

**LAND EAST OF KESTREL CLOSE AND BEECHFIELDS WAY,  
NEWPORT**

**CLOSING SUBMISSIONS ON BEHALF OF COUNCIL**

*Nature of application*

1. The initial submissions made on behalf of the Council are relied upon and are to be considered as incorporated within this closing.
2. For the reasons set out in those submissions it is reiterated that the application is properly to be considered to be for “*approximately 170*” dwellings and the Council reserves its position on this issue. However, for the reasons set out in those submissions even if the application is for “*up to 170*” houses that does not remove the need to consider whether the site can accommodate 170 units. An application for *up to 170* seeks permission for *as many as 170*. The appellant’s contrary argument effectively renders the figure meaningless and does not comply with the legal and policy requirements set out in the initial submissions.
3. The fixing of a quantity of development on an outline application is important because the outline planning permission grants permission for that level of development and reserved matters cannot be used to re-open the principle of development. When outline planning permission is granted and it is not possible satisfactorily to address a particular issue then approval of reserved matters cannot be refused the only question is whether the solution proposed is the best solution rather than a satisfactory solution<sup>1</sup>.
4. At the opening of the inquiry the appellant appeared to recognise this point and offered a condition limiting development to 130 units, but their position is now unclear given JH’s remarkable contention that it was unnecessary to limit the amount of development.

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<sup>1</sup> See in particular *Medina BC v Proberun Ltd (1991) 61 P&CR 77*

5. There is no evidence to show that 170 units can be satisfactorily accommodated on this site. MO'C in particular drew attention to the difference between the original application for 170 and the later, based on Masterplan A for 130 which is the application now relied upon<sup>2</sup>. She agreed that the distinction was important and that she had not considered the suitability of the site for greater quantity of development.
6. It is clear that the appellant has been unable to identify how the site could accommodate 170 dwellings. The suggestions that it could be achieved by converting detached units into semi-detached units is fanciful – there is no suggestion that there is sufficient space satisfactorily to accommodate that number of semi-detached units, and in any event as D Owen explained that would not provide a suitable mix of development. There is accordingly no evidence that the level of development sought can be accommodated on site and the appeal should be dismissed for this reason irrespective of the conclusion on the other issues.
7. Whilst the appellant has produced a layout showing 130 units even such a level of development appears to be problematic given the problems with levels identified by D Owen. In the circumstances even if it were possible to impose a condition limiting the development to 130 units (which is not the case for the reasons already explained) that would not satisfactorily address this issue.

Correct approach to determination

8. The starting point for determination of the appeal is the development plan, and this remains unaltered even if it is concluded that relevant policies of the development plan are out of date.
9. The legal framework is clear the appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise. The *Richborough* case<sup>3</sup> provides a useful reminder (to any who had forgotten) that “*The NPPF is a policy document. It ought not to be treated as if it had*

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<sup>2</sup> MO'C 2.2.1

<sup>3</sup> CD6.1

*the force of statute. It does not, and could not, displace the statutory "presumption in favour of the development plan"*"<sup>4</sup>. The NPPF is one material consideration, but it does not modify the statutory framework for determining applications and appeals. Importantly also it is for the decision maker to decide the weight to give to material considerations, including the NPPF policies in so far as they are material to the determination. Again as *Richborough* points out –

*"We must emphasise here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker...Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect."*<sup>5</sup>

10. Paragraph 47 of *Richborough* is clear in reiterating that the weight to be given to development plan policies is for the decision maker. Whilst the court suggests that one can infer from NPPF 49 that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply, the weight is not dictated by the NPPF. The weight can be affected by the extent of any shortfall in the supply of housing, the action being taken by the local planning authority to address it, and the purpose of particular policies. Importantly the court confirms that *"There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph*

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<sup>4</sup> CD6.1 para 42

<sup>5</sup> CD6.1 parar 46

*49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF.*<sup>6</sup>

11. It is unfortunately necessary to go over this point because JH made that very error, which was surprising given that Mr Young had correctly recognised that this was an error which some had fallen into.
12. As JH acknowledged in XX, her analysis of a number of the policies in the development plan was limited to arguing that the policies are out of date rather than any assessment of whether the proposal was in conflict with the policy and how much weight to give to the policy. This clearly led to a skewed balancing exercise and an unreliable conclusion.

#### Development plan

13. Whilst it is accepted that the housing figures in the development plan are now out of date for the purpose of calculating a 5 year supply, given that they were produced some 10 years ago on the basis of a policy decision without any OAN assessment, and that they only provide up until 2016, it is not accepted that the relevant policies are out of date or conflict with the NPPF.
14. Core Strategy policies CS 1, CS 6 and CS 7 promote a sequential approach to housing which should be focussed in the existing built up areas with most housing going to Telford and development beyond the settlements to be limited. This is entirely consistent with the NPPF and the promotion of sustainable development; a point noted in the Dawley Road decision<sup>7</sup>.
15. The policies recognise Newport's role as a market town and the need to maintain that character. CS 6 requires development to respect and enhance the quality of the town's built and natural environments, including its townscape and impact on surrounding countryside. CS 7 provides that development in the rural area is to be limited. The proposal which is located outside the settlement boundary on open land is plainly contrary to all of these policies, would have a harmful impact on the surrounding countryside, and would not respect the quality of the town's built and natural environment.

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<sup>6</sup> My emphasis

<sup>7</sup> Doc 30 para 13

This conclusion applies whether one treats the proposal as subject to CS 7 given its location outside the settlement boundary within the rural area, or one takes the Appellant's approach of essentially treating the site as related to Newport and so subject to CS 6.

16. JH made no attempt to analyse the application of these policies to the proposal, and plainly did not consider that she could dispute that the proposal was in conflict with the policies. Instead she limited herself to arguing that they were out of date<sup>8</sup>. For the reasons set out above this is an erroneous and inadequate response.
17. The site also falls to be considered against policy CS 11 which seeks to protect and enhance areas of open space, both formal and informal. The policy is plainly up to date and consistent with the NPPF as again recently concluded in the Dawley Road decision<sup>9</sup>, and the proposal is plainly contrary to this policy. JH did not seek to dispute either of these points, instead she argued that policy CS 11 did not apply to the appeal site<sup>10</sup>. Her argument is that the appeal site does not comprise open space as envisaged within the terms of the policy and does not carry any open space designation. These arguments are mistaken and misconceived.
18. The policy states plainly that it applies to open space both formal and informal, it does not place any requirement that the land be formally identified as open space, and it does not limit open space to land within settlement boundaries or the built up area. There is nothing in the supporting text to support JH's contentions. As JH correctly notes the text emphasises that the policy applies to all open space<sup>11</sup>. The text does not, as JH contends, distinguish between open space and the countryside. Paragraph 9.66 merely observes that open spaces and countryside underpin quality of life; that is perfectly compatible with open space being found in rural areas beyond settlement boundaries and within the countryside; it does not suggest that the two are mutually exclusive. Whilst the text does refer to further work to identify particularly valuable areas and the production of an SPD it does not

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<sup>8</sup> JH 6.1.2 – 6.1.7

<sup>9</sup> Doc 30 para 14

<sup>10</sup> JH 6.1.8

<sup>11</sup> CS para 9.68

make any protection of open space dependent upon this further work, which would be inconsistent with both the clear wording of the policy and the comment that it applies to all open space.

19. JH's approach to what type of land can come within policy CS 11 was again inconsistent with the Dawley Road decision given the nature of the land in that case<sup>12</sup>. JH was unable to defend her position in XX, accepting that there was no requirement for land to be allocated or separately identified to come within CS 11 and that open space could be located within the countryside if it was already functioning as open space. The qualification that the land has to be "functioning" as open space gets JH nowhere – open space is open space. The appeal site is clearly within CS 11, in the same way as the land at Dawley Road fell to be considered against CS 11.
20. The appeal site also comes within policy OL 6 of the adopted WLP. Again there is no attempt by JH to argue that the proposal complies with this policy, instead it is contended that the policy does not apply on the grounds that it cannot apply to land outside the settlement boundary and/or is not "incidental" open land.
21. JH's argument that land beyond the settlement boundary of Newport cannot come within OL 6 initially relied upon the text in paragraph 8.3.22 of the WLP<sup>13</sup> which noted that "many" of the sites covered by the policy are within Newport and that important areas of open land within Newport "including" those marked on the proposals map need protecting from inappropriate development. It is clear from these words themselves that OL 6 is not limited to land within Newport or land identified as subject to OL 6. The text refers to "many" sites, it does not even say the majority, it is clear that there are sites covered by the policy outside Newport. Even within Newport it is not suggested that land has to be allocated to come within OL 6 as it states that land within Newport which is covered by the policy includes the land identified on the proposals map. Furthermore, and importantly, the contention that land outside Newport cannot come within OL 6 ignores the clear opening words of the policy which applies "throughout the District".

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<sup>12</sup> See Doc 30 paras 17 and 21-24

<sup>13</sup> See JH 6.1.9

22. As a matter of fact land is identified as subject to OL 6 on the inset map for Newport, but it is important to note that this is the only place on the proposals map where any land is identified as subject to OL 6. As the policy is expressly stated to apply throughout the District it is plainly not dependent upon land being identified on the proposals map. As the appeal site falls outside the settlement boundary, and therefore outside the Newport inset map it would not be addressed by any allocations on the inset map and the fact that it is not shown as subject to OL 6 on the inset map is to be expected and has no relevance to the issue.
23. JH argued that given the site's location beyond the settlement boundary it would have been covered by policy OL 7 and that policies OL 6 and OL 7 are mutually exclusive. Policy OL 7 applied to "open countryside", whilst the appeal site is rural beyond the settlement boundary and is part of the countryside that does not mean that it is necessarily part of the "open countryside". Whether or not policy OL 7 would have applied to the appeal site is in any event irrelevant as there is nothing to suggest that the two policies were mutually exclusive. As JH conceded in XX policy OL 6 is concerned with protecting open space which contributes to the character and amenity of built-up areas whereas policy OL 7 is concerned with the protection of the open countryside; the two policies are concerned with different objectives and it is possible for one piece of land to contribute to both objectives; there is accordingly no reasons for the two policies to be construed as mutually exclusive.
24. Faced with these difficulties JH adopted a new argument that land had to be adjacent to a built-up area to come within policy OL 6 and that for these purposes the "built-up area" is not to be equated with a settlement boundary. JH is wrong in her interpretation of the policy – for the purposes of OL 6 land adjacent to a settlement boundary is land adjacent to a built up area. But even if JH had been correct in her interpretation of the policy it would not assist her, because as a matter of fact on the ground the appeal site is adjacent to a built up area.
25. JH's final argument with respect to the application of OL 6 was that it only applied to "incidental" open land and that land of the size of the appeal site

cannot be considered as "incidental". JH agreed that there is no size limit in the policy or supporting text, but she suggested that effectively there was a cut-off point somewhere in the region of about half an acre. There is no support for this contention and it is plainly contradicted by the very allocations shown on the Newport inset map, many of which are considerably larger than JH's suggested limitations would allow.

26. JH's interpretation of the application of OL 6 is contrary to the wording both of the policy and the supporting text. It is also again contrary to the approach taken by the Dawley Road inspector. It can be noted, however, that JH agreed with that inspector in concluding that she could not take issue with the objective of OL 6 which is consistent with the NPPF and the principles of sustainable development.
27. There is no suggestion that the proposal is, or could be, consistent with policy OL 6. The development is clearly contrary to this important development plan policy and the policies and objectives of the NPPF with which OL 6 is consistent.
28. Consideration must also be given to the emerging TWLP. In particular the site is allocated as part of a Green Network under policy NE 6. JH agreed that the proposal would be contrary to this policy, her argument was with the weight to give to this policy. Paragraph 216 NPPF provides some guidance on this issue. Whilst it is correct to note that there are unresolved objections with respect to the policy, it is also important to note that the emerging plan has now reached the examination stage and accordingly more weight can be given to its policies and the relevant policy is plainly in accord with the NPPF. In the circumstances weight can be given to the policy, and it cannot be dismissed in the manner suggested by JH.
29. The significance of the appeal site within the proposed Green Network is clear from the answers given by JH. The site provides a significant visual amenity, there are open views across the site including from the footpath and the canal. The views are considerably enhanced by the two ancient oak trees which are very fine specimens. Whilst it may be possible to obtain some very limited glimpsed views of the oak in the centre of the site down roads

between houses, to all intents and purposes views of this oak will be lost. Furthermore any view of this oak would be surrounded by housing, it would lose much of its amenity value. Whilst it would be possible to see the southern oak from the south many other views would be lost, it would retain no relationship with the other oak, and it would be dominated by the housing rising up behind it.

30. The footpaths around the edges of the site link into routes into the town centre and connect residential areas with the Canal SSSI. They are important, and well used recreational routes. Importantly they allow a route through open land with a rural parkland feel in close proximity to the urban area without the need to cross the busy A41. JH agreed that the present state and appearance of the appeal site contributes positively to the experience of using these footpaths. Surprisingly JH argued that whilst changed the setting and value of the footpaths would not be significantly diminished as a result of the proposed development. It is difficult to understand how this view could be held given the loss of open views across the site with the oaks and their replacement with a residential estate with buildings of at least 7.5 metres in height in close proximity to the footpath.
31. The development would lead to a significant loss of visual and recreational amenity and be harmful to the character and appearance of the area.
32. As D Owen explained the appeal site also exhibits the other functions of Green Networks<sup>14</sup>. Whilst one has to take into account the outstanding objection from the appellant to the proposed allocation of the site within NE 6, the policy itself is compliant with the NPPF and the site properly comes within the policy.
33. The appellant seeks to rely upon the identification of the appeal site as a possible employment site in the consultation Shaping Places document. As D Owen explained this was not a “version” of the local plan, it was merely a document setting out sites which had been suggested as suitable for development for the purposes of public consultation. The document was a largely desk-based exercise and whilst it is possible that some site visits were

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<sup>14</sup> D Owen 7.6.3ff

undertaken there is no evidence that they included the appeal site, and given, as JH herself pointed out, that the appeal site is clearly not suitable for development of any large scale buildings there is good reason to conclude that the site was included within the document without any consideration of its physical attributes. The Employment Technical Paper<sup>15</sup> explains that through the consultation exercise it became apparent that the site is not suitable for employment development due to physical constraints on the land and potential access. Further work on production of the Local Plan identified the significance of the site for the Green Network.

34. The identification of the site within the Green Network is, of course, entirely consistent with the application of policies CS 11 and OL 6 to the site, and underlines the importance for the appeal site of these policies in the adopted development plan. Furthermore given the current application of these policies in the development plan it would be particularly inappropriate to allow development of the site contrary to NE 6 in advance of consideration of the policy at the local plan examination.

Landscape and visual impact

35. The appeal site consists of a medium-sized semi-improved grassland field with a distinctive rolling landform. There are two mature oaks within the site which form prominent landscape features and contribute to an estate parkland type character<sup>16</sup>.
36. The appeal site and immediate surroundings are part of the *Estate Farmlands Landscape Type* in the *Shropshire Landscape Typology (2006)*<sup>17</sup>. They exhibit a number of the characteristics of this landscape type including a planned woodland character and parkland influence. However, due to the scale of wooded enclosure and the distinctive rolling landform, the scale of the landscape is small-medium which increases its sensitivity to landscape change.

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<sup>15</sup> CD 3.15

<sup>16</sup> DH 3.4

<sup>17</sup> DH 3.11

37. The suitability of a range of sites for development was assessed objectively in the *Landscape Sensitivity Study Update for Telford and Wrekin (2014)* which identified the site as having a medium-high sensitivity for residential development. In making this assessment the study noted *"the site's value which lies in its possible parkland origins, its mature oak trees and its distinctive and attractive rounded landform. Its susceptibility to housing development would be the removal of this character and the subsequent prominence of housing on the rising landform. Overall, the site is considered to be very sensitive to housing....Development along the western edge, where it would be least intrusive within the wider landscape, would remove the backdrop to the existing settlement edge and development would begin to creep up the hill. Elsewhere the strongly undulating topography of the site affects its potential to accommodate housing and development would be highly visible from the public footpaths."*<sup>18</sup>
38. The site is high above the adjacent river valley. Its undulating round landform is likely to have glacial deposit origins and is an unusual landscape in the Newport context. It contrasts strongly with the mainly low-lying flat landscape of the local area and forms a strong backdrop to the housing along its western boundary. All of this was accepted by MO'C
39. The landscape retains a prevailing rural character with very few detracting features. Characteristics such as the distinctive rolling landform, mature oak trees, vegetated canal corridor, wooded backdrops and views all contribute to a reasonably high scenic quality. The site is very accessible to the urban edge and is clearly valued by residents of Newport who make use of the perimeter footpath and also clearly make unauthorised use of the site itself<sup>19</sup>. The footpath along the eastern edge of the site provides attractive views over the site and across the settlement. The presence of the oak contributes significantly to the visual interest and amenity.
40. The site is a valued landscape for the purposes of NPPF 109.

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<sup>18</sup> DH 3.16

<sup>19</sup> DH 3.19

41. There is no real assessment of the existing quality of the landscape by the appellant's advisers who seek to downgrade its value on the basis that it is "local".
42. The distinctive landform of the appeal site is particularly susceptible to any form of earthworks and built development and it is clear that the proposed development would require very extensive earthworks. The site and local landscape have a relatively simple land cover comprising pastoral fields and woodlands. The introduction of built development would noticeably contrast with the current pattern of land cover and landform. The site has a weak visual and landscape relationship with the town and the existing settlement edge along the west of the appeal site is very susceptible to change, as it is contained by rising ground reinforced by mature hedge and trees. The appellant again fails to consider and address the implications of this for the development.
43. The distinctive rolling landform would be very significantly altered by the inevitable engineering works to provide development platforms and to provide access; it would take on an engineered landform. The open pasture and simple land cover would be lost. The perception of rural character would be lost. The central oak would be surrounded by housing and barely perceptible from outside the site, whilst the southern oak would only be visible from the south and dominated by the housing behind it.
44. The appellant's assessment of this impact is quite remarkable. Whilst accepting that the impact would be adverse it claims that this would be a "minor" impact. The methodology used defines such an impact as a "minor alteration to key features and characteristics of the existing landscape". Plainly the impact of the proposal is much greater than that. Either the appellant's advisers have failed to understand the inevitable impact or they have failed to apply their own methodology. Whatever the reason it is clear that they grossly under-estimate and misrepresent the landscape impact of the proposal.

45. The appellant's advisors also downplay the visual impact of the proposal by downgrading the sensitivity of the recreational and residential users who currently enjoy the visual amenity provided by the proposal.
46. As DH demonstrates the proposal would have significant adverse landscape and visual impacts and the proposal is contrary to local and national policy.

### Sustainability

47. The site is not in a sustainable location. Contrary to Mr Young's suggestions that this is not raised, this is a matter addressed by D Owen<sup>20</sup>, but not really acknowledged by the appellant.
48. Contrary to the suggestions in JH's evidence<sup>21</sup> there are not footpaths on both sides of the road to the centre of Newport and the footpaths that are present are in deficient in places<sup>22</sup>. Furthermore the appellant's TA, to which JH deferred, and AM's evidence confirm that the nearest bus stop is further away than JH suggests. The relevant bus stop is about 1150 metres from the edge of the appeal site<sup>23</sup>. The services from that bus stop are relatively limited. The only facility closer to the site than the town centre is St Peter & Paul RC primary school, which is itself about 780 metres from the edge of the site. All other facilities are at least 1.5 km from the edge of the site. In truth the appeal site would be predominantly serviced by private car.
49. In addition to the harm to landscape and visual interests identified above, development of the appeal site would involve the loss of greenfield site which includes best and most versatile agricultural land<sup>24</sup>. There would be substantial harm to the environmental role of sustainable development.
50. Whilst there would be some economic benefits from the proposal and a degree of social benefit arising from the development<sup>25</sup>, they are no greater than those which will be provided by the more suitable sites in Newport which already have planning permission or are proposed for allocation. A

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<sup>20</sup> D Owen 7.5.2 – 7.5.7

<sup>21</sup> JH 2.5

<sup>22</sup> D Owen 7.5.4

<sup>23</sup> D Owen 7.5.6 and AM XX

<sup>24</sup> D Owen 7.5.9 & 7.5.10

<sup>25</sup> D Owen 7.5.11

core planning principle of the NPPF provides for LPAs to “actively manage patterns of growth to make the fullest possible uses of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable”. That is precisely what the Council is doing in this area and the appeal proposal runs counter to this approach.

51. The appeal proposal would not amount to sustainable development.

OAN

52. It is common ground that the starting point for calculating the five year housing supply in this case is the OAN. This accords with the guidance in PPG 3-30 given that the CS figure is agreed to be out of date as it derives from the revoked RSS, was set in 2007 and only ran until this year. The emerging local plan is to be subject to examination next month. Although the Local Plan examiner has understandably asked for a calculation of 5 year supply set against the proposed local plan, the figures in the emerging plan are subject to objections, and it is not considered that sufficient weight can currently be applied to them to use for the purposes of calculating the 5 year housing supply. In such circumstances PPG 3-30 advises that one should consider the information provided in the latest full assessment of housing needs.

53. The original OAN assessment was carried out for the Council by respected consultants in March 2015<sup>26</sup>. That document was an independent and objective appraisal of the OAN undertaken in accordance with all relevant national policy and guidance. It utilised the latest available DCLG projections (2012) at the time when it was produced in accordance with the guidance in PPG 2a-15<sup>27</sup>. Since the publication of the original OAN assessment the DCLG 2014 projections have been published. The PPG advises that whilst assessments should be informed by latest projections wherever possible they are not automatically rendered out of date every time new projections are

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<sup>26</sup> CD4.1

<sup>27</sup> RB XX

issued<sup>28</sup>. However, the Council has chosen to have the OAN reassessed on the basis of those latest projections<sup>29</sup>. In fact use of the latest projections does not result in any material change in the OAN because although use of the 2014 projections results in a higher population projection it also results in a younger population which on average lives in larger households so that the 2012 projections lead to an OAN of 497 pa whilst the 2014 projections produce an OAN of 502 pa<sup>30</sup>.

54. RB first seeks to raise the OAN by use of alternative migration assumptions, which he says would lead to an alternative OAN of 667 pa<sup>31</sup>. RB's assessment on this issue is not accepted, but at the outset it can be observed that even were he correct on this point on the appellant's figures it would not appear to make a material difference as to whether the Council can demonstrate a 5 year supply.
55. If the OAN were 667 this would have led to a requirement of 3335 between 2011-16. During that period there have been 4498 completions<sup>32</sup>. There is accordingly no suggestion of any shortfall against this figure. Furthermore JH's evidence is that the Council has a total deliverable 5 year supply of 4,565<sup>33</sup>. Even if one were to use an OAN of 667 and apply a 20% buffer to the requirement the resultant requirement would still only be 4002 and the Council would have a 5.7 years supply. Clearly the Appellant is driven to argue that the requirement is larger if it is to make any case that there is no 5 year supply.
56. CH explained that the 2012 ONS projections under-estimated trend-based population growth due to it showing dramatically lower net migration in the future than the past and that accordingly in preparing the original OAN assessment she had created two alternative projections trends<sup>34</sup>. She explained that the low figures in the 2012 ONS projections was due to an anomaly and that this was not uncommon at local level given the complexity

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<sup>28</sup> PPG 2a-16 and RB XX

<sup>29</sup> CD 4.9

<sup>30</sup> CH rebuttal 2.4

<sup>31</sup> RB 6.6

<sup>32</sup> CD 4.13 p5 Table 2

<sup>33</sup> JH 6.7.33

<sup>34</sup> CH 2.11

of the ONS projections. It was not due to the impact of the recession as suggested by RB.

57. The fact that there was something wrong with the 2012 ONS projections with respect to migration is clear from a consideration of Figures 3.1 in both CD 4.1 and 4.9. There is a marked discontinuity between the recorded figure for 2012 and the start of the projection; it is plain that the 2012 projections start at a lower point with respect to migration than any figure recorded since 2002; indeed the 2012 projections remain lower than the actual historic figure for the whole period of the projections and are only approaching the actual figure by 2031. It is also notable that the 2012 projection is out of line with all other projections.
58. CH explained that the 2014 ONS projections had largely corrected the anomaly in the 2012 projections, albeit for the OAN update she had still created an alternative scenario which showed higher population growth<sup>35</sup>. It can be noted, as RB accepted, that there has never been any attempt by CH or the Council to use the lowest figures which might be adopted.
59. CH explained that in considering migration it is more appropriate to use a longer trend than a short-term trend because shorter trends can be unduly influenced by short-term factors. For this reason CH has consistently preferred the use of a 10 year trend. It can furthermore be noted that the 10 year trends used by CH are firmly within the central range of the various trends shown in Figures 3.1 in CDs 4.1 and 4.9 and fit well with the ONS 2014 trend. In contrast the use of the 2010-2015 trend is very much an outlier which is as far from this central band of trends as the 2012 ONS projection.
60. RB sought to gain support for his trend from the fact that it was closer to CH's 2010-15 trend, albeit it was higher still. This is a misconceived point as inevitably two 2010-15 trends should be close together. He also sought to argue that comparison with the 2014 ONS projection is misleading as it compares a different 5 year trend, but this ignores the point that the 2014 ONS projection is but one of a number of trends which cluster in this central band which together all point to the 10 year trend providing the best fit.

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<sup>35</sup> CH rebuttal 2.4

61. It is clear that the 2010-15 trend is unduly affected by the unusually high immigration figure for 2014-15. Consideration of RB's chart 1 reveals that the 2014-15 figure is unrepresentative; it is higher (by a large margin) than any figure since 2000-1; indeed it has only been exceeded on four occasions since 1991 which were all during the mid-1990s. As CH explained there are significant differences between the situation now and that in the 1990s: during that period population was still decentralising from the conurbations to the more peripheral areas and this area was still very influenced by the New Town but since then population has been redirected to the central urban areas and there is no suggestion that this trend is to end. Realistically there is not going to be a return to the position found in the 1990s (a point confirmed by AT's evidence).
62. Surprisingly RB tried to argue that the use of a 10 year trend based projection would be affected by the recession and that this was a reason for preferring his 5 year projection. In fact RB was unable to identify the dates of the recession, but his evidence was that house-building is still affected by the recession. If that were the case it completely undermines his reason for preferring a 5 year based projection to a 10 year based projection. His contention was that at some point there could be a return to what he termed pre-recession levels of migration. In fact it is clear from consideration of his own chart 1 that pre-recession levels (i.e. in the boom years before 2008) are considerably lower than the figures he suggests.
63. As CH explained use of the 10 year trend relied upon her covers both pre-recession and post-recession as well as the recession. In other words it covers the whole of the economic cycle which is a much more realistic approach than RB's truncated period. The events of the last few years have amply demonstrated that any claim that economic cycles have ended was an empty boast and the future will continue to contain the whole cycle of boom followed by recession followed by recovery. The appellant's suggestion that we should only plan on the assumption that a boom will last for ever is simply an attempt to inflate the figures and bears no relationship to realistic planning for the future.

64. In the circumstances there is no good reason for preferring the use of a 5 year period rather than a 10 year period. However, even if one were to use a 5 year period it is not clear how RB gets to the figure he does. As CH explained she has been unable to replicate his figures and that when she used the 2010-15 trend she only arrived at a figure of 552. RB claims that the difference is due to a different migration mix but provided no details to justify this.
65. RB argues for a higher OAN on the basis of making an allowance for improved household formation rates, suggesting that holding the rates constant for the under 45 age group constant at the 2014 level would result in an OAN of 698 pa<sup>36</sup> whilst an alternative approach of returning rates to half the 2008 trend for the 25 to 44 age group would result in a figure of 732 pa<sup>37</sup>.
66. RB's adjustments on this issue are not accepted but again it can be noted at the outset that even if they were made it would not even on the appellant's figures establish that there was no 5 year housing land supply. If one were to take the higher figure of 732 pa, this would indicate a requirement between 2011 and 2016 of 3660 whereas there were 4498 completions – again there would be no suggestion of a shortfall during this period. Furthermore even if one were to use the 732 figure and apply a 20% buffer to the figure this would only lead to a requirement of 4,392 whilst JH's evidence is that the Council can demonstrate a 5 year supply of 4,565 giving a 5.2 years supply.
67. RB agreed at the outset that there was no basis for asking for the OAN and 5 year requirement to be calculated in any way other than in accordance with the NPPF and PPG and he claimed that he was not asking for it to be determined in any alternative manner. That being the case he had to accept that the starting point should be the DCLG projections<sup>38</sup>, which are statistically robust and based on nationally consistent circumstances<sup>39</sup>. He agreed that in providing this advice and guidance the government will have had its own policies, particularly those in the NPPF in mind and that it will also have been fully aware of the "housing crisis". Whilst the Appellants spent much time referring to numerous documents about the "housing crisis"

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<sup>36</sup> RB 6.8

<sup>37</sup> RB 6.9

<sup>38</sup> PPG 2a-15 & RB XX

<sup>39</sup> PPG 2a-17 & RB XX

in their proofs and introduced the Explanatory Memorandum to the Housing and Planning Act 2016<sup>40</sup> none of these matters produce new policy or provide reasons for departing from the NPPF and PPG as RB agreed. The Explanatory Memorandum does not purport to set out new policy, it merely summarises the existing policy background (again agreed by RB), and there is nothing in the Memorandum or the legislation that calls for a different approach to be taken. The other documents outlining the “housing crisis” all form part of the background – the relevant government response to be applied at this inquiry is found in NPPF and PPG.

68. The PPG does contemplate that it may be appropriate to adjust the DCLG household projections to reflect factors affecting *local* household formation rates<sup>41</sup>. It is important to note that any adjustment can only be because of local factors, it cannot be on the basis of national factors or factors which apply nationally. If one were to apply corrections on the basis of national factors that would be contrary to the clear wording of the PPG and also inconsistent with the advice that the projections are the starting point and based on robust nationally consistent evidence. Furthermore any local changes have to be clearly explained and justified on the basis of established sources of robust evidence<sup>42</sup>. This was all agreed by RB.
69. Although RB agreed that that if he were to depart from the DCLG projections it was necessary to identify local factors to justify such a departure, he surprisingly failed to provide any evidence of relevant local factors to justify a departure. The only evidence he could point to was in section 8 of his proof and page 16 of his rebuttal. One can observe that section 8 is after he made the adjustment and provides “Sensitivity testing and other assessments of need” rather than providing a justification for the approach he took, and clearly the rebuttal is addressing points made by CH rather than justifying his original adjustments. In any event when one considers the particular sections of his proof to which he referred none, when properly considered, provided any evidence of local factors justifying departing from the DCLG projections.

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<sup>40</sup> Document 16

<sup>41</sup> PPG 2a-15 and 2a-17

<sup>42</sup> PPG 2a-17

70. RB referred first to the number of concealed families in Telford recorded in the 2011 census and compared this with the 2001 census results for Telford<sup>43</sup>. On its own this does not provide evidence of a local factor as it fails to consider and compare the national picture. When the national position is compared far from concealed families in Telford providing any basis from departing from the national projections, they actually suggest that Telford has been performing better than the national trend. The national figures are provided in RB paragraph 8.7 and it can be seen that they show an increase nationally from 1.2% of all families in 2001 to 1.8% of all families in 2011. In contrast the Telford figures have gone down from 1.9% of all families in 2001 to 1.7% of all families in 2011. Faced with this evidence RB had to concede that Telford had bucked the national trend and from a situation where it was worse than the national figure it is now better. Whilst this is not a cause for complacency, and one may still be concerned about concealed families, it makes it clear that they do not provide any local evidence for departing from the national projections.

71. RB then drew attention to the growth in "Other households"<sup>44</sup>. However, this simply shows the projection in Telford, there is absolutely no evidence that this is any different to the position nationally or that it provides any basis for departing from the national projections because of local factors which are not common nationally.

72. RB also drew attention to Tables 4 and 5 in his rebuttal proof. The point he made was that if one considered the household formation rates in Telford in the various categories in the 25 to 44 age groups with those in England there were a number where they "declined" between 2001 and 2031 compared to the England average. These tables come with a health warning because it was clear that there were numerous errors in the figures relied upon by RB and it was not even clear if they were consistently comparing 2001 with 2031 as claimed. The selected comparison is in any event misleading. What the figures show is that in 2031 the Telford figures are as good as (100%) or better (over 100%) than the England figures in 12 of the 20 categories; a

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<sup>43</sup> RB 8.10

<sup>44</sup> RB 8.14 and Table 10

projected improvement on the 2011 position when they were better in 11 of the 20 categories. This is more a meaningful comparison than looking at whether there is some slight change in the degree by which they depart from the average figure (100%); one can expect fluctuations in this position and indeed in a situation where Telford is better than England in the majority of the groups it is no surprise that the Telford figures may reduce – all this indicates is that “England is “catching up”, which is precisely what one might expect it to do. There is furthermore no evidence that these fluctuations are statistically significant or any different from what is normally to be expected.

73. RB’s real point on this is that the national trends should not be extended if the objectives of the NPPF are to be met<sup>45</sup>, and he seeks support for this view from the views expressed by the Inspector at the Haygate Road appeal<sup>46</sup>. At the outset it must be noted this is not a local factor justifying departure from the DCLG projections – the same point would apply everywhere. The very fact that RB’s position ultimately relies upon arguing that one should not follow the national trends because of their harmful consequences confirms that he is unable to rely upon any local factor for departing from the national projections in accordance with the PPG. The suggestion that we should depart from the DCLG projections because to follow them would have harmful consequences which would apply everywhere is in truth an attack upon the PPG guidance on this issue.

74. The PPG guidance is clear (as RB accepted), any departure from the DCLG projections must be on the basis of factors affecting local household formation rates, not factors affecting rates nationally, still less the consequence of applying the DCLG projections, particularly when the consequence would apply nationally.

75. The Haygate Inspector observed that because low household formation rates may have harmful social consequences he was not persuaded that it was appropriate simply to reflect the projected rates, but the error made by the Inspector in that case was to suggest that this might alter the OAN. The PPG provides a clear methodology for assessing OAN; the DCLG projections are

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<sup>45</sup> RB 8.7

<sup>46</sup> CD 8.20 para 42

to be used unless there are local factors affecting formation rates – any harmful consequences of the national rates is not a local factor and is something of which the government must have been aware when issuing this guidance. It may be the case that a decision will be taken to provide additional housing because of concerns about the social consequences of low household formation rates, but that is not something for calculating the OAN it is a policy decision to be taken having calculated the OAN. The attempt made in RB's re-examination to characterise this as in accordance with the guidance in PPG 2a-15 was contrary to the clear wording of the guidance and RB's answers in XX and defied logic. In so far as RB allowed himself to be led along this path in Re-X he merely undermined his credibility as a witness.

76. It is furthermore important to consider why the household formation rates in the later projections differ from those in the 2008 projections. CH explained that even when published the authors were concerned that they were over-estimating future household formation because there was evidence that the previous trends had already been broken prior to the recession because of a number of long term trends including the introduction of student fees, the increase in precarious employment, a sustained increase in young people not leaving home, the fall in the number of childless women and the reduction in the older formation of couples and families<sup>47</sup>. At the time of the publication of the 2008 the decision was taken to ignore these factors, but they were subsequently confirmed by the 2011 census and there is no sign that they are reversing<sup>48</sup>.

77. RB was surprisingly unaware of the concerns raised at the time about the 2008 projections, but importantly he had to agree that he had no evidence to support either his assumption that rates would hold constant for the under 45 age group at the 2014 level or return to half the 2008 trend for the 25 to 44 age group. Given the admission that there is no evidence to support these figures they are effectively “plucked out of the air” and have no rational basis for support.

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<sup>47</sup> CD 4.9 2.9 and 2.10

<sup>48</sup> CD 4.9 2.8-2.16

78. Neither CH nor RB suggest that any adjustment need be made for market signals, although RB does suggest that his higher figures would in any event address this. However, PPG 2a-15 does give undersupply and worsening affordability of housing as examples of local factors which might suppress household formation. It is therefore appropriate to consider the evidence on these points.

79. Market signals are considered at length in CDs 4.1 and 4.9<sup>49</sup>. The evidence shows that –

- i) House prices in Telford & Wrekin are below the relevant national and regional benchmarks<sup>50</sup> and the long-term change in the borough's prices has closely paralleled the regional trend which has slightly under-performed the national average<sup>51</sup>.
- ii) Affordability (as defined by CLG) is good relative to the relevant benchmarks. It is lower than that for England, West Midlands, and Shropshire<sup>52</sup>. Furthermore it is improving as RB conceded.
- iii) Market rents are stable<sup>53</sup>.
- iv) Overcrowding is below the national and regional benchmarks<sup>54</sup>.

The evidence, all accepted by RB in XX, is contrary to his claim that affordability, overcrowding and concealed households have all worsened in the area<sup>55</sup>. The making of such an unsupported and inaccurate claim undermines RB's credibility as a witness.

80. The evidence on market signals demonstrates that far from there being any local circumstances justifying a departure from the DCLG projections, the position in Telford and Wrekin is better than the relevant benchmarks, and it

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<sup>49</sup>See in particular CD 4.1 pp 17-24 and CD 4.9 pp 9-10

<sup>50</sup>CD 4.1 para 4.23

<sup>51</sup>CD 4.1 Figure 4.2 and para 4.25

<sup>52</sup>CD 4.1 Figure 4.3 and para 4.28

<sup>53</sup>CD 4.1 Figure 4.4 and para 4.30

<sup>54</sup>CD 4.1 Figure 4.5 and para 4.32

<sup>55</sup>RB 5.35

undermines any contentions that there is a particular issue with household formation rates in the local area.

81. The appellant's witnesses have variously sought to suggest that a failure to meet the maximum figures set out in the CS and RSS is indicative of a problem which needs to be addressed. In fact the evidence demonstrates that throughout the relevant period the Council had a large land supply in line with the figures, much of which had planning permission, but that it was lack of demand and consequent poor viability which held back development<sup>56</sup>. Ironically this position is essentially confirmed by AT who explained that there has been an oversupply of sites which resulted in average sales prices falling and a reduction in interest from potential developers which has resulted in fewer houses being delivered<sup>57</sup>.
82. RB provides three alternative OAN figures based on a re-working of economic trends which he contends reflect the employment objectives of the emerging Local Plan. The first figure, which he does not rely upon or take any further is 864<sup>58</sup>. The second which is based on retaining the household formation rates at the 2014 figure is 888<sup>59</sup>, whilst his third (and preferred) figure of 933 is dependent upon returning household formation rates to half the 2008 trends<sup>60</sup>.
83. Again at the outset it is worth noting that RB's adjustments purely for economic reasons would not, even on the appellant's own figures, result in there being any issue with respect to the 5 year supply of housing land. If the OAN were 864 that would suggest a requirement of 4320 over a 5 year period. During the period 2011-2016 there has been 4,498 completions; there is accordingly no backlog. If one applied a 5% buffer (which would be appropriate given the performance over the last 5 years) the 5 year requirement would be 4,536. JH's evidence is that the Council can demonstrate a 5 year supply of 4,565 giving a 5 years supply.

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<sup>56</sup> CD 4.1 paras 4.12-4.21

<sup>57</sup> AT XX

<sup>58</sup> See RB Table 9

<sup>59</sup> RB 6.20 and Table 9

<sup>60</sup> RB 6.21 and Table 9

84. In the circumstances it can be observed that RB has to make a number of unjustified assumptions even to begin to raise any issue, even if it is assumed in the appellant's favour that all of JH's evidence on the land supply is accepted. But even then with the figure of 888 the appellant does not in truth identify any issue on its own figures. The figure of 888 would translate over 5 years to a requirement for 4,440, which was more than met in the period 2011-16 with completions of 4,498. Again there is no backlog. If one applied a 5% buffer the 5 year requirement would be 4,662 which is only marginally above the supply identified by JH if one assumes that she is correct in every respect. In truth even on the appellant's figures there would essentially be a 5 year supply.
85. If RB's preferred figure of 933 is used, the resultant requirement over 5 years would have been 4,665, just above the level of completions at 4,498. A 5% buffer would result in a requirement of 4,898 whereas a 20% buffer would result in a requirement of 5,598. One can see that the appellant is driven to arguing for the unrealistic and unjustified assumption that household formation rates would return to half the 2008 rate as even if all of JH's evidence were accepted it is only at these levels that it can even begin to raise an issue about whether there is a 5 year supply of housing land.
86. RB's claimed justification for adopting different figures for his employment led housing figure is that the Experian model is a "circular" model which is population constrained. This was his major criticism of the PBA assessment. RB's criticism was wholly unfounded and was quickly abandoned by RB in XX.
87. As CH explained<sup>61</sup> (and RB accepted) the Experian model is not population constrained. The model produces a figure called "job demand" which is an estimate of the workplace jobs that employers in the area would want to fill and which does not take into account the available labour supply in the area (i.e. it is not constrained by the local population). As CH further explained the job demand figure is largely independent of population because it looks at the different sectors of the local economy, considers national forecasts for

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<sup>61</sup> See CH rebuttal 2.25 and CD 4.9 para 2.43

jobs growth in the various sectors and then considers how local jobs has compared and is expected to compare with national jobs growth<sup>62</sup>. RB accepted all of this. There is an element which is influenced by local population which is the employment in providing local services which is inevitably affected by the level of local population as this will affect the demand for such services. This is not a constraint on the number of workers available; it is simply a necessary and reasonable assessment of the number of customers for local services. RB agreed that one cannot make an assessment of this element of jobs provision without an input as to local population and that this was a small element of the jobs figure.

88. Having obtained the jobs demand figure the Experian model compares this figure with the local labour supply generated by a given population projection. If the labour supply is enough to meet the jobs demand then the economy is not constrained by labour supply, but if it falls short of the jobs demand figure the model has identified that there is a labour supply constraint and a need to increase the population if one is to meet the job demand figure.

89. RB had used three economic models all of which he said were well respected<sup>63</sup>. Experian is one of those models, and it can be noted that it is the model which produces the results closest to the average. The other models are Oxford Economics ("OE") and Cambridge Econometrics ("CE"). There is nothing in the comparison with the other models which would give rise to any reason for questioning the Experian model. Importantly RB said that he was unaware of any version of OE which approached matters differently from Experian. In fact CH explained that the OE model would predict the number of houses needed for the outcome of the model and questioned why this had not been disclosed by RB. Surprisingly RB said he was unaware of the figure. He was also unable to help with the CE model. There is therefore no evidence to suggest that the Experian model adopts any different approach to other models.

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<sup>62</sup> CH explained that there is in fact an intervening regional calculation but this does not alter the principle of the approach which is simplified simply for easy explanation.

<sup>63</sup> RB 6.10 and Tables 7 & 8

90. Importantly, and unlike the model used by RB, the Experian model is an integrated economic model (as is the OE). The Chelmer model relied upon by RB cannot calculate economic variables – they are fixed inputs. It cannot calculate the impact of those variables upon each other – for example the impact of changing activity rates upon job demand. Importantly also the Chelmer model is limited to looking at the Telford area and it can give no consideration to the impact of changing activity rates on the national economy and the inevitable consequence this would have for the Telford economy. Similarly it has no idea of the number of jobs and workers in the neighbouring areas and the effect this would have on the jobs market in Telford. Experian (and similarly OE) in contrast is able to assess all of these important issues. RB accepted all of this in XX.
91. The Experian model is plainly equipped to make a better assessment of these issues than the Chelmer model relied upon by RB. It was furthermore completely illogical to criticise the Experian model as circular but then use it as part of the foundation of his own calculation. It is also illogical, and contrary to the guidance as CH explained to use part of the forecasts from these models whilst rejecting other elements; the integrated nature of the models and the fact that the various factors all interact means that it cannot be assumed that the parts relied upon would hold true once one has made the adjustments<sup>64</sup>.
92. Given the disappearance of his principal criticism of Experian, RB was driven to complaining that it did not provide the figure of additional population needed to meet the job demand figure and that it “flexed” local factors which influenced the jobs market. Both complaints were misconceived, and even if correct would not have amounted to a reason for disregarding the Experian outputs.
93. As already considered the Experian model produces two figures the “jobs demand” and the “workplace jobs”. It allows comparison between the two figures and identifies if there is an issue which would constrain jobs growth. If there is an imbalance the figure is provided by the model and this allows

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<sup>64</sup> CD 4.9 para 2.52

for identification of the level of additional population needed (albeit this will inevitably not be the simple difference between the two figures).

94. The “flexing” of the local factors about which RB takes issue merely reflects what happens in reality as different factors impact upon each other. RB accepted that this happens in reality and will, for example, already have happened in the first five years of the period under consideration (i.e. 2011-2016). There is no suggestion that this “flexing” which has already happened should be (or realistically could be) undone. There is further no reason for supposing that this flexing will cease in the future. It is frankly unrealistic to assume that flexing will not occur in the future. The approach adopted by RB involves substitution of his arbitrary fixed judgments for the more calculated and realistic assessment undertaken by the model.
95. It is important to understand that the Experian model does not have as an objective any attempt to make the jobs demand match the available labour within the local area. It does not set out to fill the jobs first with local employees and commuters so as to keep down any number of migrants attracted by jobs. There is no manipulation of the result. In reality it is RB who is manipulating matters by ignoring the “flexing” which would in reality take place and instead assuming that one can only fill the new jobs with in-migration.
96. The unrealism of RB’s approach is very clear if one steps back and considers what can reasonably be expected to happen in the real world if additional jobs are created. A number of points can immediately be recognised –
- i) A number of the jobs can be expected to be taken by those living in the area who are currently unemployed and therefore the local unemployment rate will inevitably fall.
  - ii) Some jobs can also be expected to be taken by those already in employment who are looking to work additional hours – in other words so-called “double-jobbing” will increase.
  - iii) A number of the jobs can be anticipated to be taken by people currently living in the local area but working elsewhere (i.e. existing out-commuters), on the basis that it is

more convenient/better to have a job nearer home. As the commuting figure is a net figure taking account of both in-commuting and out-commuting a reduction in out-commuters will inevitably result in an increase in "net in-commuting".

- iv) The new jobs will have the potential to attract people from outside the local area to come to work.
- v) It can be anticipated that for most jobs those who may be attracted will predominantly be those who currently live relatively close to the local area with the propensity to be attracted the greater the closer one is to the area.
- vi) With respect to those outside the area who take up a job in the area they will then have to decide whether to commute to work or move to live more closely to their place of work. There will be many factors which influence individual choice, but again it can be expected, particularly for those who live relatively close to the local area (from whom the majority of new workers may expected to be drawn) that many will choose to remain living at their current property. This will result in a further increase in "net in-commuting".
- vii) It must also be remembered, that even of those who relocate some may choose to move to somewhere nearer to, but still outside the local area and so remain as in-commuters.

RB accepted all of this in XX. This is effectively the "flexing" of which RB complains. Given he accepted that this is what would happen in practice, his objection to the "flexing" in the model was both groundless and illogical.

97. The first major change that RB makes is to assume that any increase in activity rates for the general population will be limited to a 2% increase<sup>65</sup>. This approach is fundamentally flawed for the reasons explained by CH<sup>66</sup> and set out at some length in CD 4.9<sup>67</sup>. To summarise, RB uses job forecasts to

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<sup>65</sup> RB 6.19

<sup>66</sup> CH rebuttal 3.12 – 3.15

<sup>67</sup> CD 4.9 para

measure job demand but those very forecasts are dependent among other things on the assumptions made about future trends in activity rates; if activity rates are lower than the forecasters expect then job demand will also be lower. One simply cannot retain the job demand figure arising from a particular trend in activity rates whilst applying a lower trend. The result is meaningless and amounts to no more than plucking figures from the air. This was recognised by the Muxton Lane inspector<sup>68</sup>.

98. RB accepted all of this. He agreed that the activity rate was a critical input to any assessment of job demand and that one could not assume the same level of job demand with a lower activity rate. That really was the end of his adjustment and also the end of any attempt to provide a different employment based calculation of housing requirement. RB tried to salvage his position by saying that he had assumed an increase in activity rates, but this is not to the point. The essential point is that he had arbitrarily assumed a different, and importantly lower, activity rate. In fact, as CH explained, if one uses a lower activity rate the Experian modelling has shown that the labour market remains in balance over the plan period because of the resultant lower job demand<sup>69</sup>.

99. RB accepted that some of the new jobs would be taken by “double-jobbing”, but arbitrarily limited this. The exact limitation is unclear on his evidence: in places he appears to suggest that 4% will be “double-jobbers”<sup>70</sup>, but in describing his adjustment he says that he has reduced the growth rate by 4%<sup>71</sup>. It is assumed that when referring to reduction in the growth rate RB is here referring to the rate of growth in new dwellings arising from the new jobs rather than the rate in growth in double-jobbing given that elsewhere he appears to hold this at 4% (i.e. he does not allow for any growth in the rate).

100. RB suggests that the “double-jobbing” figure in the Experian model is an “assumption” i.e. an input<sup>72</sup>. As he agreed in XX this is in fact wrong the “double-jobbing” figure is an output of the model having taken into account

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<sup>68</sup> See CH rebuttal 3.13 and Appendix A para 27

<sup>69</sup> CH rebuttal 3.12

<sup>70</sup> See RB 5.28 & Table 9

<sup>71</sup> RB 6.18

<sup>72</sup> RB 5.29

all the relevant inter-related factors. The only evidence relied upon by RB for his approach is an article in the Financial Times which he has not produced. From what he tells us about the article, however, it is clear that the rate of “double-jobbing” is growing. Given that the rate is growing his decision to hold the rate constant is inconsistent with the evidence he claims to be relying upon.

101. In his rebuttal proof RB recognised that there has been an increase in “double-jobbing” but bizarrely suggests that this is a reaction to the recession<sup>73</sup>. As CH explained the converse must be the case. “Double-jobbing” arises when additional employment is available which does not occur during a recession. What happens during a recession is that less employment is available; that may result in people working fewer hours rather than losing their job but this results overall in fewer hours being worked by the same number of people which is the exact opposite of “double-jobbing”. It appears that RB has confused the two quite separate phenomena. There is no basis, still less evidence, to support RB’s assumptions with respect to “double-jobbing”.

102. RB’s final adjustment is to assume that the ratio of in and out commuting remains the same<sup>74</sup>. This is plainly unsound for the reasons discussed above, which RB accepted.

103. In short there is no basis for any of RB’s arbitrary and unfounded assumptions and adjustments to the figures. There is no reason to depart from the outputs from the Experian model which show that there is no need to increase the provision of housing to meet the employment projections.

#### Affordable housing

104. The appellant also seeks to make a case for allowing the appeal on the basis of delivery of affordable housing. It is important to note at the outset

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<sup>73</sup> RB rebuttal 1.17

<sup>74</sup> RB 6.22

that there is no requirement to meet affordable housing in full as both RB and JS accepted<sup>75</sup>.

105. JS gave extensive evidence on the national housing crisis. Whilst this is a matter of concern, it is not apparent that it has any real bearing upon this appeal. JS agreed that –

- i) The government is fully aware of the national housing crisis and the issues which it raises.
- ii) The government has taken the national housing crisis fully into account in formulating planning policy and national planning policy adequately addresses the matter.
- iii) The approach to be followed is that set out in the NPPF and PPG.

Given that national policy has properly covered these matters the references to the national housing crisis are essentially background to the policy. They do not provide any reason for adopting any different approach to determination of the appeal.

106. JS's position on the question of affordable housing in the Council's area was unclear. Whilst he referred to the latest figure of 665 per annum found in the Council's latest SHMA as the "objectively assessed need"<sup>76</sup> he referred variously to other figures, including in his conclusions a much larger figure of 1,912 per annum<sup>77</sup>. This figure appeared for the first time in the conclusions without any justification in the proof, and surprisingly JS was unable to explain its provenance. In answer to a question from the Inspector, JS suggested that the figure was the result of adding the 665 pa figure from the SHMA to the shortfall in delivery since 2010/11 and clearing this all in the next five years.

107. If this is the basis for the figure of 1,912 it is plainly flawed and contrary to JS's evidence both in his proof and to the inquiry. As JS explained the 665 pa figure is calculated on the basis of clearing the "backlog" in 5 years in

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<sup>75</sup> RB 7.15 and JS XX

<sup>76</sup> JS 7.3

<sup>77</sup> JS 8.6

accordance with the "Sedgefield" method. If on the other hand one were to clear the "backlog" in 15 years the figure would fall to 263 pa. Given the 665 pa figure already provides for clearing the "backlog" there can be basis for adding a further figure for the "backlog" to it. This major confusion and inconsistency in JS's approach and evidence and his inability to address it seriously undermined his credibility.

108. If one turns to consider the 665 pa affordable housing figure, JS agreed that most of it would be dependent upon market housing coming forward and, given that most would be in Telford rather than Newport, affordable housing would be provided at nearer to the 25% rate found in Telford rather than the 35% rate in Newport. To provide 665 pa at 35% would require 1900 houses pa whereas 25% would require 2660. Plainly as JS accepted nobody could seriously advocate such levels of provision and there is no serious suggestion that such figures would be remotely achievable or desirable.

109. It is also important to put the affordable housing figures in context. As JS accepted in XX the presence of large levels of affordable housing need is something which "probably applies everywhere in the country". In this regard it is important to remember that the evidence with respect to affordability shows that the Council area compares favourably with all relevant benchmarks. This is also apparent from the evidence that JS produced. JS relied upon the HNF "Home Truths" publications<sup>78</sup>. The figure JS particularly relied upon was the "ratio of house prices to income". However, it can again be seen that in both documents the Council area is more affordable than England, the West Midlands and Staffordshire and is also more affordable than all constituent parts apart from Stoke.

110. JS draws attention to the level of affordable housing in the Council area since 2001<sup>79</sup> and in Newport from 2007<sup>80</sup>, his figures omit the latest figures for 2015/16 which for ~~Newport~~<sup>Telford</sup> are 1255 total housing completions and 343 affordable housing completions<sup>81</sup> and for Newport 166 total housing completions and 37 affordable housing completions. RS also properly drew

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<sup>78</sup> JS App 14

<sup>79</sup> JS Figure 5.1

<sup>80</sup> JS Figure 5.3

<sup>81</sup> CD 4.12 pp1&2

attention to the fact that the affordable housing figure for 2012/13 was wrong – it should be 283 rather than 211.

111. Whilst it can be observed that affordable housing delivery in the earlier years was disappointing this is already reflected in the backlog which results in the 665 pa figure considered above. What is notable is that there has been a marked step change in delivery which appears to have started around 2009/10 but gained particular traction since 2011 i.e. the start of the emerging local plan period. Over the last 5 years there have been 1647 affordable housing completions out of a total of 4498. This equates to 329 affordable houses pa and represents 36.6% of total completions.
112. Whilst the annual level of affordable housing provision over the last 5 years has not equalled the 665 pa figure, JS has made it clear that this is not a realistically achievable figure. Importantly it can be noted that the average of 329 pa is considerably better than the annual level (263) which would be required to clear the backlog over the remainder of the local plan period. The current level of provision is therefore making inroads into the backlog.
113. RS suggested that increased delivery in 2014/15 was due to the cyclical nature of HCA funding<sup>82</sup>, but he had to accept that there were 343 in the following year which remained above average and was in fact the second highest figure during the whole period. There is therefore no basis for fearing that the levels of affordable housing provision are dropping off.
114. If one considers the position with respect to Newport it is important to recall that the Council has granted permission for a considerable number of houses in Newport already. As JH agreed the Council has already released more housing land in Newport than is proposed for the whole of the emerging plan period – 1546 units compared to planned provision of 1200<sup>83</sup>. This will contribute to future affordable housing needs, and there can be no grounds for suggesting that the Council has been seeking to restrain development in Newport if it can be found to be acceptable.

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<sup>82</sup> RS 5.18

<sup>83</sup> JH 6.2.7

115. Whilst there remains much to be done, and the Council is not complacent, there is nothing in the evidence to suggest that further housing land needs to be released contrary to the development plan and national policy and which would have harmful impacts upon the character and appearance of the area.

The 5 year housing land requirement

116. Whilst there is agreement that the requirement should be based upon the OAN from 2011 there is disagreement with respect to the correct OAN figure. For the reasons discussed above the Council would invite you to conclude that the correct figure is 497 or 502 (the difference for present purposes is immaterial).

117. JH produced 4 different 5 year calculation putting forward 4 different requirements<sup>84</sup>. In addition to the dispute about the correct OAN figure they raise issues with respect to any backlog and whether to apply a 20% buffer instead of a 5% buffer.

118. Two of JH's calculations involve adding on a claimed shortfall of 4339 for the period 2006-11<sup>85</sup>; this accounts for the difference between Tables 7 & 9 and 8 & 10 respectively. JH's position with respect to this claimed shortfall is erroneous on a number of grounds.

119. Fundamentally it is inappropriate and wrong to consider the position prior to 2011. The OAN is assessed as at 2011 and it is the position going forward from 2011 which needs to be addressed. As RB agreed the OAN is calculated taking into account any need at the base date of the OAN which will include any needs arising from any under-delivery of housing. RB recognised and agreed that to add a "shortfall" to the assessed OAN would amount to double-counting<sup>86</sup>. On this point RB was in agreement with D Oakley's evidence. JH in her approach is guilty of such double-counting.

120. It is furthermore wrong to attempt to mix and match in the manner proposed by JH. At the outset it can be noted that JH relies upon the CS

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<sup>84</sup> JH Tables 7 - 10

<sup>85</sup> JH Tables 9 & 10 and see JH 6.7.4

<sup>86</sup> RB XX

which ran from 2006-16 for her calculation of the claimed “shortfall” between 2006-2011, but then seeks to rely upon a claimed higher OAN figure for the period between 2011-16 when the CS would have provided for a lower figure. More fundamentally still the CS was not based upon an OAN, it was a policy driven figure which employed a very different methodology to that which is now advocated in national policy and which has been followed in this case in assessing the OAN. The policy aims upon which it was based were quite different from the current situation. Importantly the objectives changed for the period after 2011 when it was seeking to redirect development to the conurbations – the last thing it would have been advocating was the release of additional land in areas such as Telford.

121. It is methodologically unsound to mix and match different figures from different periods which are based upon different methodologies and use different data sources. This is obvious from consideration of the issue from first principles, but it is also reinforced by the judgment in the *Zurich Assurance* case<sup>87</sup>. Whilst that case involved a challenge to a local plan the principles covered are equally applicable to a section 78 appeal.
122. It is furthermore surprising that JH should seek to rely upon figures from the CS which she considers to be out of date. The figures date from the original RSS in 2004 and clearly they were produced before that date.
123. Even if it had been appropriate to consider the CS figures for the purpose of calculating any “shortfall”, when properly understood the CS does not establish any shortfall. The CS figures are expressly stated to be a maximum. By definition there is no requirement to meet a maximum – it is a figure which must not be exceeded not a figure which must be attained. The CS simply followed the RSS. The RSS was clear in distinguishing between those figures which were maxima and those which were minima, but the appellant essentially argues that both maximum figures and minimum figures are to be treated as a requirement or target thus rendering the deliberate distinction meaningless.

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<sup>87</sup> *Zurich Assurance v Winchester CC* [2014] EWHC 758 (Admin)

124. If reliance is to be placed upon the CS it is furthermore important to consider the figures in the context of the CS approach and strategy. The CS set out maximum figures, but if they were to be treated as “targets” there is a difference between the targets before and after 2011. The relevant figure before 2011 was ~~1300~~<sup>3</sup> pa which over the 5 year period 2006-11 would come to ~~6500~~<sup>6650</sup> whereas the figure from 2011-16 was 700 pa coming to 3500 over the 5 year period. If one looked at the total for the 10 years of the CS it would come to ~~10,000~~<sup>150</sup> or an average of ~~1,000~~<sup>15</sup> pa. In contrast to the CS, the Councils OAN is of the order of 500 pa and the proposed LP figure is 778 pa. Even the appellant does not consider the OAN to be greater than 933 pa. It is common ground therefore that whatever figure should be adopted from 2011 there would be a significant reduction in the figure compared to the pre-2011 figure and the average level of provision over the whole of the CS period. It is common ground that whatever the figure is to be there is now proposed to be less housing than was contemplated either over the period to 2011 or the whole CS period.

125. Although it is common ground that any requirement now is lower than during the early or whole of the CS period JH remarkably suggests that 5 year requirement is either 10,417 or 11,041<sup>88</sup>. In other words she suggests that the 5 year requirement is more than the 10,000 figure for the 10 years of the CS, and more than 10 years at the rates suggested by the appellant’s OAN (i.e. 8,800 or 9,330). It is an even greater figure compared to the LP proposed figure – representing 13.4 years<sup>89</sup> or 14.2 years<sup>90</sup> of the LP proposed figure. A basic sense check would identify that something must be wrong.

126. Importantly contrary to everybody’s position (and the position of the CS) rather than housing provision going down after 2011 it is suggested that it should be massively increased.

127. The fact that JH’s figures depart from any sense of reality is confirmed by the appellant’s own evidence with respect to delivery rates. AT confirmed that there is absolutely no prospect of commercial delivery at anything like

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<sup>88</sup> Tables 9 & 10

<sup>89</sup> Table 9

<sup>90</sup> Table 10

these rates and no demand for this level of development. He further confirmed that release of the additional sites required to provide this level of development would further depress delivery rates on existing sites. One can see a spiral of more sites being release to achieve unrealistic rates suppressing delivery leading to claims for release of even more land. The appellant's report that this is looking at 5 year supply calculation rather than anything which might happen in the real world merely underlined the fanciful nature of the appellant's case.

128. There is no sensible basis for carrying forward a "shortfall" from before

2011 and JH Tables 9 and 10 should be rejected. \* It has discuss

129. The next issue is the appropriate buffer to apply. It is clear on the evidence

that there has been no shortfall in delivery over the last five years if one adopts the Council's OAN (497 or 502), the CS figure for the period (700 maximum), the emerging LP figure (778) or even all but the highest of the appellant's alternative OAN figures<sup>91</sup>. It is only if one were to adopt the highest figure the appellant could think of (933 pa) that any shortfall over the last 5 years is identified<sup>92</sup>. Even then it is only a shortfall of 167 and it can be seen that in 2 of the 5 years the completions significantly exceed the 933 pa figure.

130. Consideration of whether there has been a persistent shortfall calling for the application of a 20% buffer is essentially a matter of judgment, but it is clear that there is no basis for concluding that there has been any persistent shortfall over the last 5 years.

131. JH's claim for a 20% buffer relies upon the performance during the period 2006-11. As already noted the CS figures were maximum figures, in those circumstances there can be no under-delivery. It is furthermore inappropriate to adopt her mix and match approach for the reasons set out above.

132. Even if one were to consider the period 2006-16 for assessing whether there has been persistent under-delivery and use the CS figures as requirements rather than maxima, it is clear that there has been no under-

delivery for the later half of that period. Given that this is the more recent period greater weight should be attached to that period, and it cannot be concluded that there has been persistent under-delivery.

133. It is furthermore important to remember why a buffer is provided. The buffer is to provide comfort that the supply is sufficient to provide for 5 years worth of housing. NPPF 47 explains that the 5% buffer is to ensure choice and competition in the market for land, whilst the 20% buffer is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition. The appellant's own evidence from AT is that the only concern about choice and competition is that there may be too much which is driving down developer interest and delivery. It is clear from the delivery over the last 5 years, and comparison of the supply with the requirement that there are no grounds for concern about the current supply (even if it is JH's figure) and achieving the planned supply.

134. In all the circumstances there is no basis for requiring a 20% buffer.

135. If it is concluded that there is a shortfall the question arises whether the buffer (whatever it may be) should be applied to the shortfall as well as the requirement. Whilst D Oakley accepted that it could be applied to both it should be noted that this is not the approach taken by the Council when it has accepted that there was a shortfall.

136. The 5 year requirement is correctly calculated as the Council's OAN figure (497 or 502 pa) with a 5% buffer – 2609 or 2636.

#### The deliverable supply

137. JH relies upon AT's evidence in an attempt to reduce the delivery which can be expected from the identified site. There are, however, numerous issues with respect to AT's evidence.

138. AT's position was that there was great market interest in Telford in the early 2000s<sup>93</sup> which he confirmed meant from 2000-8<sup>94</sup>. He suggested that

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<sup>93</sup> AT 2.4

<sup>94</sup> AT XX

the subsequent reduction in market interest has resulted in a change in delivery of housing. He also suggested that there was an oversupply of housing and housing land which had caused average prices to falter which had resulted in a waning of developer interest which has resulted in fewer houses being built<sup>95</sup>.

139. The problem for AT is that the evidence on delivery is the exact opposite to his contentions. The AMR 2016 shows that since 2007/8 there has been a year on year increase in completions with the exception of 2012/13 and even then 2012/13 was higher than for 2010/11<sup>96</sup>. This can also be seen in RB Chart 2<sup>97</sup>. In addition RB Chart 2 shows that (a) 2016 had the greatest level of completions of any year since 1981, (b) the completions in 2015 were only exceeded on 4 occasions since 1981 and not at all since 1991, (c) completions in the early 2000s (the time of the claimed market interest) dropped significantly.

140. The evidence clearly demonstrates the AT's thesis about the state of the market and market interest is completely wrong. AT clearly does not understand the local market and no credence can be given to his evidence.

141. AT also suggests that Help to Buy is distorting the market and that it will end in December 2019<sup>98</sup>. In fact it is not clear that Help to Buy will end by then and/or that there will be no comparable replacement. However, if AT were correct on this point the inevitable corollary would be that it would be in the interests of developers to complete as much as possible by December 2019 so the enhanced levels of delivery seen in recent years can be expected to continue at least for the next 3 years.

142. AT is concerned that because of the availability of land in the local area and the number of builders already operating in the area there is limited interest from developers. Again if AT is correct on this point then adding land is only going to make the situation worse, and it will not lead to more houses being delivered. Indeed AT accepted this in part as he said it would result in fewer houses being completed on existing sites, but he claimed (without any

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<sup>95</sup> AT XX

<sup>96</sup> CD 4.12 p1

<sup>97</sup> RB p53

<sup>98</sup> AT 2.7

basis or evidence in support) that in net terms taking into account the additional sites there would be some (unquantified) increase in delivery.

143. AT's assumptions on delivery rates depend in part upon his assumptions with respect to lead in times. It is clear, however, that the evidence he produces in his Appendix 1 does not support his lead in times.

- i) He assumes that from the date of application for planning permission to determination of reserved matters will take over 25 months<sup>99</sup>.
- ii) His Appendix 1 comprises 40 examples. 4 of those examples are at Lawley and it is accepted by AT that those examples, plus another at Lightmoor are not representative and should not be used in any assessment of lead in times.
- iii) Of the remaining 35 sites which are considered to be reliable comparables it can be noted that the average time from application to determination of reserved matters is shown in Appendix to be 15.7 months i.e. 10 months less than his assumed period – it is important to note that this would provide almost an additional year of delivery on the sites considered by JT.
- iv) That is not the end of the matter as the average is plainly unduly affected by the inclusion of a number of sites where what is being counted is the development of a later phase on a large site and the time being counted is from the original planning permission for the whole site to the approval of reserved matters of a later stage. This is plainly an unreasonable assumption.
- v) The inclusion of these phased sites and a small number of anomalous sites clearly distorts the average figure.
- vi) Importantly it can be noted that even including these phased and anomalous sites only 6 of the 35 exceeded AT's over 25

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<sup>99</sup> AT 3.16

months period whereas 22 were less than the average of 15.7 months in Appendix 1.

144. It is clear from consideration of Appendix 1 that AT has over-stated the lead in times. This is a point which is also clearly seen when one compares the position against D Oakley's rebuttal Appendix 3.

145. In passing it is important to note the implications of AT's delivery rates for the appeal site. AT accepted that one could apply his rates to the appeal site. If one were to do that it is clear that from the date of any decision allowing the appeal it would be over 2 years before any housing might be delivered on the appeal. In reality given the difficulties associated with this site it would probably be more realistic to apply a longer period. However, applying AT's figures would mean that the appeal site could not be expected to make any contribution to the 5 year supply before the last 2 years.

146. Faced with this problem AT tried to argue that his clients were different and would get on with things more quickly. This flies in the face of his own Appendix 1, from which it can be seen that his clients actually perform less well than the average.

147. It is clear that AT's evidence does not provide a sound basis for reducing the deliverable supply.

148. It is also apparent that in truth JT does not apply AT's delivery rates and lead in times in her calculations.

149. The various points raised by JT with respect to individual sites are addressed in D Oakley's rebuttal and the table in the SOCG. For the reasons given, apart from the minor concessions made by D Oakley there is no reason for downward adjustment of the supply.

### Conclusions

150. The evidence establishes that the appeal proposal is contrary to the development plan and the emerging plan. It would have a harmful impact upon the landscape and visual amenity, it is not in a sustainable location and

These are  
a rebuttal

it would represent over-development of the site. The proposal would conflict with the NPPF.

151. Set against these powerful reasons for refusal the appellant attempts to show that there is not a 5 year supply of housing land. For the reasons given the evidence conclusively shows that there is in fact a 5 year supply.
152. Even if it were shown that there is not a 5 year supply it is important to remember that this is simply one material consideration. It is also important to note the comments in paragraph 47 of the *Richborough* judgment. Matters to consider in the absence of a 5 year supply are the extent of any undersupply, the steps being taken to address it, and the nature of the policies. In this case even if it were concluded that there is no 5 year supply it is highly material that (a) there has been good delivery of housing over the last 5 years and the trend remains upwards, (b) the emerging Local Plan is bringing forward land and the whole matter of requirement and supply will be shortly considered at the examination, (c) the Council has already released a greater quantity of land in Newport than is proposed for the whole Local Plan period. Considerable steps are being taken to bring forward housing land and address any supply issues (if any are found to exist).
153. Even if it is concluded that there is no 5 year supply and/or that the development plan policies are out of date one must still give weight to the development plan. One must also give weight to the harmful consequences of the proposal.
154. Even if it were concluded that this appeal fell to be determined against NPPF 14 the question remains as to whether it falls within the first or second indent. Given the harm to the valued landscape and the over-development of the site it should be concluded that it falls within the second indent and that the appeal should be dismissed.
155. Even if it were concluded that the first indent in NPPF 14 applies this still involves a balancing judgment. It is clear for the reasons discussed above that when that balancing exercise is undertaken the adverse impacts of allowing this development would significantly and demonstrably outweigh the benefits.

156. It is finally important to recall that NPPF 14 is but one material consideration. It would remain necessary to balance the position under NPPF 14 with the development plan conflict and the harm to interests identified.

157. In the circumstances and for the reasons set out above the Council would invite you to dismiss this appeal.

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15<sup>th</sup> December 2016  
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