



Report to the Secretary of State for Communities and Local Government

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Town and Country Planning Act 1990
North West Leicestershire District Council

APPEAL BY

Hallam Land Management Limited

Inquiry held on 13 – 30 October 2009 and 30 November 2009

Land at Lower Packington Road and Measham Road, Ashby de la Zouch LE65 1TS

File Ref: APP/G2435/A/09/2102468

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ABBREVIATIONS

App	Appendix
DfT	Department for Transport
EMRP	East Midlands Regional Plan, March 2009
GOEM	Government Office for the East Midlands
IHT	Institution of Highways and Transportation
Mg/l	Milligram per litre
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
STW	sewage treatment works

Please note that 'Council' is used to mean North West Leicestershire District Council unless stated otherwise.

File Ref: APP/G2435/A/09/2102468

Land at Lower Packington Road and Measham Road

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Hallam Land against North West Leicestershire District Council.
- The outline application Ref 08/01588/OUTM is dated 6 November 2008. All detailed matters are reserved.
- The development proposed is for approximately 1000 dwellings, local centre with retail (A1, A3), business (B1), healthcare (D1) and community (D2) uses, expansion of Willesley Primary School, sports pitches, community park, pocket parks with public open space and equipped play areas, woodland planting, structural planting, balancing ponds and flood alleviation works, new highway access, roads, footpaths, cycleways and bus routes, plus ancillary works.

Summary of Recommendation: that the appeal be dismissed and that planning permission be refused

1. PROCEDURAL MATTERS

- 1.1 As reflected in the above details, the name of the appellant and the site address are incomplete on the application form. I take the former to be Hallam Land Management Limited, and the site address to be Land at Lower Packington Road and Measham Road, Ashby de la Zouch LE65 1TS, as stated on the appeal form.
- 1.2 Following a scoping opinion¹ issued by the local planning authority in August 2008, the application was accompanied by an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended (*Document A1G*). Along with comments from statutory consultees this constitutes environmental information, which I have taken into account for the purpose of this report. The sewage treatment mitigation measures now proposed are not included in the Environmental Statement, and they have been subject to change during the appeal process and up to the inquiry itself. This has given rise to a legal issue (*Document MH4/8-11*)². While accepting that this evolving mitigation has involved something of a 'paper chase', I have reported on the basis of my view that the currently proposed mitigation has been considered at the inquiry, and that in this case its absence from the Environmental Statement does not itself mean that to grant planning permission without further public consultation would be prejudicial to the interests of third parties.
- 1.3 On 24 April 2009 the Secretary of State directed that he will determine the appeal, for the reason that it involves proposals for residential development of over 150 units, or on sites of over 5 ha, 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.

¹ See Appendix 1 of Document A1G

² See also paragraph 11.4 below

- 1.4 A letter dated 27 April 2009 set out the matters about which the Secretary of State particularly wished to be informed for the purpose of considering the appeal. They include accordance with the development plan, consistency with Government policy in PPS1, PPS3 and PPG13, and planning conditions and obligations.
- 1.5 On 2 June 2009 the District Council's Planning Committee resolved that had the District Council been in a position to determine the application it would have refused planning permission for the following reasons³.
 - 1.5.1 *"The application site is on unallocated greenfield land located outside the limits to development of Ashby de la Zouch as defined in the adopted North West Leicestershire Local Plan and is therefore within the open countryside. The proposed development of the site would be contrary to Policy S3 of the adopted North West Leicestershire Local Plan.*
 - 1.5.2 *Notwithstanding the fact that there is not presently a five year supply of deliverable housing land, the proposed development of this site conflicts with the spatial vision of the adopted East Midlands Regional Plan (March 2009), which seeks to direct the majority of new housing development to the Coalville sub-regional centre in the plan period 2006-2026.*
 - 1.5.3 *The proposal would be detrimental to the landscape character of the area. Furthermore, it is considered that this application is contrary to the government guidance in PPS7 which seeks to protect the countryside from inappropriate development and to protect the countryside for its own sake.*
 - 1.5.4 *The proposed expansion of Ashby de la Zouch would also be detrimental to the character of town as the development proposal is out of scale with the existing settlement. The development would therefore be contrary to Policy 3, Policy 12 and Policy Three Cities SRS3 of the adopted East Midlands Regional Plan (March 2009).*
 - 1.5.5 *The development proposed would be unsuitable in terms of environmental sustainability given there is likely to be a considerable reliance on the private car to the serve the development. The proposed development would therefore be contrary to government guidance in PPG13, PPS3 and to Policy H4/1 of the adopted North West Leicestershire Local Plan.*
 - 1.5.6 *The applicant has not demonstrated that the application site is the most appropriate development site from a sustainability perspective and as such the proposal is contrary to the government guidance in PPS1 and PPG13 and to Policy H4/1 of the adopted North West Leicestershire Local Plan. Consequently, the approval of this development scheme may prejudice the development of other potentially more sustainable sites within the District of North West Leicestershire which will be determined as an integral part of the Local Development Framework process, including Sustainability Appraisal. Any approval would also be contrary to government advice set out in document 'The Planning System: General Principles'.*
 - 1.5.7 *The development submissions provide insufficient information to demonstrate that the development would not to be to the detriment of the internationally*

³ Document DC10

important interest features of the River Mease Special Area of Conservation, or any of the features of special scientific interest of the River Mease Site of Special Scientific Interest. As such the development would be contrary to Policy 33 of the adopted East Midlands Regional Plan (March 2009).

- 1.5.8 *The Highways Agency directs that planning permission is not granted as there are unresolved transportation issues in relation to the impact of the scheme in relation to the use of the Junction 13 of A42. Furthermore, the County Highway Authority advises that there is inadequate information upon which to assess the impact of the development on the existing highway and transportation network. As such the development submissions fail to demonstrate that the development would be acceptable in terms of highway safety and would thus be contrary to Policy T3 of the adopted North West Leicestershire Local Plan which states inter alia that development, including that of allocated sites, will be permitted only where its highway design and layout make adequate provision for vehicular access and circulation, and servicing arrangements.*
- 1.5.9 *Government guidance in Planning Policy Guidance Note 16: Archaeology and Planning indicates that development will only be acceptable in areas of archaeological potential if a proper evaluation of the archaeological implications of proposed developments have been undertaken prior to the determination of the application. The development submissions provide insufficient information to ensure that archaeological potential of the site is given future consideration. (NOT PURSUED)⁴*
- 1.5.10 *The development submissions provide insufficient information to demonstrate that having regard to the impact of the noise generated by the A42 that the proposed development would provide acceptable living conditions for residents of dwellings on the site in relation to the use of private and public amenity areas. As such the proposed development would be contrary to Policy E3 of the adopted North West Leicestershire Local Plan."*
- 1.6 A Pre-inquiry Meeting was held on 6 August 2009 (*Document OD1*).
- 1.7 At the inquiry I received two Section 106 planning obligations: an agreement and a unilateral undertaking from the appellant (*Documents AP15B & AP16B*). I take these into account in my report.
- 1.8 At the inquiry the North West Leicestershire District Council, the Highways Agency and the Packington Nook Residents' Association applied for awards of costs against the appellant. Those applications are the subject of separate reports.
- 1.9 At the inquiry it was confirmed by the advocate for the North West Leicestershire District Council that the representatives of the Leicestershire County Council and Natural England appeared as witnesses for the District Council and not for the County Council and Natural England in their own right.
- 1.10 My report includes a description of sources of background facts and agreed matters, the appeal site and its surroundings, the proposals, planning policy, the gist of the representations made, and my conclusions and recommendation.

⁴ See 6.8 of Document SoCG1

Lists of appearances and documents are appended. The documents include proofs of evidence and closing submissions. The proofs are as originally submitted and do not take account of how the evidence may have been affected by cross examination or other aspects of the inquiry. Similarly the closing submission documents are as handed in and do not include elaborations made during their delivery at the inquiry. I include an Annex of my recommended conditions in the event that the appeal is allowed and planning permission granted.

2. BACKGROUND FACTS AND AGREED MATTERS

- 2.1 A Statement of Common Ground between the appellant and the District Council was submitted at the beginning of the inquiry (*Document SOCG1*).
- 2.2 Also, a Statement of Common Ground on highways and transportation issues has been agreed by the appellant and the Leicestershire County Council (as local highway authority) (*Documents SOCG4 & SoCG5*). To distinguish it, I shall refer to this as the 'Highways Statement of Common Ground'⁵.

3. THE SITE AND ITS SURROUNDINGS

- 3.1 The appeal site comprises about 61 ha of agricultural land on the southern edge of the town of Ashby de la Zouch (*Document A1B*). To the north is residential development on the southern edge of the town together with Willesley County Primary School and Western Park. To the north east the site is bounded by Lower Packington Road and a sports ground. To the west the site boundary runs along Measham Road (the B5006) and is indented to exclude some development including a grade II listed building at Rotherwood. On the other side of Measham Road is a row of dwellings, Willesley Park and a golf club. Properties at Middle Barn and Mill Farm are also excluded from, but are surrounded by, the site (*Document A1B*). To the south west the site adjoins agricultural land and to the south east it is bounded by the A42 trunk road, beyond which lie agricultural land and the village of Packington.
- 3.2 The A42 here lies between Junctions 12 and 13, which are about 1 km to the south west and 2 km to the north east, respectively. The A42 runs in a cutting alongside the southern part of the site but, to the north east of this, traffic on this road is visible from parts of the site through the trees and shrubs growing along the south east edge of the site.
- 3.3 The site's arable and pasture fields extend across gently undulating land which rises to a ridge by the south west side of the site. Field boundaries include hedgerows of varied composition with a number of mature and semi-mature trees. An avenue of mature lime trees is located near the north western corner of the site. These trees are the subject of a Tree Preservation Order (*Document L3*). On the other side of the site substantial parts of the proposed development area are visible from the approach to the town along Lower Packington Road (*Documents A1G/6/E, AP3A/2&3*). Further out from the town, beyond the A42, the countryside takes on a more open character (*Documents LP1/7.410, AP3A/2/Figs.5*).

⁵ The appendices referred to in the Statement (Document SoCG4) are to be found in other documents, as set out in Document SoCG5

- 3.4 The site's highest point is 135 m AOD on its south western boundary and its lowest point is 110 m AOD near Mill Farm (*Document SoCG1*). From the west the land falls to the Gilwiskaw Brook, which flows southwards through the site from the town, past Mill Farm, and then under the A42 to Packington. Beyond the village of Packington it joins the River Mease. The River Mease Special Area of Conservation (SAC) extends up the Gilwiskaw Brook to the southern side of the village, about 1.2 km from the site of the proposed development (*Documents EA2/App.A, A1G/7.230*).
- 3.5 Most of the site is within Flood Zone 1 and therefore has a low risk of fluvial flooding. About 15% of the site is within Flood Zone 3a which has a 1 in 100 annual probability of flooding (*Document A1NA*).
- 3.6 Packington Nook Lane, a public bridleway, runs through the middle of the site in a south easterly direction. It serves Middle Barn and Nook Farm, where it ceases to be passable by motor traffic. The bridleway continues southwards before passing out of the site on to a bridge over the A42 and heads off to Packington. On the southern edge of the site it links with a public footpath, which heads back across the site northwards to Mill Farm and Lower Packington Road. Large parts of the proposed development area can be seen from Packington Nook Lane (*Document A1G/App.6*).
- 3.7 Ashby de la Zouch is a market town within the National Forest and is the second biggest settlement in the District. It had a parish population of 12,758 at the 2001 Census (*Document SoCG1*). The town centre is focused on Market Street, which is arranged as a typical high street. There are other employment areas on the northern side of the town and near Junction 13 of the A42 to the east. Visitors are attracted to the historic castle in the town and extensive views are possible from the top of its tower. There is no passenger rail station in the town but there are bus services. The nearest bus stops to the site are on Lower Packington Road, Measham Road, and Avenue Road (*Document SoCG1*).

4. THE PROPOSALS

- 4.1 While the application is in outline form, with all detailed matters reserved for future consideration, it does include a location plan and a 'parameters plan' together with a number of supporting documents (*Documents A1B, A1C, SOCG1/3.3*). It is proposed that construction would take place over a period of 8 years (*Document AP9/2.26*). There is a commitment to making various provisions in the Section 106 agreement, including affordable housing, community facilities, flood alleviation works, healthcare facilities, open space areas, habitat creation and management, public transport, waste disposal, education, highways, and a library contribution (*Document AP15B*). In addition the unilateral undertaking provides for a waste water treatment scheme (*Document AP16B*).
- 4.2 After discussions with the Council, a Design and Access Statement Addendum was produced in June 2009, and this included further details to provide clarification on specific design matters (*Document A1F*). Likewise, some illustrative design adjustments have been introduced in response to the Council's noise evidence (*Document AP3A/6/Fig1*). Vehicular access would be from Measham Road and Lower Packington Road, with the latter access incorporating a restriction to traffic to and from Lower Packington Road to the west (*Document A1KA/App.H*).

4.3 At the inquiry an up to date list of mitigation measures was submitted by the appellant (*Document AP17A*).

5. PLANNING POLICY

5.1 The development plan comprises the East Midlands Regional Plan (EMRP), adopted in March 2009 (*Document DP1*), and the 'saved policies' of the North West Leicestershire Local Plan adopted in August 2002 with subsequent alterations adopted in 2004 and 2005 (*Documents DP2 & DP3*). For convenience I shall refer to the latter as 'the Local Plan'.

5.2 **EMRP** policy 3 provides for the distribution of new development, reflecting sustainable development principles. Ashby de la Zouch is not one of the settlements named for such development in parts (a), (b) and (c). But part (d) does provide for the development needs of other settlements subject to a number of criteria. Policy 12 also allows for development in settlements, such as Ashby de la Zouch, in the Three Cities Sub-area. It states that such development should be in scale with the size of those settlements, in locations that respect environmental constraints (including the River Mease SAC and the surrounding countryside), and where there are 'good public transport linkages'.

5.3 Following from EMRP policy 13a, policy Three Cities SRS3 states that new housing provision in North West Leicestershire over the Plan period 2006-2026 will be made at the level of 510 dwellings per annum "... located mainly at Coalville, including sustainable urban extensions as necessary".

5.4 The **Local Plan** designates the appeal site as 'countryside' outside the development limits of Ashby de la Zouch. Here, Local Plan policy S3 indicates that only certain kinds of development will be permitted, none of which include the development proposed. With regard to the development of land for housing, policy H4/1 sets out a sequential approach based on that in former Government guidance contained in PPG3. Policy T3, in brief, requires adequate provision to be made for vehicular access and circulation.

5.5 The **emerging Local Development Framework** for North West Leicestershire is chronicled in paragraphs 4.9-4.13 of the Statement of Common Ground (*Document SOCG1*). The Council has consulted on 4 growth options for the Plan period 2006-2026 (*Document LDF14*). These envisage different levels of development for Ashby de la Zouch, ranging from 500 to 2400 dwellings. The Council now aims to determine the submission version of its Core Strategy DPD in January 2010 (*Document SOCG1*). Its latest 'emerging view' is that an appropriate level of provision for Ashby is 1000 dwellings (*Document DC9/Table1*).

6. THE CASE FOR THE APPELLANT

The material points are:

6.1 The proposed development comprises an extension of Ashby de la Zouch in a southerly direction and its various elements are described in evidence (*Document AP9/section 2*). The main justification for the project is to assist in the delivery of the housing requirement set out in the EMRP and to alleviate the local need for affordable housing. Accordingly, this matter is dealt with first.

Housing need

- 6.2 The appellant's case rests firmly upon the cardinal precepts of national policy on housing contained in PPS3, which aims to achieve a new, more responsive approach to housing land supply at the local level. It is agreed that there is currently an inadequate supply of land to meet District housing needs and that there is therefore a need to "consider favourably" the appeal proposal having regard to policies in PPS3, including the considerations in paragraph 69 (*Document SOCG1/6.1*). Moreover, the Council accepts that the shortfall is both chronic and severe, and that the current performance on housing delivery required by the recently adopted EMRP is outside 'acceptable ranges', with only 2.7 years (putting the Council's case at its highest) supply of land for market housing (*Document AP9/Tables2&3*).
- 6.3 The Council also accepted that the affordable housing need was pressing. An average of only 31 units have been delivered over the 3 years to March 2008 against a current target of 104 per annum (in supplementary planning guidance) and an EMRP target of 178 per annum (*Document SOCG1/6.12*).
- 6.4 The Council has failed to give due weight to these deficiencies and has put forward no clear interim strategy other than continued reliance upon its Local Development Framework process. This has been subject to persistent slippage and there is a likelihood of further slippage in the projected adoption date (February 2013) for the allocations DPD (*Document AP9A/CMH10*). Allowing for lead-in periods of at least 2 years, the DPD will probably not be able to make any contribution to meeting the 5 year housing land supply shortfall. The Council claims that the delivery of housing will improve after the next two years, and yet the trajectories illustrate the continuance of the chronic, if less severe, shortfall against target (*Document SOCG1/App.1*). In the case of affordable housing no improvement in the short to medium term was claimed. Although the proposed development would be spread over 8 years, beginning part way through 2011/12, it can be seen that it would do much to mitigate the problem (*Documents AP9A/CMH35, AP15B*). It is agreed that 40% of the proposed houses would be affordable, and that the development would be capable of providing a good mix of housing (*Document SOCG1*).
- 6.5 The considerations of PPS3(69) include "*ensuring the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives...*". In this respect the housing policies of the adopted Local Plan are out of date as they are inconsistent with the key policy objectives of the EMRP. The sequential approach of policy H4/1 is no longer reflected in Government guidance. The settlement limits policy in the Local Plan (S3), set many years ago in a different context, is also out of date. In short, the Local Plan policies carry very little weight in this appeal.
- 6.6 It is therefore necessary to assess the appeal proposals against the EMRP together with the criteria of PPS3(38). Policy 3 of the EMRP requires the needs of "other settlements" (a category which includes Ashby) to be met. The DTZ residential report (2009) confirms the considerable demand for housing at Ashby de la Zouch and limited existing purchasing opportunities (*Document AP2*). It is supported by and is consistent with the Strategic Housing Market Assessment and the Regional Housing Strategy (*Documents LDF8, RP7, RP8*). Its conclusions were not disputed by the Council, which accepts that Ashby is

the second biggest settlement in the district (with the next largest being only half its size) and that it is the most desirable place to live in the District (*Document AP9/Table1*).

- 6.7 The Council accepts that if Ashby de la Zouch were to receive a proportion of housing which reflected its current size, this would result in approximately a 13% apportionment (1348 houses) over the plan period. The lower share favoured by Council officers was said to be due to a significant mismatch between employment and housing in Castle Donington, which the Council is seeking to address (*Document DC9*). But a balance should not be sought in one settlement to the exclusion of others: EMRP policy 12 confirms that it should be achieved in **all** settlements within the 'Three Counties'.
- 6.8 Ashby de la Zouch has a strong employment base (*Document AP9A/7*). The Council did not dispute calculations that there are already just over 2600 more jobs in Ashby de la Zouch than employed residents (*Document LDF10/Tables9&11*). The jobs that will arise from committed but as yet undeveloped employment sites are similarly substantial in number (*Documents AP9C, HS6/7.3.35*). When the needs of Ashby have been properly assessed, and the balance of employment with housing has been taken into consideration, it could reasonably be expected to accommodate somewhere in the region of 1800 to 2400 houses – figures which were reflected in the Council's own options for development in the District (*Document LDF14*).
- 6.9 The Council contends that any development strategy for the District which fails to deliver the "maximum viable quantum" of housing in Coalville would be contrary to EMRP policy Three Cities SRS3. But there is no evidence to support that interpretation. A more literal interpretation of 'mainly at' Coalville permits a more sensible approach, accepting that all four of the Council's options were in line with EMRP policy Three Cities SRS3 when read with policy 3 and policy 12.
- 6.10 The relevance of alternative sites is extremely limited in the context of this appeal. Case law⁶ indicates that they only constitute material considerations in the context of an application or appeal where exceptional circumstances exist (*Document AP17B*). Indeed, it may be taken from one judgment⁷ that housing developments do not fall within the range of projects where consideration of alternative sites may be relevant. This is not a case where consideration of alternatives is required by any policy. At the heart of PPS3(71) is the need to cut through the normal comparative exercise that one would undertake in preparing a Local Development Framework. It is essential to the approach in paragraph 71 that its objectives are not to be confounded by delay.
- 6.11 The Council's intention to indicate 'broad locations' for future growth in its Core Strategy appears likely to involve the use of stars or arrows on a Core Strategy key diagram (*Document DC9/4.6*). Given the limited number of protagonist sites available for consideration this would amount to a specific choice in the

⁶ For example Secretary of State for the Environment v Edwards [1995] 69 P&CR 607, and (1) Derbyshire Dales District Council (2) Peak District National Park Authority v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin).

⁷ Trusthouse Forte Hotels Ltd v Secretary of State for the Environment and Another (1987) 53 P & CR 293 (see page 299)

circumstances of Ashby de la Zouch. This would not be in keeping with the aims of PPS12, and would be unlikely to be found to be sound at the Core Strategy examination. Therefore it cannot be assumed that the delivery of alternative sites through the Local Development Framework would not need to await the site allocations DPD. It is not an alternative means of meeting an immediate need, and it can be seen from strategic guidance that the Council has misunderstood the concept of broad locations (*Document C12*).

- 6.12 Should it be determined that the availability of alternative sites, such as Hollywell Spring Farm and Money Hill, **is** a material consideration in this case it should only be accorded limited weight. After all, the evidence demonstrates that taking **all** 'pros and cons' into account no one site is obviously better than any other, overall (*Document AP9A/p78-124*).

Prematurity

- 6.13 Having regard to paragraphs 17-19 of *The Planning System: General Principles* and to PPS3(72), there is no obviously superior site whose release might be prejudiced by allowing the appeal. Nor would the policy of locating development 'mainly at Coalville' be prejudiced by the appeal scheme as Coalville is in a different market area (*Document AP2*). Little weight can be given to the allocation of 1000 dwellings for the Plan period at Ashby de la Zouch in the Council's committee report (*Document DC9*). The figure is consultative, lacks a reasoned justification supported by the evidence base, and fails to include the flexibility advised in PPS12.
- 6.14 In the face of the compelling housing need, the lack of any significant progress over the last 5 years in the preparation of the Council's allocations DPD and the likely timescales before its adoption (2013 at the earliest), the substantial land supply shortfall requires to be managed by other means including the appeal scheme (*Document AP9A/CMH10*). In terms of paragraph 17 of *The Planning System: General Principles* it is not considered that allowing the appeal would be of such significance as to prejudice the Core Strategy. Certainly, the appeal scheme is well short of the threshold for 'strategic sites' suggested by GOEM (*Document DC8/6.1-5*). Also, there are similarities with an appeal decision on a case at Edwalton (APP/P3040/A/08/2083092), which considered development on this scale (of less than 10% of the District requirement) as unlikely to prejudice preparation of the Core Strategy (*Documents AD1, AP9/4.37*).

Sustainable location

- 6.15 Considering first the sustainability of Ashby de la Zouch as a settlement, it is generally accepted that it is one of two 'stand out' settlements for main facilities in the District (*Document AP9A/13*). Although the Council claims that the application of the PTOLEMY model underpins its suggested growth distribution (*Document DC9/Table1*) this was not supported by specific references to the PTOLEMY report, and it accepted that the report provides no evidence to favour growth distribution option 1 (Coalville-focused growth) over option 3 (dispersed growth) of the Core Strategy options report, or vice versa (*Documents LDF10, LDF14*). In fact the report provides a sound evidence base for the appellant's suggested housing growth figures for Ashby in the range of 1800 to 2400. In the PTOLEMY report, option 3, with its provision of 1965 dwellings and 2516 more jobs in Ashby to 2026, represents a much more sensible balance for both

Ashby and Coalville and happens to be approximately coincident with the appellant's own projection for new jobs arising from existing and likely commitments at Ashby (*Documents LDF10/Tables 11, 34&36, AP9C*). And the report indicates Option 3 has little impact on the overall levels of traffic and delay within the district when compared with Option 1 (*Document LDF10/p67-68*). The PTOLEMY analysis for Option 3 supports the balance between jobs and houses required by EMRP policy 12, whilst at the same time allowing for the development needs of Ashby to be met.

- 6.16 That Ashby de la Zouch is well connected by road to the major Midlands conurbations should not count against the appeal as this is a feature of all settlements in the District. The Highways Agency indicates that at a strategic level there is some spare link capacity on the A42/M42, unlike the M1 and the A453 (*Document HA2A*).
- 6.17 With regard to the alternative development sites at Ashby de la Zouch, the appellant's sustainability appraisal shows that there are few important differences in the level of sustainability of each of the sites (*Document AP9A/24-27*). This is particularly the case in relation to the propensity for use of the private car. With regard to the proximity of the appeal site to Junction 12 of the A42, the Council produced no analysis of either the relative or absolute effects of this on travel patterns.
- 6.18 Given the relatively compact nature of Ashby, all sites are convenient to both the town centre and employment areas. Virtually the entire settlement, including all the alternative sites, falls within a 1.6 kilometre radius (*Document AP9A/19*). Key facilities are within the 2 km distance referred to in PPG13(75). The main daily facilities of the town are within walking distance of the site (*Document AP4A/7*). In comparison with the alternative sites the walking route from the appeal site has more favourable gradients (*Document AP9D*). It was accepted that the IHT guidelines referred to by the Council are not embraced by national policy: guidance in the Manual for Streets confirms that the 800 m walking distance is not an upper limit (*Document C9/4.4.1*).
- 6.19 Although cycling patronage is currently low in Ashby the gentle gradients from the appeal site to the town centre suggest that it is well placed to benefit from future improvements. Moreover, cycle routes proposed as part of the appeal scheme would integrate with the Ashby Area Cycle Network Plan (*Document AP4A/8*).
- 6.20 There is no dispute concerning existing bus services (*Documents A1J, AP4A/3*). The appeal site compares reasonably well in this respect and the scheme makes provision for substantial improvements (*Documents AP4A/6, AP15B*). On the advice of the County Council the suggested reinstatement of the service to the East Midlands Airport would not be viable, and it is not now proposed (*Document SOCG4*). The sustainability of the appeal proposals should also take account of the provision for retail/business uses, community and health facilities, and the proposed travel plan (*Document AP15B*).
- 6.21 In conclusion the appeal site performs well when judged against the sustainability criteria in both national and local policy advice.

Education, Library and Waste Facilities

- 6.22 The planning obligations would meet reasonable requirements for education,

library and waste facilities (*Documents AP15B, AP16B*). The Council's evidence supports the reasonableness of the contributions provided for (*Documents LCC4, LCC4A, LCC5, LCC6, LCC7, LCC7A*).

Landscape and visual impacts

- 6.23 It is accepted that there would be moderate adverse effects on the local landscape as a result of the proposed development (*Documents AP3A/2(Fig5), AP3A/3*). These effects would be felt in the short to medium term whilst the development establishes itself. In the longer term, after a period of perhaps 15 years, the effects could be described as neutral, as the new planting would become semi-mature and yield benefits in terms of screening and integration. That the Council reached the conclusion that the effects would be "slight adverse" after this period is attributable to a modest difference in the assessment of landscape sensitivity (*Document LPA2/6.3.3*). While it is fair to say that the site is part of a normal attractive piece of lowland countryside, it is also reasonable to describe it as having low rather than medium sensitivity (*Documents AP3A, AP3/3.11*). This is because, on moving across it, one is never free of the urbanising influences of either the edge of the town or the busy A42.
- 6.24 Objectors also expressed concern about the effect on views from the top of the Ashby Castle tower (*Documents AMA9A-F, AMA9G*). Although these views are undoubtedly important the effect on them would be negligible and not determinative in the context of the overall landscape character and visual assessments (*Document AMA9G*).
- 6.25 These differences in assessment are not such as to produce a material difference in outcome. The Council's landscape expert considered that the development of landscapes such as this, and including Money Hill or Hollywell Spring Farm, would be unlikely to give rise to 'neutral' or 'insignificant' landscape effects in terms of his methodology (*Document LPA2A/D/Table4*). His conclusion on the alternative sites is no more than that they **may** be preferable sites in landscape terms (*Document LPA2A/A/7.4.2*). Both alternative sites have more elevated areas, are more exposed, and have higher landscape sensitivity (*Document AP3A/7*). What emerges from the evidence and from site visits is that there is no obviously better site than the appeal site in respect of these issues. Similarly there is no policy distinction between the sites concerned.
- 6.26 The proposal that was considered by the Local Plan Inspector in 1998 was quite different from the appeal proposals, not least because the site covered a substantially smaller and partly different area, did not allow for such a comprehensive approach, and involved the consideration of the effects of potentially developing land up to Measham Road (*Document AP3A/2/Fig1*). Moreover, there is now a significantly changed policy context with greater design expectations for sustainable urban extensions and greater provision in terms of 'green infrastructure'. The latter would be as much as 50% in this case (*Document AP3A/2/Fig8*).

Character of the town

- 6.27 The Design and Access Statement explains how the appeal proposals respond positively to the distinctive character of the town's historic core (*Documents A1E, A1F*). The Council accepted that this would not be directly affected by the

appeal scheme and that there would be no unacceptable effects on the Conservation Area or its setting. Its objection on this issue boils down to the proposed **scale** of development in relation to the town. The Council accepted that the appeal scheme represented growth of about 3% per annum, based on the current total of 5076 dwellings for the town. Given the scale of growth required by the EMRP in general and an appropriate distribution to Ashby in line with the spatial vision (supported by the likely increase in housing figures in the EMRP review), the appeal scheme is entirely reasonable and appropriate in scale.

6.28 The Design and Access Statement demonstrates a reasonable outcome for the overall settlement pattern of the town (*Documents A1E, A1F*). The relationship of the site to the existing settlement edge and the A42 means that the proposals would fit in very effectively, rounding off the town rather than protruding into open countryside (*Document AP3A/2/Fig11*). Ashby has been able to retain its character, having undergone expansion in the past, and it is not considered that it would fail to do so as a result of the appeal scheme.

Noise

6.29 The appellant's noise measurements are broadly accepted by the Council (*Document LPA3/9.1*). Some of the appeal site has noise levels in excess of the World Health Organisation guideline of 55 dBLAeq (*Document AP8/App.D*). After development this would only apply to small areas of open space closest to the A42 (*Document A1C*). This is due to the scheme design and the barrier effect of buildings. Figure PI-006 provides an example of this for the part of the proposed development that is most exposed to the noise source (*Document AP8/App.D*).

6.30 It has been shown that the large amount of open space in the appeal scheme is such that open space standards in the Local Plan and supplementary planning guidance⁸ would be satisfied even if open space located above the 55 dBLAeq contour is excluded from the open space calculation (*Document AP3C*). In any event, a Government-commissioned review of noise standards⁹ indicates that the guideline is precautionary and that exceeding it does not necessarily imply an overriding need for noise control, merely that the relative advantages and disadvantages of noise control action should be weighed in the balance (*Documents C14, AP8/4.5*).

6.31 The Council accepts that some flexibility is required in the interpretation of external noise limits. However, it appears to recognise the need for this flexibility only in busy urban areas where the guideline is difficult to achieve (*Document LPA3/9.22*). There is nothing in PPG24 to support this distinction and the Council was unable to show otherwise.

6.32 The Council sought to draw some comfort for its position from the Grange Farm appeal decisions dated 22 August 2007. However, in that case it can be inferred that the whole of the public and private amenity areas would have been subject to noise levels "*of about 55 Db(A)*", and almost 54% of the proposed 139 residential units would be "*almost entirely reliant upon mechanical cooling or ventilation systems in key habitable spaces to achieve satisfactory living*

⁸ Play Area Design Guidance (2002)

⁹ National Physical Laboratory Report CMAM 16

conditions" (Document AD3/12&14). In the instant appeal proposals only a small number of properties would require such mitigation measures, and, even then, only the sides facing the A42. Although some of the elevations facing the A42 would have principal rooms, it is proposed that these would be limited, with the majority of principal rooms facing internal shielded gardens/courtyards (*Document AP3A/6/Fig1*). The small number of exposed rooms could be provided with acoustic wall vents to achieve the World Health Organisation guideline levels.

- 6.33 It is agreed by the Council that it would be possible for development on the appeal site to be laid out so as to provide an acceptable standard of amenity for future residents. Contrary to the way the issue is characterised in the reason for refusal on noise, the Council's case, in essence, is based on its belief that there are alternative quieter sites available. In respect of the latter, guidance in PPG24 is primarily directed towards the development plan process. Neither Money Hill nor Hollywell Spring Farm is a practical alternative to the delivery of much needed housing in the short to medium term. There is no requirement in PPG24 to await the outcome of an emerging development plan before making a decision on a planning application, nor is there a requirement to assess all potentially available alternative sites. Indeed the practicalities of so doing would unnecessarily prevent a significant amount of much needed development.
- 6.34 In any event, the Council's evidence does not provide a sound base for concluding that the potential alternative sites are materially better (*Document LPA3/Figs. 3-10*). Both Money Hill and Hollywell Spring Farm are in close proximity to significant potential sources of industrial noise, yet the Council had not investigated this through a BS4142 exercise, but only relied upon a verbal indication that there is no history of complaint from residential properties near the employment installations (*Document AP9A/7*). There is no written confirmation from the Council's Environmental Health Officer of such absence of complaint. In the absence of a proper consideration of this issue it is simply not possible to make a sound claim that the appeal proposals are materially worse than the alternatives in respect of noise issues.

River Mease SAC and SSSI

- 6.35 The Environment Agency's objection on water quality issues was not made until 5 August 2009. Similarly the first indication by Natural England that an objection by them was predicated upon phosphate concentrations in the River Mease SAC was provided on 14 August 2009. This has made it difficult to address this issue in the time available.
- 6.36 The appeal proposals now include the funding, by way of a financial contribution of up to £1 million, of the required upgrade to the Packington Sewage Treatment Works to ensure that final effluent discharge would be no worse with the development, than without it – the 'nil detriment' approach (*Documents AP7C, AP16A*). A planning permission for the appeal scheme would thereby provide a mechanism for bringing forward by about 2 years the AMP4 phosphate removal scheme, which has been scheduled for 2014.
- 6.37 Because the proposed development would take the maximum flow for Packington Sewage Treatment Works over the permitted level, a new discharge consent would be required and this would allow the Environment Agency to

impose the operation of the 1mg/l limit for phosphates at an earlier stage than 2014. The appeal scheme would therefore act as a catalyst in producing this significant benefit for the interest features of the SAC. The financial contribution would be considerable and sufficient (*Document AP7C*). It is highly unlikely that a contribution of the required size could be secured from any other source in the short term. And it should not be forgotten that there is currently no discharge limit for phosphates at the Sewage Works, and that this would remain the case in the short to medium term in the absence of the appeal development.

- 6.38 The Environment Agency calculates that if the development proceeded without the mitigation 0.02 mg/l more phosphate would be discharged to the river (*Document EA2A/App.A*). But the Agency had no evidence that an increment of that degree would have a significant effect on the SAC. Even so, there remains the commitment by the appellant to providing funds to deliver the 'constant load approach', which would ensure that with the additional flow the concentration limit on the discharge consent would be reduced proportionately such that the total load is not increased. To put the phosphate removal benefit in context it is estimated that it would be equivalent to about 50 years of the additional phosphate load that would result from the proposals without mitigation.
- 6.39 Despite the objections from the Environment Agency and Natural England there is no legal requirement for phosphate concentrations in the effluent from the appeal scheme to be limited to the conservation objective of 0.06 mg/l (*Documents AP11, NE8*). That figure is generic in origin and is being used for the SAC without being tailored to the site-specific conditions of this river (*Document NE8*). In any event the conservation objectives document within which 0.06 mg/l is now listed as a target appears to have the status of only a consultative draft (*Document NE5*). Also, assessment of the effects on conservation objectives should come into play only after it has been determined that the scheme would have a significant effect and that an appropriate assessment is therefore necessary.
- 6.40 Authority for the view that the mitigation proposals can be taken into account in considering whether the appeal scheme would be likely to have a significant effect on the internationally important interest features of the SAC is to be drawn from the judgment in *R (on the application of Hart District Council) v SSCLG and others* [2008] EWHC 1204 (*Document AP17B*). It is clear that an effective planning condition or section 106 planning obligation can, as a matter of law, be used to secure such mitigation. On the evidence it is doubtful whether the appellant need do any more than bring forward the AMP4 scheme as proposed in order to ensure that there would be no significant effect on the SAC. Since the 'nil detriment' effect would be secured by the proposed Grampian condition as well as by the unilateral undertaking, there is no need to proceed to the next stages of appropriate assessment: that is, to consider the implications for the conservation objectives of the SAC and whether it can be ascertained that the scheme would not adversely affect the integrity of the SAC (*Documents CON4A, AP16B*).
- 6.41 The only process engineer to provide evidence to the inquiry was supplied by the appellant, and from this evidence there is a sufficiency of detail and certainty about the mitigation proposals, the science of which was unchallenged at the inquiry (*Documents AP7, AP7B, AP7C*).

- 6.42 Although the mitigation measures would be on Severn Trent Water Ltd's land, that body did not object to the appeal scheme and it has consistently indicated its willingness to accept and deal with the foul sewage from the development. It does not reject the appellant's mitigation proposals and considers the options to be worthy of further consideration (*Document AP13*). That Severn Trent Water Ltd is also planning for the inclusion of ammonia reduction measures in the improvement scheme does not affect the proposed advancement of the scheme as, in terms of process engineering, it would not be a complex issue to do both, and in any event adequate reduction of ammonia could be achieved with the oxidisation ditch technology already in place.
- 6.43 There is little basis for the view that Severn Trent Water Ltd would not be willing or able to bring forward the AMP4 improvements. It is not to be found in Severn Trent Water Ltd's statement that *"this programme of improvements may take a number of years to deliver depending on the complexity of the solution required"* (*Document EA3*). The solution proposed is not complex and there is no reason why it could not be achieved in a two year timescale. And there is no objective evidence to demonstrate otherwise. Nor would this timescale be affected by the sensible need to await the results of the Water Cycle Study in early 2010 before finalising the detailed design of the mitigation proposals.
- 6.44 Since there are at least reasonable prospects of the required action being taken within two years it would be appropriate to include a Grampian condition to provide the necessary safeguard (*Document CON4A*). Even if that were not the case it would not necessarily rule out the use of such a condition, as reflected in Government's advised amendment to paragraph 40 of Circular 11/95.
- 6.45 EMRP policy 32 requires that any necessary sewage treatment improvements are "in place" so that development does not compromise the quality of discharged effluent. This does not mean that the mitigation would need to be **in operation** before the granting of planning permission. It would be reasonable to impose a Grampian condition that prevents development until the mitigation scheme is agreed, and then prevents occupation until the scheme is operational. This is supported by paragraph 41 of Circular 11/95.
- 6.46 There has been no challenge to the capability or efficacy of the technology proposed. Accordingly, in the event that the Secretary of State concludes that he would not be able to exclude a 'likely significant effect' on the SAC at the screening stage, he would be entitled on the evidence before him to conclude as a result of his appropriate assessment that there would be no adverse impact on the integrity of the SAC.
- 6.47 Opponents draw attention to perceived inadequacies of the environmental statement. This should not present procedural problems as the additional information submitted to the inquiry constitutes 'environmental information' for the purpose of the Regulations¹⁰, and it is the environmental information, including the Environmental Statement, that is required to be taken into account before granting planning permission. Any view about the shortcomings of the Environmental Statement in addressing the SAC issue should take

¹⁰ See Regulation 3(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

account of the fact that the Council's scoping opinion did not raise the issue of phosphate concentrations in the SAC. There was no knowledge as to the nature or extent of the Environment Agency's objection at the time the Environmental Statement was compiled.

- 6.48 Similar procedural points were raised by the parties objecting to the appeal in relation to the 'Appropriate Assessment' submitted by the appellant (*Document A3*). That document was not intended to be the formal appropriate assessment, but instead to constitute the provision of information to Natural England as part of an iterative process in the course of determining whether an appropriate assessment was in fact required. Indeed there is no prescribed approach for an appropriate assessment, which does not have to be in any particular form. Nor does all the information need to be in a single document: as with the Environmental Impact Assessment Directive¹¹, the provisions in the 'Habitats Directive' are intended to be an aid to effective environmental decision making, not a legal obstacle course¹². It remains open to the competent authority to conclude that there is no likelihood of a significant effect on the SAC (in reliance upon the proposed mitigation) and that there is, therefore, no requirement for an appropriate assessment to address this issue.

Flooding

- 6.49 It is important to take account of the positive improvements that would result from the flood alleviation scheme that forms part of the appeal proposals (*Documents A1N, A1NA, AP6*). The evidence on this was unchallenged at the inquiry. The Strategic Flood Risk Assessment has identified land at the appeal site as the best option for flood alleviation, which would benefit the village of Packington (*Document LDF9*). Five properties here flooded in 2001 and 25 properties are at risk in a 1 in 100 year return period event in the 'do nothing' scenario (*Document AP6*). Although the benefits concerned would not accrue to a large number of dwellings they would nevertheless be very important to those affected by flooding, and would be unlikely to be forthcoming in the absence of the appeal scheme (*Document AP6*).

Highways

- 6.50 The micro-simulation modelling in the Supplementary Transport Assessment was not challenged by the county highway authority or the Highways Agency (*Document A1KA/G&J*).
- 6.51 The Highways Agency's VISSIM model runs alongside the appellant's own work, and it was agreed that the model is a robust basis for assessing the effects on Junction 13 of the A42. The agreed overall network performance evaluation shows that the scheme would result in significant improvements at both the AM and PM peaks for the average delay time per vehicle, total delay time, total travel time and average speeds (*Document HA4/Tables4.1&4.2*). The county highway authority drew attention to one particular effect of the appeal scheme in increasing travel time and average queue lengths for Ashby Road. But this was not claimed as being unacceptable and it should be seen in the wider context of substantial overall improvements to the network (*Document HA4/Tables4.1&4.2*).

¹¹ Directive No 85/337/EEC as amended

¹² See paragraph 72 of Hart judgment (referred to above) (*Document AP17B*)

- 6.52 The county highway authority was also concerned about the need for proper validation of the base model for the PARAMICS work. In essence this boiled down to the issue of validating the model against travel time even though validation had already been done for queues (numbers of vehicles). The county highway authority's evidence includes differences between observed times and the modelled predictions on four routes (*Document LCC9A/C*). But the figures are averages and, given the considerable variability in times of individual trips, the utility of validating the model based on travel times is doubtful. That it is unnecessary to validate the base year against **both** travel time and queuing is supported by correspondence, dated 27 August 2009, from the County Council (*Document LPA14*).
- 6.53 Had there been any legitimate points of concern about the appellant's proposed mitigation in the light of the modelling work, it would have been a simple matter to demonstrate them by some common sense sensitivity testing at specific points. In substance, the principal criticism of the model was in relation to its extent in respect of potential 'rat-running' effecting Corkscrew Lane and Cambrian Way. The traffic distribution from the proposed development to the network has been agreed (*Documents A1KA/App.A*). With this information a common sense judgment can be made in assessing the potential effects on Corkscrew Lane. About 5% of projected traffic might use this link out of the agreed total potential of 15%; but even if the entire 15% were diverted to that link it would not produce an unacceptable outcome. The county highway authority simply referred to the Lane's horizontal alignment as a potential issue.
- 6.54 As for the possible 'rat run' via Cambrian Way, the number of junctions to be crossed would make this an unattractive proposition for new residents on the appeal site. The Packington Nook Residents' Association's evidence about the length of journeys via this 'rat run' compared with a journey through the main estate road is based on prospective residents residing right at the junction of the new estate road and Lower Packington Road. This comparison is therefore one that would face very few residents in practice. It was accepted that traffic calming or home-zone designation could address the issue and could be secured by planning conditions.
- 6.55 With regard to Junction 13, the modelling work did not support concerns about capacity at the stop line on the circulating carriageway between the south bound and north bound limbs of the A511. In the absence of an evident problem of queuing back from this stop line around the circulating carriageway it is difficult to understand the county highway authority's concern about side swipe and shunt accidents that would result at the A511 exit to Coalville (*Document LCC9B*).
- 6.56 The Road Safety Audit recommended the addition of further taper length to allow vehicles using the exit to merge more effectively (*Document AP4C/3.4*). Audits carried out in 2005 confirmed the problem as being a lack of merge length on the A511 rather than any problem with the circulating carriageway (*Document AP4D/B3.2*). At that time it was recommended that the exit arm lane markings should be reduced to a single lane. In the absence of a capacity issue this would have been the most cost-effective solution. But in present circumstances localised widening, to allow an extended taper length, could deal with the problem highlighted. The county highway authority had seen the accident records but could not say that any of them pointed to a problem of side

swiping accidents at the junction prior to the improvements in 2005 when the same configuration of two exit lanes existed (*Document LCC9B*).

- 6.57 It was not disputed that the standard for taper width in TD16/07(7.63) could be met by the proposals (*Document LCC9E*). Nor was there anything substantial to counter the appellant's view that the necessary improvements could be carried out within highway land. While attention was drawn to the proximity of the extended merge lane to the nearby lay-by, there was no case to show that such an arrangement would be dangerous. Because the merging activity would have taken place well before the end of the extended carriageway it is considered that the arrangements would be safe.
- 6.58 The remaining point about the mitigation scheme relates to the removal of the central island on the A511 link between Junction 13 and the Nottingham Road roundabout at the entrance to Coalfield Way (*Document AP4A/9*). Again, there was no evidence to show that the island could not be reinstated as part of the scheme and the A511 widened by the necessary 1.5 m or so at this location. The latter could be achieved simply by slightly narrowing the verges on both sides.
- 6.59 In conclusion the evidence clearly supports a finding that these outstanding issues can be dealt with by the suggested Grampian condition.

Overall conclusion

- 6.60 It has been agreed by all parties that the shortfall in housing supply in the present case is both 'chronic' and 'severe'. This key fact and PPS3(71) set the overall context for the decision-maker in this case, and full consideration should be given to the proposed mitigation measures in considering any harm (*Document AP17A*). The scheme complies with the precepts of PPS1 in terms of good design and aiming for social cohesion between existing and new communities. It would provide a mix of facilities on the site and a unique opportunity to deliver a flood alleviation scheme. The site is a sustainable location for residential development and the mitigation proposed in respect of the River Mease SAC would ensure its protection, with the potential to provide material benefits. Likewise there would be on-site habitat enhancements and no material adverse impact on the highway network. Overall the material contribution to correcting the shortfall in the five year housing land supply, together with the other significant benefits of the scheme, are not outweighed by any disbenefits. Accordingly the appeal should be allowed.

7. THE CASE FOR NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

The material points are:

The River Mease SAC and SSSI

- 7.1 It is not disputed that the appeal development would generate foul water that would be conveyed to the Packington sewage treatment works, the discharges from which run into the Gilwiskaw Brook and the SAC, not far from the appeal site (*Document EA2/Apps.A&B*). It is also not disputed that the foul water would contain phosphates, and that increased levels of phosphates in the river would be harmful because they encourage the growth of algae which can increase siltation and reduce the dissolved oxygen content of the water. This

would affect the internationally important interest features of the SAC, and especially the spined loach (*Cobitis taenia*) and bullhead (*Cottus gobio*) fish (*Document NE2/6.1.4-8&Apps.A&B*). Present levels of phosphates in the Gilwiskaw Brook are high in relation to the SAC conservation objective of 0.06 mg/l. It is agreed that discharging any additional phosphate load from the sewage treatment works would be a significant disbenefit to the SAC (*Documents NE5, NE9C*). The risk of development causing such harm in these circumstances is recognised in the 'Habitats Regulations' assessment of the regional spatial strategy (*Document NE3*).

- 7.2 Regulation 48 of the Habitats Regulations restricts the granting of planning permission for development which is likely to significantly affect a SAC, and which is not directly connected with or necessary to the management of the SAC. A key issue in respect of this test is the correct application of the law to the status of the mitigation measures.
- 7.3 Following the judgment in R (on the application of Hart District Council) v SSCLG and others [2008] EWHC 1204, it is clear that the competent authority is required to consider whether the project as a whole, including mitigation measures, is likely to have significant effects (*Document LPA15*). That approach is not questioned here. However, it is not accepted that to avoid a finding of likely significant effects at this 'screening stage', the developer can rely on a Grampian condition for works which do not form part of the application and are located on land over which the appellant has no control. Moreover, in this instance the nature of the works remains unspecified. Worse still, there is no guarantee that the third party will even allow the works to take place, let alone within any specified timeframe (*Documents EA3, AP13*). A proposal on third party land, to be executed on an unspecified date after permission has been granted, with no certainty over the precise nature of that mitigation work cannot be said to be mitigation works which **form part of the project**. Because they do not form part of the project it is clear from Hart that they should not be taken into account at screening stage¹³. This is further supported by the judgment in the case of WWF-UK Limited v Secretary of State for Scotland [1999] ENV LR 632, which drew a distinction between mitigation that is the subject matter of the planning application as opposed to something identified by way of a planning condition as proposed in this appeal (*Document LPA15/p699*).
- 7.4 It is also clear from Hart that if the competent authority does not agree with the proponent's view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to efficacy, then an appropriate assessment would be required because it would not have been able to exclude the risk of a significant effect on the basis of objective information. As indicated in Circular 6/2005 (paragraph 13), the decision on whether an appropriate assessment is necessary should be made on a precautionary basis. It is concluded that it **is** necessary in this case.
- 7.5 Natural England objected to the application in February 2009, advising of the need to conclusively show that there would be no significant effects on the SAC/SSSI (via Gilwiskaw Brook) from any activities at the appeal site either

¹³ See also Gillespie v SSSLGR [2003] ENV LR 30 and R (Catt) v Brighton and Hove City Council and Another [2007] EWCA Civ 298, in relation to Environmental Impact Assessment (*Document LPA15*)

during the construction phase or during the lifespan of the development (*Document NE9C*). Despite attempting to avoid the necessity for an appropriate assessment, the appellant submitted a draft 'appropriate assessment' in April 2009 and a revised version in October 2009 (*Documents A3, AP5A/3*). Both are needlessly voluminous documents which fail to reach any meaningful conclusion on the issue of whether the proposals would affect the integrity of the SAC. Moreover, they are not based on the latest mitigation measures suggested by the appellant.

- 7.6 The mitigation proposals are best described as preliminary proposals in their infancy. A number of different solutions have been suggested but there is no clear definition of the works to be carried out (*Documents AP7, AP7B, AP7C*). Much of the evidence currently relied upon was given orally at the inquiry and it was accepted it had been a rushed job. It was agreed that there is no certainty in terms of the delivery and timing of the mitigation measures because they would require the consent of Severn Trent Water Ltd, being located on Severn Trent's land. It appears from the correspondence from Severn Trent Water Ltd that the necessary works might not take place until after 2014 (*Document EA3*). Reaching a detailed and certain scheme of works that is agreed by all four parties involved would not be easy and would no doubt take time. Careful research and analysis would be necessary to establish what exactly the 'nil detriment' level should be. Yet more uncertainty is created by the appellant's attempt to cap the costs of the works it would fund (*Document AP16B/p14-15*).
- 7.7 Accordingly Natural England advises that the proposed Grampian condition (*Document CON4A*) does not provide sufficient certainty to be able to ascertain that the appeal proposals would not have an adverse effect on the integrity of the SAC.
- 7.8 Guided by Circular 6/2005 (Figure 1) the next step is to consider whether there are alternative solutions that would have a lesser effect, or avoid an adverse effect, on the integrity of the SAC. Clearly in this case there **are** alternatives for the project, which is the delivery of new housing in Ashby. For example there is no reason to doubt that the Money Hill and/or Hollywell Spring Farm sites could deliver the necessary housing before the end of the EMRP period in 2026. Both sites lie in the northern part of the town and foul drainage may be capable of discharging outside the catchment of the River Mease SAC (*Documents AMA11G, MH2/p8*). As there is no argument that there are considerations of overriding public interest supporting the appeal development it is firmly concluded, on the basis of the 'Habitats Regulations', that the appeal scheme should not be permitted.

Conflict with the Spatial Vision for the area, and Prematurity

- 7.9 In contrast to the Local Plan, which places Ashby de la Zouch and Coalville on an equal footing, the more up to date EMRP directs the focus of new development to Coalville. Coalville is the only town in the District to be designated a Sub Regional Centre. Accordingly, and unlike Ashby de la Zouch, it is an EMRP priority that its role be strengthened (*Document DP1/p40*). This is reflected in the formulation of EMRP policy Three Cities SRS3 (*Document LPA4/App.1*). It is essential to the spatial vision of regenerating deprived areas at Coalville and revitalising its town centre. The deprivation indices for the District overwhelmingly focus on the Coalville urban area (*Document LPA4/App.5*).

- 7.10 The spatial vision for the area also includes the emerging Core Strategy. After considering a very significant body of evidence, various options, and the outcome of very extensive public consultations, the Council has settled¹⁴ on a figure of 6500 dwellings for Coalville during the plan period, taking into account any delivery problems. The comparable figure for Ashby de la Zouch is 1000 dwellings, and for the District as a whole, 10200 dwellings. This is consistent with the Core Strategy Sustainability Appraisal and takes account of the PTOLEMY modelling and the SAC constraints.
- 7.11 The appeal proposals are in clear conflict with this emerging strategy. Of the provision for Ashby de la Zouch, 528 houses are already built or committed, and there is an application for an additional 261 homes on an allocated site on Leicester Road (*Documents DC9/Table2, LPA16*). On top of this the appeal scheme is excessive. It is out of step with the new Coalville focus in the EMRP.
- 7.12 It is accepted that the 2.7 years¹⁵ housing land supply represents a severe shortfall of 1251 dwellings and that it is chronic in the sense of lingering (*Document LPA4/App.3*). However, this is only likely to persist for the next two years because a significant improvement is anticipated in 2012 as reflected in the trajectories (*Document SOCG1/Tables1&2*). Leaving aside all the significant technical problems with the site raised by the Highways Agency, the Environment Agency, Natural England and Leicestershire County Council, the appeal proposals would not assist in the delivery of housing in that two year period. Because the scheme is only in outline form with all detailed matters reserved for future consideration, it is difficult to imagine any completions within 3 years, and the appellant has not sought a condition requiring a shorter timescale. More fundamentally, there is no certainty over the delivery of waste water mitigation measures, let alone their timing. The proposed Grampian condition would place the delivery of the whole scheme in the hands of a third party, Severn Trent Water Ltd, which wants to take account of the Water Cycle Study in planning future improvements (*Document EA3*). This completely undermines the delivery argument, which is the main component of the appellant's case.
- 7.13 Furthermore, given the scale of the appeal scheme in relation to the emerging Core Strategy figure of 1000 dwellings for Ashby de la Zouch, permission for the appeal scheme would prevent any other substantial permission being granted, for example at Money Hill or Hollywell Spring Farm. Although the Core Strategy is still in preparation it can be said that there are sufficient serious disadvantages of the appeal site to conclude that it would not be the preferred choice at this stage (*Document LPA4/App.2*). Also, the uncertainty in delivery of the appeal scheme means that it is possibly the worst way to achieve the 5 year housing land supply in Ashby de la Zouch ahead of a Core Strategy which is likely to be adopted in early 2011. In predetermining the scale and location of new housing development the scheme would result in over-delivery here, to the detriment of both Coalville, where the housing market is weaker, and the Council's related efforts to secure the greatest and most sustainable regeneration and public transport investment (*Documents OD2/1, WD/GELSON1*). It is premature in relation to the Water Cycle Study and would

¹⁴ In its Report to Cabinet (*Document DC9*), which has been endorsed by Cabinet

¹⁵ Based on the District Council's preferred residual method, which was taken as common ground at another recent appeal (*Document LPA4/App.4*)

pre-empt decisions on the appropriate housing split between the settlements of the District and on selecting development locations at Ashby de la Zouch that are best able to protect the character of this historic market town.

- 7.14 While a 5-year housing land supply shortfall is capable of requiring applications to be considered favourably in accordance with Government policy in PPS3(71), this is qualified by the need to take account of PPS3(69) and its reference to the spatial vision for the area and wider policy objectives. The appeal scheme does not pass this test, and in terms of paragraph 17 of *The Planning System: General Principles* prematurity does amount to justifiable grounds for refusing planning permission.

Character of the town

- 7.15 The appeal scheme would be a massive addition to make at one location and on the side of the town that has already seen growth. It would be out of scale with the character of Ashby de la Zouch as a small, very attractive, historic market town of only some 12,500 population. It would mean missing the opportunities for a more balanced delivery of housing on smaller sites at Leicester Road, Hollywell Spring Farm, Money Hill and Moira Road or a possible combination of these. It would also miss the best opportunities for achieving a more compact urban form (*Document LDF15/6.15*).

Landscape

- 7.16 The appeal site can be described as 'urban fringe' in location terms, but far less so in visual terms. It does not have the run-down appearance that the term often conjures up, and the existing urban area is well screened from the site. The main concern is with the adverse landscape impact rather than the visual impact, other than in the context of scale.
- 7.17 That the site considered in the Local Plan Inspector's report amounted to only part of the appeal site does not make the Inspector's conclusions irrelevant. He agreed that: ***"The area between the A42 and Ashby-de-la-Zouch provides an important and attractive approach and setting to the town. That part closest to the built edge is intimate in character and contrasts to the openness beyond the A42, and contains a diverse hedgerow pattern. The result is attractive countryside right up to the built edge"*** (*Document LP1/p351-2*). The appellant accepted that the appeal site is twice as large as that considered by the Local Plan Inspector. Moreover the appeal scheme would extend up on to the higher ground to the south. The exclusion of the football pitch and another field from the appeal site does not provide a justification for rejecting that Inspector's conclusions in respect of half of the appeal site. And since 1998 there have been no changes in circumstances that would now lead to different conclusions: indeed, the conclusions are only likely to have been strengthened by the subsequent growth of vegetation.
- 7.18 The appeal scheme is huge, measuring 1 kilometre across in both width and depth, and it is proposed that the construction site would be developed over the course of eight years. Despite the proposed green infrastructure, it involves a loss of a considerable area of pleasant open countryside, including some mature trees and very significant lengths of hedgerows (amounting to around 2557 m according to the Environmental Statement) (*Document A1G/7.231*). But even the retained features would lose their context, enveloped, as they would be, not by small intimate green fields, but a housing development, and cut through by a

network of tarmac roads.

- 7.19 An independent assessment using a recognised methodology shows that there would be a moderate adverse effect on the local landscape character, the appeal site being of medium landscape quality and medium to high landscape value (*Document LPA2&2A*). With provision for landscaping, the effects would decline over a period of some 15 years but would never disappear completely, and the in-principle effects would persist into the future. A simple comparative appraisal of the alternative development sites at Ashby de la Zouch indicates that they are likely to have advantages in terms of landscape and visual effects (*Document LPA2A/App.A*)
- 7.20 That the appeal development would produce a substantial benefit in landscape terms, as concluded in the Environmental Statement, is untenable. At the inquiry, even the appellant's landscape expert accepted his professional judgment in the Environmental Statement was "bullish", and his evidence had been changed to delete the reference to beneficial effects and enhancement of the landscape (*Documents LPA10, A1G/6.131*). That the Environmental Statement is wrong in this respect renders it impossible to grant planning permission. The landscape chapter of the Environmental Statement has a number of other shortcomings (*Document LPA2A/App.A/p21-23*).

Sustainable location

- 7.21 Ashby de la Zouch is very much a commuter town, and with as much as 56% of the morning peak traffic exiting the town it evidently contrasts with Coalville, Castle Donington (with its large employment area) and Kegworth in this respect (*Documents CE1, LDF10, LPA12, LCC8A/TableA1*). This arises from Ashby's excellent road connections with the A42/M42, M1, M6, and A50, and is borne out in evidence from local residents (*Document PNRA7*). The appeal site is especially well located for access to this network and the appellant's proposals offer no support for any alternative sustainable transport options for anyone travelling to work outside of Ashby. Evidently there is a wide dispersion of journeys to work from Ashby, and this makes public transport improvements more difficult (*Document LCC8A*). Bearing in mind that there are no major employment areas on the south side of the town it is likely that the appeal scheme would only serve to strengthen unsustainable travel patterns (*Document AP9A/7*).
- 7.22 For most residents of the appeal scheme access to the town centre for shopping and other services would be unlikely to be on foot. The vast majority of the site is beyond the widely recognised comfortable walking distance of 800m (*Document LCC8B*). Indeed that distance is recognised as the preferred maximum distance people will walk to a town centre (*Document C15/p49*). In contrast the Money Hill site extends substantially closer to the town centre and the town's other two employment areas (*Documents AP4A/7, A1G/5/Fig3*). The Core Strategy Sustainability Appraisal explained that development in the **north** of the town would assist in supporting a compact urban form that encourages more trips by car alternatives (*Document LDF15/6.15*).
- 7.23 Bus services at Ashby are currently poor with limited frequency and no evening services (*Document A1J*). The appellant's proposed new 'hopper' bus service would be an improvement but it would not serve the whole town (*Document AP4A/6*). The use of service interchanges is not popular, especially

when frequency of the services concerned is limited. Since bus patronage to work is only around 1% of trips in Ashby it is questionable how effective it would be in changing travel patterns (*Documents CE1, LCC8A/A6.1*). With the lack of off-road cycle routes in Ashby and the fact that no further improvements are proposed, there would be little propensity to travel by bicycle (*Document LCC8A*). In conclusion the appeal site is not a sustainable location; indeed it is considered the least sustainable of the potential development sites in the town.

Highway matters

- 7.24 The modelling work carried out by the appellant did not include roads that had for some time been specifically requested for inclusion by the county highway authority (*Documents LPA14, LCC9A/App.A*). These include the possible rat running routes of Cambrian Way/Windsor Road, and Leicester Road and Corkscrew Lane to the east of the town. The former are residential roads, while the latter is a rural road with poor alignment and not at all suitable for significant volumes of traffic. To retrospectively provide for traffic calming on the routes concerned to some extent undermines the objectives of a robust transport assessment. Without the necessary information on dynamic assignment and route choices for the base year as well as the chosen design year, and without all the related validation, it is not possible to directly compare 'with development' and 'without development' scenarios and to make informed judgments about impacts and any necessary mitigation requirements. Although some late modelling work has been done, these matters have still not been adequately addressed and the appellant accepted that the model had not been validated in relation to critical links with the town centre (*Document LCC9C*).
- 7.25 There is also concern about the build up of traffic on the local roads due to the Junction 13 improvements proposed by the appellant. As a result, Ashby Road would see a huge and unacceptable increase in average queue lengths and delays of up to 10 minutes (*Document HA4/Tables*).
- 7.26 Moreover, there is a serious concern about taking out line markings on the A511 exit from the Junction 13 roundabout, to provide another lane (*Documents LCC9B, AP4A/9, AP4C/photo3.2*). The existing traffic signals on the circulating carriageway would cause traffic to block back and leave an opening for one lane only on the A511. The proposed two lanes of traffic would try to merge while exiting on to the A511 to avoid the rear of the queue, causing potential for side-swipe and shunt accidents.
- 7.27 It was claimed by the appellant that the two-lane exit from the roundabout would be acceptable in terms of TD16/07 standards and that a suitably long taper could be used. But because the roundabout now has some traffic lights there is a need for caution. No two signalised roundabouts are alike (*Document LCC9D/6.4*). Moreover the A511 exit is very close to the A512 exit and the taper would run close to the start of a lay-by on the north east side of the A511. This matter was raised by the appellant's Road Safety Audit. Even so, one can question the independence of safety auditors who operate from the same firm and the same office as the design team (*Document AP4C/p7*).
- 7.28 The line markings were put in place as part of a package of safety measures in 2005, including traffic signal control and carriageway widening (*Documents AP4D, AP4E, LCC9B*). This led to a 50% reduction of accidents (*Document LCC9B*). Before altering this improved situation there would need to be clear

evidence that there would be no adverse impact on safety on the whole roundabout. That is the purpose of the mandatory instruction in paragraph 8.50 of the TD16/07 (*Document LCC9E*). It was agreed that this does apply to the appellant's proposal to add the extra exit lane from the roundabout, and that the required swept path analysis had not been carried out.

- 7.29 The removal of the separation island on the link road towards the Nottingham Road roundabout introduces further safety concerns (*Documents LCC9B, AP4A/9*). The island was introduced to remove the hazard of right turning vehicles at Coalfield Way.
- 7.30 In conclusion the effects of the scheme have not been properly demonstrated and the mitigation measures have not been shown to be appropriate and adequate. The scheme is not in accordance with Local Plan policy T3.

Traffic Noise from the A42

- 7.31 The first concern relates to external noise. Assessment of noise levels by experts on both sides reveals that a large area within the eastern part of the site is in noise exposure category C, where, as stated in Annex 1 of PPG24, planning permission should not normally be granted (*Documents AP8, LPA3, LPA3A, LPA3C*). Where it is considered that permission should be given, for example because there are no quieter alternative sites available, conditions should be imposed to ensure a commensurate level of protection against noise (*Document LPA3A/E*). In this case it is evident that the alternative sites at Money Hill and Hollywell Spring Farm are quieter, having a much smaller proportion of land in noise exposure category C (*Document LPA3/8.0&Figs*).
- 7.32 The category C area at the appeal site includes a large area of proposed open space where noise levels would be well above 55dB(A)Leq (*Document LPA3/Fig3*). Noise below this level would be desirable to prevent significant community annoyance, as provided by the World Health Organisation¹⁶. It was confirmed at the inquiry that the affected open space is part of the proposed green infrastructure network which is intended to be accessible to the public (*Document AP3A/A2/Fig8*). The appellant's noise expert accepted that some open space in the east of the site would be "noisy".
- 7.33 The second concern is that the category C area also includes a substantial area of built development (*Documents LPA3/Fig5, AP8D*). The houses on the outer façade of this development would act to mitigate noise for those living further within the development and the open space within the residential blocks, as illustrated for example on Figure P1-006 (*Document AP8*). But those with homes on the external façade would be exposed to very significant noise levels. The impact could be limited by a forced-air ventilation system as an alternative to opening windows: indeed, were the Noise Insulation Regulations to apply in this case they would require it. This does not signify a desirable living environment. Such a view was taken in a similar situation by the Inspector dealing with an appeal at Grange Farmhouse, Coventry (*Document AD3*). Adverse effects could not be avoided by adjusting the layout of rooms in the houses concerned, or by installing screen fences (*Document LPA3*). Moreover, going to such lengths is not desirable when there exist quieter potential housing

¹⁶ See paragraph 4 of Annex 2 of PPG24

sites at Money Hill and Hollywell Spring Farm.

- 7.34 The above noise effects are not consistent with the claim that the development would be high quality, as required by PPS1 and PPS3. Particularly relevant is paragraph 69 of PPS3, which forms part of the paragraph 71 assessment for releasing sites in the absence of a five year land supply. A similar view was taken by the Inspector dealing with the Grange Farmhouse appeal (*Document AD3*).
- 7.35 The hope that the widening of the A42 might result in a quieter road surface and Highway Agency funded mitigation has now disappeared with the Highways Agency confirmation at the inquiry that this widening is no longer being pursued.
- 7.36 In conclusion, the noise arising from the A42 would be significantly detrimental to the aims of prospective occupiers of the site, and mitigation measures are neither appropriate nor adequate to overcome this harm.
- 7.37 The overall conclusion is that the appeal scheme is contrary to the development plan in several respects (*Document LPA19*) and that there are no overriding material considerations to justify granting planning permission.

8. THE CASE FOR THE ENVIRONMENT AGENCY

The material points are:

- 8.1 It is clear from EMRP policy 26 that the River Mease SAC should receive the highest level of protection and that neither direct nor indirect damage to it will be permitted (*Document DP1*). In accordance with Circular 6/2005 and the 'Habitats Regulations' the decision-taker must determine whether it can ascertain that the proposal would not adversely affect the integrity of the SAC. If the effects are uncertain but could be significant, permission should not be granted. With regard to water quality, EMRP policy 32 adds that local authorities, developers, water companies, the Environment Agency and others should work together to ensure timely provision of appropriate additional infrastructure for waste water treatment to cater for the levels of development provided for in the EMRP. Where necessary, improvements to sewage treatment capacity should be in place so that development does not compromise the quality of discharged effluent.
- 8.2 The River Mease SAC is currently in 'unfavourable condition' (*Document EA2/2.8*). Of particular importance are the very high levels of orthophosphate (*Documents EA2/App.1, AP11/p24*). By far the greatest contribution to orthophosphate levels in the Gilwiskaw Brook is from Packington Sewage Treatment Works (STW) (*Document EA2/AppsE&I*). That will remain the case once the STW is operating at BAT limits (1mg/l) (*Document EA2/AppD*). The effect of point sources such as sewage treatment works can be particularly significant where, as here, they are in headwater areas where relatively small loads are required to induce ecologically relevant enrichment (*Document AP11/p37*).
- 8.3 The limit on orthophosphates at the Packington STW is to be tightened to the level that is considered as tight as is practicable given existing technology, and that will secure a significant improvement in the near future (*Document*

EA2A/69). It will still leave the levels of orthophosphate unacceptably high, however, and it is plain that the levels must not be allowed to worsen and that the achievement of further improvements in the future should not be made more onerous.

- 8.4 If the development were allowed to proceed without further mitigation, the increased load would be equivalent to 33% of the relevant nature conservation target of 0.06 mg/l (*Documents EA2A/AppA, EA2/AppF*). The target is based on best available information for the site (*Document EA2/App.I*). There can be no question that such an increase would be significant and could not be permitted.
- 8.5 No proper thought or consideration was given to the impact on water quality within the River Mease SAC before the application was submitted. This is reflected in both the Environmental Statement and the draft appropriate assessment, neither of which attempted to identify the contribution that would be made by the development, with or without mitigation (*Documents A1G&A3*). Once the Environment Agency's objection was made, the appellant recruited an expert (August 2009) to seek to find an *ad hoc* solution at short notice. With the limited time available before the inquiry and the appellant's lack of control over the STW the expert has struggled from one suggestion to the next with each one proving impossible to secure with any degree of certainty (*Documents AP7, AP7B, EA6/para10*).
- 8.6 The chemical dosing option cannot be relied on because there has not been an assessment of its environmental effects to the extent required, or of the sensitivity of the SAC. The potentially harmful effects of iron-dosing are well-known (*Document EA2C*). The preferred approach is biological treatment, but this is more complicated to achieve and thus more time would be needed to deliver a system capable of achieving the 1mg/l limit (*Document EA3*).
- 8.7 The appropriateness here for the 'constant load' options suggested by the appellant have not been demonstrated by any detailed assessment involving Severn Trent Water Ltd, the body that would be responsible for deciding what it would or would not be willing to do. It is plain from Severn Trent Water Ltd's comments that because of the onerous requirements of the Habitats Directive, "*any extra flow will prove difficult to treat*" (*Document EA3*). Severn Trent Water Ltd is understandably reluctant at this stage to commit to any *ad hoc* measures designed to overcome the problems of one site without consideration of the wider strategic picture and the complexity of the solution required bearing in mind all its regulatory obligations (*Documents AP13, EA3*). It would be far more sensible to assess what is needed by reference to the level and distribution of new development in the catchment through the Water Cycle Study (*Document EA2A/paras.38,41(i), 103*) and the emerging development plan. With all of the Environment Agency's experience in dealing with this issue as a regulatory authority, it does not have any confidence that orthophosphate loads below 1 mg/l would be secured in the lifetime of the permission, whether using the innovative approaches advanced by the appellant, or otherwise.
- 8.8 There are further drawbacks of the appellant's 'constant load' approach. For example, as technology improves, and the BAT limit is reduced, the benefit that would otherwise accrue to the River Mease SAC would be reduced because of the additional burden placed on the system by the additional flows (*Document EA2A/57c*). This would plainly make attainment of the nature conservation target more difficult in future.

- 8.9 Severn Trent Water Ltd has made plain that it does not intend to bring its phosphate removal scheme forward earlier than its planned date of 2014 (*Document EA3*). The appellant's additional measures could not be implemented beforehand. The suggestion that the necessary works could be brought forward to 2010 has been described by Severn Trent Water Ltd as "most unrealistic" (*Document EA3*). The subsequent installation of the appellant's 'extra' treatment requires agreement to be reached as to what needs to be done, how and when, installation and testing, and a fresh discharge consent. All of that is likely to take time and there is no prospect of it being done by early 2015.
- 8.10 The suggestion that approving the development would act as a catalyst in bringing forward the AMP 4 scheme is misconceived, because it ignores the effect of the suggested *Grampian* condition. The development would have to await Severn Trent Water Ltd's agreement to and implementation of a supplementary scheme. There is no onus on Severn Trent Water Ltd to accelerate its existing plans and commitments to accommodate the developer. It can simply continue as planned, and, from what it has said, that is its clear intention (*Document EA3*).
- 8.11 There is still no clear understanding as to what practical steps would be needed to discharge the *Grampian* condition. All of the options so far suggested have foundered as quickly as they have emerged, and each one remains untested in terms of practicality, cost and timing. The latest 'option' is best described as embryonic and far from fully-formed. It is therefore not possible to undertake a proper informed assessment of the prospects of the necessary steps actually being taken by Severn Trent Water Ltd within the lifetime of a planning permission, or of their likely effectiveness in mitigating the impact of the proposed development.
- 8.12 There is no obvious mechanism for determining what an appropriate contribution would be, and indeed in the absence of any detail as to what would need to be done it is not possible to know what the likely cost would be. This casts yet further doubt over the prospects of any additional improvements being put in place prior to implementation.
- 8.13 On the evidence available it is not possible to conclude that the proposed development would not have an adverse effect on the integrity of the River Mease SAC. The tests in Circular 06/05 for permitting development which might affect the integrity of a SAC are therefore not met. Equally, the tests in Circular 11/95¹⁷ for imposing a *Grampian* condition are not met. In those circumstances, and because the unmitigated impact is clearly unacceptable in nature conservation and policy terms, the only proper course of action is to refuse planning permission.

9. THE CASE FOR THE HIGHWAYS AGENCY

The material points are:

¹⁷ Taking account of the proposed amendment to paragraph 40 of the Circular advised by ODPM on 25 November 2002.

- 9.1 Having found the original transport assessment to be deficient the Agency, on 26 January 2009, directed that planning permission should not be granted for an indefinite period. The appellant's handling of the planning application and appeal has been chaotic: a catalogue of failures, delays, bad practice and misjudgements (*Document HA5*). Having failed to carry out timely and necessary modelling work, it is upon the results of the Highways Agency's own VISSIM testing that the appellant now relies to support the narrow proposition that the proposed mitigation scheme at Junction 13 would deal adequately with the impact of the proposal on the Strategic Road Network in capacity terms (*Document HA4*). But the Agency's objection has still not been overcome, for the following reasons.
- 9.2 The county highway authority has expressed significant concerns. First, in relation to Junction 13, about the implications in highway safety terms of the proposed two-lane exit on to the A511 towards Coalville and the impact on the circulatory carriageway at the Ashby Road junction; and secondly, about the impact of the mitigation scheme on congestion on the local road network, and in particular the link road between Junction 13 and the Nottingham Road roundabout. The appellant did not carry out the PARAMICS modelling requested by the county highway authority in time for it to be duly considered at the inquiry. This is required to understand the potential for future traffic to be reassigned on the congested network. It is vital because any significant reassignment could plainly impact on the Strategic Road Network, undermining the technical VISSIM work done to date and requiring the modification of the mitigation scheme (*Document HA4A*).
- 9.3 The Stage 1 Road Safety Audit of the mitigation scheme currently proposed was only submitted on 23 October 2009, at the end of the second week of the inquiry and shortly before the highways session (*Document AP4C*). It recommended that further enquiries be made with the county highway authority in respect of the A511 Coalville-bound exit. It is bad practice and wholly unacceptable that such fundamental enquiries, critical to assessing the viability of the mitigation scheme proposed, were not made earlier. Moreover, there is also concern about the independence of the audit, given that it was prepared by an audit team within the same consultancy that designed the mitigation scheme for the appellant. From the details submitted it cannot be concluded that the scheme complies with standards in TD16/07, in particular the mandatory road width requirement in paragraph 7.8 (*Documents LCC9E, AP4A/9*). This should have been drawn to the attention of the audit team for their consideration. It is also unclear that adequate mitigation including widening could be achieved on the link between Junction 13 and the Nottingham Road roundabout.
- 9.4 As the county highway authority, for reasons of highway safety, cannot approve the Junction 13 layout proposed by the appellant, then clearly the Highways Agency is not in a position to satisfy itself that the proposal would have an acceptable impact on the Strategic Road Network (*Document HA4A*). It cannot be concluded that the proposal could be satisfactorily mitigated, and so it would not be rational to leave these matters to be resolved by planning conditions.
- 9.5 The appellant has failed to meet the requirements of paragraph 43 of DfT Circular 02/2007 or to resolve the safety issues to which the proposal gives rise (*Document C5*). Accordingly, it has failed to demonstrate that the proposal is deliverable. The Agency's holding objection to the proposal stands.

10. THE CASE FOR NURTON DEVELOPMENTS LIMITED

The material points are:

- 10.1 Nurton Developments Ltd is a land and property developer with a 'competing' proposal for development, including some 500 dwellings, on land at Hollywell Spring Farm to the north of Ashby de la Zouch (*Document AMA/8.57*). As a matter of common sense and planning judgment the existence of alternative sites is material in this case, and the decision maker will not err in law if he takes them into account. Moreover, because the case involves consideration of the effects on the River Mease SAC, and there is specific regulatory and policy context requiring the consideration of alternatives, the decision maker would err in law if he failed to have regard to the alternative sites. These conclusions are supported by the judgment in (1) Derbyshire Dales District Council (2) Peak District National Park Authority v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin) (*Document AMA13A*).
- 10.2 The development plan and key elements of national planning policy indicate no support for the appeal proposals in terms of either scale or location.
- 10.3 In terms of scale, Ashby de la Zouch falls in category d) of EMRP policy 3, and so any development should provide for the needs of the settlement. In addressing such needs the appellant apparently contends for a *pro rata* apportionment based on the District's allocation in the EMRP and the size of existing settlements. This leads to a need for 1,357 dwellings at Ashby de la Zouch (*Document AP9/4.26*). However, in the first 3 years of the EMRP period, 528 houses have already been built/permitted here, leaving 829 for the remaining 17 years (*Document DC9*). The appeal proposal plainly exceeds 'the needs of the settlement' on this basis. Further, this *pro rata* approach does not take into account the very clear EMRP priority for the regeneration of Coalville, or the flexibility required to address the current mismatch of jobs and houses at Castle Donington (*Document LDF15/6.19*).
- 10.4 Moreover, EMRP policy 12 requires that housing development at Ashby de la Zouch should be in scale with the size of the town. The appeal scheme has the effect of increasing its population by between 19% and 25% depending on the population figures adopted (*Documents A1G/p30-31, AMA11/5.28*). This suggests a scale of development that is excessive and cannot be justified on the basis of 'need'. By adding to congestion it would harm the attractiveness of the town centre.
- 10.5 In terms of location the appeal proposals also fail to accord with the requirements / approach of the development plan.
- They are not on an allocated site.
 - They do not respect the environmental constraint of the River Mease SAC, contrary to EMRP policy 12.
 - They would harm a particularly important and attractive piece of countryside and the setting of the town, which also represents an environmental constraint in terms of policy 12. This is supported by

expert evidence (*Documents AMA4&9A-G*) and the qualitative judgment made in 1998 by the Local Plan Inspector on the land between the A42 and the town (*Document LP1/p351-2*).

- 10.6 The site also fails to offer good access to jobs or to the town centre by non-car modes. The present and future employment sites and opportunities are largely located on the northern side of the town with some opportunity in the town centre.
- 10.7 The scale of the development would be such as to predetermine the location of a very substantial part, if not all, of the housing required in or adjacent to Ashby in the plan period. Taking account of housing delivery and commitments in the first 3 years (528 units) and 261 units on the allocated site at Leicester Road, the total would be nearly 1,800 (*Document DC9/Table2*). This would prejudice the ability of the emerging Core Strategy to direct growth to the north of the town, which is currently the preferred approach of officers and one which members have asked them to proceed with (*Document DC9*). The scheme is therefore premature and opposition is justified on the basis of Government guidance in paragraphs 17-19 of *The Planning System: General Principles*.
- 10.8 As to whether this would be consistent with the prematurity conclusions in the Inspector's report and Secretary of State's decision on appeal APP/P3040/A/08/2083092, it should be noted that the Core Strategy in that case was at a very early stage of emergence with nothing having been published, and that all identified sites were needed for development if the housing provision targets were to be met (*Document AD1/p46*).
- 10.9 It is accepted that the local planning authority is unable to show a five year supply of housing land and therefore that the 'consider favourably' approach in paragraph 71 of PPS3 applies. There is a perfectly rational explanation for the shortfall: the EMRP considerably increased the annual requirement after the start of the plan period in 2006. However, as well as the deficiencies of the scheme in terms of an assessment against paragraph 69 of PPS3, there is a very substantial doubt as to whether it would be able to contribute in any meaningful way to the delivery of housing in the next five years.
- 10.10 The appellant's claim that occupation of the development could begin in September 2011 is wholly unrealistic, for the following reasons.
- It depends on an optimistic view of the economic recovery (*Document AP9A/p209*).
 - It depends on the rapid disposal of the appeal site to house builders, and, while the appellant has received some expressions of interest, there is no evidence as to any early start-on-site date (*Document AP9A/CMH6*).
 - It assumes that any developer would implement the outline permission granted on the basis of the Parameters Plan (*Document A1C*) and not seek to vary either the permission itself or any conditions attached to it. This again is wholly unrealistic at this stage, bearing in mind the lack of detailed evidence on the viability of the scheme and the importance of this factor in current market conditions.

- A more convincing view of the evidence is that completions could not be expected before August 2012 (*Document AMA11/8.38*). Bearing in mind that the appellant is not a house-builder, the process of marketing and disposal of the site and securing developers could result in an even longer gestation period.
- The evidence from Severn Trent Water Ltd is that the prior need to complete the necessary sewage treatment works might not be addressed until as late as 2015 (*Document EA3*).

10.11 Therefore the prospects of the appeal site actually contributing to the housing supply in 2011 are non-existent, before 2013 are remote, and before 2014 very optimistic. The rate of building required to complete the development in 8 years is also optimistic and unlikely to be achieved in practice (*Document AMA11E*).

10.12 The local planning authority is intending to address the lack of a 5 year housing land supply by indicating 'broad locations' for development in its Core Strategy (*Document DC9/4.6*). This approach is supported by PPS3 (paragraph 4.5) and would have the advantage of giving a 'clear steer' to development as soon as the Core Strategy is in place and without waiting for the Site Allocations Development Plan Document. There are plans to submit planning applications for alternative schemes, such as that at Hollywell Spring Farm, after the submission of the Core Strategy, expected early in 2010. Determination could follow the Inspector's examination and report on the Core Strategy. There is therefore a realistic prospect of one or more sites being permitted, as conforming to the emerging Core Strategy, in early 2011. Housing could be delivered at Hollywell Spring Farm in at least a comparable timeframe to that on the appeal site and there would be a greater certainty of delivery in practice. The Hollywell Spring Farm site would have better access to land in use for employment purposes, higher quality access to public transport, and a landscape better able to absorb development (*Documents AMA4,AMA8,AMA9,AMA11*). Importantly, development here need not impact¹⁸ on the River Mease SAC (*Document AMA11G*). In short, the appeal scheme does not represent the only way, or the best way, of addressing the housing land supply shortfall, and any merits in this respect should not be regarded as overriding conflicts with the development plan and other harm.

10.13 In conclusion, although Ashby de la Zouch is the right location for some further housing development, the appeal scheme is ill conceived – it is the wrong development, in the wrong place, at the wrong time. The appeal should therefore be dismissed and planning permission refused.

11. THE CASE FOR MONEY HILL CONSORTIUM

The material points are:

11.1 The Money Hill Consortium comprises private developers and housebuilders who have a landholding of about 111 ha on the north eastern side of Ashby de

¹⁸ potentially it could discharge sewage to the Milton treatment works

la Zouch (*Documents MH2A/1&2*). The land is capable of accommodating various levels of growth, up to about 1800 dwellings (*Document MH2A/4*).

11.2 The fact that the appeal scheme faces fundamental problems helps to explain why the appellant has been so keen to promote the site now, on the pretext of a shortfall in the 5-year housing land supply, rather than face competition from sites, such as Money Hill, with which it compares unfavourably in the Core Strategy process (*Document OD2/4*).

Suitability of location

11.3 The sensitivity of the appeal site location is reflected in the EMRP, with its express reference to the SAC in policy 12. The importance of the Water Cycle Study is emphasised in the first indent of policy 32 and the "timely provision" of necessary "infrastructure" including "waste water treatment to cater for the levels of development provided for in this plan" is identified in the second indent. The final indent of policy 32 makes clear that necessary improvements should be "in place". The appellant has ignored these policy requirements. It is assumed that Severn Trent Water Ltd would, through some as yet unidentified means, make adequate provision for treatment of the site's waste. There is no agreement on the part of Severn Trent Water Ltd so to do and evidently (*Document EA3*) no agreement or mechanism exists to satisfy the requirements of policies 32 and 12.

11.4 The potential effects on the SAC have not been properly assessed in the Environmental Statement. Failure to include within the Environmental Statement details of any mitigation measures which are relied upon means that planning permission should not be granted. The appellant was not able to define the 'environmental information' amongst the various proofs of evidence and notes presented throughout the inquiry. Such information is doubly deficient in that (a) it has not been demonstrated that there will be no adverse impact on the SAC, and (b) the appellant's case on no adverse impact (such as it is) fails the "paper chase" test of *Berkeley v Secretary of State for the Environment etc* [2001] 2 AC 603; and there is no non-technical summary of the case that is now presented.

11.5 That an appropriate assessment is clearly required in this case is reflected in the fact that the appellant has produced a draft Regulation 48 'appropriate assessment' dated April 2009 and a revised version in October 2009 (*Document A3*). It would be wrong to argue that the Hart judgment¹⁹ makes an appropriate assessment unnecessary in this case. That judgment shows that, as part of the screening process as to whether or not there is a need for an appropriate assessment, consideration can be given to the mitigatory measures only where there has been the necessary preparatory assessment and analysis (*Document AP17B*). From the appellant's revised appropriate assessment (*Document A3*) it can be seen that (a) no clear decision has been taken as to which mitigation option is to be selected, (b) it proceeds on the basis of an assumption of what Severn Trent Water Ltd may do in the future, and (c) further work is required, based on optimism that has little foundation in evidence (*Document EA3*).

¹⁹ R. oao Hart District Council v Secretary of State for Communities and Local Government and others [2008] EWHC 1204 (Admin)

- 11.6 Applying the test in Regulation 48(5) of the 1994 'Habitats Regulations'²⁰, planning permission should not be granted, the evidence relating to mitigation being so uncertain. The appellant does not argue for 'overriding public interest' to justify the development. Nor is this a case where it can rely upon the absence of alternative solutions to justify grant of planning permission, because clearly there are alternatives both as to location (which would not need to rely on the sewage treatment works at Packington) and as to numbers, for example a development of less than 1,000 houses. Therefore there can be no saving in Regulation 49.
- 11.7 The proposed condition and planning obligation are also inadequate in terms of the 1994 Regulations because they both refer to and rely upon future events after planning permission has been granted. That is entirely inconsistent with a regime intended to ensure that there is certainty of protection to the SAC before planning permission is granted. It is telling that both the Environment Agency and Natural England are still not satisfied that the proposed mitigation measures are sufficiently defined and certain of delivery so as to be capable of being agreed now, before planning permission is granted.

Prematurity

- 11.8 Given the options under consideration for the Core Strategy, the appeal scheme, by virtue of its scale, could consume all the growth for Ashby to 2026, as well as growth that could otherwise be directed to other settlements (*Document DC9*). This could compromise the long term spatial strategy for the District with adverse implications for settlements and other more suitable and worthy developments in a position to come forward during the plan period.
- 11.9 The proposals are also premature in relation to the Water Cycle Study and the planned provision of infrastructure for Ashby de la Zouch. The need to complete the Study first is supported by the contents of the 'Habitats Regulations' assessment of the EMRP (*Document RP10/p28*) and by paragraphs 4.8-9 of PPS12, bearing in mind the ability of the proposals to affect the emerging Core Strategy.

Alternatives

- 11.10 Money Hill is a site which performs better in terms of sustainability, being closer to town centre and key facilities (*Documents MH2A/6, AP9A/p72*). This is also reflected in its potential to include a substantial retail element (*Document MH3*). Although it shares the problem of a location in the River Mease catchment, it is near to the edge (*Document MH2A/8*) and could avoid the problem by transferring sewage effluent to the treatment works at Swadlincote. A development scheme is capable of being brought forward once the Water Cycle Study has been completed, early in 2010.
- 11.11 With the submission of a hybrid planning application in August 2010, and subject to the provision of planned infrastructure, housing at Money Hill could be provided in the third quarter of 2011. This information comes from housebuilders with local experience (*Document MH2A/9&10*). Having regard also to the nature of the appellant's business model (*Document MH2A/9*) any 'head start' over Money Hill in terms of satisfying the deficit in the 5 year land

²⁰ The Conservation (Natural Habitats, &c) Regulations 1994

supply is entirely illusory.

- 11.12 Accordingly, planning permission should be refused: it would not prevent other sites coming forward to address the 5 year land supply in a timely manner, guided by the Core Strategy as it continues to emerge, together with the Water Cycle Study results.

12. THE CASE FOR PACKINGTON NOOK RESIDENTS' ASSOCIATION (PNRA)

The material points are:

- 12.1 PNRA has a constitution and over 300 registered supporters (*Document PNRA2/p1&App. 1*). It supports the putative reasons for refusal put forward by the Council following its planning committee meeting on 2 June 2009 (*Document DC10*). It seeks to add value on the following issues by offering local in-depth knowledge of the area, which can best be given by those who have lived in the area and are intimately familiar with it.

Policy

- 12.2 EMRP policy 3 identifies Coalville as the only sub-regional centre in the District. To strengthen that role, large scale development should be directed there. While this is supported and is being pursued in the emerging Core Strategy, the appeal scheme would effectively strangle it at birth. The Local Development Framework process presents the best means of deciding the scale and location of growth at Ashby de la Zouch.
- 12.3 The PNRA has carried out the only substantial surveys of public opinion, and these show that the vast majority of respondents considered that the existing road network could not cope with such a large-scale development and the accompanying extra traffic flow. There is also great concern over issues of ecology, landscape and the sewerage system, as well as the effects on the historic character of the town, which is fundamentally linked with its size (*Document PNRA2*). The appellant drew attention to the geographical weighting of the local survey work (*Document AP12*), but the fact remains that Packington Nook carried the least number of 'most preferred' and the highest number of 'least preferred' responses (*Document PNRA2*). This only goes to underline the fact that this appeal is being made in the face of local opinion and, if allowed, would cause local people to feel cynical about, and disenfranchised by, the planning process.

Highways

- 12.4 The PNRA highways witness worked for the county highway authority for 13 years, latterly being responsible for the management of all roads in the county. He is also a longstanding resident of Ashby de la Zouch (*Document PNRA3/p1*). His concerns about the inadequacy of the existing road network and its inability to reasonably withstand further traffic flow should therefore carry due weight. Particular concerns are as follows, as demonstrated by photographic evidence (*Document PNRA3A*).

- 12.4.1 The degree of on-street parking in Lower Packington Road and Avenue Road and the degree to which this restricts visibility and limits traffic flow to one direction.
- 12.4.2 The implications of increased traffic on Leicester Road, particularly during congested peak times. The road splits the secondary school site and consequently large numbers of pupils regularly need to cross the road between lessons and at the start and end of the school day (*Document PNRA3/3.8*).
- 12.4.3 The Upper Church Street/Wood Street junction is heavily congested, particularly at school travel times and peak traffic periods. There is limited visibility at the junction, little scope for improvement, and no agreement on mitigation measures.
- 12.4.4 The additional use of the congested Market Street/Bath Street junction, where, as with the above problem spots, conditions would be severely exacerbated by the traffic generated by the appeal scheme.
- 12.5 Turning to the proposed new access point at Lower Packington Road, the 'right turn only' junction is likely to produce a 'rat run' through Cambrian Way and Windsor Road. It could also lead to unsafe U-turns on Lower Packington Road. These effects have not been properly addressed by the appellant. It is inconceivable that residents in the northern part of the proposed estate would not use Cambrian Way, as it would be the quickest and easiest way to reach the town centre (*Document PNRA3C*). This is likely to be materially harmful, in highway safety terms, as Cambrian Way is a quiet residential road with large numbers of children and elderly people (*Document PNRA3A/p27*). It is plainly unsuitable to take traffic from the appeal scheme, and traffic calming would not satisfactorily overcome the problem. Furthermore, traffic calming proposed for the planned main boulevard of the appeal site would reinforce the tendency to use Cambrian Way as the quickest route into town from the northern area of the site.
- 12.6 The appellant has also failed to demonstrate the effect of the proposed 20 mph speed limits within the town on the assignment of traffic within their model. This adds to the unreliability of their model.
- 12.7 It can be seen that 80% of the anticipated traffic flow from the proposed estate would be out of the town (*Document A1KA/App.A*). Many people in the town work in Nottingham and, increasingly, the West Midlands conurbation, for which the private car is the only realistic means of transport. The same would be likely to apply to future residents at the appeal development, which is close to the A42 and central motorway network. Like other properties at Ashby de la Zouch (*Document PNRA7*), the appeal scheme would inevitably be targeted at the commuter market. This adds to the unsustainability of the proposals.

Ecology

- 12.8 The rate of residential development in Ashby de la Zouch has been comparatively high in recent years (*Document PNRA4/App.1*). The proposed development would affect a large portion of the remaining unurbanised and undisturbed Gilwiskaw Brook (*Document PNRA4/p16*) and would adversely

affect the quality and integrity of the River Mease SAC. The local sewage and foul drainage system is already overloaded and signs of stress are obvious, as evidenced by numerous sewage flooding incidents culminating in 4 major sewage blowouts in the area in 2007 (*Document PNRA4/Apps.4-6*). The resulting impact on human health and the condition of the SAC is obvious. The River Mease is already in an unsatisfactory condition and it is telling that the EMRP Appropriate Assessment indicates that levels of planned housing growth and development in the River Mease catchment represents a significant risk to the SAC; and that adequate water treatment infrastructure and capacity must be available before any further housing development takes place (*Documents RP10, NE3, PNRA4/App.8*).

12.9 The Money Hill and Hollywell Spring Farm sites to the north of the town are better able to address the sewage system concerns as they are able to direct sewage to other works outside the catchment and thus avoid potential damage to the SAC. The appellant's proposed mitigation scheme is ill-conceived and has been expedited without proper consideration of costs or consequences. It does not provide what is required to assure, beyond any reasonable doubt, that development at the Packington Nook site would do no harm to the SAC. Accordingly, the scheme is contrary to the Water Framework Directive, the Habitats Directive, and the precautionary principle in paragraph 6 of PPS23.

13. THE CASE FOR PACKINGTON PARISH COUNCIL

The material points are:

13.1 Packington is a small rural community, which has been brought much closer to Ashby de la Zouch as a result of development that has taken place on the south side of the town over the last 40 or 50 years. The increase in traffic has been the worst effect of this development, and it would be considerably exacerbated by the appeal scheme which is almost equivalent to the whole of the aforesaid development. The scheme would also threaten the separate identity of Packington (*Document PPC1*).

13.2 A Parish Council survey revealed that 94% of parishioners were opposed to the appeal proposals (*Document PPC1*). Apart from traffic problems, strong concerns included:

- loss of a greenfield site and the inappropriateness of such a large development for a historic, rural market town
- effect on existing flooding problems at Packington
- facilities are already working to capacity, including the sewage treatment works, doctors' surgery, secondary schools
- increased parking problems and congestion in the town and increased difficulties of access into the town and its facilities

13.3 In the event that the appeal is allowed there must be measures to ensure that Packington remains a village, has no increase in flooding, has restrictions/calming on all roads entering the village, and has any necessary

provision for its junior school and sewage treatment works.

14. THE CASE FOR INTERESTED PERSONS

The material points are:

- 14.1 Mr N Smith is District Councillor for Packington and expressed similar concerns to those of Packington Parish Council, again drawing support from the local survey (*Document SMITH1*). Allowing the appeal for such a large development would be pre-emptive, effectively robbing local people of their part in the Core Strategy process.

15. WRITTEN REPRESENTATIONS

The material points are:

- 15.1 A few additional matters are raised in the written representations (*Document OD2*).
- 15.2 William Davis Ltd and Jelson Ltd are well advanced in preparing a scheme for the sustainable extension of Coalville, in accordance with the EMRP strategy of focusing growth at this sub-regional centre. The appeal proposals are in the wrong location and are of an inappropriate scale. To allow them in advance of the Core Strategy could de-rail or delay their own scheme and undermine the EMRP strategy. Developer interest in Coalville would be weakened by easier and more attractive sites becoming available in locations such as the appeal site (*Documents WD/Jelson1, OD2/1*). Attention has also been drawn to the proposal of Miller Homes and Clowes Developments (UK) Ltd for a development including up to 975 dwellings at Castle Donington (*Document Clowes/Miller1*).
- 15.3 In view of the site location, East Midlands Airport is concerned about obstacle limitation and possible bird strike issues (*Document OD2/2*). It would support a condition to limit building height and ensure consultation with the Airport on matters such as water bodies (*Document CON5*).
- 15.4 Many more written representations were received at application stage and are largely reflected in the above cases of objectors. A number of local residents value the site's traditional farmed landscape of small fields, hedgerows and wildlife, crossed by public paths, and they fear adverse effects on its positive contribution to local amenity and the historic market town character of Ashby de la Zouch. Commenting on the lack of employment content of the proposals, the East Midlands Development Agency is concerned to achieve a balance between housing and jobs markets to avoid congestion and commuting, which themselves have economic consequences. The Ashby de la Zouch Civic Society objection contains some detailed objections, generally akin to those of the PNRA. Ashby de la Zouch Town Council objected, supporting the objection of the Civic Society. The East Midlands Design Review Panel also made some detailed criticisms of the scheme, but that was prior to the Design and Access Statement Addendum in June 2009. The National Forest objected to the large scale nature of the application and drew attention to the cumulative impact of such development on the Forest area. Sport England recommended some planning conditions relating to amenity space and play / sports facilities.

16. PLANNING CONDITIONS AND OBLIGATIONS

Conditions

- 16.1 A number of planning conditions were suggested during the inquiry, some of which were superseded by later amendments. The main list of conditions is dated 22 October 2009 and was submitted by the Council and the appellant (*Document CON2*). During its consideration at the inquiry the following material points arose.
- 16.1.1 Condition 9, the sewage condition, evolved through several further stages and suggestions that were the subject of considerable discussion (*Documents LPA9, CON3A, CON3B, CON3C, CON4, CON4A*). The Environment Agency and the Council considered that the appellant's suggested wording (*Document CON4A*) should be changed to prevent development, and not just occupation of the development, before the sewage scheme is implemented. This would be justifiable to protect the SAC, following the precautionary principle. The Environment Agency was also concerned about the reference to a particular discharge consent, as that might be replaced by another consent by the time the scheme becomes operational. The latest version of the Environment Agency's suggested replacement condition attempts to reconcile these views (*Document CON3C*). The appellant accepts all except the first line, which restricts the commencement of development. This is because it is the restriction of occupation that is critical and with the appellant's suggested wording this would be capable of control by the Council by means of 'breach of condition notices'.
- 16.1.2 Condition 10 may be unnecessary in view of the coverage of condition 20.
- 16.1.3 Condition 12: for clarity, the word 'appropriate' could be deleted from lines 1 and 6, the phrase "with any future development proposals" in line 2 could be replaced with "before development commences", and the last sentence could be replaced by "This provision shall be made in advance of development". The reference in line 4 should be to condition 11.
- 16.1.4 Conditions 13 & 15: for greater clarity the main parties propose that these conditions be replaced by slightly amended versions (*Document CON6A*). The Highways Agency prefer an alternative condition 13, which would be more specific about the design and construction details to be submitted and approved by the Council (*Document CON6*). The appellant did not consider the reference to Traffic Regulation Orders to be necessary.
- 16.1.5 In relation to the above the Highways Agency suggested an additional condition to read '*No development shall commence until independent Stage 1 and Stage 2 Road Safety Audits in relation to the improvements approved under condition [12] have been approved by the relevant highway authority*'. The reference to condition 12 should be 13 (*Document CON6*). This condition was not agreed by the appellant as it requires the approval of a third party - the highway authority - and it is unnecessary as safety audits are always covered by the terms of 'Section 278 agreements'.
- 16.1.6 Condition 16: the PNRA suggested that road height on the main escape routes should be included in the submitted details in view of flood risks. The appellant considered this to be dealt with by condition 18(10), while the

Council thought this could be linked to condition 7 or covered by addition to condition 16.

- 16.1.7 Condition 17: after consultation with the East Midlands Airport the appellant suggested a simpler condition to replace the condition on airport safeguarding, to read as follows: *'No structure or building on the site shall individually or collectively exceed a height level of 160 m AOD, either on a temporary or a permanent basis'*. It is also suggested that the need for consultation with the Airport should be added to conditions 4, 23 and 24 of Document CON2 (*Document CON5*). There were no objections.
- 16.1.8 Condition 19: the Environment Agency suggested an amended version of this condition, to which other parties did not object (*Document CON3/fifth condition*). The references to 'the Fluvial Flood Attenuation Storage Scheme' should be replaced with a 'flood attenuation scheme'.
- 16.1.9 Condition 20: the Environment Agency suggested an amended version of this condition, to which other parties did not object (*Document CON3/sixth condition*). The reference to 'the Fluvial Flood Attenuation Storage Scheme' in the second paragraph should be replaced with 'the surface water drainage scheme'.
- 16.1.10 Condition 21: the Environment Agency suggested an amended version of this condition, to which other parties did not object (*Document CON3/seventh condition*). The word 'Fluvial' should be deleted in this condition.
- 16.1.11 Condition 25: to provide for possible changes in the sustainable homes code level requirements the Council suggested an amendment to the condition or an alternative form of wording modelled on condition 30 of the Stenson Fields Farm appeal D decision (*Documents LPA13, CON7*).
- 16.1.12 To protect the water quality of the underlying minor aquifer, the Environment Agency suggested a contaminated land condition set out as the first condition in its suggested schedule of conditions (*Document CON3*). The appellant and the Council were not convinced that there was sufficient justification for such a condition.
- 16.1.13 The second condition in the Environment Agency's schedule concerns the submission of a scheme to install trapped gullies, in order to prevent pollution of the water environment. There were no objections.

Planning obligations

- 16.2 The first obligation is a Section 106 agreement dated 10 November 2009 (*Document AP15B*). This makes provision for various elements of the scheme including affordable housing, community facilities, flood alleviation works, healthcare facilities, open space, habitat creation and management, a habitat mitigation scheme, a phasing plan, public transport, civic amenity infrastructure, education, highways, library facilities, and a travel plan (*see summary in Document AP15A*).
- 16.3 The agreement excludes provision for sewage treatment following some earlier criticism on the draft (*Document AP14*), for example from the Environment Agency (*Document EA5*). With the remaining disagreement on

sewage treatment, this matter is now provided for in a second obligation: the appellant's unilateral undertaking dated 10 November 2009 (*Document AP16B*).

- 16.4 With regard to the First Schedule of the unilateral undertaking, the Environment Agency does not consider it appropriate for a cap to be placed on the owner's total liability (in paragraph 1.4.2), having regard to the need to protect the SAC. There is also concern that because the Treatment Works is located on land owned by Severn Trent Water Ltd the appellant would be unable to ensure the scheme's implementation. The "reasonable endeavours" in paragraph 1.4 are not considered sufficient (*Documents EA5,23 LPA17*). As with the suggested Grampian condition 9, the Council, Natural England and the Environment Agency also object to paragraph 1.4.1 and the allowance for development to proceed prior to completion of the sewage scheme, albeit without occupation. This scheme, formally described as the Waste Water Treatment Works Scheme, would take the form of one of the three 'candidate processes' outlined in the Second Schedule of the unilateral undertaking. The Council and others considered these provisions to be too uncertain and questioned their adequacy in relation to the requirements of the 'Habitats Regulations', particularly the need for appropriate assessment and a precautionary approach.
- 16.5 In response to my query, the appellant acknowledged that the manuscript addition to paragraph 3.5.2 of the unilateral undertaking had not been initialled by all the parties to the undertaking but did not see any difficulty with this.

* * * * *

17. CONCLUSIONS

(References in square brackets are to earlier paragraphs in this report)

17.1 I find that the main issues in the appeal are as follows.

- A. The likely effects on the **River Mease SAC and SSSI**.
- B. The **landscape and visual impacts** of the proposals and the effects on the **character of the town**.
- C. The effect of **traffic noise** from the A42 on the standards of amenity for the appeal proposals.
- D. The adequacy of the provision to be made in respect of **highway safety**.
- E. The merits of the appeal site as a **sustainable location** for the proposed development, having regard to Government guidance and to the more specific guidance in the development plan.
- F. Whether or not the scheme is **premature** and would prejudice the emerging Local Development Framework.
- G. The benefits of the scheme in terms of meeting **local housing needs**.

17.2 The cases of the parties and my conclusions cover the matters upon which the Secretary of State wishes to be informed. Other than in relation to the above issues I have no reason to question the appeal scheme on grounds of housing mix, design, access and car parking, bearing in mind that the application is in outline form with all detailed matters reserved for future consideration.

The River Mease SAC

17.3 The River Mease SAC is a 'European site' for the purpose of the 'Habitats Regulations' and therefore it is important to consider this issue in the context of Regulation 48 in particular. To secure compliance with the 'Habitats Directive' the Regulation requires a number of criteria to be satisfied before granting planning permission.

17.4 To begin with, the appeal scheme is not directly connected with, or necessary to, the management of the SAC. Therefore, in accordance with Regulation 48(1) I consider the question of whether or not it would be likely to have a significant effect on the SAC.

17.5 The waste water from the appeal site would be piped to Packington sewage treatment works. The works discharges into Gilwiskaw Brook, and since the Brook flows into the River Mease and the SAC there is clearly a link that warrants consideration [7.1]. In present circumstances, in the absence of mitigation measures, the appeal development would increase the amount of phosphates discharged into the Gilwiskaw Brook and thence into the SAC. The phosphate loading is already high, not least due to the Packington treatment works; and this high level, being detrimental to the interest features of the SAC, is a cause of its unfavourable condition [7.1,8.2].

17.6 Bearing in mind the precautionary approach referred to in paragraph 13 of Circular 6/2005, and the quantitative evidence, I have no hesitation in

concluding that the unmitigated effects of the appeal scheme would be likely to be significant [6.38,6.40,7.4,8.4,12.8]. I accept that even at this 'screening stage' of the Regulation 48 assessment process, it can in some cases be reasonable to take account of proposed mitigation measures, and in this connection both sides have drawn my attention to the case of Hart²¹ [6.40,7.3-4,11.5]. However, for the following reasons I do not consider that the advancement of additional treatment works at Packington, although now proposed by the appellant to be part of the appeal proposals, should be considered at the screening stage.

17.7 The case law referred to draws a distinction between mitigation measures proposed as part of the application and other mitigation secured by planning conditions [7.3]. It is the former that are to be considered at the screening stage. Consistent with the reasoning in those judgments, I am not satisfied that the appellant has fully recognised, assessed and reported the effects of the appeal scheme on the SAC and incorporated appropriate mitigation measures into the project. Certainly I find little sign of this in the Environmental Statement or in the 'appropriate assessment' document produced by the appellant shortly after the appeal in April 2009. Even the revised appropriate assessment produced just before the inquiry in October 2009 falls short in this respect, and it does not clearly reflect the mitigation proposals promulgated during the inquiry itself [7.5,8.5]. Indeed, it is still not clear which mitigation measure would be employed and when it would be implemented, assuming that this could be agreed with the third party concerned [11.5].

17.8 I do not consider that the mitigation options now envisaged by the appellant can be taken to be part of the application scheme. Even if they are considered not to materially change the substance of the application, they involve works on the property of Severn Trent Water Ltd and in the absence of an agreement there is little to give me confidence that they would be implemented so as to enable the scheme as a whole to proceed as planned. They take the form of options worthy of consideration rather than a settled programme of works, and it is not clear how they would fit in with other considerations that Severn Trent Water Ltd might need to take into account [7.3,7.6,8.7]. That the measures are dependent on a suggested Grampian condition and a unilateral undertaking, rather than an agreement, underlines this uncertain position. For the purpose of this screening stage it is difficult to see how measures that are dependent on a third party who is not 'signed up' to the project can be regarded as part of the application.

17.9 I therefore consider that it is consistent with the case law referred to that the mitigation proposed by the appellant at Packington treatment works is not considered at the screening stage. I conclude that the appeal scheme would be likely to have significant effects and that an appropriate assessment of the implications for the SAC is therefore necessary in accordance with Regulation 48(1).

17.10 While it may be generic in origin, the phosphate target limit of 0.06 mg/l appears to be based on best available information for the site and deserves to be given due weight in considering the implications for the site's interest

²¹ R (on the application of Hart District Council) v SSCLG and others [2008] EWHC 1204 (Document AP17B)

features [6.39,8.4]. It is an environmental outcome that would contribute to the site's conservation objective of restoring the favourable condition of the river as a habitat for populations of bullhead and spined loach.

- 17.11 It may well be that the treatment options proposed by the appellant are theoretically capable of allowing the development to go ahead with 'nil detriment' to conservation objectives, although this remains questionable in the case of chemical dosing [6.41,8.6]. However, in assessing the effects on the integrity of the site I find that there are several sources of uncertainty.
- 17.12 As noted above the implementation of the works would be dependent on a third party, which, although it has not rejected the appellant's proposals, appears unwilling or unable to commit itself at this stage, there being other considerations for it to take into account [6.42]. Even with the financial support offered by the appellant I am far from convinced that Severn Trent Water Ltd would bring forward its plans by two years to suit the requirements of the appeal scheme [6.42,8.9-10]. Various factors, including the outcome of the Water Cycle Study and the complexity of the programme of improvements considered by Severn Trent Water Ltd to be required, may have a bearing on its investment plans and attitude to the mitigation proposals [8.6-7].
- 17.13 The appellant's unilateral undertaking and suggested Grampian condition would allow for development to take place before the mitigation works were completed and operational [6.45,16.1.1,16.3-4]. Although occupation of the proposed dwellings would be restricted, there is insufficient information to assure me that harm to the SAC could be avoided during the period of development activity, notwithstanding the requirements of the suggested planning conditions [7.5,7.7,16.1]. Moreover, the unilateral undertaking also places a cap on the appeal site owners' financial liability in respect of the mitigation works [16.4]. While the cap would cover the costs calculated by the appellant's expert in response to a question raised during his cross examination at the inquiry, I am not sure about the views of Severn Trent Water Ltd or about the risk of costs exceeding the cap and the problems that might result from that [6.36].
- 17.14 It also appears to me that there is no cogent answer to the view that the proposed mitigation works would affect future progress towards achieving the 0.06 mg/l phosphate target for the SAC [8.4]. The implication of the proposed 'constant load' approach is that the potential for future technological improvements to reduce phosphate concentrations in effluent would effectively be instead 'used up' on the need to reduce the phosphate load resulting from the additional flow arising from the appeal development [8.8]. Thus, it might simply serve to maintain the present unacceptable levels of water quality and the threat that these pose to the integrity of the SAC and restoring its favourable condition.
- 17.15 Because I do not find these concerns to be adequately addressed in the 'appropriate assessments' supplied by the appellant or in the other information produced at the inquiry I cannot ascertain that the appeal scheme would not adversely affect the integrity of the SAC. While Regulation 49(1) would nevertheless allow permission for the scheme to be granted in certain circumstances, I do not find that those circumstances are to be found in this case. First, I am not satisfied that there are no alternative solutions to the development needs to be met by the appeal scheme: for example, there are

possible alternative sites and emerging schemes at Money Hill and Hollywell Spring Farm [7.8]. There is a possibility that development there would not be dependent on discharging its sewage to Packington treatment works [10.11, 11.10]. Secondly, it is not argued in this case that there are any 'imperative reasons of overriding public interest' for carrying out the proposed development.

- 17.16 On this issue, therefore, I must conclude that permission for the scheme should not be granted on the basis of Regulation 48 and the unacceptable risk of harm to the River Mease SAC. The scheme does not respect this environmental constraint in accordance with EMRP policy 12; nor would it ensure the protection required by EMRP policy 26 [5.2, 8.1]. Moreover it is not fully consistent with the aim of EMRP policy 32 to ensure that the necessary improvements to sewage treatment capacity are in place so that development does not compromise the quality of discharged effluent. While it is true that the proposed Grampian condition could be imposed, neither it nor the unilateral undertaking would prevent development commencing before the necessary improvements come into operation. It also appears to be inconsistent with the water quality mitigation proposed in the 'Habitats Regulations assessment' of the EMRP [11.9, 12.8]. By pre-empting any possible decisions taken as a result of the Water Cycle Study it would also run counter to what I infer is an aim of the policy to get developers and public bodies to work together to take account of water-related issues at an early stage in identifying land for development and in the implementation of development.

Impact on landscape and the character of the town

- 17.17 The area of land to the south of Lower Packington Road considered in the Local Plan Inspector's report was substantially smaller than, and not wholly part of, the appeal site [6.26]. However, I consider that the quoted description of the area between the A42 and Ashby de la Zouch, to which that Inspector agreed, is just as applicable to the appeal site [7.17]. Indeed, as a concise description I find it difficult to improve on. Although on the edge of the town, the site is predominantly rural and "*attractive countryside right up to the built edge*" [7.17]. Much of the area proposed for development is visible from the approach to the town along Lower Packington Road and from the public paths, including Packington Nook Lane, that cross the site [3.3, 3.6, 6.23, 7.19].
- 17.18 Taking into account the expert evidence, I rate the site as of at least medium or moderate landscape value and sensitivity [6.22, 7.19, 10.5]. This takes account of the noise from the A42, which, I agree, does detract from the rural character, especially in the south of the site [6.23, 6.29].
- 17.19 Despite the amount of green infrastructure proposed in the scheme, the built development would be extensive and would transform the character of the site [4.1, 6.26, 7.18]. The visual and accessible amenity of the site as countryside and as an attractive rural setting for the town would, I believe, be permanently lost, and I am aware that local people would regard this as a significant loss [12.1, 12.3, 13.2, 15.4]. Again taking account of the expert evidence, I consider that the visual and landscape impacts of the development would be adverse and of at least moderate or medium significance during the period of development [6.23, 7.19-20, 10.5]. There would of course be considerable scope for mitigation by scheme design and landscaping [6.60]. This would reduce the visual and landscape impacts of development in the longer run, as the

landscaping matures, but I would not go so far as to say that it would eventually neutralise or render insignificant these impacts.

- 17.20 The policy context has of course changed since the time of the Local Plan Inspector's report in 1998; but the current expectations in terms of design, green space, or sustainability do not lead me to modify my above assessment of landscape and visual effects. The latter involve another conflict with EMRP policy 12 in that the scheme would not be located so as to respect environmental constraints, which explicitly include the surrounding countryside [5.2]. For a similar reason, but in more site-specific terms, there is also a clear conflict with policy S3 of the Local Plan [5.4]. However, that conflict is qualified by the fact that the Local Plan is out of date in respect of its development boundaries, which do not take account of the current housing land needs for this District as stated in the EMRP [5.1,5.3].
- 17.21 The appeal scheme represents a substantial addition to a town that has already grown substantially to the south east [7.15]. However, like that development it would be contained by the A42. I would see no harm to the character of the town in terms of the resulting pattern of development. Arguments that development would be better located on the northern side of the town and to create a more compact form of development appear to me to relate more to sustainability merits than to the character of the town [7.15]. Control over the reserved matters, including layout and design, would help to avoid harm to distinctive characteristics of the town [6.27-28].
- 17.22 Many objections focus on the **scale** of the scheme, but I find no objective basis for concluding that it is excessive either in relation to the character of Ashby de la Zouch as a whole or in terms of indirect effects on the town centre Conservation Area [12.3,13.2,15.4]. I am also conscious that development would be phased over a period of 8 years, and so the full impact of the scheme would not be sudden [4.1,6.27].
- 17.23 I would expect the main effect on the character of the town to relate to its attractive rural setting, which can be appreciated from the top of the castle tower as well as from Lower Packington Road and public paths across the site [6.24,10.5]. Also, I would see the proposed development on the side of the ridge on the south west side of the site as significantly extending the perceived extent of the town from several viewpoints outside the site [6.24].
- 17.24 In conclusion I would expect some harm to the landscape and to the character of the town to result from the proposed development. This could be limited by the mitigation measures but would nevertheless be significant in my assessment [6.60].

Noise

- 17.25 A not insignificant part of the appeal site lies adjacent to the A42 and within Noise Exposure Category C, where PPG24(Annex 1) advises that planning permission should not normally be granted [7.31,7.33]. While that advice is qualified, I am not convinced that the qualification applies in this case as, in view of my other conclusions, I do not find cogent reasons for permitting the proposed development. In any case, following the same advice, I consider it probable that quieter alternative sites would be available, albeit not immediately [7.31]. Although those sites are nearer to employment areas, which could be potentially noisy, I have not seen or read anything that would cause me to

expect that they would be as noisy as the part of the appeal site next to the A42 [6.33].

- 17.26 That aside, it would be possible to secure mitigation measures through planning conditions. The design and layout of buildings and landscaping could provide a barrier affording considerable protection against noise [6.29]. However, there would still be areas of open space where noise would be a notable consideration [7.32]. The area of open space next to the A42 would be particularly exposed with no planned shielding by buildings. That area may not be essential for meeting open space standards, but it would be available for amenity use and is to be taken into account in considering the quantity and quality of the scheme's total open space provision [6.29-30, 7.32].
- 17.27 In addition to this there would be some, albeit limited, garden or courtyard areas in the most exposed part of the site that would not fall within the World Health Organisation guideline of 55 dB(A)Leq [6.29, 7.32]. This guideline may be precautionary, without policy implications, and in need of flexible interpretation [6.30]. But exceeding it here signifies to me the difficulty there would be in achieving the high quality development sought by national planning policies, even with due attention being given to the reserved matters [7.34].
- 17.28 With regard to internal noise, I accept that proposed dwellings in the most exposed part of the site could incorporate acoustic ventilation and/or cooling systems to ensure acceptable conditions [6.32]. I also accept that the more limited necessary provision in this case does not necessarily lead to the same conclusion as that in the Grange Farm appeals [6.32]. Internal noise is not a determining factor in my view. But that such provision would be necessary only serves to support my doubts about the quality of this part of the development as a residential environment.
- 17.29 On this issue I conclude that noise from the A42, although not the major consideration, is sufficient to count against the appeal scheme.

Highway matters

- 17.30 I have several concerns in relation to highway matters. These arise mainly from the failure to provide a timely and sufficient transport assessment.
- 17.31 First, I share the view that the traffic modelling work falls short in certain respects [6.50, 7.24, 12.5-6]. Most notably, there is reasonable cause for concern about the potential use of Cambrian Way / Windsor Road as a 'rat run'. The proposed access works on Lower Packington Road would, to me, make the use of that route to the town centre very likely [4.2]. In view of the nature of Cambrian Way / Windsor Road and their function for residential access, I would have expected this possible route to have been covered in the modelling work, with more specific consideration of any mitigation measures after local consultation [12.5]. As things are, I cannot be sure that potential adverse effects on local amenity and road safety could be acceptably overcome.
- 17.32 I come to a similar conclusion on the route to Junction 13 via Corkscrew Lane. I am not satisfied that a resulting increase in traffic using this route, even if no more than 15%, would be safely accommodated, given the alignment and width limitations of the existing lane [6.53]. A more specific assessment was warranted, including the possible need for, and feasibility of, mitigation.

- 17.33 Secondly, the necessary mitigation measures at Junction 13 have not been adequately considered. Indeed, they were still evolving at the inquiry. On the face of it there appears to be scope for adequately limiting the impact on the Strategic Route Network, but I can understand that there could well be potentially problematic repercussions on the use of that Network and Junction 13 arising from measures to overcome the outstanding issues facing local roads [9.2, 9.4].
- 17.34 The layout of the present A511 Coalville exit from the Junction 13 roundabout was introduced a few years ago as part of a new system, including traffic lights [7.28]. Evidently those changes proved to be successful in terms of road safety [7.28]. With the present traffic lights and associated queueing I can see why a reversion to two lanes at this exit could now increase the probability of accidents despite the recommended increase in taper length [6.55-57, 7.26]. That there is no evidence of accidents of this kind under the former junction arrangements here does not prove that the proposed mitigation measures would be safe [6.56]. That is because there is now the need to take account of the other measures that were introduced at the time, including traffic lights [7.27].
- 17.35 I accept that the mitigation measures proposed on the link westwards to the Nottingham Road roundabout are unsatisfactory in that they do not provide for adequate separation of the two directions of traffic, especially in relation to traffic wishing to turn right out of Coalfield Way [7.29]. The proposed re-instatement of the long separation island, and the widening of the road to accommodate this, were discussed at the inquiry but it was not clearly demonstrated to be achievable having regard to physical features such as the embankment, and to ownership boundaries.
- 17.36 Having regard to the aims and text of Local Plan policy T3, I believe it is for the appellant to demonstrate that traffic consequences of the proposals can be adequately mitigated [5.4]. That was not achieved at the inquiry. Nor am I satisfied that full consideration has been given to the requirements of DfT Circular 02/2007 and certain mandatory guidance in TD16/07, particularly paragraphs 7.8 and 8.50 [7.28, 9.3, 9.5].
- 17.37 Local residents have concerns about the effects on certain other local road junctions and streets, but it does not appear to me that the proposals are lacking in those respects [12.4, 13.3]. The county highway authority draws attention to the resulting increased congestion on Ashby Road, but my overall view also takes account of the improvements that would result from the appeal proposals [7.25]. The modelling results suggest to me that the harm associated with this increased congestion could be offset by benefits to be felt in other parts of the local network [6.51].
- 17.38 Nevertheless, I conclude that the necessary mitigation measures are not fully defined and supported by the modelling work. I am not satisfied that they would be sufficient to avoid prejudicing road safety. This leads me to the view that, even with the proposed Grampian condition to secure mitigation measures, the scheme is not in accordance with the aims of Local Plan policy T3. The provision made for highways is not adequate.

Sustainability

- 17.39 In dealing with this issue I concentrate on the need to encourage patterns of

development that reduce the need to travel, especially by private car. Ashby de la Zouch is well connected to the strategic road network and the PTOLEMY report on strategic housing growth scenarios illustrates the degree of commuting from the town [7.21]. Although all the towns in the District may be considered to have good access to this network it is evident that there is a higher degree of commuting from Ashby de la Zouch in comparison with the main settlement of Coalville [7.21].

- 17.40 In these terms I accept that the PTOLEMY report does not unarguably favour any one of the growth options considered by the Council. I can see that the PTOLEMY option 3 scenario would allow for a scale of housing development at Ashby consistent with the appeal scheme and with a growth of employed residents that happens to roughly match the appellant's calculation of jobs growth over the plan period [6.15]. However, I do not find that it shows that option to be better, in terms of sustainability, than the option favoured in the Council's 'emerging view' which envisages growth of just 1000 dwellings at Ashby over the period [5.5].
- 17.41 The appeal site is very conveniently placed in relation to the A42 Junction 12 in particular, and I have no doubt that the proposed housing development would be attractive to those working in the West Midlands and other urban areas served by the related motorway network [3.2, 7.21, 12.7]. I conclude that development here would probably strengthen the commuting pattern that already exists at Ashby.
- 17.42 The potential for sustainable development is helped by the fact that Ashby de la Zouch is the second biggest town in the District, although not designated a Sub-Regional Centre in the EMRP [3.7, 5.2, 6.14]. However, most of the appeal site lies beyond the preferred maximum **walking** distance (800 m)²² to the town centre, albeit with a relatively favourable gradient [6.18, 7.22]. That distance is not policy but is part of a technical report – the IHT guidelines – the credibility of which I have no cause to doubt [6.18, 7.22]. While it is true that many key facilities of the town lie within the 2 km distance referred to in PPG13(75), that distance relates to the potential for replacing short car trips generally and not just trips to the town centre [6.18]. Also, the 2 km reference is by way of an observation and, although in national planning policy guidance, is not itself presented as a policy criterion. Even using 2 km as a criterion, I would not agree that the town's main employment areas outside the town centre would be conveniently located for the appeal site as a whole [6.18].
- 17.43 **Cycling** would perhaps offer better access to local facilities, although there do not appear to be particularly well developed cycle routes in this area [6.19, 7.23].
- 17.44 **Public transport** is available, but limited [3.7, 6.19, 7.23]. I doubt that the appeal scheme would meet the requirement of EMRP policy 12 for development to be located where there are "**good**" public transport linkages. The appeal scheme would make provision for bus transport, including a town centre service; but the latter would not serve parts of the town, such as the northern employment area, or other towns [6.20, 7.23].

²² Based on the IHT guidelines

- 17.45 The scheme does of course include non-residential uses, which would help to limit the amount of travel beyond the site boundaries. The Section 106 agreement would also help in providing local capacity for the services and facilities that would be sought by the occupiers of the proposed development [6.22].
- 17.46 I conclude that the appeal scheme does have some sustainability merits but that it does not rate particularly highly in this respect. All things considered, it is not a distinctly more sustainable location than the alternative sites at Ashby [6.17, 10.11, 11.10]. Simply to illustrate the basis for this conclusion I judge that the Money Hill site would offer somewhat better opportunities for limiting car travel by virtue of its proximity to the town centre and employment areas [7.22].
- 17.47 EMRP policy 3 is particularly relevant to this issue as it sets out the approach to the distribution of new development in the region, reflecting sustainable development principles. I cannot conclude that the sustainability credentials of the appeal scheme draw any significant support from the policy as Ashby is not a named settlement in categories (a), (b) or (c), the appeal site is not previously developed land, and it is not clear to me that the scheme would be located so as to contribute substantively to shortening journeys and facilitating access to jobs and services [3.1, 5.2]. In terms of the objectives of PPG13(4) I also have doubts about the extent to which the scheme would promote more sustainable transport choices and reduce the need to travel, especially by car.

Prematurity

- 17.48 While a good deal of consideration has been given to the Core Strategy for the District I do not give much weight to the emerging view of the Council that 1000 dwellings should be provided at Ashby de la Zouch [7.10]. This is because the split of the District's housing provision between settlements is not yet part of the submission document and that figure might change as a result of further processes of public consultation, sustainability appraisal and examination [5.5, 6.13].
- 17.49 However, the Council has been consulting on a range of possible growth options for Ashby and the other settlements. I consider that the scale of the appeal scheme is such that it would notably restrict the optional range for Ashby, particularly at the lower end [5.5]. Now that there is an up to date regional spatial strategy and an impending outcome of the Water Cycle Study, I expect the Core Strategy to be produced and submitted expeditiously in 2010 [6.43, 7.13]. So a decision to permit the appeal scheme would be pre-emptive possibly at just the time when the Council will be deciding the content of the submission DPD.
- 17.50 Having regard to the existing development commitments and the progress with the allocated site at Leicester Road, an additional permission for 1000 dwellings at Ashby would, I believe, be so substantial as to predetermine decisions on the scale, location and possibly phasing of new development to be addressed in the Core Strategy [7.11, 10.7, 11.8]. Given the need to ensure that the District's allocation of housing development is located mainly at Coalville, as required by policy Three Cities SRS3, the appeal scheme could affect the Council's ability to ensure that the needs of the other settlements are satisfied by the Core Strategy, in accordance with EMRP policy 3 [5.2-3, 7.13]. It would

predetermine the scale of growth at Ashby and affect the location of development across the rest of the District. In the context of the range of growth options the Council has been considering for Ashby I do not consider that the effect would be major or likely to threaten the ability to fulfil policy Three Cities SRS3 [5.3]. Nonetheless, I consider that it would be substantial enough to be of significance.

17.51 The appeal scheme could affect the progress of the development focus at Coalville, although as the latter is in a different market area I doubt that the effect would be marked [6.13, 15.2]. The 'strategic site' threshold suggested by GOEM was for the purpose of identifying such sites in the Core Strategy [6.14]. That the appeal scheme falls below that threshold does not in my view mean that the strategic effects of the scheme would be insignificant.

17.52 The scheme would also predetermine the direction of growth at Ashby: a matter presently intended to be settled through the formulation of the Core Strategy [10.7]. And it would not take account of the forthcoming results of the Water Cycle Study, which might have implications for the amount, location and timing of development at Ashby during the Plan period [11.9].

17.53 The context of the Edwalton appeal decision was different in notable respects. In particular it appears that all the identified sites in that case were needed for development if the housing provision targets were to be met [10.8]. So it is perhaps not surprising that permitting that proposal for development, amounting to less than 10% of the emerging regional spatial strategy requirement, would not have been considered to prejudice the preparation of the relevant Core Strategy. It also appears that the Core Strategy in that case was at an earlier stage, with nothing having been published at the time [10.8].

17.54 As indicated in paragraph 18 of *The Planning System: General Principles*, refusal on prematurity grounds would seldom be justified where there is no early prospect of submission of a development plan document for examination. That is not the case here, and I do not consider that refusal of planning permission would give rise to undue delay in determining future land uses.

17.55 I conclude that the appeal scheme would be premature, having regard to the emerging Local Development Framework and to guidance in *The Planning System: General Principles* paragraphs 17-19. In view of PPS3(72) I accept that this would not be sufficient reason in itself to refuse outline planning permission. But the degree to which the scheme would prejudice the outcome of the Core Strategy process adds some weight to the sum of the harm attributable to the scheme.

Meeting housing needs

17.56 It is common ground that the Council does not have a five year supply of deliverable housing sites [6.2, 10.9]. The Council accepts that the shortfall is chronic and severe [7.12]. Were the appeal scheme to proceed as proposed it would noticeably reduce the shortfall, even though much of the development would occur after the present five year period [6.4]. In accordance with national policy in PPS3(71) the appeal scheme should therefore be considered favourably having regard to the considerations in PPS3(69).

17.57 The appeal scheme certainly has some substantive merit in relation to PPS3(69). With regard to the second bullet point it would be able to provide a

good mix of housing, including a substantial proportion of affordable housing, which would help to tackle the chronic under-provision [6.3-4]. However, in relation to the first bullet point I have already questioned the extent to which the scheme could achieve a high quality housing development, owing to traffic noise from the A42. And in relation to the third bullet point I find that the scheme is not suitable in terms of environmental sustainability, owing to the lack of certainty that the proposed development would avoid adverse effects on the River Mease SAC.

- 17.58 In relation to the fifth bullet point of PPS3(69) I am not satisfied that the scheme is wholly in line with 'planning for housing objectives' in PPS3(10). Although it could again score well on housing mix, I have already expressed doubts about the prospects of achieving a wholly high quality development and having good access to jobs and services. As for the rest of this fifth bullet point of PPS3(69), I believe the scheme would reflect the need and demand for housing in the area, but that there are shortcomings in terms of fulfilling the spatial vision and wider policy objectives of the area [6.6].
- 17.59 To explain this latter conclusion I need to refer to the development plan and the District's emerging Core Strategy. Because the Core Strategy is still in preparation and the Local Plan is rather out of date in some important respects, I look mainly to the EMRP [5.4-5,6.5,7.10]. But before doing so, I consider the appellant's point about the relevance of PPS3(38) in these circumstances, since it contains criteria to be used in identifying broad locations and specific sites for development and to be taken into account in producing local development documents [6.6]. Insofar as they can help in the assessment of an individual planning application, I do not find that the appeal development fares well against some of those criteria. For example, and for reasons already given, it would not respect the environmental constraint posed by the SAC, and it would not focus new development in a location *"with good public transport accessibility and/or by means other than the private car"*.
- 17.60 Concerning the EMRP, policy 3 does provide for the development needs of "other settlements", such as Ashby de la Zouch, to be met. The appropriate levels of development for settlements are presently being worked out through the Core Strategy process. I cannot say what the appropriate level for Ashby is, but coming on top of the existing housing development commitments for Ashby, there are reasonable grounds for the view that the appeal scheme could prove to be excessive [7.11,10.3]. It appears to be above the size that would be required were provision to be based on the settlement's population share and on a split that fully reflects the 'Coalville focus' established in policy Three Cities SRS3 and the need to correct notable housing/employment imbalances in settlements such as Castle Donington [6.7-8,7.21,10.3,15.2]. I conclude that there is a significant risk that the proposed housing development would exceed the needs of the settlement in terms of policy 3.
- 17.61 Apart from this, my findings in relation to the other main issues suggest that the appeal scheme would not meet the qualifying criteria of part (d) of policy 3. First, it would not contribute to maintaining the distinctive character of Ashby, particularly with regards to its attractive rural setting. And secondly, I am not convinced that it would shorten journeys and facilitate access to jobs and services.
- 17.62 As indicated above, I also find that it fails to meet some of the qualifying

criteria of EMRP policy 12. First, the proposed development does not “... *respect environmental constraints, in particular the River Mease SAC ... and the surrounding countryside ...*”. And secondly, I have concluded that the site location does not enjoy **good** public transport linkages. In connection with this policy the appellant argues that the scheme would help to achieve an appropriate balance with employment uses at Ashby; but that needs to be considered against what I judge to be a location that would strengthen the existing pattern of out commuting [6.8,6.15,7.21].

17.63 With regard to EMRP policy Three Cities SRS3, the appeal scheme would help to achieve the annual level of provision stated in the policy although it does not help to ensure that this is located “mainly at Coalville” [6.4]. It is arguable that it would make the latter more difficult although I do not rely on that view as it is not well supported by the evidence [6.13,7.13,15.2]. Nevertheless, I am aware of the importance of this policy in achieving the regional priority of strengthening the role of Coalville [7.9].

17.64 In evaluating the contribution of the appeal scheme to meeting local housing needs I consider it appropriate to take account of alternative means of meeting those needs in the event that the appeal scheme does not proceed. The sites at Hollywell Spring Farm and Money Hill are both able, either on their own or in combination, to make a substantial contribution to meeting housing needs, although in the case of the former site the potential size is less than that of the appeal site [10.1,11.1]. Since meeting those needs is such an important part of the case for the appeal scheme I believe it to be a matter of common sense that in gauging the strength of this case consideration is given to the likelihood of those needs being satisfied by other means [6.1-2]. Moreover, I find that it is necessary to consider alternatives as part of the process of assessment under the ‘Habitats Regulations’. In coming to these views I have taken account of the case law referred to [6.10,10.1].

17.65 Development schemes on the alternative sites are at a less advanced stage of preparation than the appeal scheme. Although it is not for me to carry out a full comparative evaluation I can at least report that, taking into account relevant planning criteria, I do not find either of the alternative sites at Ashby to be inferior, overall, to the appeal site [6.12]. Indeed, in certain respects the alternative sites have possible advantages [7.13,10.11,11.10]. I have no good reason to doubt that alternative schemes could be capable of delivering housing from 2012 onwards. It does not appear that the promoters of alternative schemes would be content to wait for the adoption of the site allocations DPD before applying for planning permission [10.11,11.11]

17.66 The appeal scheme envisages the first completions during 2011/12 [6.4]. Several factors might cause delay in the proposed programme, and I would be especially concerned about the time it would take to agree and implement a programme for providing the necessary sewage treatment works [7.12,8.9-12,10.9-10]. My concern is heightened by my doubts about the appropriateness of the appellant’s suggested planning condition, which would allow development to be carried out in advance of the agreed works becoming operational [16.1.1]. I am not satisfied that this would be acceptable bearing in mind the sensitivity and importance of the SAC and the need to assess the risk of on-site activities and uses indirectly causing it harm [7.1-2,7.5]. In any event and leaving that point aside, I am not sure that a prudent developer would wish to commence development until it was clear that all the demanding

requirements of this condition were satisfied.

17.67 In summary I conclude that the appeal scheme would be beneficial in providing much needed housing development. But the need to consider it favourably in accordance with PPS3(71) should be qualified by its shortcomings in relation to PPS3(69) and the development plan. Moreover, it is not the only way of addressing the housing land supply requirements: without the appeal scheme other sites in Ashby would be likely to come forward in time to boost the 5 year supply. They may not come to fruition as quickly as the appeal scheme, but in my assessment the time advantage of the appeal scheme is not very substantial and there is a significant risk that it would turn into a disadvantage due, especially, to delays arising from the need to implement sewage treatment works.

Other matters

17.68 There is concern about flood risk at Packington and I do not doubt that the appeal scheme would be capable of significantly reducing that risk by means of its flood alleviation measures. The benefit of the scheme can be judged in the context of the history of recent events and the 25 properties at risk of flooding in a 1 in 100 year return flood event [6.49]. I take this into account as a substantive benefit of the scheme, as I am not aware of any other proposals likely to come forward to provide that benefit. That said, to dismiss the appeal would not rule out the possibility of other development proposals and flood alleviation measures coming forward at some stage.

17.69 I can understand the concern about the effects of the scheme on existing congestion and parking pressure in the town. But, taking into account the proposed mitigation measures, it is not evident to me that conditions would deteriorate to an extent that would cause real harm. Local people are also understandably concerned about the additional pressure on local facilities and services; but I have no reason to doubt the adequacy of the developer contributions through the Section 106 agreement in addressing those matters [13.2, 15.4, 16.2].

17.70 The village of Packington values its separate identity, but I do not consider that this would be seriously threatened by the appeal scheme, particularly in view of the physical presence of the A42 trunk road and its likely effectiveness as a barrier to the spread of development from the town [13.1].

17.71 Other concerns, such as airport safeguarding and the wildlife of the site, could in my view be adequately addressed by means of the suggested planning conditions [15.3-4, 16.1, 16.1.7].

Overall conclusion

17.72 On the first main issue I have concluded that permission for the scheme should not be granted on the basis of Regulation 48 of the 'Habitats Regulations' and the unacceptable risk of harm to the River Mease SAC. Even if the suggested Grampian condition and Section 106 unilateral undertaking were considered to be an adequate safeguard, they do not provide assurance that the necessary sewage treatment works would be carried out soon enough to allow the scheme to go ahead as planned. The risk of delay to the development programme reduces its potential benefits in terms of meeting the pressing shortfall in housing land supply. Moreover, to allow the appeal would probably

make it more difficult to envisage other schemes coming forward in time to provide such benefits. This is because they would be less likely to be favoured by policies in the emerging Core Strategy and less likely to be pursued with the vigour that would otherwise be the case.

17.73 I have also found against the appeal scheme on other main issues. In particular, I would expect the following shortcomings or harmful effects.

- Some significant harm to the landscape and to the character of the town.
- Shortcomings in the quality of the residential environment on parts of the site owing to noise from the A42.
- An undue risk of harm to road safety.
- Shortcomings in the sustainability of the site location.
- Prejudicing the outcome of the Core Strategy process.

17.74 The appeal scheme could be beneficial in providing much needed housing development. But it is not the only way of addressing the housing land supply requirements. It could address those requirements at an earlier stage than the alternative means but I conclude that the time advantage would not be very substantial. Another notable benefit of the scheme is the likely reduction of flood risk at Packington. Together with the other merits of the appeal scheme, these benefits are not sufficient in my assessment to outweigh the conflicts with the development plan and the other shortcomings and harmful effects I have identified [6.60]. In coming to this conclusion I have taken full account of the potential for mitigation to be secured by planning conditions and obligations. Accordingly my overall conclusion is that the appeal scheme is not in accordance with the development plan and should not proceed.

Planning conditions and obligations

17.75 Should the appeal be allowed, I consider that the following changes would be required to the conditions listed in Document CON2. These are in addition to a number of minor changes that are necessary for clarification and correction. In most cases I have omitted the consultation requirements from the conditions as their inclusion is unnecessary and in some cases imprecise about who would need to do the consultation. All changes are reflected in the conditions listed in the Annex to this report. Condition reference numbers can be taken to be those in the Annex unless I state otherwise.

17.76 In condition 1 I add a sentence to ensure the development is carried out as approved.

17.77 Condition 9 is a simplified and clarified version of that in Document CON3C [16.1.1]. It states that no development shall commence on the site until the approved sewage scheme is operational. With the limited information to hand, and notwithstanding the effect of conditions 10, 18 and 19, I believe that this would be necessary to minimise the risk of harm to the SAC.

17.78 Condition 10 is based on the fuller versions of the surface water drainage conditions in Documents CON2 and CON3 [16.1.2, 16.1.9].

17.79 Condition 12 incorporates amendments discussed at the inquiry [16.1.3].

- 17.80 Conditions 13 and 15 are based on the conditions suggested by the main parties, although I accept that it is unnecessary to include the reference to Traffic Regulation Orders [16.1.4]. I also agree that it would be unnecessary to include the additional condition suggested by the Highways Agency [16.1.5]. Information on road heights would be covered by conditions 4, 7 and 16 [16.1.6].
- 17.81 Condition 17 takes the form of the suggestion made at the inquiry, which is simple and clear. I do not consider it necessary to add consultation requirements to other conditions [16.1.7].
- 17.82 Condition 18 requires the submission of a revised flood risk assessment [16.1.8]. In view of the requirements of this condition and conditions 10 and 19, I consider the inclusion of the condition requiring adherence to the April 2009 flood risk assessment to be unnecessary, potentially confusing, and not completely clear in its detail. The omission of the condition concerned (condition 18 of Document CON2) was not discussed at the inquiry. The wording of condition 18 of the Annex is modified to take this into account.
- 17.83 Condition 19 is based on the fuller version suggested by the Environment Agency [16.1.10].
- 17.84 Condition 23 is based on an alternative wording suggested by the Council [16.1.11].
- 17.85 It is not evident that there is any need for the suggested contaminated land condition [16.1.12]. Nor do I consider that it is necessary to include the suggested condition on 'trapped gullies', which appears to be inadequate in its definition and requirements [16.1.13].
- 17.86 With regard to the **planning obligations**, the provisions of the Section 106 agreement appear to be adequate and to fulfil the tests of Circular 05/2005 [16.2].
- 17.87 However, with regard to the unilateral undertaking I share the views of the objectors about the uncertainties associated with the implementation of the proposed works [16.4]. Despite the various safeguards in the planning conditions I would not be assured that there would be no adverse effect on the integrity of the SAC and that there would be a reasonable prospect of the proposed works being effectively completed in time to allow the scheme to follow the proposed programme of implementation. I do not see that the unilateral undertaking would achieve significantly more than condition 9.

18. RECOMMENDATION

- 18.1 I recommend that the appeal be dismissed and that outline planning permission be refused.
- 18.2 In the event that the appeal is allowed I recommend that outline planning permission is granted subject to the conditions set out in the Annex to this report.

Graham C Cundale

APPEARANCES

FOR NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL:

Mr C Young	Of Counsel, instructed by Mrs E Warhurst, Legal Services, North West Leicestershire District Council
<i>He called</i>	
Mr S Saunders BA(Hons) MA MRTPI	Planning Policy Team Leader, North West Leicestershire District Council
Mr J Etchells MA BPhil MLI	Director, Jon Etchells Consulting Limited
Dr R Keymer BSc(JtHons) MSc PhD	Area Manager, Natural England
Mrs C Day BSc MIOA	Acoustics Consultant, Sharps Redmore Partnership
Mr A Harvey BA(Hons) MRTPI IHBC	Principal Planning Officer, North West Leicestershire District Council
Mrs J Eynon BSc(Hons) DipTP MRTPI	Team Manager, Transport Planning Group, Leicestershire County Council
Mr A Crawford BA MSc	Director and Head of Development Services for Transport Consultancy, Scott Wilson

FOR THE APPELLANT:

Mr A Williamson	Partner, Walker Morris Solicitors
<i>He called</i>	
Dr S Metcalf PhD CEng MChemE MCIWEM	Technical Director, SLR Consulting Limited
Mr D Pettifer CEng FICE FCIWEM MEPS	Director, JBA Consulting, a specialist flood risk consultancy
Dr S Mansfield BSc(Hons) PhD MIEEM CMLI	Partner, Faulks, Perry, Culley and Rech, a multidisciplinary practice of architects, landscape architects, ecologists and arboriculturalists
Mr S C Williams BEng	Acoustic Sector Director, Halcrow Group Limited, a multidisciplinary engineering and environmental consultancy
Mr C P Rech BA BPhil MLI	Senior Partner, Faulks, Perry, Culley and Rech
Mr C M Hough BSc FRICS	Principal, Sigma Planning Services

FOR THE ENVIRONMENT AGENCY:

Mr H Phillpot	Of Counsel, instructed by E Hulse, Principal Solicitor, Environment Agency (Midlands Region)
<i>And in Mr Phillpot's absence:</i>	
Mr J Taylor	Regional Solicitor for the Environment Agency

He called

Dr P R Hulme BEng(Hons)
PhD CEng MCIWEM

Environmental Planning Team Leader,
Central Area, Environment Agency
(Midlands Region)

FOR THE HIGHWAYS AGENCY:

Mr G Lewis

Of Counsel, instructed by TSOL on behalf of
the Highways Agency

He called

Mrs A O'Toole
BSc(Arch)(Hons) MEnvS MA
Mr D Bennett BEng CEng
MICE

Network Manager, Highways Agency

Director, AECOM

FOR NURTON DEVELOPMENTS LIMITED:

Mr H Richards

Of Counsel, instructed by Mrs C Chave,
Andrew Martin Associates Limited

He called

Mr N Cowlin BA(Hons) DipLA
CMLI
Mrs C Chave BA(Hons) DipTP
MRTPI

Landscape Architect, Andrew Martin
Associates Limited

Principal Planner, Andrew Martin Associates
Limited

FOR THE MONEY HILL CONSORTIUM:

Mr J Cahill

Queen's Counsel, instructed by Icen
Projects Limited

He called

Mr J Waterhouse BA(Hons)
DipTP MRTPI

Director, Icen Projects Limited (planning
consultants)

FOR THE PACKINGTON NOOK RESIDENTS' ASSOCIATION:

Mr J Smyth

Of Counsel, instructed by Peter Wilkinson of
Landmark Planning

He called

Dr N Garnham

Chairman, Packington Nook Residents'
Association

Mr J Trinick BSc(Eng) CEng
MICE MIHT

Retired and formerly Technical Director,
Highways Management and Construction,
Scott Wilson Plc

Mr C Tandy

Vice Chairman of Ashby de la Zouch Civic
Society, and past Chairman of PNRA

FOR PACKINGTON PARISH COUNCIL:

Mr C Miles

Chairman, Packington Parish Council

INTERESTED PERSONS:

Mr N Smith

District Councillor for the village of Packington

Appeal by Hallam Land Management Ltd at Lower Packington Road and Measham Road, Ashby De La Zouch (APP/G2435/A/09/2102468)

DOCUMENTS LIST

Ref	Document	Provenance	Date
1.	National Planning Policy Documents		
N1	PPS 1: Delivering Sustainable Development	ODPM	2005
N1A	Planning and Climate Change: Supplement to PPS1	DCLG	2007
N2	PPS 3: Housing	DCLG	2006
N3	PPS 7: Sustainable Development in Rural Areas	ODPM	2004
N4	PPG 13: Transport	ODPM	2001
N5	PPG 15: Planning and the Historic Environment	Dept of Environment / Dept of Natural Heritage	1994
N6	PPG 16: Archaeology and Planning	ODPM	1990

N7	PPG 23: Planning and Pollution Control	ODPM	2004
N8	PPG 24: Planning and Noise	ODPM	1994
N9	PPS 25: Planning and Flood Risk	DCLG	2006
N10	The Planning System: General Principles	ODPM	2004
N11	Transport White Paper – A New Deal for Transport	DfT	1998
N12	White Paper: The future of Transport – a Network for 2030	DfT	2004
N13	Calculation of Road Traffic Noise (CRTN) – DfT		
N14	Wildlife and Countryside Act		1981
N15	Water Framework Directive		

2.	Circulars and Good Practice Guides		
C1	DCLG – Land Supply Assessment Checks		May 2009
C2	DCLG – Demonstrating a Five year Supply of Deliverable Sites		
C3	DCLG – Strategic Housing Land Availability Assessment Practice Guidance		July 2007
C4	Planning Officers Society – SHLAA and DPD Preparation		July 2008
C5	DfT Circular 02/2007 Planning and the Strategic Road Network		February 2007

C6	Circular 05/2005 Planning Obligations	May 2005
C7	DCLG / DfT Guidance on Transport Assessments	2007
C8	Withdrawn	
C9	Manual for Streets	2007
C10	Highways, Transportation and Development, Design Guide Adopted by Leicestershire County Council	
C11	BS82331999 Sound Insulation and Noise Reduction for Buildings – Code of Practice	
C12	DCLG – Letter from Richard McCarthy to Cheltenham Borough Council	20 th May 2009
C13	World Health Organisation – Guidelines for Community Noise	1999
C14	National Physical Laboratory: 1998: Report CMAM 16: Health Effect Based Noise Assessment Methods: A Review and Feasibility Study	1998
C15	Guidelines for Providing Journey's on Foot (Institute of Highways and Transportation)	2000

3.	Appeal Decisions	
AD1	Appeal by David Wilson Homes Ltd and others Land East and West of Melton Road, Edwalton	
AD2	Appeal by Jelson Ltd against Blaby District Council (APP/T2405/A/08/2080483)	December 2008
AD2A	Appeal by Jelson Ltd against Blaby District Council (APP/T2405/A/08/2080483) – Cover Letter	December 2008

AD2B	Appeal by Jelson Ltd against Blaby District Council (APP/T2405/A/08/2080483) – Statement of Common Ground	
AD3	Appeal by Barratt, Mercia and Thamesway Properties against Coventry City Council, Grange Farm and Farmhouse, Longford, Coventry	22 nd August 2007

4.	Other Regional Planning Documents		
RP1	RSS8	GO-EM	March 2005
RP2	Draft East Midlands Regional Plan	EMRA	September 2006
RP3	RSS EiP Meetings / Minutes / Participants Statements		
RP4	Panel Report to East Midlands RSS		November 2007
RP5	Proposed Changes to the East Midlands Regional Plan		July 2008
RP6	Sustainability Appraisal into the Proposed Changes to the East Midlands Regional Plan		July 2008
RP7	Managing Growth, Managing Change – East Midlands Regional Housing Strategy 2008-2016 (Draft)		April 2008
RP8	Managing Growth, Managing Change – East Midlands Regional Housing Strategy 2008-2016		November 2008
RP9	EMRP Partial Review Options Consultation		June 2009
RP10	Habitats Regulatory Assessment of the East Midlands RSS		March 2009

5.	Development Plan Documents		
DP1	East Midlands Regional Plan		March 2009

DP2	North West Leicestershire Local Plan (Saved Policies)		August 2002
DP3	Secretary of States Letter on Saved Policies		

6.	County Documents		
CO1	Leicester, Leicestershire and Rutland Landscape and Woodland Strategy	2002	
CO2	Leicestershire, Leicester and Rutland Structure Plan 1996 to 2016 Written Statement	2005	
CO3	Withdrawn		

7.	Leicestershire County Council Committee Reports		
CC1	County Council Cabinet Report of the Chief Executive, LDF Consultations		December 2008

8.	Local Plan Documents		
LP1	Inspectors Report on Objections to the North West Leicestershire Local Plan		1998
LP2	Housing, Phasing, Design and Density Issue Paper		January 2002
LP3	Proposed Alteration to housing policies, Responses to Issues Paper		August 2002
LP4	Proposed Alteration No.1 Housing Land Release, density and design and parking standards		November 2002
LP5	1st Deposit Alteration No.1		January 2003

LP6	Appendix 1 (Predicted Completions on large sites)		
LP7	1st Deposit Alteration No.3		November 2003
LP8	1st Deposit Alteration No.3, background Paper on Housing requirements		November 2003
LP9	Executive Board Report on Alteration Nos.1, 2 & 3		March 2004
LP10	2nd Deposit Alteration No.3, housing Land Release		March 2004
LP11	Inspectors Report to Public Local Inquiry into the objections to Alteration 1, 2 & 3		March 2004
LP12	Statements of Decisions and Reasons on Inspectors Recommendations and Proposed Modifications		October 2004
LP13	Notice of Intention to adopt and of Proposed Modification to proposals for the alteration of a Local Plan; NWL Local Plan: Alteration No.1 Housing design, density and parking standards: Alteration No.2 Housing Land Release		November 2004

9.	LDS / LDF Documents and Evidence		
LDF1	Annual Monitoring Report 2008		
LDF2	Annual Monitoring Report 2007		
LDF3	Annual Monitoring Report 2006		
LDF4	Annual Monitoring Report 2005		
LDF5	Statement of Community Involvement		October 2006

LDF6	Strategic Housing Land Availability Assessment	March 2009
LDF7	Housing Land Availability Assessment	July 2007
LDF8	Strategic Housing Market Assessment	December 2008
LDF9	Strategic Flood Risk Assessment	May 2008
LDF10	Ptolemy: Strategic Housing Growth Scenarios in North West Leicestershire	June 2009
LDF11	Coalville Town Centre Transport Assessment	July 2008
LDF12	Issues and Options Consultation (Together with background papers and consultation responses)	November 2006
LDF13	Core Strategy Additional Consultation (Together with background papers and consultation responses)	June 2007
LDF14	Core Strategy Further Consultation (Together with background papers and consultation responses)	November 2008
LDF15	Core Strategy Further Consultation – Sustainability Appraisal	May 2009
LDF16	Core Strategy Further Consultation – Habitats Regulations Assessment	June 2009
LDF17	Fordham Local Housing Needs Assessment	2005
LDF18	PNRA Response to the LDF Consultation	February 2009
LDF19	GOEM's response to the North West Leicestershire District Council Core Strategy Further Consultation	18 th March 2009

10.	North West Leicestershire District Council Committee Reports	
DC1	Withdrawn (Duplicates DC7)	June 2006
DC2	Withdrawn (Duplicates DC8)	July 2007
DC3	Environment Scrutiny Report, Housing Land Availability Update	August 2008
DC4	Cabinet Report - Review of Local Development Scheme	September 2008
DC5	Cabinet Report – Core Strategy Further Consultation	October 2008
DC6	Cabinet Report – Planning Monitoring Report	December 2008
DC7	Cabinet Report	16 th June 2009
DC8	Cabinet Report	14 th July 2009
DC9	Cabinet Report – Core Strategy Update	20 th October 2009
DC10	Report of the Director of Environment Planning Committee (Appendix B) – Development Control Report	2 nd June 2009
11.	Supplementary Planning Documents and Similar Documents	
SP1	Play Area Design Guidance Note SPG Adopted	July 2001

SP2	Affordable Housing SPD Adopted	October 2007
SP3	Statement of Requirements for developer contributions in Leicestershire – Guidance produced by Leicestershire County Council	December 2006
SP3A	Statement of Requirements for developer contributions in Leicestershire – Guidance produced by Leicestershire County Council (Interim Review Version)	December 2007
SP4	National Forest Planting Guidelines, A Guide for Developers and Planners	2005
SP5	Withdrawn (Duplicates SP1)	

12.	Other Housing Supply / Availability Documents	
HS1	Urban Housing Potential Study	April 2005
HS2	Withdrawn	June 2005
HS3	Performance Monitoring Board NWL Local Plan – Housing and Employment Land	June 2005
HS4	Alteration No.3 (Housing Land Release) Urban Capacity Study and Housing Land Availability Consultation Draft	June 2005
HS5	Executive Board Report; Housing Land Release – Consideration of Responses to the Council’s Consultation Draft	October 2005
HS6	Leicester & Leicestershire Housing Market Assessment Employment Land Study	October 2008

13.	Other Landscape Documents	
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L1	National Character Area 71: Leicester and South Derbyshire Coalfield Landscape Character Description	
L2	The National Forest Strategy	
L3	Tree Preservation Order (Packington Nook Lane)	1984
L4	River Mease SSSI Citation	2000
L4A	River Mease Citation Plan	2000
L4B	River Mease Data Sheet for SAC	May 2006

14.	Census Documents	
CE1	2001 Travel to Work Data North West Leicestershire District Profile	February 2006

15.	Application Documents	
A1	08/01588/OUTM – Planning Application	
A1A	Application Form	
A1B	Location Plan Drawing 3456/P/100/B	
A1C	Parameters Plan Drawing 3456/P/05/H	

A1D	Indicative Layout Plan	October 2008
A1E	Design and Access Statement	November 2008
A1F	Design and Access Statement Addendum	June 2009
A1G	Environmental Statement	October 2008
A1H	Planning Statement	
A1I	Sustainability Appraisal	
A1J	Transport Assessment Volume 1	
A1K	Transport Assessment Volume 2	
A1KA	Supplementary Transport Assessment	
A1L	Residential Travel Plan	
A1M	Green Energy Statement	October 2008
A1N	Flood Risk Assessment	October 2008
A1NA	Flood Risk Assessment – Final Report	April 2009
A1O	Withdrawn (Superseded by A3)	

A1P	Tree Assessment Report	October 2008
A1Q	Statement of Community Involvement	
A1R	Draft S106 Agreement	November 2008
A2	09/00473/ OUTM – Planning Application (No Longer Before the Inquiry)	
A3	Appropriate Assessment (Regulation 48) – The River Mease SAC (April 2009 Revised October 2009)	October 2009

16.	Appellants Statements / Proofs	
AP1	Rule 6 Statement	
AP2	Residential Market Report, Ashby de la Zouch & Coalville, DTZ,	March 2009
AP3	Phil Rech – Proof of Evidence: Environmental Matters	15 th September 2009
AP3A	Phil Rech – Appendices to Proof of Evidence: Environmental Matter	15 th September 2009
AP3B	Phil Rech – Summary Proof of Evidence: Environmental Matters	15 th September 2009
AP3C	Packington Nook Green Infrastructure – Open Space Matters	23 rd October 2009
AP3D	Extract from Deposit Draft Local Plan Proposals Map (AP3E)	23 rd October 2009

AP3E	North West Leicestershire Local Plan West – Deposit Draft Proposals Map	February 1995
AP4	Brian Plumb – Proof of Evidence: Highways	15 th September 2009
AP4A	Brian Plumb – Appendices to Proof of Evidence: Highways	15 th September 2009
AP4B	Brian Plumb – Summary Proof of Evidence: Highways	15 th September 2009
AP4C	Brian Plumb – Road Safety Audit Stage 1	21 st October 2009
AP4D	Brian Plumb – Road Safety Audit Stage 2	March 2005
AP4E	Brian Plumb – Road Safety Audit Stage 3	December 2005
AP5	Suzanne Mansfield – Proof of Evidence: Ecological Matters	15 th September 2009
AP5A	Suzanne Mansfield – Appendices Proof of Evidence: Ecological Matters	15 th September 2009
AP5B	Suzanne Mansfield – Summary Proof of Evidence: Ecological Matters	15 th September 2009
AP6	David Pettifer – Proof of Evidence: Flood Risk	15 th September 2009
AP7	Withdrawn – Superseded by AP7B	
AP7A	Stuart Metcalf – Summary Proof of Evidence: Water Quality Issues	15 th September 2009
AP7B	Stuart Metcalf – Revised Proof of Evidence: Water Quality Issues	7 th October 2009

AP7C	Stuart Metcalf – Note to Inquiry: Cost Breakdown of Waster Water Processes	26 th October 2009
AP8	Samuel Williams – Proof of Evidence: Noise	15 th September 2009
AP8A	Samuel Williams – Summary Proof of Evidence: Noise	15 th September 2009
AP9	Christopher Michael Hough – Proof of Evidence: Planning	15 th September 2009
AP9A	Christopher Michael Hough – Appendices to Proof of Evidence: Planning	15 th September 2009
AP9B	Christopher Michael Hough – Summary and Conclusions Proof of Evidence	15 th September 2009
AP9C	Christopher Michael Hough – Estimate of Future Jobs Arising From Committed But As Yet Undeveloped Employment Sites	28 th October 2009
AP9D	Christopher Michael Hough – Longitudinal Sections of Anticipated Pedestrian Routes: O.S. Spot Heights	28 th October 2009
AP10	Opening Statement	13 th October 2009
AP11	Phosphorus and River Ecology: Tackling Sewage Inputs (English Nature / Environment Agency)	March 2000
AP12	Plans Displaying Location of Respondents To Packington Nook Residents Association Consultation	16 th October 2009
AP13	Email from Severn Trent Water to Hallam Land and the EA re: Dr. Hulmes Supplementary Proof (EA 2A)	21 st October 2009
AP14	Section 106 Draft	23 rd October 2009
AP15	Section 106 Agreement and Planning Obligation Draft	29 th October 2009

AP15A	Summary of Section 106 Agreement and Planning Obligation	29 th October 2009
AP15B	Section 106 Agreement	10 November 2009
AP16	Section 106 Planning Obligation by Unilateral Undertaking, Draft	29 th October 2009
AP16A	Section 106 Planning Obligation by Unilateral Undertaking (Updates Ap16 – Conditions), Draft	30 th October 2009
AP16B	Section 106 Planning Obligation by Unilateral Undertaking	10 November 2009
AP17	Closing Submissions	30 th October 2009
AP17A	Closing Submissions (Mitigation Measures)	30 th October 2009
AP17B	Closing Submissions (Legal Judgments)	30 th October 2009

17.	North West Leicestershire District Council Statements / Proofs	
LPA1	Rule 6 Statement	
LPA2	John Etchells – Proof of Evidence: Landscape and Visual Matters	12 th September 2009
LPA2A	John Etchells – Appendices to Proof of Evidence: Landscape and Visual Matters	12 th September 2009
LPA3	Catherine Day – Proof of Evidence: Noise	14 th September 2009

LPA3A	Withdrawn (Superseded by LPA3C)	
LPA3B	Catherine Day – Summary Proof of Evidence: Noise	14 th September 2009
LPA3C	Catherine Day – Revised Appendices to Proof of Evidence: Noise	20 th October 2009
LPA4	Steffan Saunders – Proof of Evidence: Policy and Housing Supply	15 th September 2009
LPA4A	Steffan Saunders – Summary Proof of Evidence: Policy and Housing Supply	15 th September 2009
LPA5	Alan Harvey – Proof of Evidence: Development Control Issues	15 th September 2009
LPA5A	Alan Harvey – Proof of Evidence Errata Sheet	15 th October 2009
LPA6	Suggested List of Draft Conditions	8 th October 2009
LPA7	Opening Statement	13 th October 2009
LPA8	Appeal Notification Documents	April 2009
LPA9	Draft Conditions – Sewerage	22 nd October 2009
LPA10	Track Changed Extract from Mr. Phil Rech’s Proof of Evidence: Landscape (AP3)	23 rd October 2009
LPA11	Packington Nook Application – Timeline	27 th October 2009
LPA12	Plan Displaying Employment Areas in Castle Donington	27 th October 2009

LPA13	Stenson Fields Farm – Example Condition 30: Sustainable Homes	28 th October 2009
LPA14	Bundle of Correspondence Between LCC & Appellants re: Highways	29 th October 2009
LPA15	Closing Submissions (Legal Judgments)	29 th October 2009
LPA16	NWLDC Position Statement – Leicester Road Planning Application	30 th October 2009
LPA17	Letter from Browne Jacobsen to NWLDC re: Section 106 Unilateral Planning Obligation	30 th October 2009
LPA18	Closing Submissions	30 th October 2009
LPA19	List of Development Plan Policies with which the Appeal Scheme is in Conflict	

18.	Leicestershire County Council Statements / Proofs	
LCC1	Highways Rule 6 Statement	
LCC2	Developer Contributions Rule 6 Statement	
LCC3	LCC Objection to the Planning Application	
LCC4	Andrew H. Tyrer – Proof of Evidence: Developer Contributions	15 th September 2009
LCC4A	Andrew H. Tyrer – Appendices to Proof of Evidence: Developer Contributions	15 th September 2009

LCC5	Paul Love – Proof of Evidence: Libraries Contribution	15 th September 2009
LCC6	Chris Page – Proof of Evidence: Education Contribution	15 th September 2009
LCC7	Nigel Shilton – Proof of Evidence: Civic Amenity Contribution	15 th September 2009
LCC7A	Nigel Shilton – Appendices to Proof of Evidence: Civic Amenity Contribution	15 th September 2009
LCC8	Joanne Eynon – Proof of Evidence: Sustainability	15 th September 2009
LCC8A	Joanne Eynon – Appendices to Proof of Evidence: Sustainability	15 th September 2009
LCC8B	Joanne Eynon – Note to Inquiry: References to 800m Walking Distances	29 th October 2009
LCC9	Alan Crawford – Proof of Evidence: Transport	10 th October 2009
LCC9A	Alan Crawford – Appendices to Proof of Evidence: Transport	12 th October 2009
LCC9B	Alan Crawford – Note to Inquiry: Position of LCC Regarding Concerns over the Proposed Mitigation Scheme at J13 A42	28 th October 2009
LCC9C	Alan Crawford – Position Statement	29 th October 2009
LCC9D	Alan Crawford – DMRB Volume 6 Section 2 TD 50/04	November 2004
LCC9E	Alan Crawford – DMRB Volume 6 Section 2 TD 16/07	August 2007

19.	Environment Agency Statements / Proofs	
EA1	Rule 6 Statement	
EA2	Dr. Philip Hulme – Proof of Evidence: Water Issues	15 th September 2009
EA2A	Dr. Philip Hulme – Supplementary Proof of Evidence: Water Issues	20 th October 2009
EA2B	EC Urban Wastewater Treatment & Nitrates Directive Candidate Sensitive Area (Eutrophic) / Polluted Waters (Eutrophic) – Midlands Region – Upper Trent Area	
EA2C	Guidance: Water Quality Consenting Chemical Removal of Phosphorus	25 th April 2007
EA3	Severn Trent Response to Revised Proof of Evidence of Stuart Metcalf (AP7B)	14 th October 2009
EA4	What's in Your Backyard – River Quality	2009
EA5	EA Comments on Draft S106 (AP14)	25 th October 2009
EA6	Closing Submissions	30 th October 2009
20.	Natural England Statements / Proofs	
NE1	Withdrawn (No Rule 6 Statement from Natural England)	
NE2	Dr. Richard Keymer – Proof of Evidence: Ecology	15 th September 2009
NE3	Extract from (pages 27, 28 & 29) Habitats Regulations Assessment of the East Midlands Regional Plan (RSS) Prepared for GO-EM by Treweek Environmental Consultants & Environ	4 th March 2009

NE4	Extract from (Pages 4-19) Circular 06 / 2005 Biodiversity and Geological Conservation	June 2005
NE5	Conservation Objectives and Definitions of Favourable Condition for Designated Features of Interest: Relating to Designating Features on the SSSI, whether designated as SSSI, SPA, SAC or Ramsar Features	15 th September 2009
NE6	Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora	21 st May 1992
NE7	Letter from Natural England to Anglian Water re: Rutland Water Compensatory Habitats Project	7 th October 2009
NE8	Common Standards Monitoring Guidance for Rivers (Joint Nature Conservation Committee)	March 2005
NE9	Letter from Natural England Setting out their Objection to the Application	13 th February 2009

21.	Highways Agency Statements / Proofs	
HA1	Rule 6 Statement	
HA2	Aoife O'Toole – Proof of Evidence: Highways	15 th September 2009
HA2A	Aoife O'Toole – Appendices to Proof of Evidence: Highways	15 th September 2009
HA2B	Aoife O'Toole – Summary Proof of Evidence: Highways	15 th September 2009
HA3	David Bennett – Proof Of Evidence: Highways	15 th September 2009
HA3A	David Bennett – Summary Proof of Evidence: Highways	15 th September 2009

HA4	Position Statement	23 rd October 2009
HA4A	Further Position Statement	27 th October 2009
HA5	Closing Submissions	30 th October 2009

22.	Andrew Martin Associates Statements / Proofs	
AMA1	Rule 6 Statement	
AMA2	Hollywell Spring Farm Flood Risk Assessment (White Young Green)	March 2008
AMA3	Ashby Development Sites Flood Risk & Drainage Assessment (White Young Green)	March 2008
AMA4	Urban Edge Development Options Assessment (Andrew Martin Associates)	November 2007
AMA5	Hollywell Spring Farm Transport Assessment (Bryan G Hall)	March 2008
AMA6	Hollywell Spring Farm Agricultural Land Classification & Soil Survey (Soil Environmental Services Limited)	November 2007
AMA7	Brochure – Response to North West Leicestershire Core Strategy Additional Consultation (Andrew Martin Associates)	2007
AMA8	Hollywell Springs Farm – Landscape and Visual Impact Assessment	15 th September 2009
AMA9	Nigel Cowlin – Proof of Evidence: Landscape	15 th September 2009

AMA9 A-F	Nigel Cowlin – Appendices to Proof of Evidence: Landscape	15 th September 2009
AMA9 G	Enlarged A3 View Plan Contained in Appendices in A4	20 th October 2009
AMA10	Nigel Cowlin – Summary Proof of Evidence: Landscape	15 th September 2009
AMA11	Caroline Chave – Proof of Evidence: Strategic Planning, Housing and Sustainability Issues	15 th September 2009
AMA11 A-H	Caroline Chave – Appendices to Proof of Evidence: Strategic Planning, Housing and Sustainability Issues	15 th September 2009
AMA12	Caroline Chave – Summary Proof of Evidence: Strategic Planning, Housing and Sustainability Issues	15 th September 2009
AMA13	Closing Submissions	30 th October 2009
AMA13A	<u>(1) Derbyshire Dales District Council (2) Peak District National Park Authority v (1) Secretary of State for Communities and Local Government (2) Carsington Wind Energy Limited [2009] EWHC 1729 (Admin)</u>	

23.	Money Hill Statements / Proofs	
MH1	Rule 6 Statement	
MH2	James Waterhouse – Proof of Evidence	15 th September 2009
MH2A	James Waterhouse – Appendices to Proof of Evidence	15 th September 2009
MH2B	James Waterhouse – Summary Proof of Evidence	15 th September 2009

MH3	Letter from Roger Tym and Partners re Aldi Store	20 th May 2009
MH4	Closing Submissions	30 th October 2009

24.	Packington Nook Residents Association Statements / Proofs	
PNRA1	Rule 6 Statement	June 2009
PNRA2	Nigel Garnham – Proof of Evidence: Planning Policy and Local Opinion	15 th September 2009
PNRA3	John Trinick – Proof of Evidence: Highways	15 th September 2009
PNRA3A	John Trinick – Appendices to Proof of Evidence: Highways	15 th September 2009
PNRA3B	John Trinick – Note to Inquiry	17 th October 2009
PNRA3C	John Trinick – Journey Times and Distances 12 Cambrian Way to J13 of A42	27 th October 2009
PNRA4	Chris Tandy – Proof of Evidence: Ecology	15 th September 2009
PNRA5	Highways Agency East Midlands Regional Network Report	2008
PNRA6	PNRA Comments on RSS Proposed Changes	19 th October 2009
PNRA7	Property Details – Rescue Way & Gilwiskaw Gardens	26 th October 2009

PNRA8	Closing Submissions	30 th October 2009
25.	Statements of Common Ground	
SoCG1	Appellants and the LPA	29 th September 2009
SoCG2	Nurton Developments – Comments on SoCG1	19 th October 2009
SoCG3	Withdrawn (Appendix C of EA2A)	
SoCG4	Appellants and Leicestershire County Council – Highways and Transportation	28 th October 2009
SoCG5	Cross references to appendices referred to in SoCG4	
26.	Third Party Statements	
CLOWES MILLER 1 /	Clowes Development UK Ltd & Miller Homes	29 th October 2009
PPC1	Packington Parish Council	5 th October 2009
SMITH1	Cllr Nigel Smith	16 th October 2009
WD / JELSON 1	William Davis & Jelson Ltd	28 th October 2009
27.	Conditions	
CON1	Working Draft Conditions	19 th October 2009

CON2	Draft Conditions	22 nd October 2009
CON3	Environment Agency Draft Conditions	23 rd October 2009
CON3A	Environment Agency Draft Condition – Sewerage	23 rd October 2009
CON3B	Environment Agency – Grampian Condition	29 th October 2009
CON3C	Environment Agency – Grampian Condition (Updates CON3B)	30 th October 2009
CON4	Withdrawn (Superseded by CON4A)	
CON4A	Appellants Draft Condition – Waste Water Treatment (Updated)	29 th October 2009
CON5	Appellants Draft Condition – Airport Safeguarding (Including Correspondence with East Midlands Airport)	29 th October 2009
CON6	Highways Agency – Preferred Drafting for Two Conditions concerning improvements at Junction 13 and Road Safety Audits	29 th October 2009
CON6A	Highways Conditions 13 & 15 (NWLDC Version)	30 th October 2009
CON7	Code For Sustainable Homes Condition	30 th October 2009
28.	Other Documents	
OD1	Notes of the Pre Inquiry Meeting	6 th August 2009

OD2	Bundle of Four Written Representations Received at the Appeal Stage	
OD3	Costs application – North West Leicestershire District Council	14 November 2009
OD4	Costs application – Highways Agency (with witness statement, including two appendices)	16 November 2009
OD5	Costs application – Packington Nook Residents’ Association	
OD6	Appellant’s reply to costs applications, with appendices and supporting documents	23 November 2009
OD7	North West Leicestershire District Council’s final response, re. its costs application	30 November 2009
OD8	E-mail dated 27 November 2009 (re. phosphate concentrations in sewage), submitted by Council in relation to its costs application	27 November 2009
OD9	County Council’s consultation response on the appeal planning application	11 February 2009

ANNEX

RECOMMENDED CONDITIONS IN THE EVENT THAT THE APPEAL IS ALLOWED

RESERVED MATTERS

1. Approval of the details of the means of access, layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced. The development shall be carried out as approved.

Reason- this permission is in outline only.

2. The details required by condition 1 shall be in substantial accordance with the Parameters Plan Drawing No 3456/P/05/H.

Reason - to ensure that the development of the site (including where undertaken in a phased manner) takes place in a consistent and comprehensive manner.

TIME LIMITS

3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason- to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

LANDSCAPING

4. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority, and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure including boundaries to individual plots; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc indicating line, manholes, etc); retained historic landscape features and proposals for restoration where relevant; and details of existing hedges and trees to be retained.

Reason- To ensure a satisfactory development; to ensure the development has an acceptable relationship with surrounding existing development.

PROVISION FOR TREE PLANTING

5. No works or development shall take place until full details of all proposed tree planting, and the proposed times of planting, have been approved in writing by the local planning authority, and all tree planting shall be carried out in accordance with those details and at those times.

If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Reason- in the interest of the ecology and visual amenities of the locality.

EXISTING TREES AND HEDGEROWS WHICH ARE TO BE RETAINED

6. In this condition "retained tree" and "retained hedgerow" mean an existing tree or existing hedgerow which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 1 year from the date of the completion of the development hereby permitted.

- (a) No retained tree or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree or hedgerow be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
- (b) If any retained tree or hedgerow is removed, uprooted or destroyed or dies, another tree or hedgerow shall be planted at the same place and that tree or hedgerow shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- (c) The erection of fencing for the protection of any retained tree or hedgerow shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Reason- to ensure that existing trees and hedgerows are adequately protected during construction in the interests of the visual amenities of the area; in the interest of the ecology of the locality.

FINISHED FLOOR LEVELS

7. The development hereby permitted shall not begin until details of the finished floor levels of all buildings and all finished ground levels have been submitted to and

approved in writing by the local planning authority, and the development shall be implemented as approved.

Reason- To ensure a satisfactory development; to ensure the development has an acceptable relationship with surrounding existing development.

NOISE

8. The development hereby permitted shall not begin until details of a noise mitigation scheme and timetable, to mitigate the effects on residential occupiers of noise from the A42, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved timetable.

Reason- in the interests of future residential amenities.

DRAINAGE

9. No development shall commence on the site until such time as a scheme demonstrating that the disposal of foul sewage from the development will not cause any increase in the concentration or load discharged to the River Mease catchment of the following determinands has been submitted to and approved in writing by the local planning authority; and no development shall commence on the site until the approved scheme is operational. The determinands are biochemical oxygen demand, ammoniacal nitrogen, suspended solids, and total phosphorus, as contained in the relevant Consent to Discharge in force at the time of the approval of the scheme. But in the case of total phosphorus the limit shall be 1mg/l at a discharge flow rate of 4729 m³ per day unless this limit is superseded by a different limit in the Consent to Discharge in force at the time of the approval of the scheme.

Reason- To ensure the protection of the environment and, in particular, the River Mease SAC from increased sewage discharge resulting from the development.

10. The development hereby permitted shall not begin until a surface water drainage scheme for each phase of the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The approved surface water drainage scheme shall be undertaken during the ground works phase of the development, and shall be fully operational prior to the first occupation of new houses on the site.

The surface water drainage scheme shall:

- limit the surface water run-off generated by the all events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- provide a minimum of 6,493m³ of surface water run-off attenuation storage on the site to a 100 year plus 30% (for climate change) standard, in the form of 3 or 4 open water balancing features.

- provide a sustainable drainage strategy with attenuation, storage and treatment capacities incorporated as detailed in the CIRIA SUDS Manual (C697).
- include details as to how the scheme will be maintained and managed after completion.

Reason - To prevent the increased risk of flooding, to improve and protect water quality, to improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

ARCHAEOLOGY

11. Prior to the submission of any reserved matters application for the development site, the applicant shall secure the implementation and completion of a programme of archaeological exploratory investigation. This work shall be undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Reason - To ensure satisfactory archaeological assessment of the development area to inform the preparation of a suitable archaeological mitigation strategy.

12. The applicant shall prepare an archaeological mitigation strategy for the development site, to be submitted to and approved in writing by the local planning authority before development commences. The mitigation strategy will be prepared in the light of the completed archaeological exploratory investigation (required under condition 11 above) and will make provision, as necessary, for either the preservation in situ of important archaeological remains, or where preservation is not warranted, their investigation and recording. This provision, as approved, shall be made in advance of the commencement of development.

Reason - To ensure satisfactory provision for any important archaeological remains.

HIGHWAYS

13. No development shall commence until such time as mitigation schemes for works to the public highway at Junction 13 of the A42 and at the Nottingham Road island at the entrance of Coalfield Way in compliance with paragraph 43 of Department for Transport Circular 02/2007 have been submitted to and approved in writing by the local planning authority.

Reason - In the interests of highway safety and the movement of traffic.

14. No dwelling on the development hereby permitted shall be occupied until all the highway improvement works approved under condition 13 above are completed.

Reason - In the interests of highway safety and the movement of traffic.

15. Notwithstanding the details submitted to date no development shall commence on the site until a Transport Assessment has been submitted to and approved in writing by the local planning authority. This shall identify all the necessary highway works outside the application site (including junction improvements and traffic

calming). No dwelling shall be occupied until all the highway works have been completed in accordance with the approved details.

Reason - In the interest of highway safety.

16. The details required by condition 1 shall include details of the proposed highway layout within the site and this shall include details of vehicle parking and turning facilities, access widths, gradients, surfacing, signing and lining (including that for cycleways and shared use footway/cycleways), visibility splays, cycle parking facilities, bridges and traffic calming measures. The works shall be undertaken in accordance with the details approved.

Reason- To ensure a satisfactory form of development and in the interests of highway safety.

AIRPORT SAFEGUARDING

17. No structure or building on the site shall individually or collectively exceed a height level of 160 m AOD, either on a temporary or a permanent basis.

Reason- In the interest of airport safeguarding.

FLOOD RISK

18. The development hereby permitted shall not be commenced until such time as a detailed design of a flood attenuation scheme and a revised flood risk assessment, taking account of the impact of the storage area (as designed), have been submitted to, and approved in writing by, the local planning authority. The approved Flood Attenuation Scheme shall be implemented during the ground works phase of the development, and shall be fully operational prior to the first occupation of new houses on the site.

The Flood Attenuation Scheme shall: -

- include proposals for the improvement, protection and maintenance of existing and proposed flood defences.
- ensure no raising of ground levels within the 100 year plus 20% (for climate change) flood plain other than those in the approved Scheme design.
- ensure access to enable improvement, protection and maintenance of existing and proposed flood defences.

The development hereby permitted shall only be carried out in accordance with the approved revised flood risk assessment.

Reasons

1. To prevent flooding elsewhere by ensuring that flood water attenuation is provided.
2. To ensure the structural integrity of proposed flood relief scheme and any flood defences created thereby reducing the risk of flooding.

3. To ensure the structural integrity of existing flood defences thereby reducing the risk of flooding.
4. To reduce the impact of flooding overall.
5. To reduce the risk of flooding overall.
6. The revised Flood Risk Assessment is required to assess the impact of any changes from the Flood Risk Assessment version 2 dated April 2009.

19. Prior to the commencement of development, a working method statement to cover all works involved in the construction of the formalised flood overflow route and Flood Attenuation Scheme, shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved working method statement and any subsequent amendments shall be first agreed in writing by the local planning authority. The working method statement shall include details on the following:

- time programme for the works
- methods used for all channel and bank-side/water margin works
- machinery to be used
- location and storage of plant, materials and fuel
- access routes to the works, access to the banks of the watercourses
- method of protection of areas of ecological sensitivity and importance
- site supervision
- location of site office, compounds and welfare facilities.

Reason

The construction phase of any proposed development affecting the Gilwiskaw Brook or Cole Orton Brook poses significant risks of

- damage to water dependent species and habitats, if not undertaken in accordance with Pollution Prevention Guidelines PPG5 and PPG6. At this site a known risk is that construction may damage the River Mease SAC if the works are not appropriately controlled.
- diffuse pollution of the water environment arising from ground works.

RETAIL FLOORSPACE

20. The retail element of the development shall not exceed 500 square metres of total gross internal floorspace.

Reason- To ensure that the proposed development does not undermine the town centre shopping policies of the adopted North West Leicestershire Local Plan.

HABITAT MANAGEMENT

21. Notwithstanding the details submitted to date no development shall commence on the site until a revised habitat management and mitigation strategy (including a timetable of implementation) has been submitted to and approved in writing by the local planning authority. The strategy shall be implemented as approved.

Reason- In the interests of nature conservation.

22. No works shall commence on the site until a mitigation strategy (including a timetable of implementation) to protect the water environment during both the construction and occupation phases of the development has been submitted to and approved in writing by the local planning authority. The mitigation strategy shall be implemented in accordance with the approved scheme.

Reason- To minimise the risk of pollution to the water environment and ensure no adverse effect on the integrity of the River Mease Special Area of Conservation.

CODE FOR SUSTAINABLE HOMES

23. No development within any phase shall take place until there has been submitted to and approved in writing by the local planning authority an initial design stage assessment by an accredited assessor for The Code for Sustainable Homes and an accompanying interim certificate stating that the dwellings within the submitted phase achieve either Code Level 3 or the then required Code Level rating, whichever is the higher. The development shall be carried out in accordance with the certified design.

Reason- in the interests of using energy resources efficiently.