LPA that the calculation of need should be based on the needs of the District rather than that of the Housing Market Area as a whole. The Parish Council has also used a different date for its calculation. Further it has sought to add to supply the bringing into use of vacant dwellings, without accounting for those that may have ceased to be used. Other interested persons who claim that there is a 5 year supply are relying either on the Parish Council's calculation or an outdated calculation by the LPA which has been overtaken by the interim report of the ELP Inspector [163, 169].

360. For these reasons I attach more weight to the agreement between the main parties that the 5 year supply required by the Framework is lacking. In accordance with paragraph 49 of the Framework it follows that the Housing Supply Policy RAP1 of the adopted LP is consequently out of date, as the LPA agrees [82]. In these circumstances paragraph 14 of the Framework provides that planning permission for the development should be granted unless:

- *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- *specific policies in this Framework indicate development should be restricted.'*

361. Footnote 9 to paragraph 14 of the Framework cites as an example of restrictive policies those relating to designated heritage assets. However those policies themselves provide for a balancing of any identified less than substantial harm with any public benefits. The test thus remains the same.

#### *Extent of the shortfall in supply*

362. The Housing SoCG agreed several matters in relation to the calculation of housing need and supply. It also agreed that the weight to the shortfall increases as the shortfall below 5 years increases [84]. Nevertheless the main parties do not agree on the amount of the annual shortfall [84, 141-142, 186-202, 207-208]. The main areas of difference concern how need is identified and what the associated housing requirement should be.

363. Paragraph 47 of the Framework provides that the Local Plan should meet the full objectively assessed need (FOAN) for market and affordable housing in the housing market area (HMA). In this case the housing market area is much wider than Warwick District. It includes Coventry City and several other districts. The

- authorities have agreed that they should jointly provide for the FOAN of the HMA which has been identified. However whilst there is an up-to-date SHMA needs assessment for the HMA as a whole, there is at present no up-to-date adopted local plan for Warwick or the other districts.
364. The Coventry and Warwickshire LPAs have agreed that some of the housing needs of Coventry should be distributed between other Districts in the HMA. However at the time of the Appeal Inquiry there was not agreement on the amount of housing to be provided by each LPA.
365. The SHMA addendum of 2014 had suggested an indicative distribution based on demographic considerations but advised that this would be sensitive to economic growth and migration considerations. Neither does the indicative distribution take account of market signals or local needs for affordable housing. However the main reason why an uplift is likely to be needed concerns the distribution of excess housing need housing from elsewhere in the HMA and especially from Coventry.
366. A meeting between the authorities to seek agreement on the distribution of housing between the districts was scheduled for 29 September 2015 but the outcome of that meeting is not before me [52,57].
367. The Housing SoCG includes agreement that for the purposes of this inquiry the FOAN should be established at the District Level [84]. However the parties do not agree on how to calculate that figure.
368. Both main parties refer to the case of *Oadby and Wigston Borough Council v Secretary of State for the Environment and Bloor Homes [2015]*<sup>68</sup> at which the LPA was represented by the same advocate [141, 193]. The judge agreed that for the purposes of a S78 appeal the OAN should be calculated on a District basis when seeking to establish the 5 year supply position because full information was not available on need and supply in all parts of the wider HMA which covered several Leicestershire authorities.
369. In the present appeal the witnesses also agree in the Housing SoCG that the OAN should be calculated on a District basis [84]. However they disagree as to whether in the circumstances of this appeal that should be only the demographic-based FOAN (as the LPA argues) or whether it should take account of other factors including any contribution to what is the identified FOAN of the HMA as a whole.
370. In the Oadby and Wigston case the judge supported the Inspector in calculating that, in the absence of an up-to-date development plan requirement, it was necessary to consider the 'policy-off' FOAN. There was a SHMA for Leicestershire established an overall 'policy off' FOAN for the HMA as a whole (based only on demographics and expressed as a range) and also set out individual figures for each district (again based only on demographics and expressed as a range). That is similar to the position in Coventry and Warwickshire.

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<sup>68</sup> This case is going to the Court of Appeal.

371. The Leicestershire LPAs agreed that they were able to accommodate the upper range for each district within their own areas. Unlike in Warwickshire there was thus to be no cross-border distribution of housing between the districts.
372. However the Inspector concluded that in Oadby and Wigston District this was a constrained 'policy-on' figure because it did not take account of additional housing needed to support economic growth or the particular affordable housing needs in the District which would have led to a higher figure. The judge agreed that the Inspector was entitled to adjust the housing requirement figure upwards to take account of such considerations. That would seem to go against the Warwick LPA argument that the OAN figure must only be based on the demographic forecast for the District. It would support an upward adjustment of the District OAN from its demographic-only base figure if there is evidence to support such an adjustment.
373. For the Council the figure is an annual OAN of 606dpa which is derived only from demographic forecasts [141]. The Council seeks to distinguish this need figure from the housing requirement which may be higher once excess need has been redistributed across the HMA. The Council also seeks to distinguish the figure of 606dpa from any interpretation of that requirement as a higher OAN for Warwick District [141].
374. In written evidence from Mr Gardner the LPA maintains that no further adjustment is necessary to the 606dpa figure. Mr Gardner was not called to appear and the Appellant considers that his evidence should be regarded with circumspection[200]. The Appellant points to an inconsistency between the LPA's approach here and that for the Asps appeal in April 2015 where the LPA evidence was that the requirement for the District alone should be 660dpa rather than 606dpa, that is about 10% above the demographic OAN [187].
375. However the more significant issue is what account should be taken of the conclusions of the Inspector for the ELP after he had held examination hearings which are highly relevant to consideration of housing need and requirements.

*The Interim Report of the ELP Inspector*

376. In noting the Council's demographic only 606dpa OAN figure the ELP Inspector described this as '*very much a minimum*' [186, 188]. The Inspector acknowledged that the ELP had already proposed a higher 720dpa requirement in the submitted ELP. That included a contribution to the housing needs of the wider HMA and especially Coventry [54]. Using that figure (and applying a 20% buffer including the backlog since 2011) the Inspector concluded that the LPA could not demonstrate a 5 year supply. This was mainly because the supply of housing in the ELP was not robust due mainly to an excessive windfall allowance. Neither had the specific 114dpa contribution to the wider needs of the HMA been justified (720dpa-606dpa). Insufficient land had been allocated even to meet Warwick District's own needs [56].
377. The Inspector concluded that additional housing would need to be allocated once a distribution had been agreed that met the FOAN for the HMA as a whole [57]. In these circumstances it is highly improbable that the ELP will ultimately be found sound on the basis of a requirement of only 606dpa. Moreover it is likely that the requirement in the finally adopted plan, including an agreed contribution to the FOAN of the HMA as a whole, will exceed 720dpa.

378. The LPA maintains that it has a 4.72 year's supply of housing using only the District's demographically-based OAN of 606dpa [140]. The LPA itself acknowledges that to make good its 5 year supply it will need to identify land to accommodate between about 750 and 1000 new homes [139].
379. The Appellant considers that the supply is only 4.37 years when calculated on the same basis and that it would be reduced to somewhere in the range of 3 to 3.65 years if calculated on the ELP housing requirement of 720dpa [207-208]. That is likely to be the minimum contribution to the wider needs of the HMA [58]. The final requirement may be still higher.

### *Delivery*

380. Paragraph 14 of the Framework is engaged whichever of these figures is used. The LPA accepts that the contribution that the appeal proposals would make towards the housing shortfall should be accorded considerable weight [148]. However as the application is in outline a further reserved matters application will be needed and there would be pre-commencement conditions to fulfil. The Appellant has not estimated how many houses would be completed within 5 years and the delivery of new housing may also be affected by competition for sales with several outlets on the adjoining land to the north and east.
381. My own experience would suggest that delivery would be unlikely to commence before Spring 2017 and is unlikely to exceed 100 completions each year. If so that would contribute at most 300 dwellings to the most recent calculation of the 5 year supply. A later start or a reduced annual sales rate mean that the actual supply could be less.
382. The planning obligation provides that 40% of the housing would be affordable and it would thus make a significant contribution to the identified need for such housing.
383. The LPA argues that the housing shortfall will be made good *'in the near future'* by the Local Plan. However, even if the ELP Inspector agrees to continue the current examination process in the expectation that an amended plan would be found sound, the process of identifying, appraising and consulting upon additional sites, and then completing the examination and adopting the plan before making a planning application on the allocated sites, would all be likely to result in a significantly later start in delivering completed dwellings and thus a smaller contribution to the current 5 YS shortfall.

### *Conclusions*

384. The main parties agree that there is a lack of a 5 year housing supply and therefore paragraph 14 of the Framework is engaged.
385. The extent of the shortfall in supply can affect the weight to be accorded to it. That extent is not agreed. However the LPA's reliance on a demographic-based OAN of only 606dpa ignores: the 720dpa requirement set out in the Submitted ELP; the interim conclusions of the ELP Inspector that additional housing would be needed; the LPA's concession that land for another 750-1000 is required; and the possibility that the LPAs in the HMA will agree a new distribution of housing that is likely to result in the 720dpa requirement in the ELP being adjusted upwards.

386. Whilst the exact extent of the shortfall cannot be determined the above considerations all indicate, based on the most recent information, that the housing requirement in the ELP will be above that rate of 606dpa and therefore the shortfall will be greater than currently assessed by the LPA.
387. The appeal site would deliver a significant amount of housing towards meeting the 5 year supply shortfall, including affordable housing. Whilst it is unlikely to be completed within the identified 5 year period, to allow the appeal would result in earlier delivery than would be achieved by awaiting the identification of additional land in the ELP.

## **Heritage**

388. Whereas the development plan is the first consideration in the assessment of the effect of the development on designated heritage assets, the adopted Local Plan heritage policies DAP4, DAP8 and DAP11 predate current national policy as set out in the Framework, and are in part inconsistent with it [59-62].
389. In particular the policies do not seek an assessment of the heritage significance of the designated asset. Neither do they seek to establish whether any harm to the significance of the asset is substantial or less than substantial as provided for in the Framework. Neither do they provide for a balancing of identified harm with any public benefits [62].
390. In the circumstances I consider that the weight to be accorded to policies DAP4, DAP8 and DAP11 is limited where they are not consistent with national policy. The national policy tests should therefore take precedence. In this respect I disagree with the decisions of other Inspectors who have accorded considerable or significant weight to policies DAP4 and DAP8 taken as a whole [91].
391. This does not affect the statutory duties in the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of protecting or enhancing the character or appearance of conservation areas or to give special regard to the desirability of preserving the setting of listed buildings. That several assets are of high (Grade I) listing adds weight to their significance [62].
392. There are no designated heritage assets on the appeal site and thus there would thus be no direct effects on any such asset. However there are many designated assets in the wider area with potential for an effect on their setting and significance. These were assessed in the Environmental Statement which reasonably concluded that for most assets, such as the listed buildings in Warwick town centre, any effect on setting or significance would be negligible or non-existent. Whilst there have been passing references in the evidence to some of these, such as the Warwick churches, Spiers Lodge, the Toll House or the New Bridge there is a lack of substantive evidence of harm to their significance. The heritage witnesses have, like the ES, concentrated on the potential effects on the significance of Warwick Castle, Warwick Conservation Area and Castle Park.

### *Warwick Castle*

393. In relation to the part Scheduled Ancient Monument and part Grade I listed Warwick Castle, the ES concluded that the proposed development would represent a further modern addition to the landscape visible from the castle towers but would not harm the appreciation of the castle as a stronghold and the

overall significance of the castle would remain unharmed [232]. English Heritage did not cite any direct harm to the setting of the castle, only to Castle Park/Warwick Conservation Area [168].

394. The LPA considers that the appeal site is clearly visible from the castle as a remnant of open land that separates the park from the town [121]. That is said to underline the castle's historic visual and associative relationships with its agricultural hinterland [121]. Zoomed photographs of the site from the castle's towers were provided by other interested persons. They fill a page and exaggerate the importance of the site in that outlook [157, 161]. As the Appellant points out, *'the appeal site as part of a huge panorama of which the appeal site is only a small part. The change will be distant .... , it will be mitigated by extensive planting and it will be seen against the backdrop of the consented development at Lower Heathcote Farm. Extensive views of undeveloped countryside will remain'*[288]. Having visited the castle I share that assessment.

395. The appeal site is also said to be *'one of a very few locations from which the Castle may be viewed in its historical agricultural setting alongside St Mary's Church'* [121]. However little evidence was provided to the Inquiry to support these claims. The Council confirmed that it did not claim harm to the setting of the listed St Mary's Church which has a similar level of visibility from the site. The castle itself is not in an agricultural setting as it is closely associated with the built up town centre. The view from the site is only of small elements of the towers above the trees and it is not possible to assess the scale or importance of the building from here or to determine that it is itself in an agricultural setting. There is no public access to the site at present from which this view could be appreciated. However some public views from the site may become available after the development, depending upon the final design and layout. The Appellant has identified other locations in the surrounding countryside from which similar views are available [287]. The important views of the castle remain the designed views from within Castle Park and the view from the New Bridge over the Avon.

396. English Heritage/Historic England did not object to any harm to the setting or significance of the Castle [168]. I share the conclusion of the ES that there would be a negligible impact on the setting and significance of Warwick Castle and other listed buildings such that LP Policy DAP4 is not contravened and the S66 duty is not engaged [232]. Neither have I identified any harm to the setting or significance of the Scheduled Ancient Monument. The SAM comprises the uninhabited parts of the castle. It predates the design of Castle Park and the enclosure of the agricultural land and does not have a separate associative relationship with them that would be harmed by the development.

#### *Castle Park & Warwick Conservation Area*

397. The potential effect of the development on the setting and significance of the Grade 1 listed Castle Park occupied much of the Inquiry. The extensive park is coterminous with the southern part of the Conservation Area that is nearest to the appeal site and it was not disputed that the effect on the setting of these 2 heritage assets would essentially be the same [233]. Any effects of additional traffic on other parts of the Conservation Area are considered separately below.

398. The Historic England Good Practice Advice '*The Setting of Heritage Assets*' (March 2015) (TSHA) advises amongst other things that: '*Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create the experience of drama or surprise and these designed settings may also be regarded as heritage assets in their own right. Furthermore they may, themselves, have a wider setting: a park may form immediate surroundings of a great house, whilst having its own setting that includes lines-of-sight to more distant heritage assets or natural features beyond the park boundary. Given that the designated area is often restricted to the core elements, such as a formal park, it is important that the extended and remote elements of design are included in the evaluation of the setting of a designed landscape.*'

399. In relation to Castle Park the ES commented that: '*Due to the visibility of the proposed development from Gallows Hill and Banbury Road, at the edge of Castle Park, it is concluded on the balance of considerations, that there will be some limited harm to the setting and significance of the registered park and garden and Warwick Conservation Area*' [235]. This relates to the presence of the appeal development in views from outside Castle Park and the Conservation Area, replacing part of the agricultural land that previously contributed to the wider setting of Warwick Castle and its Park. The ES concluded that this would be a moderate/minor magnitude of effect on the Registered Park and the Conservation Area which is '*not significant in EIA terms and less than substantial in the terms of the Framework*'. The ES further concluded that this harm ought to be weighed with any public benefits, as provided for by paragraph 134 of the Framework.

400. The main area of dispute between the heritage witnesses for the LPA and Warwickshire Gardens Trust on one side and the Appellant and the Rule 6(6) parties on the other concerns whether there is additional harm to the setting and significance of the Registered Park and the Conservation Area arising from the following disputed factors:

- a) Whether the Second Earl of Warwick, when extending Castle Park in the 18th century, had created intentional designed views from the Park through the boundary trees towards his recently enclosed agricultural land on the far side of Banbury Road [97, 100-109, 164, 246, 253-263, 306, 313-319].
- b) Whether the last mile or so of the contemporary realigned Banbury Road turnpike approaching Warwick was a 'Picturesque' designed approach to the Warwick Castle which used the countryside east of Banbury Road as a foil [110-117, 164, 264-276, 320-323].

401. The 'third issue' or 'fall-back' position referred to by the LPA [120-122] is whether the immediate agricultural setting of the Park contributes to the significance of the Park, the Castle or the Conservation Area even if there was no designed inter-visibility or Picturesque intent. That relates to the harm identified by the ES to setting and significance of the Park and Conservation Area (but not to the Castle) [235].

#### *Views out from Castle Park*

402. It is not disputed that the Second Earl of Warwick planted trees along the full length of the boundary to Banbury Road with no open gaps that would have

- provided a clear view out of and into the Park. The disputed facts rather relate to the thickness of the tree planting and whether understorey planting was included at relevant locations to further screen views under the tree canopies.
403. No photographs have been provided by any party to demonstrate that the appeal site would be currently visible from within the Park. Whilst trees remain along the full boundary, only some of these survive from the original 18<sup>th</sup> century planting and the tree belts include what are obviously younger trees. I saw that the boundary tree belts and woodland are currently effective in screening long views out of the park to the east and would be thick enough to do so in winter as well. However there is a section of perimeter planting in the vicinity of the Toll House where the current tree belt is thinner and where some glimpsed views into and out of the park are possible beneath the tree canopies. The glimpsed views are towards Banbury Road, the Toll House and the Hallam Land rather than to the more distant appeal site itself. Part of this belt is described as the 'Long Thins' by the Council [100] but the Management Plan records identified that this is a relatively recent 20<sup>th</sup> century term [253-254]. Part of the belt here seems to have been replanted in the mid 20<sup>th</sup> century, possibly following the removal of temporary military buildings.
404. The English Heritage written response to the planning application consultation was based on their opinion on that there were intended to be views out of Castle Park from a carriage drive which circumnavigated the Park [168]. However EH did not cite any evidential source for this and it is not clear whether it was based on any of the evidence subsequently placed before the Inquiry. The Sale survey of 1791 [105, 255, 258, 317] and the James Map of 1806 [105] both indicate that the carriage drive was on the inner park side of the perimeter belt of trees. The Sale map indicates that the belt was of similar thickness to the adjacent turnpike road which is known to have had a width of 60 feet. Where the carriage drive passed over the New Waters on a dam, trees were planted on the dam between the drive and Banbury Road [281]. The carriage drive was also at a lower level than the road which would have further limited views out of the Park [284].
405. Only limited weight should be accorded to evidence from Phibbs and others concerning the landscape designs of Lancelot Capability Brown because it is known that he did not landscape this section of Castle Park (which works post-dated his involvement) and because it cannot be said how closely the Second Earl followed Brown's ideas [101-102, 260-261].
406. There has been much discussion of a written account by William Field of a visit to the Park in 1815. This refers to the inclusion of an understorey and evergreen planting in tree belts. If so, that would have made them more effective screens. The description fits the tree belt alongside Banbury Road but other interpretations are possible [106-107, 257-259, 317].
407. The recent Castle Park Management Plan (2014) was produced independently of the LPA and the Appellant. Its principal author Dr Hazel Fryer gave evidence at the Asps Inquiry but did not attend the Inquiry for this appeal or provide any written representations. The Appellant points out that her proof of evidence to the Asps inquiry at §4.7 states that the tree lined boundaries of the Park "*...define the perimeter of the park and **exclude** views into and out of the park*" [242, 262].

408. The Appellant cites further extracts from the Management Plan as evidence that whilst some outward views from the park are identified these are not towards the appeal site. No views or inter-visibility through the Long Thins are identified. Moreover the Plan proposes to replant the Thins at a higher density which would have the effect of reinforcing its effectiveness as a screen even if some reduced visibility were retained, particularly in the shorter term before the new planting matures [241].
409. The evidence of motivation for the Second Earl to create views through the trees is weak. The naturalistic planting within the Park that was promoted by Brown and others would have complimented the timeless setting of the castle and would have contrasted with the regular small hedged fields on enclosed agricultural land which were then a modern 18<sup>th</sup> century innovation. That would have been a reason to create visual separation between these distinct landscapes rather than to combine them into one view [108, 280-281, 314-316]. If the Second Earl wanted to show off his agricultural improvements he could easily have taken guests on a trip outside the Park. Neither does it logically follow that, having moved the main Banbury Road out of the park and avoided creating any open vistas from that road into the park, the Second Earl would have wanted to retain views of and from the turnpike.
410. Any outward views from the park that were still available when the 18<sup>th</sup> century planting first matured would have been at best filtered rather than clear and open. From the tree belt now known as the Long Thins there would have been a foreground view of the 60 feet wide turnpike and the tollhouse and then middle ground views towards relatively small hedged fields. Any views towards the appeal site on its higher ground would have been oblique and in the background and likely partially screened by hedgerow trees such that the surface of the fields and their use would have been concealed from a viewer located within the Park.
411. Today the partial foreground view through the trees is of a wider and busier modern road junction with traffic lights and street lighting [248]. Since the recent construction of a new arm to the junction the toll house now stands on a traffic island [25]. Its garden is enclosed from Banbury Road by a noise barrier. In the middle ground is the Hallam land; a field from which the internal hedges have been removed to create a much larger field than was here in the 18<sup>th</sup> century. A recently planted belt of trees on the Banbury Road frontage will soon start to conceal even this view [13]. The still oblique view of the appeal site is currently of a thin line on the horizon.
412. Housing on the appeal site would appear on that horizon but would in time be wholly or partially concealed variously by the proposed planting belt along its western edge [34], by the tree belt already planted on the adjacent Hallam land beside Banbury Road [13], and by the denser replanting of the Long Thins that is proposed in the Management Plan and which will also serve to conceal the busy Banbury Road and junction from the Park [262].
413. It is concluded that it is unlikely that the second Earl of Warwick intended to create designed views out of Castle Park towards adjacent agricultural land and that, even if he did, the view towards the appeal site would have been filtered, distant and oblique. The current view is in any event much changed from the 18<sup>th</sup> century; its retention would not contribute materially to the significance of

the Park. Existing and proposed planting in the Park, on the appeal site and on the intervening land will further change the view and so mitigate any slight adverse effects on significance as to become negligible in outward views from the Park.

#### *The Banbury Road Approach*

414. There is very little historical evidence of the original design intentions for the Banbury Road. What can be said is that:

- The road was deliberately moved eastwards to extend the park [25].
- Its route follows the edge of the Park except on the final approach to the New Bridge where there is an old established housing area known as Bridge End between the road and the park [26-27].
- Trees were planted continuously along the edge of the Park [26].
- There was mostly agricultural land on the opposite east side of Banbury Road that was enclosed in the 18<sup>th</sup> century by hedges as small fields with hedgerow trees. Many of the internal hedges have since been removed to create larger fields.
- As well as that agricultural land there was woodland at Turnbull's Garden and an adjacent area of water that may have been a silt pond for New Waters [112, 114, 228 ].
- The final straight stretch on Banbury Road is aligned on the spire of St Nicholas Church in Warwick [27, 113-114, 164, 234, 252, 264, 267, 321]
- The Castle cannot be seen until it is revealed from Castle Bridge [112, 114, 164, 276]
- The Second Earl is likely to have sought to influence some aspects of the development including the design and materials of the Toll House and the relocated Castle Bridge [25].
- The Commissioners of the Toll Road are likely to have preferred a short functional route, even if the Second Earl had other objectives [268-269].

415. There is speculation by Dr Hodgetts of Warwickshire Gardens Trust and NC for the Council that when, in 1777, the Reverend William Gilpin had been told by the second Earl of Warwick that at Warwick Castle he intended to '*out-Brown anything that is down there, particularly with regard to the approach*' [97, 114-115] he was referring to the Banbury Road. However there is an at least equally plausible explanation by Dr Miele and Mrs Stoten that this was a reference not to Banbury Road but to the short rock-cut approach to Warwick Castle from the gatehouse [116, 271, 311, 320-323, 332]. That approach is wholly within Warwick town and it was later claimed as a proud achievement by the Earl himself [271]. Mrs Stoten also suggests that the relatively straight alignment of Banbury Road did not accord with the principles of the Picturesque movement which the Earl supported [281, 316]. However it would accord with other objectives that turnpike roads should follow the shortest and most convenient route [268-269]. The naturalistic and curving alignment of the rock cut approach leading to a sudden reveal would have been more in accord with the movement's objectives.

416. Even if Banbury Road was a designed approach intended to enhance one's experience of the designated heritage assets (which is uncertain), the key consideration would be whether the appeal development would affect that designed approach and thereby harm the significance of the assets themselves. In that regard the appeal development would generally be concealed from view when approaching Warwick along Banbury Road. There may be a very brief and glimpsed view in the vicinity of the Asps farm buildings where not concealed by those buildings and roadside vegetation. Otherwise there would only be an over the shoulder view from the vicinity of the toll house and through 2 new tree belts as well as existing roadside vegetation. Banbury Road would still be bordered by agricultural land and woodland along its length as far as the Toll House. In any event the appeal development would not encroach on the view down Banbury Road to St Nicholas Church.

417. It is concluded that, even if there was a designed approach to Warwick Castle along the Banbury Road (which remains uncertain), then this would not be materially harmed by the appeal development since it would be little visible on that approach, if at all, and agricultural land would remain east of Banbury Road to act as a foil to the adjacent park, if that was the intention.

#### *Comments of English Heritage/Historic England*

418. English Heritage objected to the site's proposed allocation for development in the 'Preferred Options' for the Local Plan because of harm to the setting and significance of heritage assets) [76]. However English Heritage was then considering a joint allocation of the appeal site with the land to the west that is much closer to Castle Park on the opposite side of Banbury Road. Because of its larger scale and closer proximity that development would have had a different and potentially greater impact on the setting of the Park than would the appeal proposal.

419. When commenting on the subsequent planning application for the appeal site alone, English Heritage suggested that the harm to views out of the park would alone make the development unacceptable [168]. However: English Heritage did not provide supporting evidence that these were planned or designed views; they did not identify this as substantial harm; and in identifying less than substantial harm they failed to apply national policy in the Framework which requires that such less than substantial harm be weighed with any public benefits [62].

#### *Traffic in Warwick Conservation Area*

420. The traffic impact of the development was assessed as part of the Environmental Statement and is considered below, as are the related air quality considerations. Several persons have expressed concern that any additional traffic in Warwick town centre would harm the character of the Conservation Area and deter visitors from appreciating the town's heritage assets and their significance [153, 155, 163, 167].

421. Whilst the M40 motorway and Warwick Bypass allow much through traffic to avoid the town centre, the town centre streets remain the shortest and often the quickest route for traffic between Warwick and Leamington Spa and also for movements between Leamington Spa and routes west including to and from Greater Birmingham. The town centre retains its mainly medieval road layout

and, like many such towns, it experiences significant traffic congestion and queuing at peak hours when junctions within the town centre are over capacity.

422. Traffic movements to and from the appeal site would be dispersed in several directions, whether directly to the M40 and Warwick Bypass or to and through Leamington Spa and Warwick. The planning obligation agreement includes measures to improve bus services and otherwise to support access by means other than the car [352]. The Transport Assessment concluded that there would only be a marginal increase in traffic movements in Warwick town centre as the result of this development and a negligible impact [295]. That would however be in addition to other committed development that has not yet been built and which would also likely add some traffic movements which have been included in the baseline model. After mitigation works that have already been included in the model, and which are not required for this development, the overall effect is likely to be slightly longer queues and a slightly extended peak period. No additional mitigation works are proposed in the town centre to support this development. Thus when junctions are already over capacity the flow of traffic could not increase.
423. I concur with the conclusions of the ES, the highway authority, and the LPA, and consider that given existing traffic levels and other committed development the marginal additional effect of the additional traffic from the appeal development on the character, appearance and heritage significance of the Conservation Area and other designated assets in the town centre would be negligible.

#### *Heritage Conclusions*

424. It is concluded that there would be no material harm to the setting or significance of Warwick Castle or any other listed building or ancient monument.
425. There would be some limited less than substantial harm to the setting and significance of the registered Castle Park and of Warwick Conservation Area. If there were intended to be planned views out of the park towards the appeal site, and if Banbury Road was a designed approach to the Castle (both of which remain very uncertain) then this would only add a negligible amount to that harm to significance. The harm would remain less than substantial. As LP Policy DAP11 does not allow for any harm to the setting of a registered park, no matter how slight, there would be a literal contravention of that policy. There would also be an arguable contravention of LP Policy DAP8 in respect of the Conservation Area, albeit that the latter policy has less stringent wording than DAP11.
426. In spite of the literal contravention of LP Policies DAP8 and DAP11, it is a material consideration that those policies are not consistent with more up to date national policy which in consequence reduces the weight to be accorded to that conflict. Moreover the identified less than substantial harm to the significance of heritage assets should instead be weighed with any public benefits of the development, as now required by the Framework.
427. The Council's suggestion that a precautionary approach should be applied in cases of uncertainty is not supported, particularly given the negligible harm identified, but also because of the prevalence of designated heritage assets in lowland Britain and the effect such an approach would have on development more widely.

428. Traffic congestion already affects the town centre and the appreciation of the significance of heritage assets there. The additional traffic movements from this development would have only a negligible impact.

### **Landscape and Visual Amenity**

429. There are 2 main aspects to the landscape and visual amenity considerations:

- a) The effect of extending the Warwick/Leamington built-up development south across Gallows Hill and west across Europa Way on the landscape character of the site and the wider Feldon Parklands Landscape Character Area.
- b) The effect of the development on visual amenity in views from public roads and footpaths and from private land.

#### *Landscape Character*

430. The appeal site and its surroundings display some of the key characteristics of the Feldon Parklands LCA [82] including a rolling topography along its southern edge, hedgerows, and adjacent woodland. However internal hedgerows have been removed to allow more intensive arable agriculture and there is a low voltage overhead powerline across the site. Mr Birkbeck accepted that the landscape is degraded but considered that it could be improved. However he did not suggest how this would be achieved [157]. The Appellant and LPA agree that the site's character is already influenced by the existing and emerging urban edge [82]. This includes the adjacent business park in Leamington Spa to the north east, the Warwick Technology Park to the north west. That influence will increase due to the extensive committed residential development to the north and east [14-18]. This is all a continuation in the present century of the expansion of the urban area in a south eastwards direction in the latter half of the 20<sup>th</sup> century [221].

431. Those recent and proposed developments have already resulted in inevitable changes to landscape character. The replacement of open agricultural land with housing would similarly change the character of the appeal site, as the ES acknowledges [210]. Junction works to serve committed development would already require the removal of most of the relatively recent hedge planting on the eastern site frontage. Much of the hedge on the northern site frontage to Gallows Hill will also need to be removed [223]. Whilst some mitigation planting to these frontages would be possible to soften the built development, it will appear from these directions as part of the extended urban area and no longer as open countryside. The site will be prominent from the adjacent roads to the north and east but its proximity to other existing and committed development on the urban edge means that it will not appear as isolated as the LPA suggests [127-131]

432. There is an opportunity for mitigation screen planting along the site's western edge [31]. Whilst that would not resemble the site's original internal hedgerows [22, 225]. But once mature it would be in character with nearby woodland and tree belts [228]. Although there may remain some visual permeability, the tree belt would reduce perceived impacts on landscape character in the wider area, including in views from Banbury Road.

433. The site's sloping southern edge is proposed to be retained as open space and green infrastructure [32]. Unless the Asps site to the south is also developed,

the appeal site development would form the new southern edge of the urban area. It would also link to similar open space in the proposed Country Park east of Europa Way [32]. Views of the site from the south would be against the backdrop of the extended urban area.

434. The LPA points out that no other built development has crossed the Gallows Hill road [129]. However that is to disregard the eastward continuation of the Gallows Hill road as Harbury Lane. The consented Lower Heathcote development will cross Harbury Lane and will be much more extensive than the appeal scheme. It will be equally prominent in views from the south but would be similarly fringed by green infrastructure and open space. The 2 developments would be readily and safely accessible to each other across Europa Way via a traffic light controlled level junction for vehicles, cycles and pedestrians. The appeal scheme will be similarly connected across Gallows Hill to the north and will then adjoin new residential development on 2 sides and.
435. It is notable that when the appeal site was removed from the emerging Local Plan, that was for reasons of heritage impact rather than landscape impact [76]. The Appellant points out that the LPA's landscape consultant Mr Morrish had not found the landscape impact to be unacceptable even when the development was also to include the Hallam land to the west [216-219]. This may be contrasted with his recommendation then that the development of the land to the south at the Asps would have been unacceptable on landscape grounds. The scale and landscape impact of the development which Mr Morrish did previously consider acceptable has since been reduced in that the Hallam land to the west is no longer included in the current appeal proposal. Whilst Mr Morrish claimed at the Inquiry that he had been considering a different form of employment development for the site, that was not stated in either his original report or in the proposed allocation in the Preferred Options document [219]. The proposed landscape structure for the appeal site is not dissimilar to Mr Morrish's recommendations in the 2012 report [219].
436. That the development would have some adverse impact on local landscape character means that there would be a literal conflict with criterion (c) of LP Policy DP3. However that is likely to apply to any similar scheme for built development of a greenfield site in the District. There is no evidence that sufficient housing land can be identified to meet the needs of the District and the wider Housing Market area without using greenfield land.

### *Visual Amenity*

437. The appeal site is not closely overlooked from existing residential areas and there is agreed by the LPA to be no residential amenity objection [82]. The development would be seen at close quarters by those passing the frontages on Gallows Hill and Europa Way, but only in the context of similarly visible development on the opposite side of the same roads that will already be extending the urban area.
438. Some more distant views of the housing will be available from an east –west public footpath that crosses the Asps farmland to the south of the appeal site (ES Viewpoints 10 and 11). But this would be against the background of the existing urban area, which is already visible in the same views. The appeal development

would be at a similar distance from the viewer as the adjacent Lower Heathcote development which would have a similar appearance and with a similar green infrastructure along its southern edge. Were the Asps development to also go ahead then the appeal site would be hidden by that development and would be surrounded on 3 sides by residential development.

439. An important visual amenity consideration is the effect of development on the approach to Warwick along Banbury Road. Whilst this is related to some of the heritage arguments above it is independent of whether this was a planned or 'designed' approach to Warwick. It is also independent of whether there were intended to be outward views from the Park.
440. The value of the Banbury Road approach to Warwick town centre through a green corridor of open countryside was recognised by Sir Patrick Abercrombie in 1949 [126]. This essentially rural green corridor passes through a typical Feldon Parklands landscape and has survived in spite of subsequent very extensive development of business and residential areas to the south of Leamington Spa and to the east of Warwick. There has also been some more limited development on the outskirts of Warwick town centre on either side of Banbury Road at Warwick Scholl and Bridge End that has nevertheless been generally set back from the road..
441. The attractiveness of the Banbury Road approach does not depend on whether it was a planned picturesque approach or on whether there were intended to be outward views across the road from the Castle Park. However it derives from the continuous woodland along the edge of the Park on one side, the open fields and woodland on the opposite side and the immediacy of the arrival at the New Bridge, with its view of Warwick Castle, shortly followed by entry into the town centre with its conservation area and numerous listed buildings. The ES confirmed that this remains the only such entrance to the town [Footnote 44].
442. Whether the appeal site development would detract from this approach depends on its degree of visibility from Banbury Road. From the southern part of the route the site would be concealed by higher ground. There may be a distant glimpsed view beyond farmland in the vicinity of the Asps farm buildings but that view would be largely concealed by those foreground buildings and vegetation. For the middle section of the route towards Warwick the road dips and the site would be concealed by woodland. When the road turns west for the final straight run towards the town there is the possibility of a glimpsed view towards the appeal site but only through a gap in roadside vegetation which will be filled when the recently planted tree belt on the Hallam land matures. That is VP23 in the ES or VP5 in Document JEP-9 of Mr Peachey's evidence which includes visualisations of the development as the planting matures. Passing the toll house a backward view over the shoulder and across and the intervening Hallam Land field would currently be possible at ES VP24 (VP4 in Document JEP-9). Vegetation was cleared for the recent junction improvements but that screening would be restored when the recently planted tree belt and the proposed tree planting along the site's western edge matures.
443. It is concluded that the overall impact on visual amenity in views from Banbury Road would be only slightly adverse. This is because: agricultural land between the appeal site and Banbury Road would not be built on as part of this proposal; the essentially rural green corridor would remain substantially

unchanged; only occasional glimpsed distant and/or oblique views would be available of development on the appeal site from short sections of the route; there would be significant mitigation by existing and new planting that would substantially conceal the development in these views within a few years; and most views from Banbury Road would be from fast moving vehicles.

### **Precedent and Prematurity**

444. The LPA did not include considerations of precedent and prematurity as reasons for refusal but made representations on these matters at the Inquiry [136-139]. The Appellant's response is at paragraphs [214-215].
445. In relation to precedent the LPA considers that to allow the appeal would undermine the heritage objection to the development of other land east of Banbury Road and South of Gallows Hill. Essentially this relates firstly to the land west of the appeal site that is controlled by the Rule 6(6) parties (the Hallam land) and secondly to the land south of the appeal site (The Asps) which was the subject of the previous appeal Inquiry that is currently before the Secretary of State [78].
446. In respect of the adjoining Hallam land to the west, there are significant differences between that site and the current appeal site; chiefly that it would lie immediately opposite the Castle Park with no remaining open land in between but with a newly planted tree belt along the frontage to Banbury Road. The landscape and heritage impacts would therefore be different. The future of that site is likely to be determined through the Local Plan process when the representations seeking its allocation would be considered alongside other evidence of housing need and supply, including the constraints that apply to candidate sites.
447. In respect of the adjoining Asps site to the south, the evidence and the Inspector's report is before the Secretary of State and that appeal will be determined on its own merits. It is likely that a decision on that appeal will be issued either before a decision on this current appeal or at the same time. In any event the Secretary of State's actual decision on the Asps appeal and its supporting reasoning would carry more weight in relation to the future of that site than would his decision on this neighbouring site.
448. It is not considered that considerations of precedent would warrant the dismissal of the appeal.
449. Turning to prematurity considerations, the PPG at 21b-014-20140306 in summary provides that the refusal of permission on these grounds is unlikely to be justified other than when it is clear that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits. The PPG advises that such circumstances are likely to be limited to situations where either: (a) the development is so substantial or its cumulative effect so significant that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location and phasing that are central to an emerging Local Plan; or (b) the emerging plan is at an advanced stage but is not yet part of the development plan.
450. In this case the emerging local plan has stalled and is likely to be significantly revised before it continues towards adoption. The plan in its final form is thus

not at an advanced stage and (b) above should not apply. In relation to (a) the LPA has acknowledged that additional development land needs to be identified [139]. Whilst no specific alternative locations have been identified there are obvious constraints such as the Green Belt that covers 80% of the District including land north and west of the Warwick/Leamington built up area [53]. Considerations of prematurity have not prevented the Council from granting planning permission on many of the proposed Local Plan allocation sites including large developments immediately adjoining the appeal site [77]. The appeal development would not be a significant departure from that strategy and may reduce the need to seek sites in the Green Belt.

451. Therefore, and subject to the other identified issues and the outcome of the planning balance, it is not considered that the appeal should be dismissed on the grounds of prematurity.

## **Other Matters**

### ***Agricultural land quality***

452. Interested persons point out that the appeal site is mainly Grade 2 'best and most versatile agricultural land' [157, 162] which the Framework paragraph 112 identifies as having economic and other benefits. The same paragraph seeks that where significant development of agricultural land is necessary, LPAs should seek to use poorer quality land in preference to that of higher quality [64]. In this case the LPA has already identified the need to release agricultural land for development including the adjoining sites to the east and north. Warwick and Leamington Spa are the main urban settlements in the District outside the Green Belt. It is not disputed that most land around the edges of both towns qualifies as best and most versatile land and there is no evidence that the housing needs of the HMA can be met only by avoiding development of such land. Neither, and in spite of a literal conflict with LP Policy DP3(g), was agricultural land quality a reason for refusal of the planning application.

### ***Transport and traffic impacts***

453. There is no reason for refusal relating to transport or traffic issues and no objection from the Highway Authority. No conflict with adopted LP policies has been claimed by the LPA. The Highway Authority has concluded a Highways and Transportation Statement of Common Ground with the Appellant that agrees improvements to the road network adjoining the site, improvements to bus services, and contributions to improve off-site pedestrian and cycle access [86-87]. The County Highway Authority delegated to its officers the response to the consultation on the planning application. If some elected County Council members do not agree with their professional officers that is an internal matter for the County Highway Authority [152, 155].

454. Objections from other interested persons mainly focus on: the traffic impact on Warwick town centre; sustainability; and cumulative impacts with other developments that have already been consented or which are proposed for allocation in the ELP [152, 153, 155, 156]. In relation to Warwick town centre they refer to existing congestion issues, especially at peak times. The Appellant has modelled the traffic impact in the town centre using modelling information agreed with the County Highway Authority. This concluded that at peak times the development would add 1 vehicle every 1 minute 20 seconds to the traffic

crossing Castle Bridge. This may marginally extend existing peak hour queues or the length of the peak hour but that was assessed as a negligible impact. Whilst the Highway Authority may have an ambition to achieve an overall reduction in traffic through Warwick town centre [155] that is unlikely to be achieved by refusing all new housing development whether it is located in or adjoining the built up areas of the 2 towns or in locations outside the towns that also rely on access to services and employment in the town centre or across the urban area.

455. In relation to sustainability, the development would adjoin committed development which includes the provision of local facilities that would be accessible on foot or by cycle [16]. They include a proposed primary school. The contribution to bus service improvements would be of benefit to other committed developments in the area and would provide alternative means of access to both town centres, the Leamington Shopping Park and rail services [18, 297].
456. The cumulative impacts of other committed developments in the area were included in the traffic modelling. This will not have included the Asps development but that will have been assessed separately.
457. Whilst the household projections indicate that the need for housing may be growing more strongly in Coventry than elsewhere in the HMA [159], it does not follow that new housing south of the built up area of Warwick and Leamington Spa will be occupied only or mainly by those travelling to work in Coventry as some suggest [165, 169]. Residents will choose to live in the most convenient locations for their needs and would be likely to move from a variety of locations including from the north side of the Warwick/Leamington Spa urban area.

### ***Air quality***

458. Warwick town centre is an Air Quality Management Area in recognition of its existing poor air quality and the harm that can be caused to health. Some interested persons consider this would be unacceptably aggravated by the appeal development [156]. The transport assessment and the air quality report indicate that the additional traffic that the proposal would generate would have only a negligible impact on emissions and air quality [292-300]. The mitigation measures are said to exceed the minimum requirements of Warwick District Council's Air Quality Action Plan (Addendum) – Low Emission Strategy such that air quality impacts will be less than those modelled [294].

### ***Tourism***

459. Tourism is important to the local economy of Warwick and there is understandable concern from some interested persons about anything which may be perceived to make Warwick less attractive to visitors [153, 155, 163]. However large numbers of tourists are drawn to the castle and the town notwithstanding that it already experiences peak hour traffic congestion and associated poor air quality in the main streets, some of which effects will be attributable to traffic movements by the tourists themselves.
460. It has not been demonstrated that the marginal increase in traffic movements due to this development, or its other impacts, would have any significant effect on tourist numbers. No additional highway works are proposed in the town centre to support this particular development. Moreover the town centre businesses can expect to experience some additional trade from the new

residents and their guests, including from those who would use means other than the car to reach the town centre.

### ***Martyrs' memorial***

461. There is no evidence of any archaeological remains associated with a previous use of the site for a gallows [301]. However an agreed condition would require a programme of archaeological work. The Appellant has not commented on whether there should be a memorial on the site and that is a matter that would be more relevant to the design of the scheme at the reserved matters stage.

### **Planning Obligation**

462. The S106 planning obligation agreement between the LPA and the Appellant and landowners covers all the matters referred to as reasons for refusal [349-352]]. However the Appellant has queried whether all of the obligations satisfy the requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and the Obligation Agreement itself provides that if the '*Planning Inspector or Secretary of State in the Decision Letter*' concludes that any of the planning obligations or the monitoring fee or any part of the obligation are incompatible with Regulations 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) then that shall cease to have effect. In particular the Appellant queries the legality of the monitoring fee and the contributions to police and health services. The LPA has provided a CIL compliance statement [353].

#### *Monitoring fee*

463. I agree with the conclusions of Appendix D of the CIL compliance statement [353] which explains that the monitoring fee is necessary as the large scale housing site with multiple contributions requires additional monitoring work over and above the Council's statutory duties. It sets out how the sum has been calculated including the activities to be carried out and the hourly rate of the officer.

#### *Police services*

464. The contributions for police services are similar to those which the Secretary of State has previously endorsed as compliant with Regulation 122 [354]. I consider that the CIL compliance statement shows that they are also compliant with Regulation 123 [353].

#### *Health services*

465. The contribution to health services provided by the South Warks NHS Foundation Trust are similar to those previously supported in principle by Inspectors at both cited appeals as compliant with the CIL regulations [355]. In particular the payments are justified in circumstances (as here) where no retrospective payments would be available through the NHS funding system to recover the cost of local increases in the population served by the Trust. The Inspector for the Shipston on Stour appeal appears to have mistakenly understood that these sums could be recovered from other sources when the Trust's evidence now is that they cannot [356]. Thus the contributions are justified as necessary.

466. The contribution towards the expansion of the Warwick Gates GP Surgery meets the test of Regulations 122 and 123.
467. In conclusion it is considered that all of the planning obligations satisfy the tests of the regulations and should come into effect in the event that the appeal is allowed.

### **Benefits**

468. As acknowledged by the LPA there is a significant shortfall in the 5 year supply of housing land which ought to be accorded considerable weight. The supply of housing to address an acknowledged need for market and affordable housing would have significant economic and social benefits and contribute to the Framework aim to boost significantly the supply of housing. Similar benefits might also be achieved by the allocation of additional housing land through the Local Plan process. However the Local Plan is unlikely to proceed unless and until there is agreement between the Warwickshire local planning authorities on the amount of housing provision and its distribution between the authorities. There would be an inevitable delay as the identified housing sites would need to go through a process of sustainability appraisal, public consultation and examination. Once adopted in the Local Plan planning permission would need to be sought for each site and it is likely that there would be pre-commencement conditions to comply with, adding to the delay before housing delivery could commence. The additional housing land would thus not be available 'immediately' as suggested in closing by the LPA [142].
469. It would be a significant benefit that to allow the appeal would address some of the identified shortfall in housing provision at a much earlier date and that there would consequently be a greater contribution to meeting the current 5 year shortfall than would be the case for a development of the same scale to be allocated elsewhere through the Local Plan or through new Local Plans for other LPAs in the same HMA.
470. There would also be some environmental benefits to set against the identified environmental harm; in particular the inclusion in the development of significant new green infrastructure and open space which has potential benefits for biodiversity as well as social benefits.

### **Planning Balance**

471. Because of its location in the countryside the development would be in literal conflict with the adopted Local Plan in that it would not accord with Policy RAP1 of the LP. However that housing supply policy is agreed by the main parties to be out of date. That is an important material consideration. There is also some literal conflict with the LP heritage policies. However those policies fail to provide for the balancing of harm with any public benefits. They are not in that respect consistent with national policy in paragraph 134 of the Framework which is another important material consideration.
472. That the LPA agrees that there is a lack of the 5 year housing supply required by paragraphs 47 and 49 of the Framework also brings into play the similar balancing test in paragraph 14 of the Framework.
473. The relevant policies in the emerging ELP only merit limited weight in that it is not an adopted development plan and the examining Inspector has indicated that

the housing supply policies are currently unsound. The other ELP policies have yet to be examined and are subject to representations such that they may change prior to the adoption of the ELP.

474. The public benefits of the development identified above therefore need to be weighed with the identified harm for the purposes of paragraphs 14 and 134 of the Framework. It needs to be established whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. If they would not then this would mean that this is a sustainable development to which the presumption in favour of sustainable development would apply.
475. The identified harm to heritage assets is limited, less than substantial, harm to the setting and significance of the registered Castle Park. This arises from the development of some of the open agricultural land that had a previous association with the Park and which would be visible from some of the same positions as would external views of the Park. As the Park is part of the Warwick Conservation Area there would be similar limited harm to the setting significance and appearance of the Conservation Area in these same external views. The Castle is further from the site and the impact on the setting and significance of the Castle and other designated heritage assets is assessed as negligible.
476. There would be some harm from the change to the landscape character of the appeal site as part of the Feldon Parklands landscape character area. However on the appeal site that landscape has already been degraded by the loss of internal hedgerows, and its character is also now heavily influenced by existing and committed urban development of adjacent land. That also already affects visual amenity in views from the adjacent roads and a public footpath. There would be some slight adverse harm to visual amenity for those using Banbury Road although but that road would still adjoin open agricultural land and the generally glimpsed and distant views of the development would reduce as new planting matures.
477. In relation to the other matters the loss of best and most versatile land is likely to be unavoidable if the identified housing needs of Warwick District the wider Housing Market Area are to be addressed. The traffic impacts and associated air quality impacts are considered to be negligible.

### **Overall Conclusions and Recommendation**

478. The overall conclusion is that the development would be in contravention of the adopted development plan but that there are important material considerations why a decision should be taken otherwise than in accordance with the development plan. In particular relevant policies are out of date and inconsistent with more recent national policy. The limited and less than substantial harm to the setting and significance of heritage assets and the limited harm to landscape character and visual amenity does not significantly and demonstrably outweigh the shortfall in housing supply against identified needs. Considerable weight should be accorded to the benefit of contributing a significant amount of housing to address these needs including the 40% provision of affordable housing. This is therefore a sustainable development in the terms of the Framework and the Framework's presumption in favour of such development should apply here.

479. For the above reasons the recommendation is that the appeal be allowed subject to the conditions set out on the attached schedule.

*R P E Mellor*

INSPECTOR

## SCHEDULE OF CONDITIONS

### *Timing*

- 1) This permission is granted under the provisions of Article 4(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010, as amended, on an outline application and the further approval of the Local Planning Authority shall be required to the under-mentioned matters hereby reserved before any development is commenced: -

- a. layout
- b. scale
- c. appearance
- d. landscaping

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 as amended.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

- 3) The development to which this permission relates shall begin within three years of the date of this permission or within two years of the final approval of the reserved matters, whichever is the later.

REASON: To comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

### *Access*

- 4) No dwellings shall be constructed until the access to the site from Europa Way has been located and laid out in general accordance with drawing 11050943/SK033 Rev I and no dwellings shall be occupied until the full crossroads junction with pedestrian crossing shown on Drawing 11050943/SK/037 Rev C (or the pedestrian crossing alone) has been constructed.

REASON: In the interests of highway safety and the free flow of traffic and to ensure safe future pedestrian access to facilities east of Europa Way.

- 5) If the junction to the north as approved under planning permission ref: W/14/0967 has been implemented the access to the site from Gallows Hill shall be located and laid out in general accordance with drawing C14171-615-p1; or alternatively if the junction to the north has not been implemented that access shall be located and laid out in general accordance with drawing number C1471-614-p1.

REASON: In the interests of highway safety and the free flow of traffic.

- 6) The access to the site for occupants'/residents' vehicles shall not be used in connection with the development until it has been surfaced with a suitable bound material for its whole length.

REASON: In the interests of highway safety.

## *Design*

- 7) The development hereby permitted shall be carried out substantially in accordance with the details described in the Design and Access Statement and as shown on the site location plan and drawing numbers BIR.4361-02A-3 and BIR.4361-01k and specification contained therein although for the avoidance of doubt the illustrative masterplan is not approved.

REASON: For the avoidance of doubt and to secure a satisfactory form of development. The application is in outline with all matters (save access) reserved and the condition is to ensure that those details that have not yet been submitted are appropriate to the locality in terms of visual and residential amenity and reflect the scale and nature of the development assessed in the submitted Environmental Statement and that they accord with adopted planning policy and strategy.

- 8) No reserved matters application for any phase of the development shall be submitted until there has been submitted to and approved in writing by the Local Planning Authority a Site Wide Design Code for the approved development. This Design Code shall be in accordance with the principles and parameters as set out within "Garden Towns, Villages and Suburbs: A Prospectus for Warwick District Council, May 2012" (and any subsequent revision and/or approved plans/strategy available at the time).

The Design Code shall include the following matters:

- a. hierarchy of streets/routes/sections (including the extent of adoptable highways and associated areas)
- b. Development blocks including built form and massing and relationship with adjoining development areas/blocks including areas of transition between development parcels (including the relationship between built form and adjoining open space);
- c. Building types
- d. Building heights
- e. The means to accommodate the parking of vehicles and cycles
- f. Sustainable Urban Drainage features
- g. Key spaces, open spaces and green features
- h. Architectural language and detailing
- i. Design principles for street tree planting and other structural planting landscaping areas
- j. Design principles on hard and soft landscaping treatments (including surfacing materials for all public realm) and proposals for their long term management
- k. Design principles on waste disposal and recycling
- l. Design principles on the colour and texture of external materials and facing finishes for roofing and walls of buildings and structures
- m. Design principles for street lighting and any other lighting to public space (including parking areas)

- n. The principles shall include a regulating plan on an ordnance survey base at a scale no greater than 1:1250
- o. A mechanism for periodic review and refinement if necessary of the approved Design Code

The Design Code shall then be used to inform the subsequent reserved matters applications.

REASON: In the interests of good urban design and a comprehensively planned development.

- 9) No reserved matters application for any phase of the development shall be submitted until there has been submitted to and approved in writing by the Local Planning Authority a Site Wide Masterplan for the approved development, which shall substantially be in accordance with the plans and documents submitted with this application and the principles set out within the Council's approved document 'Garden Towns, Villages and Suburb: A Prospectus for Warwick District Council, May 2012' (and any subsequent revision and/or approved plans/strategy available at the time), and which shall also accord with the principles set out in the approved Site Wide Design Code.

The Site Wide Masterplan shall include the following:

- a. Illustrative details of how the proposed layout of development has been designed with due regard to the surrounding urban and rural context
- b. Land form topography as existing and proposed
- c. Land use plan and character areas (including densities and building heights)
- d. Movement corridors within the site (including principal roads, public transport corridors, footpaths, cycleways and green corridors) and demonstrating how these relate to existing movement networks in the wider area
- e. Location of any areas for off-street car parking areas and courts
- f. Key infrastructure (including SUDs, significant utility provision, schools, district/local centres)
- g. Landscape corridors and open space network
- h. Public open space
- i. Housing mix including tenure and size of dwelling
- j. Location of affordable housing
- k. Street tree planting and other structural planting landscape areas
- l. Hard and soft landscaping treatments
- m. Street lighting arrangements and any other lighting to public space
- n. A phasing plan including triggers for delivery of key elements of supporting infrastructure
- o. A statement establishing how the development proposals accord with the principles set out in the Site Wide Design Code.

REASON: In the interests of good urban design and a comprehensively planned development.

*Tree Protection*

- 10) No phase of the development hereby permitted shall be commenced and nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place for that phase of the development. The scheme must include details of the erection of stout protective fencing and be in accordance with British Standard BS5837: 2012, a Guide for Trees in relation to construction. Nothing shall be stored or placed in those areas fenced in accordance with this condition and nor shall the ground levels be altered or any excavation take place without the prior consent in writing of the local planning authority. The approved scheme shall be kept in place until that phase of the development have been completed and all equipment, machinery and surplus materials have been removed.

REASON: In order to protect and preserve existing trees within the site which are of amenity value.

*Ecology and Landscape*

- 11) The landscaping matters reserved for subsequent approval by Condition 1 shall include details of landscape buffer of native trees and shrubs not less than 20m in width to the site's western boundary and shall include a programme for its implementation early in the construction period. For the avoidance of doubt, this condition shall not apply if, at the programmed date of planting, the comprehensive residential development of the land to the west has, either been the subject of an allocation in an adopted development plan, or if that land then has planning permission for such comprehensive residential development.

REASON: In order to mitigate the landscape impact of the development.

- 12) No phase of the development hereby permitted shall, for that phase of the development, commence until a detailed Landscape and Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of planting and maintenance of all new planting. Details of species used and sourcing of plants should be included. The plan shall also include details of habitat enhancement/creation measures and management, such as native species planting, wildflower grassland creation, woodland and hedgerow creation/enhancement, and provision of habitat for protected and notable species (including location, number and type of bat and bird boxes, location of log piles). Such approved measures shall thereafter be implemented in full for the phase of development.

REASON: To ensure a net bio-diversity gain in accordance with the National Planning Policy Framework (NPPF).

- 13) No phase of the development hereby permitted (including vegetation clearance) shall commence until further breeding bird surveys of the site have been carried out and a detailed mitigation plan including a schedule of works and timings for the relevant phase has been submitted to and approved in writing by the Local Planning Authority. Such approved mitigation plan shall thereafter be implemented in full.

REASON: To ensure that protected species are not harmed by the development.

- 14) No phase of the development hereby permitted shall commence until adequate measures have been taken to protect Local Wildlife Site, Tach Brook, with associated habitat and areas of woodland (potential LWS Turnbolls Garden), during development. A barrier, such as a wire fence, should be erected before works start. This fenced area should include a buffer zone between the development and the boundary of the LWS and woodland. No access or storage of materials within this buffer zone shall be permitted.

REASON: To ensure the protection of important habitats during development.

- 15) No phase of the development hereby permitted shall commence until a Construction and Environmental Management Plan (CEMP) in accordance with BS 42020:2013 has been submitted to and approved in writing by the local planning authority for that phase of the development. In discharging this condition the LPA expect to see details concerning pre-commencement checks for protected and notable species with subsequent mitigation and monitoring as deemed appropriate. In addition appropriate working practices and safeguards for other wildlife dependent of further survey work, that are to be employed whilst works are taking place on site. The agreed Construction and Environmental Management Plan for that phase of the development shall thereafter be implemented in full.

REASON: To ensure that protected species are not harmed by the development.

#### *Lighting*

- 16) No development shall take place under any relevant phase of the development until a detailed lighting scheme for that phase which shall use low energy lighting has been submitted to and agreed in writing by the local planning authority. In discharging this condition the local planning authority expects lighting to be restricted around the boundary edges, particularly along hedgerows, where protected species are likely to be found, and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats and other nocturnal wildlife. This could be achieved in the following ways:

- a. low energy LED lighting should be used in preference to high pressure sodium or mercury lamps;
- b. the brightness of lights should be as low as legally possible;
- c. lighting should be timed to provide some dark periods; and
- d. connections to areas important for foraging should contain unlit stretches.

Such works, and use of that lighting and/or illumination, shall be carried out and operated only in full accordance with those approved details.

REASON: To ensure that any lighting is designed so as not to detrimentally affect the amenities of the occupiers of nearby properties and to ensure that appropriate measures are taken in relation to protected species.

#### *Archaeology*

- 17) No phase of the development hereby permitted shall take place on site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of

investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority for each relevant phase.

REASON: To ensure that no deposits of archaeological interest are destroyed or recorded as appropriate.

*Site Investigation*

18) No phase of the development shall take place unless and until:

- a. A site investigation has been designed for the relevant phase using the information obtained from the desk-top study and any diagrammatical representations (conceptual model). This should be submitted to and approved in writing by the planning authority prior to that investigation being carried out. The investigation must be comprehensive enough to enable:
  - i. A risk assessment to be undertaken relating to human health
  - ii. A risk assessment to be undertaken relating to groundwater and surface waters associated on and off site that may be affected.
  - iii. An appropriate gas risk assessment to be undertaken
  - iv. Refinement of the conceptual model
  - v. The development of a method statement detailing the remediation requirements
- b. The site investigation for that phase has been undertaken in accordance with details approved by the planning authority and a risk assessment has been undertaken.
- c. A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters using the information obtained from the site investigation for the relevant phase, has been submitted to the planning authority. The method statement shall include details of how the remediation works will be validated upon completion. This should be approved in writing by the planning authority prior to the remediation being carried out on the site. All development of the site shall accord with the approved method statement. If during development of each relevant phase, contamination not previously identified, is found to be present at the site then no further development within that phase shall take place until an addendum to the method statement addressing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the LPA. Prior to the commencement of each relevant phase of the development, a report shall be submitted to the Local Planning Authority that provides verification that the required works, regarding contamination for that part of the site, have been carried out in accordance with the approved method statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

REASON: To ensure that appropriate mitigation and remedial works are undertaken to protect future occupiers of the development.

### *Housing Mix*

- 19) The mix of type and size of market dwellings submitted as part of any reserved matters application must accord with the recommendations contained within the most up to date version of the "Development Management Policy Guidance: Achieving Mix of Market Housing on new Development Sites".

REASON: To ensure that the housing meets the needs of the District.

### *Energy*

- 20) No phase of the development hereby permitted shall not be commenced unless and until a scheme showing how at least 10% of the predicted energy requirement of the development of that phase will be produced on or near to the site from renewable energy resources, has been submitted to and approved in writing by the Local Planning Authority. The phase of development shall not be first occupied until all the works within the approved scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.

REASON: To ensure that adequate provision is made for the generation of energy from renewable energy resources in accordance with saved Policy DP13 of the adopted Local Plan.

### *Drainage and Fire Hydrants*

- 21) No phase of the development hereby permitted shall be carried out other than in strict accordance with the details of surface and foul water drainage works and a detailed scheme for the disposal of surface water (incorporating where possible Sustainable Urban Drainage principles) for that phase which shall have been submitted to and approved in writing by the local planning authority.

Details to be submitted shall include:

- a. a detailed design flood risk assessment for the site to incorporate both fluvial and pluvial flooding mechanisms and any effects on existing water bodies or drainage systems including: - plans showing the existing and proposed drainage systems including levels, sizes, material, fall and construction details and standards in comparison to finished floor levels along with Manhole schedules;
- b. Plans defining the water catchment areas for the site including the offsite catchment areas that contribute to the drainage areas. This plan should show areas of impermeable and permeable surfaces of the proposed site including calculations of these areas in a clear labelled table;
- c. The applicant is to provide calculations/models of pipe flows, discharge rates from the site and flood storage volume and design water levels reducing the off-site discharge rates to mimic existing greenfield run off rates. This should include calculations for 1 in 1 year, 1 in 30 and 1 in 100 year + 30% climate change allowance;
- d. Provide calculations and percolation test results carried out on the site for the infiltration of water (if used), i.e. soakaways, swales, ponds with photos and attached report;
- e. To provide plans long and across sections through the site and a plan showing overload flow paths with arrows for storm events that exceed the capacity of the drainage systems; (vi)To provide details of the proposed

maintenance of water systems for the site into the future and a risk assessment for open bodies of water and structures, a plan showing the proposed phased development of the site together with details of discharge consents from the land drainage authority and Severn Trent Water.

REASON: To ensure that adequate drainage facilities are available.

- 22) No phase of the development hereby permitted shall be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes for that phase of the development, has been submitted to and approved in writing by the Local Planning Authority. No phase of the development shall be occupied until the scheme relating to that phase has been implemented to the satisfaction of the Local Planning Authority.

REASON: In the interests of fire safety.

#### *Security*

- 23) No development shall take place under any reserved matters consent until a scheme for that reserved matters consent has been submitted to and approved in writing by the Local Planning Authority indicating how and when the 'Secured by Design' standards will be incorporated into that phase of the development. The scheme shall be implemented in accordance with the approved details of that phase and shall be retained at all times thereafter.

REASON: In the interests of security.

#### *Construction Method Statement*

- 24) Any phase of the development hereby approved shall only proceed in strict accordance with a construction method statement for the relevant phase, which has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for: the parking of vehicles of site operatives and visitors; the loading and unloading of plant and materials; the storage of plant and materials used in constructing the development; wheel washing facilities and other measures to ensure that any vehicle, plant or equipment leaving the application site does not carry mud or deposit other materials onto the public highway; measures to control the emission of dust and dirt during construction; and a schedule for the movement of construction plant, associated equipment and deliveries.

REASON: In the interests of highway safety.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr T Leader	of Counsel (4-5 Grays Inn Square)
He called	
Mr S Sahota BSc(Hons) PGCertTP MA MRTPI	Planning Witness – Development Team Leader – Warwick District Council
Mr N Corbett MA BA(Hons) BPI MRTPI	Heritage Witness – Principal Conservation and Design Officer – Warwick District Council
Mr R Morrish CMLI	Landscape Witness – Warwick District Council
Mr A Gillham BA(Hons) DipTP MRTPI	Housing Supply Witness- Warwick District Council

### FOR THE APPELLANT:

Mr P Tucker	of Queen’s Counsel (Kings Chambers) instructed by A Bateman
Mr F Humphreys	Of Counsel (Kings Chambers)
He called	
Mr A C Bateman BA(Hons)TP MRICS MRTPI MCMi MioD FRSA	Planning & Housing Supply
Mrs G Stoten BA(Hons) MCIFA FSA	Heritage – Principal Heritage Consultant, Cotswold Archaeology
Mr J E Peachey BSc(Hons) M.LD CMLI	Landscape and Visual Matters
Mr N Brant MSc CMILT	Highways & Transportation Witness – Technical Director WSP Parsons Brinckerhoff

### FOR WILLIAM DAVIS LTD AND HALLAM LAND MANAGEMENT (THE RULE 6(6) PARTY):

Mr R Wald	of Counsel
He called	
Dr C Miele MRTPI IHBC	Heritage Witness – Senior Partner, Montagu Evans

### INTERESTED PERSONS:

Cllr J Holland	Warwickshire County Council
Mr J McKay	Chairman of the Warwick Society
Mr D Crips BSc(Eng) CEng MIET	Save Warwick Group
Mr J Birkbeck MA DipLA DipTP CertMgt CMLI (Retd) CMRTPI (Retd)	Save Warwick Group
Professor J Bishop MD FRCP	Save Warwick Group
Mrs J Russell	Warwick resident and owner of Mill Street Garden
Cllr R Bullen Dipl Arch RIBA	Bishops Tachbrook Parish Council (the appeal

Mr R Ashworth  
Dr C Hodgetts PhD

Canon E Stewart  
Mr T Jones

Ms A Graham-Paul

site lies in Warwick Town and is thus outside but adjacent to that parish)  
Chairman of the Leamington Society  
Conservation Secretary – Warwickshire Gardens Trust  
Catholic Church  
of Counsel (No 5 Chambers) representing Warks and West Mercia Police Authority  
of Counsel (Francis Taylor Building) for South Warks NHS Foundation Trust

<b>APPELLANT'S EVIDENCE</b>	
<b>Heritage Evidence of Mrs G Stoten</b>	
GS1	Proof
GS2	Appendices
GS3	Summary
<b>Landscape Evidence of Mr J Peachey</b>	
JEP1	Proof
JEP2	Appendices
JEP3	Summary
JEP4	Rebuttal of Mr Morrish's Evidence incl Figures JEP 12-15
Fig: JEP 9	Plans and photo visualisations
<b>Planning Evidence of Mr Bateman</b>	
ACB1	Proof
ACB2	Appendices Volumes 1, 2 and 3
ACB3	Plans Document
ACB4	Summary
<b>Highway Evidence of Mr N Brant</b>	
NB1	Proof
NB2	Appendices
NB3	Summary
NB4	Highways Statement of Common Ground between the Appellant and the Highway Authority
NB5	Brant email to D Crips dated 27 August 2015
<b>DISTRICT COUNCIL'S EVIDENCE</b>	
<b>Heritage Evidence of Mr Corbett</b>	
NC1	Proof
NC2	Appendices
NC3	Summary
NC4	Revised Summary
<b>Landscape Evidence of Mr Morrish</b>	
RM1	Proof
RM2	Appendices

RM3	Summary
<b>Planning Evidence of Mr Sahota</b>	
SS1	Proof
SS2	Appendices
SS3	Summary
SS4	Email of 18 August with attached letter of 27 March 2015 from Brandon Lewis to CE of the Planning Inspectorate
<b>Housing Land Supply Evidence of Mr Gilham</b>	
AG1	Proof
AG2	Appendices
AG3	Summary
AG4	Appendix F
<b>Housing Need Evidence of Mr Gardner (He was not called to appear)</b>	
JG1	Proof
JG2	Appendices
JG3	Summary
<b>RULE 6 EVIDENCE - WILLIAM DAVIS AND HALLAM LAND MANAGEMENT</b>	
<b>Heritage Evidence of Dr Miele</b>	
CM1	Proof
CM2	Appendices
CM3	Summary
CM4	Letters from Montagu Evans of 21 August and 1 September 2015 concerning late submission by C Hodgetts evidence
CM5	Written Landscape Statement to Support Evidence

<b>APPELLANT/RULE 6 PARTY – LIST OF ADDITIONAL DOCUMENTS SUBMITTED TO THE INQUIRY</b>	
ID1	Opening Statement on behalf of the Appellant
ID2	Opening Statement on behalf of the Rule 6 Party (William Davis and Hallam Land Management)
ID3-ID10	<i>Renumbered as statements from the Council and Other Interested Persons (see below)</i>
ID11	Note to Inspector with drawings to confirm which highway plans submitted by the Appellant are part of the outline application.
ID12	Air Quality Report July 2015 submitted on behalf of Appellant
ID13	Statement of Common Ground between Hallam Land and the Appellant.
ID14	Additional Air Quality Note submitted on behalf of the Appellant.
ID15	Housing Land Supply Tables showing position of Appellant, LPA & Mr Bullen
ID16	Series of photographs prepared by Mr Peachey on behalf of the Appellant
ID17	A3 Plan showing Green Infrastructure prepared by Mr Peachey on

	behalf of the Appellant.
ID18	Highways Briefing Note by Mr N Brant dated 26 August 2015 in response to 3 <sup>rd</sup> party representations
ID19	Aerial Photographs from 1940, 1999, 2008 and 2013 showing changes to the Toll House Junction on Banbury Road and also show boundary trees of Castle Park adjacent to Banbury Road.
ID20	Heritage Overlay Plans submitted by Ms G Stoten on behalf of the Appellant
ID21	Closing Submissions by the Appellant
ID22	Closing Submissions by William Davis and Hallam Land Management
ID23	Traffic Modelling and Transport Planning Notes by N Brant
ID24	Miele Replacement Appendix 20 (incomplete)
ID25	Miele Replacement Appendix 3
<b>COUNCIL'S LIST OF ADDITIONAL DOCUMENTS SUBMITTED TO THE INQUIRY</b>	
AD1	Opening statement on behalf of the Council
AD2	Planning Statement of Common Ground between the LPA and the Appellant
AD3	Housing Statement of Common Ground between the LPA and the Appellant
AD4	Appeal decision land east of Wellesbourne Rd/north of Wasperton Lane (W13/1465 – APP/T3725/A/14/2215618)
AD5	Appeal decisions land east of Wellesbourne Rd/north of Wasperton Lane (W13/1465 – APP/T3725/A/12/2215618 & W/14/0361 – APP/T3725/A/14/2222805)
AD6	Appeal decisions Homewood, 19 Kenilworth Rd (W11/1533 – APP/T3725/12/2184225 & W/12/0827 – APP/T3725/E/12/2186677)
AD7	Landscape Visuals pages 77-82 [Missing from the original Morrish appendices]
AD8	Draft Conditions
AD9	Letter from the Local Plan Inspector (28 August 2015) in response to LPA letter of 13 August 2015
AD10	Submission of HOW Planning LLP concerning the Asps appeal
AD11	Closing submission of the LPA at the Asps Inquiry
AD12	Section 106 planning obligation
AD13	Summary Table of S106 Contributions
AD14	CIL Regulations Compliance Statement
AD15	Housing briefing note by Gillham
AD16	Appeal decision concerning Land to the south of Fieldgate Lane, Whitnash, Leamington Spa (W/14/0907 – APP/T3725/A/14/2226904)
AD17	Closing submissions of the LPA
AD18	Warwick Castle Park Conservation Management Plan (Feb 2014)

<b>EVIDENCE OF OTHER INTERESTED PERSONS SUBMITTED BEFORE THE INQUIRY AND EXCEPTIONALLY ACCEPTED AFTER THE JANUARY 2015 CLOSING DATE FOR WRITTEN SUBMISSIONS</b>	
OIP1	J Birkbeck Landscape and Visual Statement and Appendices on behalf of Save Warwick Group
OIP2	J Birkbeck Summary
OIP3	R Bullen Statement and Appendices on behalf of Bishops Tachbrook Parish Council
OIP4	R Bullen Summary
OIP5	D Crips Highway Statement & Appendices on behalf of Save Warwick Group
OIP6	Dr C Hodgetts Statement, Appendices and Figures on behalf of Warwickshire Gardens Trust - 18 August 2015
OIP7	Warks and West Mercia Police submissions concerning S106 contributions - 16 February 2015
OIP8	Public Health Warwickshire Statement - 30 July 2015
OIP9	South Warwickshire NHS Foundation Trust – July 2015 addendum to evidence submitted in January 2015 including Counsel's opinion and 2 appeal decisions: Land N of Campden Road, Shipston on Stour Ref APP/J3720/A/14/2221748 and Land at Spring Lane, Radford Semele, Leamington Spa Ref APP/T3725/A/14/2221858
<b>EVIDENCE OF OTHER INTERESTED PERSONS SUBMITTED AT THE INQUIRY</b>	
OIP10	Statement by Mrs J Russell
OIP11	Statement by Richard Ashworth (Chairman) The Leamington Society.
OIP12	Statement by Warwickshire County Council Councillors A Warner, J Holland and J St John.
OIP13	Statement by Canon Edward Stewart
OIP14	Statement by Professor J.M Bishop 'Air Pollution in Warwick'.
OIP15	Statement by Councillor N Murphy of Warwick District Council/Warwick Town Council
OIP16	Statement by J Mackay
OIP17	Written questions dated 2 September from J McKay to N Brant on his briefing note of 26 August and matters raised at the Inquiry
OIP18	R Bullen Housing Supply Spreadsheets
OIP19	D Crips Further Statement
OIP20	D Crips Appendices to Further Statement
OIP21	Save Warwick Group Notes of evidence given by Hazel Fryer at the Asps Inquiry
OIP22	T Jones for WWM Police – Appeal Decision by Secretary of State - Melton Road, Barrow upon Soar Ref APP/X2410/A/12/2173673
OIP23	T Jones for WWM Police – Appeal Decisions by Secretary of State – Land off Mount Sorrel Lane, Rothley, Leics Refs APP/X2410/A/13/2196928 & APP/X2410/A/13/2196929
OIP24	A Graham-Paul for South Warks NHS Trust - Counsel's opinion concerning provision of payments for health services in Section 106 agreements



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

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

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

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

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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

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

### **SECTION 2: ENFORCEMENT APPEALS**

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

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

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

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

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the 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.