

**IN THE MATTER OF**

**LAND TO THE EAST OF KESTREL CLOSE AND  
BEECHFIELDS  
NEWPORT, SHROPSHIRE**

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**CLOSING SUBMISSIONS  
ON BEHALF OF  
THE APPELLANT**

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**No5**  
**CHAMBERS**

**BIRMINGHAM • LONDON • BRISTOL**

## INTRODUCTION

1. This is an outline proposal for up to 170 units of residential development on a very logical site which lies between the existing housing in the town and the A41. The town of Newport is enveloped inside two major roads. Other housing proposals allowed by the Council mostly fall in the land between the edge of the town and these two major roads. It is of course a very logical place to locate housing. The containment is obvious.
2. The site is 6.5 hectares of land. In 2014, when in preparing their emerging Local Plan, the Council proposed to allocate the site for development as employment land. The Council proposed this after a process of site assessment, evaluation and site selection [CD 3.11]. The suggestion that officers did not even visit the site as part of that evaluation process is unconvincing. As JH explained in RE, given the process which was followed in respect of these draft allocations, one would certainly have expected them to at least visit the site. It has been confirmed by the Council that there is certainly no evidence that they did not.
3. The Council have tried their very best to raise any procedural point they can think of whether it is good or bad. The Appellants sensed a real desire on the part of the Council to try and secure the adjournment of the inquiry. Claims that the proposal was too vague to be considered because it was described on the application form as “approximately 170 dwellings” which took up a good part of the first morning were completely undermined by the Council having itself changed the description of development to “up to 170 dwellings” and validated it in that format.
4. The claim was also made that the phrase “up to 170” is also too vague would of course drive a coach and horses through most outline planning applications in this country including many approved by the Council itself, the Planning Inspectors and the Secretary of State himself.
5. The claim that the Appellant has to prove 170 could be built on the site for an outline scheme was the last throw of the dice. That is a procedural complaint unknown in law. And given the Secretary of State has granted permission for sites in the knowledge that less units are likely to be delivered, as in the case of the proposals at Sketchley House, Burbage, Leics, that will probably come as surprising news to the DCLG. (CD7.4, please see para 1.3 of the IR, page 16 of 112). The reason applications such as this are described and validated as “up to” has a reason. The Council will be able to say at the RM stage that description alone is proof enough that the Council is not, and never was obligated to agree to 170 houses.
6. If these arguments are sustained in closing then, I am afraid, all it will show is that the Council have learned nothing from having its arguments rejected there first time. It would also suggest that the Council are trying to scare the Inspector into refusing the proposal for fear of some procedural challenge to the decision, if permission is granted. Few

inspectors are so scared. It has about as much merit as the request for an adjournment and claims the appeal could not be heard.

7. Claims that the impact of the noise from A41 and the effect on trees could not be demonstrated with an outline scheme have also proved to be misplaced. As should have been clear to the Council from the outset, these matters were clearly capable of being addressed by condition. This has of course proved to be the case. The Appellant has not sought any cost on these issues as the Council requested more information and that it is entitled to do so. That being the case those RR2 and RR5 have fallen away, the concern about ecology having been satisfactorily addressed through the submission of additional information before the inquiry started. On the noise issue, what the Appellant has been able to demonstrate is that noise can be satisfactorily addressed. The standard the Council have required is below the Council's normal standard of 55 dB for rear gardens. The standards required here is 50 dB. But since that can be achieved with little difficulty, that is not a concern to the Appellant. RR3 has also fallen away. That makes this case simply about development outside the settlement boundary (RR1) and the impact on the character and appearance of the wider landscape (RR4).
8. A revised scheme was submitted and was the subject of full consultation with statutory consultees and the public. Having progressed that refined scheme, the Appellant saw little merit in reverting to the existing scheme and so sought an amendment to the appeal proposal to ensure the proposal was developed in accordance with Masterplan Revision A (worked up as part of the revised scheme). The Appellant consulted everyone previously consulted on the two applications to explain that the revised scheme would be the one the Appellant was seeking to progress at this inquiry. That was done in the full knowledge of the Council and PINS. Given this is an outline scheme for the same quantum of development, within the same red line, but will a smaller proposed development parcel, it is difficult to see how anyone could be prejudiced anyway, even if there had not been consultation, in light of the well-established law set out in Wheatcroft v SSE [1980] PCR 43 (Inq Doc 20) . But there having been consultation on the revised application and clarification sent to the public that the appeal scheme was the one that would be discussed at the appeal it is genuinely difficult to see how there could be any prejudice. Most especially as this is an outline scheme anyway, with all matters reserved save for access.
9. It has been agreed that the proposal is to be assessed against the Masterplan Revision A. This shows the disposition of buildings and roads on the site and allows the witnesses, especially the landscape witnesses to judge the impact of development and most especially the impact in the wider landscape (which is RR4). It is agreed that the proposal is to be for no more than two storey houses. The areas proposed not to be developed are also shown on this plan. The precise stand-off distance from the oak trees and the precise number of dwellings is for the reserved matters stage. In her evidence, MO showed how the proposal could be refined further through her use of a proving layout. She has referred to that in her evidence, but she also confirmed that in terms of differences with Masterplan Revision A, since the disposition of uses is the same, her

conclusion on the impact of the proposal are the same. The proving layout shows less houses than 170. But that is, as she explained, as matter for the RM. The Council is simply wrong to assume that 170 must be achieved. But even if the siting of all the buildings remained the same (which of course it does not need to as this is an outline scheme), there is no reason why 170 could not be achieved through the use of semi-detached houses or buildings divided up into flats. This again is yet another red herring.

10. The technical drawing SK2 was produced to address the Council's concerns that one could not physically achieve a road layout with the Council's preferred gradients or achieve the stand-off distances from the trees which the Council's arboriculturalist requires. SK2 does that. But it is not a replacement masterplan.

## **THE DEVELOPMENT PLAN**

### **Overview**

11. The Development Plan is plainly out of date. That applies to both parts of it, which comprises both the Wrekin Local Plan ("WLP"), adopted 16 years ago in 2000 and the Telford and Wrekin Core Strategy ("CS"), which although adopted only a decade ago in 2007, is already time expired, as it only covered the period 2006-2016. In the last 9 years, and despite having passed the end date of the Core Strategy, the Council have not yet managed to put in place a replacement plan to plan for the area. As such there is no adopted development plan making provision for the development needs of the area. The Council agree that is unfortunate (XX DOW). The housing policies do not address the present housing needs of the area. This alone means that the relevant policies for this housing proposal are clearly out of date, even before one turns to the issue of five year supply of housing land.
12. The suggestion from DOW in cross examination that the policies relevant to this application are up to date is completely unconvincing. It is not even remotely credible
13. But the position is in fact much worse than this. The CS is plainly out of date. But even worse is the fact that a CS on its own is not, and was never intended to be a full DP in any event. A full DP under the LDF system was a CS, an allocations DPD, a development management/ policies document and if required a AAPs. The Council was fully aware of this as is evident from the Foreword to the CS itself. [CD3.9] It expressly acknowledges that the adoption of the CS was "only the beginning" of the process to having a full DP for the Borough. Adopted nearly a decade ago, the Council promised to produce a land allocations DPD and Development Control Policies DPD and two AAPs. The Council never even produced the Land Allocations DPD and nor did it produce the policies DPD. That is why it continues to have to rely on saved policies from the old WLP, a document adopted at the turn of the century.
14. It is this promise to produce these documents "over the next two to three years" and the complete failure to do so which is lamentable. The last time the Council adopted a plan

with housing allocations in was 17 years ago in the WLP. A plan which addressed development need only up until 2006. If local people in Newport want to know why speculative developments have come forward in the last few years, they need only look to their own Council for the answer.

15. Why this was not done remains unanswered. But the settlement boundary policies and the protection or preservation of countryside beyond that have little meaning if the plan itself is not addressing present development needs. DOW suggestion that the DP in this Borough is up to date is completely lacking in credibility. He suggested that it matters not that the CS and the old WLP do not address at all present development needs. He suggests that one can simply take those plans, embrace the Council's OAN figure of 497dpa and hey presto you have an up to date plan. This is not Blue Peter. You don't stick two things together with double sided sticky tape and hope it holds together. As the Courts have frequently reminded us, DP should be read as a whole. It is only coherent as whole. And if a plan has no regard to present development needs of the area, then very little if any of it will be up to date. Added to which absent the allocations DPD, the adopted DP does not actually allocate any land for development anyway, save for the single AAP for part of Telford. So it was only ever half a plan in the first place. All of the policies in the WLP and the CS are out of date.
16. Moreover, DPs are meant to be forward looking documents. The failure now, even in 2016 not to have a LP in place, is equally lamentable. It is not the fault of the Inspectorate that the eLP has not been adopted. The fact the eLP Inspector is temporarily unwell is not an excuse. It is entirely the fault of the Council for not having produced the allocations DPD and other LDF documents by 2010 as promised. Or the failure to bring forward a submission version of the LP before 2016. If other Councils can do it, there is no reason why TWC could not do so.

#### **NPPF/14**

17. NPPF/12 confirms the NPPF does not change the statutory status of the development plan. But when there is no up to date LP then plainly this become a particularly important material consideration, as the articulation of the Government's present national planning policy.
18. It should be apparent from the above that the DP policies relevant to this application are out of date. The whole DP is out of date and that is for the part that actually exists. A large part of it, the housing allocations is absent, although the High Court has suggested the concept of a plan being silent or absent is very constrained and does apply to situation even when the allocations document to support a CS was never produced: Bloor v SSCLG and Hinckley and Bosworth BC [2014] EWHC 754 (Admin). In that case, the Claimant alleged the following as recorded by Lindblom L (as he then was)

***“32. At the inquiry Bloor contended that the “presumption in favour of sustainable development” in paragraph 14 of the NPPF was engaged, for several***

*reasons. It said that the development plan was “absent” or “silent” in the sense of paragraph 14 of the NPPF. The core strategy required a minimum of 110 houses to be provided at Groby in the plan period (from 2006 to 2026). But there was no adopted development plan document allocating the land on which those houses were to be built. In that respect the development plan was either “absent” or “silent”.*

19. Lindblom Ls judgment on that was as follows:

*“52. The provisions of the plan current at the time of the decision may represent one stage of planmaking, and they may later be amplified or refined in another. They may be strategic rather than specific to the site. But they may still provide an ample basis for decision-making on proposals submitted and determined before any addition to the plan has been made. The plan may not have as much to say of relevance to the proposed development as the developer or the local planning authority, or indeed the objectors, might wish. But whether it can properly be said to be silent is a matter for objective interpretation, not the subjective view of any of the parties involved. As Lord Reed said in paragraph 18 of his judgment in *Tesco v Dundee City Council*, “policy statements should be interpreted objectively in accordance with the language used, read ... in its proper context”.*

*53. Of course, as Lord Reed also remarked (at paragraph 19), “development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another”, and “many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment”. It may be that a plan does not have a specific policy for a particular type of proposal that might be put forward on a particular site. The relevant provisions of the plan may be framed in general terms. Often this will be so. But in my view a plan containing general policies for development control that will enable the authority to say whether or not the project before it ought to be approved or rejected – subject of course to other material considerations indicating a different outcome – could hardly be said to be silent.” (my underlining)*

20. This is especially in this case, where the WLP was adopted in 2000 and the CS almost a decade ago, in 2007. That is well before the present national policy was introduced, which was some 6 years later in March 2012. As regards planning policy for housing, the Court of Appeal has said that the NPPF has “**effected a radical change**”: Solihull MBC v Gallagher Laws LJ

21. This is not a footnote 9 case. The Council has not sought to rely on footnote 9, other than to tentatively suggest that it may be a valued landscape. It formed no part of the Council RRs, nor the statement of case or the proofs of evidence. Referring NPPF/109 in a policy review section of one’s proof is not making a case for the site being a valued landscape. DOW also references NPPF/109 in his consideration of the application but specifically

omitting that part of it addressing valued landscapes: please see his PoE, page 14, para 7.3.1). His acceptance that the this was not a footnote 9 case in XX should have put the matter to rest. When it was raised, this is firmly rejected by MO and JH in their oral evidence. DOW making a passing reference to the land “has value” in his para 7.3.3 and that the land is “valued” and is used by the local community is again well short of a case seeking to rely on the policy in NPPF/109. As noted above this matter is addressed in the landscape section of the closing (RR4), addressed in more detail below.

22. Although it was the subject of the challenge by his Council in the aforementioned Telford v Gladman, in this case no issue is taken about loss of BMV or more generally about the loss of this agricultural land. In any event the Council do not argue that proposal does involve significant development of agricultural land. NPPF/112. is not therefore triggered Loss of agricultural land is not a RR. The land is understood to be a combination grade 3a and 3b. This should be noted and it is a loss of such resource. But it does not cause the special emphasis in NPPF/14 to be disengaged
23. Without a restrictive footnote 9 policy suggesting development should be restricted, then the test in the NPPF/14 is engaged. Planning permission should be granted unless the adverse impacts of doing so would significant and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This inevitably requires a careful assessment of the merits of the proposal against the harm. But it is important to always note the balancing is done on the basis of a weighted or titled balance, which significantly favours the grant of planning permission.

## **THE HARM**

### **RR1: Site Located Outside the Built Up Area of Newport**

24. These problems manifest themselves immediately with the first RR. The Council suggest the proposal should be refused because the site is in the countryside and outside the built up area of Newport. But that settlement boundary is derived from the WLP and that only addressed development needs to 2006. So the settlement boundary itself has very little weight. The policy to protect the countryside from that plan is OL7. But it has not even been saved. So the Council cannot rely upon it. So the Council are forced to contrive a RR related to the fact the site is outside the settlement boundary and suggest it offends OL6.
25. The reliance on OL6 is an utter contrivance. The Appellant’s position is there is no conflict with this policy (Inq Doc 38).
26. There is of course an air of unreality about the entirety of this first RR. The Council has itself granted planning permission for a whole series of sites on the edge of Newport. It has been doing so for the last few years, no doubt conscious of the fact that they could not sensibly be resisted in the absence of an up to date DP. And it is here, in the

committee report for the Station Road site, that we find the Council officers real view about OL6. (CD9.4)

***“The development of the site will involve the loss of fields between Newport’s existing built edge and the A518 by-pass. However, as already discussed earlier in the report, WLP policy OL6 that refers to incidental areas of open space should not be used to assess this application as the land is not the type of open space that requires to be protected from development under that policy or Core Strategy policy CS11.” \****

27. Save for the fact the bypass running past the appeal site is the A41, which is a trunk road, that description could have been written for the appeal site. And of course, that is exactly what should have happened. Public bodies, like Inspector’s are meant to be consistent. Consistency in decision making is a material consideration at common law.
28. For the avoidance of any doubt, the Appellant submits that the site is not open space as properly understood, that open space is meant to relate to land within the settlement boundary as is plainly evident from the proposal map for the WLP; that incidental open space means small parcels of land which are incidental to something such as a housing estate. A 6.5 hectare field is not that.
29. The fact the designation covers sport’s pitches which collectively at least are not incidental rather suggests that the policy was an ill-considered idea at its inception. Back to the Blue Peter school of planning, but it appears to be a policy which seeks to protect incidental open spaces (as shown by the various genuinely examples of this on the proposal map- Newport Inset) and also sport’s pitches which no one would sensible believe to be merely incidental pieces of open space.
30. It was the Muxton Inspector (CH RPOE Apdx A) who best grasped this particular nettle. His decision was quashed but not on this ground. His reasoning in para 10 and 11 of his decision letter. It is striking similar to that which the Council adopted in the officers report on the Station Rad site in Newport (CD 9.4) and quoted above. It all has the ring of truth about it. What the Council would really have wished to do is rely on OL7. But because it has not been saved they simply cannot do so.
31. In the Wellington case the Inspector gave OL6 little weight. Lang J addresses the issue of the Inspector’s approach to the weight to give this policy in her Judgment in Telford v SSCLG and Gladman (Inq Doc 23).The Council raise this as its Ground 2 in Court [J/28 onwards]. The criticism was that the Inspector was wrong to conclude the policy was not intended to provide protection for large areas of agricultural land in the countryside. At paragraph 32 of the Judgment the Judge holds that the Inspector did correctly interpret OL6 and applies it appropriately to the facts of the case. The Inspector’s reasoning is set out in paragraphs 65 -68 of the decision letter (CD8.20). OL7 covered the wider areas of the countryside, but as the Judge rightly observes at J/33, the wording of OL6 means there was a degree of overlap such that it is not right to say that the Council’s

interpretation of OL6 in that case would have rendered OL7 otiose. That is going too far. But it is clear OL7 was intended to cover most areas of countryside beyond the settlement boundaries.

32. The whole argument about OL6 has been a complete red herring, a complete distraction and enormous waste of time. Moreover, OL6 as interpreted by the Council is being suggested to protect all open countryside around Newport. That would make OL6 inconsistent with the NPPF as protection from development is reserved for Green Belt (NPPF/17(5)) and valued landscapes (NPPF/109) only. Countryside outside either of those categories is not protected under the NPPF. It is to be recognized for its intrinsic value. That is not the same as protection from development.
33. The reasoning in the Station Road Committee report also addresses the inappropriateness of seeking to rely on CS11, which appears in the first RR for the appeal site. The Appellant's position is there is no conflict with this policy (Inq Doc 38)
34. Absent OL6 and CS11 (Open Space), the Council's cases in terms of adopted DP policies rests on CS6 and CS7. Neither of these policies prevent the development. CS6 seeks to support development at Newport, provided it protects the towns built and natural environment, including its townscape and the impact on surrounding countryside. Again the attempt to protect what is nothing more than countryside makes this policy inconsistent with the NPPF. As to the focus on local needs, the policy relates to a plan which is not addressing present development needs and for which the necessary supporting allocations were never made. For all those reasons, it should be given little weight.
35. CS7 does not apply in this case. The site is in the rural area. This is a proposal at Newport like the others which are located on the edge of the town it is CS6 which is relevant here. Those proposals have been granted. If CS7 is applied then all that development should have gone to the three names villages in CS7. The Council finally saw sense on that issue in its CIL compliance statement, recognizing that it is CS6 which applies here not CS7. In the view of MO, the site is not open countryside and to the extent that is said by the Council to apply to the site it is inconsistent with the NPPF which is not seeking to protect ordinary countryside. The policy is also a policy which fails to address present development needs and for which no allocations plan was ever adopted.
36. A claim is made in the first RR that the proposal is in conflict with the NPPF, but no policy in the NPPF is specified
37. Of late the Council have sought to claim the site is a valued landscape and therefore should be protected from development. That is not mentioned in any of the RR. Nor the PoE of DOW nor that of DH. There are passing references to NPPF/109 in their review of policy. But a clear case that the Council asserts this is a valued landscape has never

been clearly stated. The Council do now try to raise this. But it was done through the landscape witness. So it is appropriate to deal with it in terms of RR4, not RR1.

38. RR1 refers to eLP policy SP2. But this has not been examined and is the subject of objection. So it can only be given limited weight at this stage.
39. The Council has not sought to suggest in the RR or the written or oral evidence that the proposal is an inappropriate scale for Newport or that it creates an unacceptable amount of new development at Newport. The Council did not meet the suggested quantum of housing need in the period 2006 – 2011 (60 x 5 = 300). JH explained that the Council fell short by 130 dwelling is one adopts an average figure of the first five years of the CS. Delivery was still below the CS target at the time of the Council's latest housing land review. Moreover the CS has now finished (whether its end date was March 2016 or December 2016). Emerging LP policy SP2 is the subject of objection and has yet to be examined or adopted.
40. One additional matter to be raised is that RR1 refers to an exceptional circumstance test. This is not known in policy save for Green Belt, AONB or local green space. None of these apply here. It is not clear what the Council was assuming when it suggests this was part of the test to be applied as regards RR1. The position seems to be adopted because the Council claim to have a 5YS of housing land. For the reasons set out below, the Council plainly do not have a 5YS of housing land. But even if it did, there is still no test of exceptional circumstances. The 5YS requirement is a minimum requirement and not a ceiling. So it is not a RR in itself to say there is a 5YS, lest still does it give rise to an Appellant having to make out a case of exceptional circumstances.
41. Ironically, there has been some recent case law addressing the application of NPPF/14 where the same phrase "exceptional circumstances" is used. East Staffs v SSCLG and Barwood [2016] EWHC 2973 (Admin). It is right to bring it to your attention. But for the reasons set out briefly below, I think this Judgment is neither correct nor applicable to the facts here. East Staffs suggests that if the PFSD does not apply then ***"[t]here is in relation to decision making little scope in logic or substance for departing from the algorithm in paragraph 14 unless there is some reason to reject the Local Plan"*** [J/30]. And that outside of PFSD there is a residual discretion to grant permission but that is the exception to the norm [J/31] and see also [J/54] Green J in which he suggests that an exceptional circumstances test would apply for any development which is not in an "adequate" plan by which he presumably he means up-to-date plan. That is, with respect, all a bit confusing.
42. The correct position is that Section 38(6) PCPA 2004 applies and all proposal should be determined in accordance with the DP unless material considerations indicate otherwise as footnote 10 of the NPPF reminds us. If relevant policies of the DP are not up to date then the special emphasis comes into play, unless footnote 9 is engaged. But if relevant policies are up to date (and the plan is not silent or absent) or footnote 9 is engaged, then

one simply reverts back to Section 38(6) PCPA. There is no need to refer to residual discretion nor seek to apply it in exceptional circumstances.

43. This idea of a residual discretion to apply the PFSD outside of NPPF/14 appears to be derived from the Judgment in Wychavon v SSCLG [2016] EWHC 592 (Admin). For my part I think Wychavon was wrongly decided and there is no such concept as a residual presumption or a discretion to apply it outside of the NPPF/14
44. In this case the relevance of that situation can be immediately dismissed as there is no up-to-date DP, so the PFSD (or more particularly the special emphasis in NPPF/14) plainly does apply. I submit the East Staffordshire it is not addressing the circumstances in this case.
45. In any event, this whole idea of residual discretion derived from the Wychavon case has been questioned by Holgate J in Trustees of Barker Mill v Test Valley DC [J/143] EWHC 3028 (Admin). Permission to appeal the case has already been given, by the Judge himself.
46. **Conclusion on harm identified in RR1:** RR1 is policy harm, in the sense of conflict with the policies in the development plan. It is addressed above. JH does not believe there to be any conflict with OL6 or CS11 and she gives limited weight to CS6 and CS7. SP2 is an emerging policy, subject to objection and yet to be examined. The harm arising from the conflict with the DP identified in RR1 is limited. That is however, a matter of planning judgement for the Inspector

**RR4:**

**Detrimental Impact on the Character and Appearance of the Wider Landscape**

47. This is a site inside the bypass. It is well contained by both the vegetation around the site and the topography. The geographic extent of the site is limited and the scale of the development is modest by modern development standards for urban extensions. In his PoE and confirmed in XX DH accepted that the extent of the change is relatively localized. He also accepts that the extent of the view is predominantly of local importance (RPoE 5.4).
48. Given the RR is specifically about the impact on character and appearance of the wider landscape, these sensible concessions are important. In truth the landscape and visual impact of the proposal on the wider landscape is very limited. But then one would largely expect that of a site situated between the built up area of the town and a trunk road bypass with well wooded embankments on either side of the road.
49. MO was clear in XX that the site is not prominent in the wider landscape. She has explained that a feature in the wider landscape are trees and with the topography gives a sense of a wooded landscape (MO in XX).

50. The site is well contained by boundary features, topography and surrounding vegetation. The A41 to the north-east with its vegetated margins separates the site from the wider landscape. This, with the aspect of the site's topography falling to west and south, relates the site more closely with the built up area to the west.
51. The Council's case appears to rest more now on the landscape sensitivity. That the site is so sensitive it cannot be developed in the way proposed. For this The Council rely heavily on the Landscape Sensitivity Study by White Consultants. This was produced in 2009 and then updated in February 2014. It is important to note however, that this study does not rule out development of the site. It suggests that development of part of the site is possible.
52. But more importantly, the study made clear that **"a detailed study would be required to assess which areas would be appropriate"**. That is important because as DH accepted in XX this study is a strategic overview document. It is also not a LVIA. It is a sensitivity study of a wide range of sites. It is not a detailed study of the site and the areas which would be appropriate for development. That work is in the LVIA.
53. The Sensitivity Study has no regard to this proposal. It could not do so. It could not know that the land close to the canal was to be left free from development. Nor the fact the two veteran trees would be retained and protected. Nor indeed the large stand-off distance that is now proposed, with no development around most of the larger lower tree and a stand-off distance extended to a diameter of 62m around the tree at the top of the hill.
54. Without a scheme, let alone once such as this which removes development from various key parts of the site, and which proposed development which fits with the contours of the site, the Sensitivity Study does not address the potential to respond to the key characteristics of the site (MO in XX). For all we know, absent a scheme, the authors could have contemplated the need for the site to be largely flattened. The Council seem to make much of the idea of large development platforms (XX MO). The White Study is not an assessment of the effects of a proposal. As MO made clear, the LVIA does this and it shows there is not a detriment to the wider landscape. Criticism of the conclusions of the LVIA finding that the adverse impacts on the landscape are low adverse are misplaced. Those criticisms fail to have regard to the fact the scale and geographic extent of the development here is well contained for the reasons outlined above, especially for a site wedged between the by-pass and the existing urban area, which itself has a stark urban edge.
55. The Sensitivity Study is also clearly dependent on an assumption that the site has a possible parkland origin. That is very evident from the later 2014 version, where this is given as the first main reason for the site's value. Indeed, although the cultural sensitivity is identified as moderate, no other reason is given for why it might achieve that status other than with reference to it being potentially former parkland, despite the suggestion it would be elevated in its status yet higher if that was confirmed. If it is not confirmed (as is

the case) why is it even moderate in the first place. There is no credible evidence for it having been parkland and the approximate aging of the tree confirms this, as MO explained in her proof and in her oral evidence.

56. The Council argue that the proposal would remove the character of the site in terms of its rising landform and rounded landform. But as MO explained during XX that character would not be removed. The rising landform would still be evident. Obviously it would be in the context of site which his being developed for housing. But the landform would very obviously still be present. The client is not flattening the whole site to put on a warehouse. What the Council are really referring to is the loss of the field not the loss of the landform.
57. As MO made clear during XX, ***“in laying out a development that is something you could take into consideration.”*** That is well illustrated by the photographs in JH RPoE Apdx 6 of other Redrow Sites which have been developed on a slope. As MO put it in XX, mindful of this sloping character the designer of the scheme would “need to respect and pay regard to these factors” and “design a proposal which respects and retains these features.” There is no reason why that could not be done in respect of this site.
58. The LVIA itself comes for criticism and a failure to follow through all parts of the guidance. But MO has reviewed the LVIA and finds that it adopts a well expressed methodology which has been consistently applied. The landscape strategy and master plan provide a framework for the reserved matters and appropriate planning conditions to deliver details of the landscape proposals and their future management.
59. To listen to DH in oral evidence, one could be forgiven for thinking the Council see this site as a rural idyll (DH EiC and XX). With the trees, the varied topography and the canal at the bottom, it is a field with an attractive character a point which MO has accepted in her written evidence (PoE 3.4.5). IN XX it was accepted that the landscape retains a rural character. But it is a single field, and as MO explained it is bounded by urban features including the built edge of the settlement and the trunk road. The road influences the area and the footpath especially with its traffic noise.
60. The Council argue the A41 trunk road is a rural feature. It may cut through the landscape but as MO explained in XX a trunk road is certainly not a rural feature of the landscape. She also explained that such roads do have a urbanising feature on the surrounding rural area through which they pass. This road of course, passes the urban edge of Newport in this location. It is not therefore even a trunk road in a rural landscape.
61. MO accepts that the features on the site contributes to pleasant scenic quality but not that they create a high quality character. This is not the Shropshire Hills or even the deep Shropshire countryside. It is a field wedged between the urban area and the trunk road. DH assessment and the XX of MO proceeds on a fundamental misunderstanding that this field is somewhere else and not inside the bypass on the edge of the town.

62. Much was made of the canal. But as MO made clear this comes from the town centre and heads out to the bypass. It is a pleasant view from the canal and interesting experience. But it is not anything exceptional because it is within an urban context which is evident from the existing houses in the view and the noise from the trunk road.
63. The footpath around the site provides intermittent views of the site. It is interesting and pleasant footpath and there are views from the NE corner which are elevated and attractive. But it should not be presented as if it were something exceptional. As one stands there, of course, behind you is the A41 and one is fully aware of that because of the inevitable noise it creates especially when on the footpath right above the road.
64. DH description in EiC of walking out into the open countryside failed to acknowledge the fact that one is of course walking towards the A41 and one is obviously aware of that. The site is private land and there are no footpaths across it. So the experience to which DH should be referring to is the footpath along Plough Lane, which then extends down the edge of the A41. No one is going to be fooled into thinking this is a walk into the wider open countryside. Along the eastern side of the site, the footpath runs very close to the road and whilst there is substantial vegetation on embankments one is aware of the vehicles on the road both in terms of noise, and during the winter months in terms of being able to see them through the trees.
65. The footpath is used, although as MO made clear it is difficult to tell exactly how much. She accepts though that it is a popular route and is a popular amenity for local people. It will of course remain a footpath as the development does not alter it in anyway. Beyond Plough Lane, along the eastern boundary the view will obviously change. It will be passing a housing development, although not one with an acoustic barrier thanks to the detailed mitigation and design work of RSK.
66. Being next to a housing development will not necessarily render the route any less popular. It is conveniently close to where existing residents already and it connects to a wider network of footpaths via the canal towpath. But if people, in Newport wish to experience a countryside walk, they are hardly short of alternatives in this rural location. People in Droitwich have to walk a little further to walk their dog now that Redrow and other housebuilders are building on Yew Tree Hill (SoS Pulley Lane decision CD 7.3). But that is a consequence of seeking to build more houses in this country and boosting significantly the supply of new housing.
67. It is of course, accepted that built development would noticeable change the cover and the site. That is entirely obvious with any site proposed for development. But it sits next to existing development and as such this is a location where one would expect the town to expand. The existing edge of the town is clear to see. (MO XX)
68. It is accepted that the oak trees have intrinsic value. They do have a relationship with each other and they sit in a field which is presently undeveloped. It is accepted that this

will be altered. But the trees will still be there, the Council have sought to ensure that is the case.

69. The trees will be set within a residential environment. But if one takes the tree at the top of the hill, there is a very large and significant area around it which will remain undeveloped. Moreover, in terms of the experience of the tree at the moment, for those who have been next to the tree (which DH accepts is not a formal public view and therefore of little relevance), the existing houses are only too obvious. DH accepts that that build edge of the town is stark in this location (XX DH). That is the present experience of being close to the tree.
70. The 62m diameter gives rise to a vast area of undeveloped land around the tree. Moreover, the tree on the hill is in the region of 16 -17 metres tall, and so the canopy, so extends about 10 me above any houses. The combination of the height of the tree and the substantial undeveloped area around it, the tree will remain a key feature in the landscape. Oak Trees are a feature. There is a large tree on the Council's land at Station Road, which awaits permission for housing.
71. SK2 shows a retaining wall which the Council measure as a height 2.9m. That drawing looks to show how the full 62m diameter of the circle around the tree can be accommodated to satisfy the arboriculturalist for the Council. But as MO made clear that she would expect at the RM stage, she would expect looked in more detail to accommodate the road. The position of the road can move and this is a matter of detail in terms of site layout (MO XX).
72. Whilst during the construction phase the development would clearly appear engineered, as MO made clear, when the development is completed it would not be a noticeably engineered form. The houses would follow the contours.
73. The suggestion being made was somehow a giant flat platform or a series of large platforms. That is not the case and the drawing (SK2) shows that not to be the case. The houses would step around the landform as MO described it in XX) It is a matter of design. Indeed, MO was clear in XX that the site can sit well with the landscape. Again, the real world photographs of other Redrow sites developed on sloping land shows that it can in fact become an attractive feature. After construction the proposal would appear as if fitted to the landform (XX MO). The magnitude of effect takes account of the scale and geographic extent of the change, the short duration of that engineered stage. Contrary to what VFQC proposition, this is specifically explained in the LVIA para 7.4
74. It is accepted that the landform will undergo major alteration (MO in XX). But MO is of the view that the effect on key features would be minor. The landform would still be apparent. As MO it in XX put the development will "range around the landform" and will not result in large flat areas. The existing development to the west shows that: those houses step along the road.

## **Valued Landscape**

75. DH's case expanded into this issue although it was a long way removed from being clear in his proof. This site is not designated in landscape terms. It does not have to be so, to be judged a valued landscape.<sup>1</sup> But plainly it may be easier to show an AONB or special landscape area is valued landscape. In Stroud v SSCLG and Gladman [2015] EWHC 488 (Admin) Ouseley J accepted the Inspector's approach of requiring demonstrable physical attributes which made it a valued landscape rather than just a landscape: see Judgment paragraphs 13-18, especially J/15. The Judge looked particularly at the evidential basis for the conclusion the Inspector reached. The Judge held "**The Inspector was entitled to conclude on the evidence he had before him that there had been no demonstrable physical attributes to make the land valued.**" [J/13]. In XX DH accepted that whether or not a site is a valued landscape is a matter for the Inspector, which it plainly is the case.
76. Two other High Court Judgments have been issued since the Stroud case: Cheshire East v SSCLG and Harlequin [2016] EWHC 694 (Admin) Judgment paragraph 29 -34; Forest of Dean v SSCLG and Gladman [2016] EWHC 2429 (Admin): see Judgment paragraphs 28 onwards. Hard copies have been provided to the inquiry. These also assist with understanding the lawful path to tread. Both endorse the approach in the Stroud case.
77. MO rejects the idea that site is rare locally. She accepts it is unusual, but it is reflecting the wider landscape. As MO also made clear hill top oaks are not rare in the area. That does not take it out of the ordinary. XX on this issue looked like a veiled attempt to try and obtain concessions which might amount to the physical attributes that might make the site a valued landscape (as defined by the Courts). But MO was not prepared to agree these points. It is an attractive site and popular with local people but that is it. A couple of oak trees on rising ground does not a valued landscape make. And ultimately that is a matter of Judgment for the Inspector.
78. Of course the site must be within the valued landscape to be so regarded. The difficulty here for the Council is that the wider landscape is made up of the town of Newport to the west and the bypass to the east. As much as the attractive features on the site should be taken into account, so too must the detracting ones. This presented DH with a real problem. He accepted that to be a landscape it needed to be more than the site. But the landscape he then defined as his valued landscape not just the deer park to the east but the town in between. Whilst plainly not as wide as I initially suggested in this location, it is still several hundred metres wide in the direction DH was describing it. The fact the site sites on the edge of the town, and the fact the town (with its stark urban edge) forms part of the landscape further undermines the claims this is to be seen as a valued landscape.

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<sup>1</sup> Stroud DC v SSCLG and Gladman para 13 (end of).

79. There is landscape and visual harm arising from the proposal. But this is a well contained site and the impact on the character and appearance of the wider landscape is limited. There is visual harm from new development. In this case the visual harm is to local residents and those using the footpath. The impact on Plough Lane will be less because of the existing vegetation. The proposal will also be clearly seen from the canal but it is set aback some distance from the towpath. The impacts are identified in the LVIA and those conclusions are supported by MO. The LVIA did look at a proposal for 170 houses. The harm is localised and contained and nothing like as significant as DH suggests.

### **Other Harm**

80. The Council tried to make a case questioning the sustainability of the site. This is not a RR and the whole argument seemed to revolve around the bus service. But there is no objection from the highway authority and no request even for contributions to local bus services. Significant enhancements are proposed via contributions from the other sites in the town and plainly the Council do not feel it necessary to ask for any more.

## **THE BENEFITS OF THE PROPOSAL**

### **General Market Housing**

81. At the heart of the NPPF and indeed the national agenda, is the requirement for local planning authorities to significantly boost the supply of housing, both market and affordable housing and to widen home ownership (para 47 and 50). New houses are both a social and economic benefit and a social and economic part of sustainable development (NPPF/7). This is in addition to the need to demonstrate a 5YS of housing land.
82. The Council are themselves suggesting an annual housing requirement of 778 dpa as set out in the eLP. The Council recognises the need for significant new house building in the Borough.
83. Regardless of the 5YS issue, new homes bring competition and choice in the market place for new homes: please see the Launceston decision. (CD8.1 ID/52)

### **Affordable Housing**

84. The problems of failing to meet housing requirements and delivery problems does not just beset market housing or general housing need. There is a particular problem in this Authority with affordable housing.
85. A significant part of Appellant's evidence relates to the ability of this site to deliver affordable housing. It is a major plank of this Appellant's case, as was the case in the Pulley Lane, Droitwich appeal (see CD7.3, IR/8.122). It is a major part of Appellant's case is the fact that the proposal involves the delivery of up to 60 affordable homes equivalent

to 35% affordable housing, secured through the signed and deliverable planning obligation.

86. The appropriate weight to be given to affordable housing in the overall planning balance is important. The Council's position is that whilst the affordable housing is a benefit it is not a unique benefit to this site. This is plainly misguided each application has to be considered on its merits, as made clear by Inspector Ward in the second Burghfield Common appeal decision: CD 8.14, ID/58 and 71.
87. The delivery of new housing contributes to the social and economic roles of sustainable development. It delivers major benefits in line with the policy in NPPF/7. Those merits are brought into stark reality by the evidence of JS, and especially for the almost 7,000 (6,965) households identified in the 2016 SHMA as falling into need (**CD 4.3 Appendix D para D.8**) People who are rarely heard at inquiries such as this, as Inspector Stevens observed in the Droitwich appeal (CD 7.3, ID/ 8.123)
88. National planning policy on boosting the supply of housing in this country is not being done just for the sake of the helping the development and construction industry. It is being done to address a really serious problem. Added to which, the country is in the grip of a longstanding housing crisis. The Council accept that.
89. As is evident from JS's evidence, the need for accelerated affordable housing provision pervades, national and local policy. The estimated affordable housing needs are considerable, with the 2016 SHMA setting out a requirement of some 665 affordable dwellings per annum to 2031. This is a requirement which as JS explains, has not and is not being close to being met. Furthermore, JS was at pains to stress the unjustified Addendum - Appendix D; (**CD4.4**) sought post publication of the SHMA to recast the need figures over a 15 year period, thereby artificially reducing the net annual need down from 665 affordable homes per annum to 263 homes per annum. JS contends that this should be dealt with in the first 5 years of the study, alleviating the need for those in most need in the swiftest possible time. Whereas the addendum simply spreads this over the entire study period, thereby downplaying the actual needs that exist now. That is unfortunate. As is evident from the numbers, a large part of the 665 AH dwellings needed per annum is the present backlog. Addressed that over 15 years is completely inappropriate as these are people in need now. As Inspector Stephens asserted at the Pulley Lane, Droitwich Spa appeal (**CD 7.3 – paragraph 8.124**) "**these are real people in real need now.**" It makes no sense to have a national policy of addressing general market housing need via the Sedgfield method (as per the PPG), but not the AH need.
90. In part, JS also relies upon the findings of the Inspector at the Church Street, Davenham appeal (**CD8.16**), which at para 55 identifies that, "**I do not understand the Council's justification for adopting such an approach (i.e. spreading over a longer period), especially since it has adopted the 'sedgfield' method in relation to dealing with its overall housing shortfall requirement**". For the Council to adopt any other

approach is unfortunate and unfair to those most in need. It has yet to be tested in the EIP for the eLP.

91. A further principal disagreement between the parties is an appropriate description of the needs. JS contends that like many SOS/Inspectors decisions the needs in TW are acute. JS is firmly of the view that the needs in TW are acute, backed up a wealth of evidence, not least that contained in the recently published Homes Truths 2015/16 document, produced by the National Housing Federation for the West Midlands (JS POE Adpx 14). In its opening sentences it sets out that, **“there is an acute housing crisis in the West Midlands”**. The report found that in TW, based upon 2014 data, the average house price was £161,623. When taken against the average annual earnings over the same period of £22,350 this results in an average house price to average income ratio of some 7.2. In the real world that makes average house prices unaffordable to those on average wages.
92. Much has been said by the Council that the TW lower quartile ratio is comparatively “better” (lower) than the West Midlands and England as a whole. Yet, this belies the fact that there is a worsening ratio (JS PoE Figure 6.2) in TW at 6.23 times. That is bad enough, but as JS explained that spectacularly misses the fact that the Council’s own document records that the worst ratio in TW can be found in Newport, at 8.8 times house price to income (SHMA 2016 – CD 4.3 Table 4.11 “Sub-area lower quartile house price to household income ratios” - page 39).
93. There should be no dispute that the needs in TW and particularly Newport are acute given the sheer magnitude of this ratio. Yet the origin of the problem is not in TW, Shropshire or even the West Midlands. It is a national housing crisis. It affects young people and young families who do not own their own home. The main group of people who object to proposals like this are home owners, many of retirement age, who’s own homes were built on greenfield land, often at the edge of settlements.
94. The requirement of around 263 net affordable dpa for TW (based on the Council’s assessment) or 665 based on Mr Stacey’s assessment (and that of the original SHMA (CD4.3) is significantly higher than the average affordable housing completions between 2006/7 and 2015/16 of 227 per annum [Figure 5.1 of JS PoE – including the verbally confirmed AH completion in 2015/16 at 343).
95. Furthermore, the 2016 SHMA (CD4.3) records that there is a net annual imbalance in Newport of 101 dwellings per annum (Table D6 appendix D page 122). Mr Stacey’s uncontested evidence in Appendix JS13 identifies a possible 5 year delivery total of just 106 dwellings or 21 dwellings per annum on average. This is some 80 dwellings per annum below the net annual imbalance.
96. Despite the lack of a Housing Register (one of only 2 in the entire Country to not hold a record) the most recent evidence shows that there are 2,377 households registered on

the main Housing Registers (CD4.3 Appendix D para D.7) and 6,965 households in housing need (CD4.3 Apdx D para D.8). This is a significant number of households.

97. Consequently, JS placed great reliance on the delivery that can be achieved here to boost the supply of much needed affordable housing indicating that the affordable housing will make a significant contribution to addressing the pressing AH needs in TW and Newport.
98. There can be no doubt that there is an **acute** need for affordable housing in the Authority. Nor can there be any doubt that the proposals will deliver a substantial number of affordable homes in a highly sustainable location, for which there is a significant demonstrable need, in the face of such significant under-delivery. The Council will not accept the word “acute”.

#### **Other Benefits**

99. The proposal will also deliver many construction jobs and jobs associated with the construction industry. It will also add expenditure to the local area, which will be a benefit to Newport town centre.
100. The proposal causes environmental harm, and JH accepts that is the case. But there are some environmental benefits most noticeably the provision of 2 hectares of open space including formal public access to the veteran oak trees.

#### **Overall Balance**

101. It is the Appellant’s case that the adverse impacts of the proposal do not significantly and demonstrable outweigh the benefits of the proposal and so planning permission should be granted. That is JH view even before one turns to consider the issue of the 5YS.

#### **FIVE YEAR HOUSING LAND SUPPLY**

102. There is no requirement on an applicant to show there is a shortfall in the five year supply of housing land in order to secure planning permission. The five year supply is not a ceiling as the Inspector put it so clearly in the **Launceston** appeal (CD 8.1). This is clear from a now growing number of appeal decisions. Please see also **Whittle-le-Wood** in Chorley Borough (CD8.5), **Essington** in South Staffordshire District (CD 8.4), **Whetstone** in Blaby District (CD 8.6). It has been confirmed also in cases where there is an up to date Local Plan or Core Strategy, such as the decisions at **Drakes Broughton** in Wychavon District (CD 8.28 and 8.29) **Northwich** in Cheshire West (CD 8.30, the two decisions from **Davenham** in Cheshire West (CD 8.7 and 8.16) **Mickleton** in Cotswold District (CD 8.18) and **Shepshed** in Charnwood Borough (CD 8.17). It has also now been confirmed by the Secretary of State – **Hook Norton** in Cherwell (CD 7.6). This latter decision was unsuccessfully challenged by the LPA in the High Court. It was also the conclusion of the Inspector

who granted planning permission at **Ludlow** in Shropshire (CD 8.33). That last one being a site in Shropshire, granted on appeal on a site inside a bypass. These are but a selection of the ones that the Appellant is aware of from an ever growing number.

103. The point is particularly well explained by the Inspector in second Drakes Broughton decision (for 120 houses in the village) at paragraph 37 (CD 8.28). The Inspector acknowledged that without a 5YS, then one applies the normal planning balance and the not “tilted” or “weighted balance” in NPPF/14 (paragraphs 38-41). But then one then looks at the economic, social and environmental role of sustainable development and assess the proposal against that.

104. The Appeal decisions at Hill Top Farm Northwich (CD 8.30) and Fountain Lane Davenham (CD 8.7) highlight the importance of the role of sustainable development. In both of these appeals in Cheshire West, the Council were able to demonstrate a five year supply of housing land but on the planning balance the sustainability of the proposed developments outweighed any harm caused and development plan conflict. There is of course, no such up to date Local Plan here in TW.

105. But a shortfall in the 5YS is an important material consideration which can weigh heavily in favour of a proposal, even overcoming significant landscape harm: see for example Winchcombe (CD8.3, para 70).

## **THE 5YS CALCULATION**

### **STAGE ONE:**

#### **ARRIVING AT AN APPROPRIATE OAN FOR THIS APPEAL**

##### **The Need to Identify the OAN**

106. There seems to be a reluctance, perhaps understandably, for some Inspectors to identify an OAN figure in the context of a housing appeal. That reluctance is difficult to reconcile with two key considerations arising from decisions of the Court of Appeal:

- (I) In the absence of an up-to-date NPPF compliant Core Strategy or Local Plan, there is a need to identify the OAN for the District or Borough for the purpose of calculating whether or not an LPA is able to demonstrate a 5YS of housing land: City of St Albans and District v SSCLG and Hunston Properties [2013] EWCA
- (II) The size of the shortfall is a relevant consideration as regards the weight to be given to policies for the supply of housing: as per Richborough Estates v Cheshire East [2016] EWCA Civ 168 [J/ 47] (CD 6.1)

107. The Hunston Properties case concern the inappropriateness of using an annual housing requirement figure which is constrained before the adoption of the LP. In that case it was a figure derived from the RS for the SE of England. The figure relied upon by the LPA in West Berkshire v SSCLG and HDD [2016] EWHC 267 (Admin) (CD 6.11) was similarly constrained and although a figure in a recently adopted (2012) CS, it was in fact just the figure in the old RS for the SE.
108. In this case, TWC do not rely on an old or constrained RS or CS figure. The Council have moved away from any reliance upon such a figure, and embrace the need to identify a OAN for the purpose of calculating the 5YS. The situation is akin to the circumstances in the case of Stratford v SSCLG & Bloor and Hallam [2013] EWHC 2074 (Admin) (CD6.4) where the choice was about which of two competing OAN figure to use. In the Stratford Judgment it is clear that the choice for the Inspector (and the SoS) was not between an OAN and reliance by the LPA on an old RS or pre-NPPF CS figure. Stratford upon Avon DC knew they could not rely on their old LP. The choice in that case was between competing OAN figures.
109. The Stratford case involved the choice between two figures put forward by the consultants advising the LPA (GL Hearn) on the production of an OAN for the Stratford CS. GL Hearn had offered three figures to the Council as is clear from J/26. The developers (Bloor and Hallam) relied upon the figure which the Council's consultants favoured. The other was a lower figure which GL Hearn had considered but rejected because it was acknowledged to be an underprovision against need/demand. It was not considered robust [J/27]. This lower figure was the one favoured by the Councillors of the LPA. This lower figure was rejected by the Inspector, as to the SoS.
110. The position at this appeal in Telford is that PBA do not offer a range of figures as regards the OAN. For reasons explained below, they have stuck resolutely to 497dpa, a figure first identified in the March 2015 OAN Report (CD 4.1). Instead, what we have here is a situation where the Appellant developer offers OAN figures, to contrast with the 497 dpa produced by PBA for the Council.
111. Over recent years, it has often been argued by LPAs that developers cannot offer a OAN figure. It has variously been suggested that
- (i) only an LPA can offer an "objective" assessment of need (on the assumption that developers and consultants who act for them are self-interested)
  - (ii) any OAN figure can only be established through the Local Plan process.
  - (iii) the PPG only relates to the LP process and cannot be used in Section 78 appeals

112. These assertions are not credible. Figures offered by OAN experts are figures provided by professional experts and can be tested through cross examination. Self-interest has no role to play here, and even if that were not the case, developers do not have a monopoly on self interest in terms of the appropriate OAN for a District. Added to which, neither party at this appeal is advocating a housing requirement figure which is constrained. That is the delicate part of the process which can only be resolved through the Local Plan process.
113. To be clear, the Council here does not make such claims. CH also accepted at the start of her XX, that the Inspector is free to accept the figure from RB as from herself. That is as it should be and the case law is entirely supportive of that position.
114. Moreover, these issues were put to bed in the Judgment of Supperstone J in West Berkshire v SSCLG and HDD [2016] EWHC 267 (Admin) (CD6.11). In XX of RB it was suggested that this case dealt with the single issue of reliance on an out of date housing requirement from a pre-NPPF (based on a figure from an RS). But that was only Ground 1 of the LPA challenge. Ground 1 was a challenge to the Council instance that the CS figure should not have been rejected for being out of date [J/32-43]. But Ground 2 of the LPA's challenge addresses the separate point that the LPA believed the Inspector should not have adopted the developers OAN figure, nor treated it as an absolute consideration (i.e. a figure capable of being used in the calculation of the 5YS).
115. Paragraph 45 of the Judgment addresses the fact that the Inspector adopted the OAN figure put forward by the consultant acting for the developer. It is clear from that paragraph and those that follow that the LPA in that case made various criticisms of the Inspector adoption of this figure. But all these criticisms were rejected. The Court emphasising that having been presented with an OAN figure by Mr Bateman for HDD the developer, the Inspector was duty bound to treat it as a material consideration (J/49) and failure to do so would have been a failure to have regard to such a material consideration [J/48, point (iv)]. This is a conclusion which stands, regardless of whether an LPA offers an OAN figure itself (as here with TWC) or fails to do so (as was the case with West Berks).
116. The Judgment of Supperstone J on Ground 2 is set out in detail in the PoE of RB at paragraph 2.11 (pages 19 – 54) To understand in full what the Inspector decided in that case, the appeal decision is actually included in the Core Docs in this case. It is the appeal decision of Inspector Kevin Ward for land at Firlands Farm, Burghfield Common (CD8.14). His approach to the OAN issue is set out in ID/17-36. It will be noted that Mr Bateman (for the developer) offered three OAN figures to the Inspector. One based on a long term migration trend, one based on 0.6% economic growth and one based on 0.8% annual economic growth. Inspector Ward did not simply accept Mr Bateman's highest figure. He looked critically at all three, and having rejected the 10 year migration trend (ID/30), he then set out his reasons for

favouring the 0.6% economic growth figure over Mr Bateman's higher 0.8% growth figure (ID/31).

117. It is to be noted at the Inspector was careful to say that he considered Mr Bateman's analysis "***employs reasonable assumptions***" [ID/32]. He made clear it was not a substitute for the work on the LP. The time period Mr Bateman had looked at was different from the eLP period (a point which the Inspector acknowledged. Of course, that inconsistency does not arise here. Inspector Ward concluding that that Mr Bateman's approach "***provides a reasonable basis to assess a five year supply of housing sites under the particular circumstances that exist in West Berkshire at this time in the context of a planning appeal.***" [ID32]. This is important because the Judge relied upon these comments to justify his rejection of the Council's claim that the Inspector treated Mr Bateman's OAN figure as an absolute consideration.[J/52] At the same time, however, the Judge accepted that in the context of the appeal, the Inspector did at least have to back one of the horses [J/49]. The Inspector approach to the issue was of course correct.

118. In the context of this appeal, RB offers three figures, based on various different approaches to the issue of suppressed household formation. These are set out in Table 19 of RB's PoE Apdx 1, which is attached to his main PoE at page 78. The three figures are

- 864 dpa – based on no adjustment for suppressed household formation
- 888 dpa – based on keeping HRR rate the same as the 2014 level
- 933 dpa – based on a 50% (or partial) return to the 2008 HRR rates

119. The justification for the adjustments upwards to 888 dpa and 933 dpa are addressed in more detail below in the sections focussed on each of the three areas of dispute. But what is clear from the West Berkshire Judgment is that the Inspector would be free to choose any of these. The choice of one from three (or more) offered by the developer is perfectly permissible. It is in fact prudent for a developer to offer more than one.

120. One important point about the Firlands Farm decision, is the Inspector did make one mistake. He misunderstood the evidence on the migration trend. Mr Bateman's attempt to rely on an adjusted longer term migration figure (10 years as opposed to the DCLG and ONS projections which are based on 5 year trend). That such a mistake was made formed part of the LPA challenge to the decision (see the West Berkshire Judgment [J/45 end of]). The SoS accepted the mistake as is acknowledged in the Judgment [J/52]. But as the Judge went on to conclude it was irrelevant to the outcome of the case as the Inspector had not relied upon an OAN based on the long term migration trend (which gave rise to a lower OAN of 597 dpa). The employment growth scenario was not based on any adjustment to the migration figures. It was an alternative scenario to the two based on economic trends (0.6% and 0.8 annual economic growth). As such the mistake did not impact on the

scenario that the Inspector ultimately adopted. The Court relying on the Judgment in E v Secretary of State for the Home Department [2004] QB 1044, per Carnwath LJ that mistakes which do not affect the ultimate outcome are irrelevant. (West Berkshire Judgment [J/51])

121. For the avoidance of doubt, that same separation of the scenarios applies to the evidence presented by RB. CH is wrong to assume that RB OAN figure, which embraces economic trends (933 dpa), also relies on an uplift in the migration trend based on the 2015 MYE. RB's demographic OAN figure of 698 dpa (see PoE Para 0.16, page 7). His 933 dpa is not reliant on the 698 dpa as a building block to get to the 933 dpa. One is a demographic OAN figure and the other an employment trend OAN figure. The two are quite separate. What they do have in common is that in both cases RB has made an adjustment for suppressed household formation rates.
122. The 933 dpa (and indeed 888 dpa and 864 dpa) are not dependent upon the level of net migration which CE have calculated in RB's demographic OAN figure (that is the migration for the period 2010 to 2015 utilising the 2015 MYE migration figure and a rolling annual average). In other words, the Chelmer model (which is CE's model) arrives at the 933 dpa without reference to the net migration level 2010 to 2015.
123. There is one caveat to that, as RB explained in oral evidence. It is important this is set out, simply so that the point can be acknowledged. The 933 is led by the increase in the labour force it is based upon an uplift in the local labour force of 6,249 persons (OAN SCG, Table 3: fourth row from the bottom).<sup>2</sup> SPRU's figure of 933 dpa is not reliant upon the average net migration for the period 2010 to 2015: migration is an output of the model in this labour force led mode which is the mode used for the economic trend OAN. In other words, the net migration figure is an output as the level of net migration is that required to fill the jobs.

#### **The Need to Grapple with the Issue**

124. Hickinbottom J emphasised that an Inspector conducting a Section 78 appeal does need to grapple with this issue [J/37]. The Judge made clear it equally important to a Section 78 appeal as it is a LP examination. The OAN is the first key ingredient in the 5YS calculation in situations where there is no NPPF compliant OAN figure in the adopted CS or LP.
125. If such a LP or CS has been recently adopted (i.e. post NPPF – where an OAN has been considered but then rejected due to constraints), then a constrained annual housing requirement figure can be used: as was the case with the Chichester CS (see the Zurich Assurance v Chichester DC [2014] EWHC 758 (Admin). But that is only after the LP or CS has been adopted: Hunston (CD6.6, J/26). As we move

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<sup>2</sup> This is explained below in the section addressing that particular dispute between the parties (Disputed Matter No3).

closer to 2017, it is clear that in England we are moving back to a development plan led system with a much greater level of LP coverage. That will (mercifully) obviate the need to debate these issues at length at least for several years. But TWC have not progressed their LP expeditiously. Mr Owen rightly accepted the position is unfortunate. The new LP has not yet been adopted and for the time being at least the 5YS issue needs to be resolved by way of the OAN figure.

126. What Hickinbottom J also emphasised in that Stratford Judgment, and this is perhaps the most critical element of the case law for a Section 78 Inspector, is that an Inspector in a Section 78 appeal is not imposing the figure on the LP Inspector. That was the concern of Stratford DC as is plain from Ground 1 of their claim, as set out in the Judgment at para 10 onwards. Nor indeed that a Section 78 appeal Inspector is somehow tying the hands of any subsequent section 78 Inspector, nor for that matter the Secretary of State [J/42]. These are really important principles and the relevant paragraphs have been set out verbatim in the PoE of RB, in paragraph 2.8 of his PoE (pages 15-18).
127. Fortuitously, there is no dispute about this, as CH accepted at the very start of her XX. CH accepted there is a need to identify the OAN and there is need to look at the methodology for doing so in the PPG.
128. This important point, set out in Stratford Judgment has now been re-emphasised by the Court of Appeal in Oadby and Wigston v SSCLG and Bloor [2016] EWCA Civ 1040 [J/39, 47 and 48] (CD6.13). What is decided at this appeal is a decision made in the confines of this appeal.
129. Of course it takes time to do justice to the issue. With nearly three full days of evidence given on this matter, this is perhaps one of the best examples of where the matter has been looked at properly and in detail. To be done properly, it is a matter which does require time (and patience). Mercifully, that has been possible in this inquiry through the extension of the sitting days and the falling away of other issues such as noise and arboriculture.
130. The case law recognise, supports (and to some degree sympathises) with Inspectors on the issue of coming to a view about adopting an OAN figure. And at the same time, the Courts have been very clear that the conclusions reached are matters of planning judgment: West Berkshire Judgment (CD 6.11) [J/42]. They are therefore not grounds for legitimate challenge in the Courts, unless they are Wednesbury unreasonable or perverse.
131. In other words, no one can criticise an Inspector for the conclusion reached if the conclusion reached is based on evidence which is itself unsatisfactory in some way. But in this case, the Appellant has gone to some considerable lengths to ensure the evidence it relies upon is both cogent and clear. The Inspector is being invited to adjudicate upon only a discrete set of topics. Through the medium of the SCG, which

the Inspector very helpfully insisted upon, the matter upon which adjudication is required are just three. These are the issues of the most appropriate migration figure, an adjustment for suppressed household formation rates, and adjustment for economic trends.

132. Of course, the Inspector in the Wellington appeal decision did avoid making a Judgment on the issue. It is not lost on the Appellant that such an approach was taken when a different OAN figure was offered. The Council sought to challenge the decision with multiple grounds of appeal. Despite its best endeavours, these were largely rejected by Dove J at the permission stage. The remaining grounds were also rejected by Lang J at the final hearing.

133. The Wellington Inspector concluded that he did not need to answer the issue of whether or not there was a 5YS. He relied upon the fact that relevant policies in the DP are out of date anyway. That meant the special emphasis / titled balance in NPPF/14 was engaged regardless of the conclusion on 5YS. As noted above, the Richborough case suggests the size of the shortfall is relevant to the weight to give policies for the supply of housing. One could come to the conclusion they should be given little weight if they fail to address present housing needs. If that is the case, there would seem little point in seeking to give them even less weight because of the outcome of the 5YS issue. And, obviously, if an appellant is granted planning permission, such matters will be of little real concern. Moreover, the winner in an appeal, no matter how that is arrived at, has no ability to challenge to decision: Redditch BC v First Secretary of State [2003] EWHC 650 Admin.

134. The Council seems anxious that any conclusion on this matter will impact on their emerging LP examination. For the reasons outlined above, especially as regards the Stratford case, such concerns concern is misplaced. A decision here on the OAN is not remotely binding on Inspector Hetherington. What must not happen is that the Council's figure is simply accepted for a concern about. Not least because, as RB has explained, the Council's figure is artificially low.

#### **What is the Council's View on its Present Housing Requirement**

135. The Council's OAN figure is 497dpa. It is artificially and uncomfortably low appears not to be lost on the Council itself The Council are not seeing to rely on their OAN at the LP EIP. Instead the Council wish to adopt a much higher figure. A figure which is more than 50% higher: 778 dpa.

136. The reason the Council are doing this is not entirely clear. Regrettably, CH felt unable to assist on this point. From the Council's latest SHMA (2016 – CD 4.3) The justification appears to be the need to meet the Council's aspirations for growth and address the affordable housing problem in Telford. This is explained briefly at para 8.18 of the 2016 SHMA.

***“The Telford and Wrekin new Local Plan set out a Housing Requirement of 15,555 dwellings up to 2031. This is considerably higher than the OAN figure of 9,940 and reflects the growth ambitions of the Council and supports the delivery of affordable housing.”***

137. On this the Council are no doubt mindful of the need to be very careful about the consequences of the Judgment in St Modwen Developments v SSCLG and East Riding of Yorkshire Council (CD6.2): Ground 2: Housing Land Requirement. If TWC admit it is absorbing growth to accommodate the huge unmet need for 37,000 dwellings from the city of Birmingham (for whom PBA have done the OAN work), then following the St Modwen Judgment this would form part of the Council 5YS figure. As is clear from the Judgment on Ground 2, (J/61-82) the city of Hull agreed (well before EIP into its LP) to take around 400 houses from its neighbour East Riding Council and this was accepted as the basis for the 5YS calculation in East Riding during a Section 78 appeal (it was also before the EIP into the East Riding LP).
138. The problem for the Council is that the 497 dpa presents it with a real dilemma in terms of NPPF/47. The very clear instruction to LPAs is that they must now look to boost significantly the supply of housing. Yet on the available evidence, one has to ask how on earth is the Council going to manage to convince the LP Inspector of that with a housing completion figure of 1,255 last year and an average of 900 a year over the past 5 years, when its OAN is just 497 is truly puzzling. Even the 778 figure look puny compared to the past delivery rate. To advocate a lower figure is a completely contradiction of the very clear instruction at the start of NPPF/47.
139. In addition, RB has pointed out that the Council’s claim that the OAN should be as low as 497 dpa sits very uncomfortably with the past rate of delivery. He points to the recent trend of 900 dpa over the last 5 years of 900 a rate of delivery which is meeting needs. And plainly it is as the completion figures will reflect the actual houses which the housebuilders are selling. That such sales are being achieved, completely undermines the claims that the needs of the Borough are being met. That, it will be recalled is a rate of past delivery, set against a migration trend of close to zero. The migration data in the 2015 MYE show a significant increase last year: a net inflow of 1,113 people above natural population growth and increased demand for housing. So how on earth 497 dpa can be judged an appropriate figure is genuinely difficult to understand. RB describes this as a “check” against his own assessment figure of 933 dpa. And it is clear to see that this looks very much more comfortable as a figure.
140. RB is giving evidence at the LP EIP. What then if his figures of 888 dpa or 933dpa are accepted. The outcome for the Council will be modest. Added to which RB’s evidence is that figure is sufficient to simultaneously address his concerns about market signals and the need to make better provision for AH. And on that latter point the Council seem to agree as per para 8.18 of the 016 SHMA (quoted above). RB is

therefore not advocating a higher annual housing requirement figure for TWC. 933dpa is, in fact, the highest figure he advocates. The implications are in fact only really of relevance to Birmingham: it will not be able to claim it is off loading its needs to Telford, if that is the intention.

### **The Council's OAN: Overview**

141. The Council's case is that the OAN of Telford is just 497 dpa for the 20 year period 2011 to 2031. The latest DCLG household projections (2014-based) suggest a figure of 502 dpa for this period. For the decision maker, one might legitimately ask two questions:

- (i) Is that the right figure to use as the OAN?
- (ii) Or, if not, would a figure which is broadly similar be appropriate?

142. The answer to both of these questions is unequivocally no. And there is a simple answer. When the Government issued the PPG, it could have said – decision makers should take the DCLG figures. But it did not. It issued an entire chapter of the PPG devoted to calculating OAN.

143. That guidance could have been one line. But it is not. It is an entire chapter. It could have said the household projections are the OAN for each District or Borough. But it is very plainly not. The Government does not believe that the OAN for each District and Borough is the same figure as the DCLG household projections. The PPG is explicit that the DCLG household projections are the starting point for the calculation of OAN.

144. Chapter 2a of the PPG sets out a whole series of steps which lead one away from the DCLG household projections. They are as follows:

- (i) The use of the latest data, which includes,
  - a. the latest household projections
  - b. the latest population projections; and
  - c. the latest mid year estimates which contain the latest migration data
- (ii) An investigation into suppressed household formation rates
- (iii) Taking account of the latest employment trends,
  - a. these can be examined in terms of past trends and future forecasts;
  - b. this is important because of the need to house a working age population
- (iv) An investigation in market signals,
  - a. including house price increases, increase in the ratio of income to house prices
  - b. these can warrant an adjustment in the number of dwellings required;

- c. this is done to increase the number of houses to alleviate housing pressure
145. Whilst there is agreement about steps 1(a) and 1(b), the parties diverge at stage 1(c). The Council make a very significant adjustment to the official figures in respect of migration particularly in the age of the migration which has the effect of pulling the household requirement down. More significant still however, is the fact the Council have made no adjustment at all in respect of steps (ii), (iii) or (iv). Its case is to rely on a figure which is very close to the DCLG household projections, largely ignoring the methodology on OAN in the PPG.
146. RB has not made an adjustment for market signals as he sees this as unnecessary after making an adjustment for the economic trends. But the PBA does neither, despite the fact the Council then add 50% to the OAN to create a housing requirement which seems to favour growth and increasing housing delivery for reasons relating to affordable housing.
147. There is therefore only really one step in PBA's approach. It is to use the latest household and population data and then make an adjustment to the migration trend within that latest population data. The reason why RB suggests this is wrong are explained in these closings submission on his approach set out below.

#### **RB's Approach: An Overview**

148. In a clear and coherent manner, RB has set out the above a six stage process in which he has considered each of the above, including breaking the first stage down even further into three separate and distinct steps (i) DCLG household projections, (ii) the latest population projections and (iii) the latest migration data. Clarity is everything in this complicated process. But so long as it is explained slowly, accurately and carefully then there is no reason to shy away from reaching a conclusion on an appropriate OAN figure

### **THE DEMOGRAPHIC PROJECTION**

#### **Step 1: The DCLG Projections**

149. As RB demonstrated in his main PoE, the Council was using the previous household projections. They are not to be blamed for that in any way. At the time of the 2015 OAN report and the 2016 SHMA, the only available DCLG household projections were the 2012-based set. And the Council have now updated their evidence and used the latest 2014 based household projections. So there is no need to comment further, as both parties agree that it is the 2014-based projections which should be adopted in this case.

150. The same is true of the latest population data. These are contained in the 2015 Mid Year Estimates (“MYE”). The 2014-based household projections were based on the Sub National Population Projections which took into account previous data up to and including the 2014 MYE figures. But now the more up to date 2015 MYE’s are available, it is a second measure of agreement between the parties that these should be used. It is the MYE give rise to one of the three main areas of disagreement between the parties in respect of the OAN in this case. This is because the MYE’s contain migration data which when adopted change the DCLG household projections.

151. The Council is therefore not using the excuse that it is impractical to use the latest Government data, although CH hinted at the fact the PPG says a LP figures does not need to be updated with every new set of OAN figures (PPG/2a/016). But reliance on that argument would not an attractive one in the circumstances where the Council will have to defend the 497 dpa for the purpose of the Local Plan process. It is much more prudent for the Council to go into that process with the most up to date information.

#### **Disputed Issue No1: Migration Trends**

152. RB relies on the latest household projections and the most up to date household and population estimates from the DCLG and ONS respectively. The NPPF/159 and PPG/2a/016 encourages the use of latest information where possible. In the case of the population projections the latest data is available in the form of the 2014-based SNPP. But both parties agree the population information can now be updated by the 2015 MYE. This is pertinent to the migration data, which is the matter in dispute.

153. These are the foundations of RB’s assessment. He has not altered these other than in the very specific way in which the PPG invites an alteration, which is to address the fact the latest household projections are perpetuating the declining trend in household formation rates (which is addressed below).

154. CH’s approach is very different. CH recognises the need to use the latest household projection and population estimates. But then radically alters these. For the 2015 report, in respect the 2012-based household projections, PBA adjusted the official projection upwards to address what it considered to be an anomalous trend in the migration statistics. That helped up lift the household projections to 497 dpa. But when 2015 MYE were published, the approach PBA took was to adjust the official household projection downwards, reducing it to 502 dpa. In so doing PBA managed to stay very close to the original OAN figure of 497 dpa (such that the Council the difference is irrelevant).

155. What PBA has done is settled on a figure of around 500 dpa and then make the adjustment they make fit that figure. The Council were concerned about the 2012-based household projections. They altered the migration trend because they considered the annual population figure was too low. There were constraints on new

housebuilding in the early 2000's and that led into the recession, which created a 10 year period of low migration. But the PBA has sought to rely on the long term migration trend. In other words, the DCLG migration trend was considered to be inappropriately low and PBA raised it by reference to a longer term migration trend (10 years). That seemed appropriate when the official 5 year projection was based on a negative migration trend. But when the situation improves, it seems odd to rely on the same data rather than the official projections and the most recent MYE. CH says that trend was an anomaly. It is negative and that may look anomalous. But upon scrutiny, the five year period beforehand saw significant periods of net out migration from TW. Although it was specifically requested no evidence of it actually being a statistic error has been provided.

156. Yet, when the migration trend increased with the publication of the 2015 MYE, the Council did not adopt that. They reverted back to the long term trend with the effect that it reduced the official migration trend.
157. The long term trend suppressed the effect of the official 2015 MYE migration figure. Odd that the Council might wish to do that when it had previously sought to increase the official migration figures. It seems either adjustment is appropriate so long as the figure stays close to 500 dpa
158. Yet as RB observed in XX, with the adoption of the 2015 MYE, the five year migration trend results in an average annual migration figure of around 300 persons a year which looks entirely consistent with an average trend.
159. It is completely unconvincing to have recognised the need to uplift the population projections because of the long term migration trend in the latest population projections (in the 2012 SNPP) is too low in the 2012 figures (i.e. accepting there is a need to make an adjustment because the figures are too low). But then refuse to even accept the 2015 MYE because it uplifts the population projections, without the need for any adjustment at all, when that uplift is unpalatable to keeping the household projections down at the level of 500 dpa.
160. The Council accept the need to take into account the 2015 MYE. But then they do all they can to run away from it. The 2015 migration figure is distinctly unhelpful to their case. In chief CH described the 2015 MYE of migration as an "outlier" as it is an inconvenient truth that the migration trend has risen dramatically after a long period of being negative or at a very low level. It has done so at the same time as increased job growth and increased housebuilding. It was put in cross examination to RB that it was inappropriate to rely on one year of migration data. But as RB pointed out in reply, he is not, of course relying on one year of migration data. The 2015 MYE has been incorporated into his population projection by taking the last 5 years of migration into account. 4 of these years are of course shared with the 2014- based SNPP and the 2015 MYE has been added to these. As illustrated in Chart 2 of RB's rebuttal PoE the implications of the Cambridge econometrics ("CE") approach to migration

modelling as used by RB is to marginally increase the population in certain age groups compared to the 2014 SNPP as a result of increase in migration projections. Whereas the approach to migration modelled by PBA is to materially change the character of the population at 2031 compared to the 2014 SNPP as illustrated by Chart 1 of RGB rebuttal PoE.

161. The PBA assumptions do not dramatically change the overall character of the population (see charts 1 and 2 page 10 of RB RPOE and Table 2 of SoCG). In XX RB highlighted that the difference between the changes to the population in the 16 to 64 age groups was (minus) - 2995 in terms of the SNPP 2014 (500 dwgs pa) 265 persons for PBA 2005 -15 (again with 500 dpa). This demonstrates the significant discrepancy between the PBA assumptions and the DCLG household projections in terms of the age sex of migrants. RB is much closer (see rebuttal chart 2). The Council need to win the use of their assumptions in terms of age sex migrant issue rather than RB's or the DCLG to keep the OAN down. It is be remembered that the Council has not submitted the age sex assumptions for migration. They therefore cannot be scrutinized. Whereas RB has and they have not been challenged (Doc 19). The suggestion that CH does not know how RB arrived as his demographic OAN is rather rich. He provides the information to show that, where CH does not.
162. The five year period that RB has used includes both a period of economic downturn and economic upturn. It is a balanced period and is the same period used by the DCLG. The only adjustment he is making relates to the use of the 2015 MYE. The PBA period coincides with a much longer period of economic downturn and prior to that a period of significant housing delivery failure in Telford. That is why they suppress the migration rate.

#### **Disputed Issue Two: Adjustment for Suppressed Household Formation**

163. The Government has recognised a problem in the household projections. This is explained in the PPG/2a/017. It expresses the need to look at this and conduct sensitivity testing. The way it was put in XX to RB suggests the Council seem to think that is an invitation to carry out sensitivity tests and then promptly ignore them. That cannot be right. They may be sensitivity tests. But if there is a problem then one surely adopts the sensitivity test as the more accurate analysis.
164. The adjustment of the DCLG household projections is fairly common as RB explained. He points to adjustments made by Inspector at South Worcestershire. It is also routinely done at Section 78 appeals.
165. RB has not adjusted the HRR's for every age group. Only those between 25 and 44 years of age. These are the age groups which the Government itself has recognised as having problems in forming new households, especially first time buyers. It is a problem which is widely recognised, and hence the PPG advocates the need to look at this issue. The Wellington Inspector (CD 8.20) had no difficulty in accepting this is an issue and making an adjustment (ID/42), albeit he later qualified

his conclusions on the basis that he did not feel it necessary to reach a firm conclusion on the OAN [ID/47]. But notwithstanding that reluctance he was also clear that that he saw no reason to reject the approach adopted by the developers consultants, which was Barton Willmore (“BW”) in that case. He said he saw no obviously flaws in their approach [ID/46]. And, of course, along the way, he firmly rejected the CH’ approach to denying suppression of households in the DCLG household projections [ID/42].

166. In the Wellington case, BW advocated a full return to the 2008 HRR rates. To prove that point, RB has included James Donagh’s full proof of evidence from that case in his appendices (RB PoE Apx 12). Paragraph 6.21 on page 33 of the BW proof is very clear that is what BW did and that is what the Wellington Inspector did. RB does not advocate this larger adjustment. When challenged as to why he had not, RB made clear that he felt that a full return to the 2008 HRR rates was unrealistic (XX RB). He can hardly be faulted for that.
167. CH’s argument is to say there is no evidence of household suppression in Telford. She argues that house prices are better in Telford than other parts of the West Midlands and England. That is not, with respect, a credible answer. The fact the housing crisis, manifests itself in higher house prices and worse affordability ratios elsewhere in the England is not evidence that it is not a problem in Telford. RB sets out his evidence on this matter in his PoE, pages 56 – 63. It is evident from various statistics. And as RB explained repeatedly during his XX, key amongst that is the fact that the number of concealed households has risen by 100% between the 2001 and 2011 census. It rose from 426 dpa to 853 dpa. What more certain evidence does the Council expect to see. As for affordability and house prices these have also risen
168. RB has done two sensitivity tests. He therefore offers three figures. One with no adjustment to the HRR rates in the 2014-based projections. One with the 2014 rates held constant (i.e. not decline rates of HRR, which is the trend in the 2014-based projections). And one with a partial (50%) return to the HRR rates found in 2008-based DCLG household projections.
169. The adjustments are not large at all. Holding the 2014 HRR rates constant adds 24 dpa to the unadjusted annual requirement based figure in the 2014-based DCLG household projections. The partial return adds 69 dpa to the annual requirement.
170. To be clear, these figures form part of both of the demographic and employment trend OAN.
171. RB was asked about what other scenarios he had looked at. From his demographic OAN, which includes the migration data from the 2014 SNPP and with the most recent 2015 MYE, his evidence is as follows;

- 667 dpa – this makes no adjustment for HRR
  - 698 dpa – this holds declining HRR steady at 2014 levels
  - 732 dpa – this returns HRR to ½ the 2008 trend by 2031
  - 793 dpa - this returns the HRR to the full 2008 trend by 2031
172. The first three figures are set out in the RB's PoE Appendix 2 at Table 19, page 78 This last figure was given orally during his XX.
173. Having been asked to highlight all the scenario's he has examined, RB made clear he has in fact also looked at figures based on a 10 year migration trend.
- 536 dpa – this makes no adjustment for HRR
  - 596 dpa – for the partial return to the 2008 HRR rates
  - 654 dpa – full return to the 2008 HRR rates
174. All bar one of these figures are below the Council's proposed housing requirement in the RB' favoured approach is a partial return to the 2008 HRRs for the 25 to 44 age groups. This is the approach favoured by Inspector Clews in his first interim report in the South Worcestershire DP. That approach was the one advocated by NLP in that case, and is addressed in para 31 of Mr Clews Report. (RB PoE, Apdx 6)
175. In XX RB highlighted the range of adjustments considered for changes to the HRR's for the 25 to 44 age groups as follows (this was in reference to table 19 of RB PoE (page 78)):
176. In his PoE, RB refers to 888 dpa and 864 dpa relies on the former two of these and offers them as alternatives. But the 864 dpa figure is there if the Inspector were to reach the conclusion that there is no need to make an adjustment for suppressed household formation. CH suggests that it should not be done at this stage. CH suggests it should be addressed in terms of market signals, But the stepped approach that RB has adopted seems to fit more comfortably with the structure of the PPG, where this concern of the Government is raised in PPG/2a/015, whereas market signals and the need for any such adjustment is addressed in PPG/2a/020).

## **ECONOMIC OAN PROJECTION**

### **Disputed Matter 3:**

177. This is the main difference between the parties. Again PBA make no adjustment for economic trends.
178. Both RB and CH look at the employment forecasts. RB has looked at three Experian, OE and CE. CH has only relied upon the Experian figure. The growth rate in both appears to be the same. But in terms of the number of jobs, RB's approach

gives rise to a lower projected increase in the need for a local labour force (6,249) than PBA (who is 7,402 SCG Table 3).

179. The main difference between the parties is how the new jobs are accommodated.
180. Both CH and RB make adjustments made for double jobbing and reduced unemployment. The reduction in the unemployment rate is very similar for both. RB has explained his adjustment is reducing to 4.3% the unemployment rate to the lowest level in the last 10 years. CH has relied on the Experian model which would appear to have taken the same approach – although the level it is reduced to is not explained.
181. The key differences are the approach taken to the commuter rate, double jobbing, and economic activity rates. RB has explained the figures he has used in his PoE , pages 48 – 50 and shown on the table on page 51. He also addresses the issue in RPOE.
182. RB main complaint about CH approach is the reliance on the Experian model. This constrains population so new households cannot move into the area. Yet that is of course the whole purpose of the exercise of calculating the OAN. The Experian model is not an appropriate tool to calculate the household requirement. Instead the Experian model flexes and adjusts what the model is doing is decided opaque. We know that the rates for net in- commuting do change, but since the model does this automatically it is not an input. CH told us that the model will explain if there is no further capacity to fill the jobs. It will apparently give a warning. But we have no certainty about at what level
183. The position is most clearly seen as regards the commuting pattern. RB deals with this in his main PoE at page 27. He cites the conclusions from Aylesbury Vale and South Worcestershire Inspectors who have addressed this. Both have rejected the idea that there should be an adjustment to the commuter rate in terms of calculating the OAN. These are decisions made in the context of LPs. There is even less justification for making any such changes in the context of a Section78 appeal where the approach should be policy off. To be clear the LP Inspectors were looking at the issue in terms of determining an OAN: an OAN should be policy off. Changes to commuter patters is really an issue to be addressed as part of the duty to cooperate. VFQC suggestion that in-commuting takes place in real world is no answer. An OAN based on employment trends is not a process where one is looking to increased net in-commuting. Suggestions that new jobs will be taken up by local people is unproven and a huge assumption. There is no evidence to support that assumption.
184. PBA use the Experian model. The approach the model takes involves the model flexing to accommodate more in-commuters. It is suggested this is a positive feature of the Experian model because it then links to the working age population in other

LPA areas. But we do not know anything about what the model assumes is the working age population in Shropshire etc. Nor indeed whether the household growth adopted in the adopted Shropshire CS is consistent with the present DCLG household projections.

185. In terms of double jobbing, the evidence supporting increases in this is very sketchy. There are no official statistics. CH relies upon an increase in the double jobbing rate to accommodate 4,300 of the new jobs. The evidence to support that though is very slim. RB has adopted a 4% reduction in the growth rate to address the double jobbing phenomena. That is based on evidence reports in the Financial Times in January 2015. In contrast, the increase adopted by CH is simply something the model has done. RB has identified that the increase used by PBA is an increase from 3% to 7%. RB explains in his RPOE why he considered this large assumption not to be sound (RPOE, Para 1.17). It is not clear what it is based upon. It is a huge increase. The evidence PBA rely upon for this has never been explained. Therefore, criticism of the figure reported in the Financial Times is therefore rather rich. The Council are making a huge assumption about the increase, or more particularly the model is doing so. One cannot discount all those jobs unless there is robust evidence to show so many of the new jobs will be taken up by people taking two jobs. Assumptions about what happens to the rate during or after a recession is again guess work on the part of the CH and the Council. Such assumptions need to be evidence based.
186. All that Experian approach does, together with the commuter rates is take an anticipated increase in jobs and completely ignore it by finding other ways to meet the increase in jobs. With a nationally ageing population that is a really serious matter because the whole reason the economic trends form part of the OAn calculation is because of the need to ensure the working age population in the Borough is large enough to take up the jobs and NOT have lots of people commuting in from Shrewsbury, Wolverhampton and wherever else the Experian model assumes there are workers
187. On the issue of economic activity rates (EAR), Cambridge Econometrics adopt Activity Rates which are uplifted by 2% and increased for the 60 to 70 age groups to reflect pension changes). The CE rates have been used so as to be consistent with the starting level of jobs in the model also supplied by CE. These assumptions make substantial reductions in the population and hence the number of dwellings required to provide for the increase in the labour force. Increases in activity rates is not a forgone conclusion RB highlights in PoE that rates for the West Midlands have been decreasing (chart 8 page 74).
188. As an alternative RB also modelled the impact of adopting the Office for Budget Responsibility changes to local activity rates in the Rebuttal evidence this increased further economic activity for the older population but reduces activity in the younger

population and as such results in a similar dwelling requirement of 902 dwellings a year (see RB RPoE Table 2 page 7).

189. The PBA approach is that participant rates have been generated by the inputting of their chosen population into the Experian Model. Therefore the 3% increase for the 16 to 64's and the 182% increase for the over 65's is a result of the balancing exercise within the model in response to the given population. As such the suitability of these outputs requires further examination. PBA undertake no such exercise despite increasing participation rates being clearly contrary to the regional trend.
190. One way to show an indication of how much higher the PBA EAR are is to look how an increase in the population of just 265 persons (16 - 64) in the PBA approach (SoCG table 2) results in an addition of 7,402 persons into the labour force. This is perhaps unsurprising. As CH explained in XX the participation rates are an output of the Experian model and are flexed (in this case increased) so as to balance the projected level of jobs with the population which was an input into the model.
191. TThe approach of PBA has not been to undertake a labour force led projection in order to determine the OAN. Instead the approach has been to test their population projection by using it as an input to the Experian Model to see if it highlights a future deficit in labour demand against supply as occurred in the first run of the model (CD4.1 paragraph 5.16).
192. Finally, in EiC, RB criticised the approach adopted by PBA on the following grounds:
- (i) The Experian model does not reflect "real life" as it does not allow people to move house to fill jobs, As RB stated most moves are short distance moves and such moves would be reasonably expected to occur to move closer to employment. It is constrained until the model gets to a point when it cannot meet the employment needs of the LPA area. The model flexes to adjust variable such as commuter rates. That is very clear.
  - (ii) The model internally adjusts activity rates, double jobbing, and commuting in order to achieve a balance with the inputted population – these are all outputs of the model and while they may remain within national parameters they are ultimately generated by the assumption that no one will actually move to fill the new jobs.
  - (iii) The claimed national consistency of the model is undermined by
    - i. known shortcomings of housing delivery in major conurbations meaning the underlying 2014 SNPP for the wider area does not reflect what will actually occur.

- ii. The fact that a different population has been used as an input to the model in this case

193. There have been delivery problems during the CS and AT envisages there are likely to be delivery problem in the future. The Council then suggests that this is a reason why the OAN should be kept down at 497 dpa. That is to mix up need and supply and it is an elementary mistake.

## **THE 5YS CALCULATION**

### **Introduction**

194. The respective position on the 5YS of two parties is like ships in the night. The Council are claiming to have more than a 12 year supply of housing land (12.9 years, based on a 5% buffer) or 11.3 years based on a 20% buffer [DOK, Table page 15]. These figures have been adjusted to reflect deductions from supply and the former at least was corrected to 11.8.

195. It is important to note that the Table on page 15 of DOK PoE, does not take account of the OAN proposed by the appellant of 933 [RB evidence] and is calculated on a different OAN of 900.

196. The Appellant says the supply is 2.07 year supply with the previous shortfall from the CS period added in, or 3.93 if that shortfall is excluded.

### **Shortfall**

197. The housing requirement from 2006 onwards is set out in the CS. As expressed in the CS, it is stated as a maxima figure. The first 5 years sought 1,330 dpa then 700 for the remaining 5 years period.

198. The total requirement was 10,150 dwellings or 1,015 dpa on average over the 10 years. (JH XX). The Council failed to get close to that figure and during the first 5 years of the plan the accumulated shortfall was huge.

199. The Council claim there is no shortfall at all.

200. The Council in 2013 (CD 4.17) very clearly identified the shortfall to be measured against 1,330 and then from 2011 700 dpa. The Council relied upon the PAS guidance on the issue of the shortfall. In CD4.17 the Council says the shortfall should be taken from the beginning of the plan period (first page). The PAS Guidance makes that clear. The Appellant has submitted this document to show that the exact words and it is clear about the shortfall to measure it against the development plan requirement (Inq Doc 41). It is in the first line of extract page. Until the eLP is adopted the shortfall should be measured against the CS requirement. There is no other way of doing it.

201. The Council argue that the shortfall can be ignored. It is suggested the Appellant agrees. It is suggested that is because RB has accepted that the OAN projections start again and deal with housing need from 2011 onwards, the shortfall can be ignored. But to assume that the Council's figure of 497 dpa incorporates the 4,339 shortfall (Table 3) is ludicrous. It plainly does not do that. That is because it is being suggested that a shortfall is in the OAN figure of 497 dpa even though it alone, allowing for no other need at all, equates to the first 9 years of the housing requirement going forward (8.7 years). This point was put to CH and the Council have no answer for this.
202. One needs to be careful not to mix up apples and pears here. What RB is dealing with is the OAN from 2011. That calculation is not examining the shortfall. It looks forward not backwards. The OAN experts are not addressing shortfall. The shortfall is a matter for the planning experts: that is why JH is deals with it. As JH made clear it looks rather like the shortfall is brushed under the carpet by the Council by suggesting it is in their OAN figure of 497 dpa (XX JH). That it is in the 497 dpa just cannot be right.
203. There was a huge shortfall against the CS requirement from 2006 to 2011. It is suggested that as a maximum it was never a requirement. But the simple fact is the RS did set a figure for Telford. The intention was that it should be met, although not exceeded. As JH explained it is simply not appropriate to ignore those households who were plainly intended to be housed in TW but were not. As JH rightly asks, what happened to those household that were supposed to be located in Telford and Wrekin (JH XX).
204. As JH outlined during her XX the whole point is that the Council were delivering only about one third of what was intended. Instead of delivering 6,650 in the first . five years, only 2,311 was delivered between 2006 to 2011. That is about 460 a year rather than 1,330 a year. There is no indication that the houses were delivered anywhere else. DOK could not point to any such evidence (DOK XX). For example, there is no evidence at this inquiry that Wolverhampton or anywhere else delivered above its minimum requirement. As JH explained, the problem is clear: if everyone in the region took the view that Telford now do, the whole delivery for the West Midlands would have failed and that would have been a disaster. (JH XX) It is simply absurd to imagine that that the 1,330 is not the measure against which to judge the Council's shortfall.
205. The Council say there is no shortfall. The Council say there is nothing wrong with delivering only about a third of the requirement . The Council's position is illogical The Councils position appears to be that there would be

no shortfall even if only 1 house a year was delivered (XX DOK). That simply cannot be right.

206. The shortfall is as JH has set out in tables 1, 2 and 3 of her main PoE. The shortfall figures are then shown on tables 8, 9 and 10 of the main PoE

### **Buffer**

207. The question is a simple one: does the Council have a record of persistent under delivery (“RPUD”) Here again the two parties are like ships in the night. The Council only wish to look at 5 years and the Appellants says that as regards local delivery, the 10 year period is more appropriate.

208. There is express Government support for the Appellant’s position that at PPG/3/035. ***“The assessment of a local delivery record is likely to be more robust if a longer terms view is taken, since this is likely to take account of the peak and troughs of the housing market.”*** (CD4.11)

209. One should not simply opt for 5 years because it seems easier, given the Council have sought to muddy the water over the CS requirements from 2006 to 2011.

210. However, it is not quite the ships in the night that it initially appears. Because there is one thing which completely “torpedoes” the Council’s ship. The Council’s position was exactly the same as the Appellant in 2013. The Council’s position can therefore be tested for credibility against what the Council itself said.

211. In 2013 the Council had no problem understanding the concept of the 1,330 in the CS being a requirement and a failure to deliver against that being a shortfall. Nor too did the Council have any problem relying on the period from 2006 to assess whether Council has a PRUD (CD4.17)

212. Furthermore, Inspector Wildsmith at the Haygate Lane, Wellington appeal came to the conclusion that a 20% buffer was the most appropriate in the circumstances of this Council’s delivery record, and this was a matter that was not challenged (CD 8.20)

213. The appropriate buffer to apply here is 20%.

### **Target Figure**

214. Based on 933 dpa, a shortfall of 4,506 and a 20% buffer the target figure for the 5YS on the Appellant’s case is **11,041 dwellings**. The Council plainly does not have a supply even close to that. This is what gives rise to the figure of 2.07 years supply.

215. The Council instead argue that this requirement for the next 5 years is greater than the whole of the CS period. But as JH explained, “that is because of the “enormous shortfall has arisen during the CS period” (JH XX). It arises because of the result of the appalling delivery record from 2006 to 2011 (JH XX).
216. If the lower annual requirement of 888dpa is used then the supply rises slightly to 2.19 years. That is based on a target figure of 10,417.
217. If one ignores completely the shortfall from 2006 – 2011 then on 933dpa the supply is 3.93 years based on a target figure of 5,798 and on 888dpa it is 4.28 years based on a target figure of 5,328.
218. These figures all rely on the use of the Appellant’s supply figure. Which is 4,565 dwellings
219. As can be seen contrary to what VFQC has suggested today, JH is not reliant on the CS shortfall figures to show a shortfall in the 5YS. The Council plainly do not understand the numbers. That is blindingly obvious from Tables 7 and 8 in JH’s proof. And that is why the tables are there. It shows the c/s shortfall is not needed to show a lack of 5YS. As other Inspectors have shown even a supply of 4.5 years gives rise to a shortfall which should be judged as serious and significant (see Brereton Heath CD8.23, para 13).

#### **The Supply and the Difference**

220. The total deliverable supply which the Council relies upon is 6,727 in DOK PoE. But with his agreement the Council’s current supply is 6,444 dwellings as some 283 dwellings have been agreed to be removed by DOK. That is from sites ref 2,9,18,31 and 38: please see SCG and XX of DOK.
221. The difference between the parties is now a total of 1,879 dwellings. The differences are clear from the tables in the SCG, together with the assumptions that JH has made in arriving at those deductions.

#### **The Sites**

222. JH has done extensive work on the 5YS. It is clear that she has done weeks of work, including researching the latest position on each site. She has spoken to those directly responsible for sites, including landowners and developers or their agents. This is in direct contrast to the Council’s work which was very limited. The Council’s supply evidence largely comprises a single line on a XL spread sheet and a sparse rebuttal of the evidence of JH. JH has produced a trajectory for each site to consider in detail how and when a site will deliver.

223. The Council has not produced any clear trajectory for site delivery and is not clear from their XL spread sheets of data.
224. Added to which, the fact the Council apply different delivery rates for different types of housebuilders (national, regional and local). But on many of the contested sites the Council does not know the identify of the housebuilder. That is because there is no housebuilder. So the Council's assumed delivery from the sites is immediately undermined.
225. Virtually none of the information required by the PPG is provided by the Council. This is the information listed as being relevant to a deliverable supply, as set out in JH PoE, para 6.7.21, pages 54 to 56. JH has shown that she has taken all of this into account in her analysis of the sites. And it is respectfully submitted that it is her supply figure which is more realistic. It is certainly far more transparent than that provided by the Council. Neither party felt it necessary to XX on all the sites. It is therefore presented really as a way of inviting the Inspector to make a choice about which supply figure, on the evidence that is available he prefers.
226. As JH has made very clear, if one has direct knowledge about the site, then there is no need to revert to default lead in times and delivery rates, JH has a great deal of direct knowledge having investigated the matter in detail. These are the most appropriate lead in times and delivery rates that reflect the real world and the real facts of the sites.
227. The Council have not included any realistic lead in times that reflect the complexities of the planning process, and it is clear from a number of examples that the planning process can be very extended. By way of an example Site 6 Peregrine Way, the reserved matters application was submitted in September 2015. Even now they are nowhere near close to being approved due to ecological reports which are outstanding because of survey work and objections from the ecological section.
228. Another example, Site 31 at Audley Avenue in Newport. The application was submitted in outline on the 6<sup>th</sup> October 2011. It still remains to be determined.
229. These are just two examples of the time delays that are part of the planning process and which delay the delivery of sites.
230. In XX JH was asked about Site 12; Land at Arleston. This is a site where it is clear that there is no planning permission in place which can deliver more than 20 dwellings onto the open market as there is a care home required the permission and there is no interest in a care home on this site. The fact that a new application is submitted and the applicants Redrow have been told that this will be refused is not indicative of additional

dwellings coming to the market. The analysis made in the supply by JH is therefore realistic

231. **Site 13. Priorslee East:** There is no evidence of disposal. DOK has suggested it is close to disposal. But as JH made clear that is not the information in the public domain and there is no agreed method of site disposal let alone a developer to build out any units, save for a small parcel of land for 18-20 units which JH has included in the supply. The references in DOK evidence do not even relate to the named parcels in the HCA site plan and it is impossible to distinguish which land he is referring to.

232. AT evidence shows that the Council's assumed lead in times ignore key stages in the process. The Council has accepted they have ignored periods of time (DOK). JH has not relied upon AT's evidence on lead in times and delivery rates for most of the sites, as she has site specific information: these are show in the table 1 attached. She has explained her assumption and set out a trajectory for each of the 5 years. We have no such information from the Council. So again criticism from the Council about the Appellant's evidence here are rather rich. Table 2 shows the sites where JH has relied upon lead in times and delivery rates provided by AT. AT deliver rates reflect what he thinks are more realistic rates given the effect of Lawley and funding and logistical issues affecting smaller and regional house builders of which he is one.

### **Consequence of no 5YS**

233. The lack of a 5YS is an addition material consideration which weighs in favour of the proposal. It is a matter to which the decision maker should give significant weight.

234. Moreover, if there is not 5YS then NPPF/49 is engaged. The breadth of policies which are affected is broad. That was the view of the Court of Appeal in the Richborough case [J/33-35], and it remains the view unless and until it is altered by the Supreme Court. The hearing is at the end of February next year. Policies are not disregarded if NPPF/49 is engaged. The reduction in weight to give such policies is a matter for the decision maker (J/47).

### **RESIDENTS CONCERNS**

235. During the inquiry afternoon session (29<sup>th</sup> November 2016), third parties raised a number of issues, such as traffic, ecology, landscape trees, and impact on the local area. The majority of these issues have already been covered in the extensive application documentation, including the Transport

Assessment ecology reports and LVIA as well as in evidence submitted to, and given at, the inquiry. There are no outstanding objections from any of the technical statutory consultees.

236. Setting aside the principle of the development, and in terms of more technical matters, a number of specific matters were raised at the afternoon session that are collectively addressed below, in no particular order.

### **Traffic**

237. Concerns have been raised that the development will increase traffic in Newport and that much work has been done to improve the current heavy flows. Developments such as this will undo this work and leave Newport at a standstill. That the traffic surveys had not taken account of the nearby Castle House Private school, which was closed on the day of the survey and that this had not therefore taken account of the real traffic common to the area.

238. It is clear from the Transport Assessment and the further evidence of AL given on the 13<sup>th</sup> December that the proposal would be insignificant in terms of these flows and that even taking account of the school this would only add 100 trips in the peak hours. In terms of the overall counts carried out this would be well below what is deemed as noticeable impact being well below the 10,000 vehicles threshold.

### **Access**

239. The access arrangements are agreed with the highway authority. The internal access has also been raised. Concern was raised by local people that the existing road is dangerous and impassible in bad weather. With the proposed new roundabout likely to make this worse when vehicles coming up the hill having to give way to vehicles accessing the new development and emergency vehicles refusing to access the lower part of Beechfields way. Residents were keen this was not repeated in the new proposal.

240. AL addressed the issue of gradient in respect to the existing hill by explaining how this assists in any moisture running away from the slope thereby limiting the likelihood of the number of instances where this would occur, also explaining how the existing grit bin and if required a new one could be used to assist in overcoming this and that due to the low number of vehicles the likelihood of this occurring was small and nothing here was unusual in highway terms and the existing grit bin and the installation of another could be provided if needed. The highway statement of SOGC confirms the proposal is acceptable in highway terms and it has also been demonstrated via technical drawing submissions that the proposal does not

repeat this as the gradients are less than those existing on Beechfields Way.

241. Concern was raised that cars speed up Beechfields Way and make it dangerous for those reversing from their drives. This existing situation will be improved by the development via the introduction of the roundabout which will reduce vehicle speeds by acting as a traffic calming feature.

### **Ecology Greenspace and landscape visual amenity concerns**

242. That Shropshire Wildlife Trust had objected to the original application and that the proposal would have wider ecological impacts including to the Shrine Brook and the many species which live within it. That the site is to be designated as part of the Green Network. Its development would harm bat corridors and spoil a circular walk and the panoramic views including of the veteran oak trees and that the site was locally important.
243. This has been addressed via the tree SOGC and the conditions and retention of the veteran oaks, which will enable public access and maintain views of them. MO demonstrated via her Landscape evidence that the site did not qualify as a valued landscape area in terms of the NPPF and that and that it was a best a borrowed landscape from a large nearby house which has now seen the existing residential estate occupying the gap between it and the site with A41 enclosing it on the eastern boundary. This demonstrated the site is contained and not part of a wider valued landscape.

### **Education**

244. Contributions are needed to ensure more capacity at existing schools. Payments are being made via the UU to ensure school place provision is increased in the area in line with the impact of the proposal.

### **THE HOUSING CRISIS**

245. There is a housing crisis in this country, as made clear by the Planning Minister of the time in October 2013 (JS PoE Apdx 2, page 20). He also made clear that this state of affairs is causing grief and hardship for millions of our fellow citizens. The extent of the crisis is revealed in the speeches and reports on the housing crisis set out in JS appendices JS5 – JS8 and include the following:

- Sir John Cunliffe (Deputy Governor Speech) – 1 May 2014
- George Osborne (Chancellor of the Exchequer) – Mansion House speech – 12 June 2014
- Mark Carney (Governor of the Bank of England) – Mansion House Speech – 12 June 2014

- European Commission – Country report United Kingdom 2016 – 26 February 2016
- International Monetary Fund – Staff report for the 2015 Article IV Consultation – 1 February 2016

246. As noted above, from mid-2014 right up to the current time there has been a seemingly endless stream of speeches, interviews and reports demonstrating just how severe the housing crisis is within the UK and how important it is to take action to increase the housing supply. The first signs of the growing concern came from the Bank of England in a speech on 1<sup>st</sup> May 2014 by Sir Jon Cunliffe, Deputy Governor of Financial Stability. He highlighted **“the history of our housing market over the past 25 years as being one in which the supply of housing in the type and place that people want has not kept up with demand”**. [JS Para 3.34 and Appendix JS5]

247. On the 12 June 2014 the (then) Chancellor of the Exchequer George Osborne delivered his annual Mansion House speech. [JS Para 3.35-3.36 and Apdx JS6] Key quotes from Mr Osborne’s speech include:

- As well as being the biggest investment of a lifetime **“a home is also a place to live and build our lives – and we want all families to be able to afford security, comfort and peace of mind. That means homes have to be affordable – whether you are renting or buying. The only way that can be achieved over the long term is by building more, so supply better matches demand.”**

248. Mr Osborne notes the juxtaposition between **“British people want(ing) our homes to go up in value, but also remain affordable; and we want more homes built, just not next to us”** immediately prior to observing that **“you can see why no one has managed yet to solve the problems of Britain’s housing market.”**

- As a consequence **“we see the social injustice of millions of families denied good homes”**.
- Mr Osborne identifies that the Government has taken new steps to protect financial stability, strengthen the new role of the Bank of England and complete the range of tools at their disposal. This addresses the economic problem of how to stop rising house prices leading to an unsustainable rise in household indebtedness and threatening the wider economy, **“but it does not address the social problem of how we stop young families being priced out of the housing market altogether.”**

- The long term solution is that ***“we need to see a lot more homes being built in Britain. The growing demand for housing has to be met by growing supply....I will not stand by and allow this generation, many of whom have been fortunate enough to own their own home, to say to the next generation; we’re pulling up the property ladder behind us. So we will build the houses Britain needs so that more families can have the economic security that comes with home ownership.”***

249. The Governor of the Bank of England, Mark Carney, also made further reference to this matter in his speech at the same event on 12<sup>th</sup> June 2014 stating that ***“the underlying dynamic of the housing market reflects a chronic shortage of housing supply, which the Bank of England can’t tackle directly. Since we are not able to build a single house, I welcome the Chancellor’s announcement tonight of measures to increase housing supply”***. [JS POE Para 3.37 and Apdx JS7]

250. The planning system in this country bears a tremendous responsibility for creating that crisis and the acknowledged hardship and grief it inflicts on millions of people. National problems need local solutions and that means boosting significantly the supply of housing.

251. This tale of woe has continued in the recent reports from the EC and IMF. The EC report published on the 26<sup>th</sup> February 2016 identifies that, “In 2015 growth in house prices significantly outstripped growth in nominal household disposable income and secured credit” (JS para’s 3.38 – 3.42 and Apdx JS8).

252. The IMF commenting on Real Estate Markets and related Macroprudential Policies [JS PoE Apdx 9 - paragraph 43 page 3 of 4] state, ***“increased housing supply will support near term growth, reduce the need for excessive household leverage, and promote social cohesion by lessening wealth inequality, as rising house prices have been a key contributor to the latter in the UK. The government has undertaken a number of welcome initiatives to boost housing supply in recent years such as improving incentives for local government to approve new construction. The authorities should remain vigilant against local-level resistance to effective implementation of these initiatives – otherwise the risks associated with an approval process perceived by many to be slow and unpredictable will remain”***.

253. Also worthy of careful consideration are the content of the local and regional reports and strategies on these issues as set out by JS in sections 4 and 6 of his PoE, namely:

- Homelessness Strategy (2014-2017) (JS PoE Para’s 4.34-38 page 36 and 37)
- Council Plan (2013/14 -2015/16) (JS PoE Para 4.39 page 37), and

- Home Truths West Midlands 2015/16 (JS PoE 6.1- 6.5 page 46).

254. There is a need for more housing in this country and in the Borough. There is also a need for very considerable more affordable housing. The provision of affordable housing is a matter to which the SoS and Inspectors have consistently attached significant and/or Substantial weight, seemingly irrespective of whether a Council can or cannot demonstrate a 5Ys It is submitted that in circumstances where an Appellant is willing to offer 35% AH in an Authority where past delivery has been “poor” compared to annual needs and future supply is far more appropriately described is a matter to which substantial weight should be attached.

255. For all the reasons given above and in the evidence of the Appellant’s witnesses the Inspector is invited to allow the appeal.

**15 December 2016**

**CHRISTOPHER YOUNG**  
**No5 Chambers**  
**Birmingham - Bristol - East Midlands - London**

## ANNEX

### Part A: Abbreviations used in these closing submissions

AAP	- Area Action Plan
AH	- Affordable housing
AL	- Allan Mendelson
Apdx	- Apdx
AT	- Andrew Timbrell
CD	- Core Document
CH	- Cristina Howick
CS	- Core Strategy
DCLG	- Department of Communities and Local Government
DH	- Douglas Harman
DOW	- Daniel Own
DOK	- Darren Oakley
DP	- development plan
dpa	- dwellings per annum
DPD	- Development Plan Document
EiC	- Evidence in Chief
EIP	- Examination in public
fseLP	- emerging Local Plan
HFR	- Household formation rates
HRR	- Household Representation Rates (aka HFR)
Inq Doc	- Inquiry document
JH	- Janet Hodson
JS	- James Stacey
LDF	- Local Development Framework
LP	- Local Plan
LPA	- Local Planning Authority
MO	- Mary O'Connor
MYE	- Mid Year Estimate
NPPF	- National Planning Policy Framework
OAN	- Objectively assessed need
ONS	- Office of National Statistics
PAS	- Planning advisory guidance
PCPA	- Planning and Compulsory Purchase Act 2004
PFSD	- Presumption in favour of sustainable development
PPG	- Planning Policy Guidance
RB	- Roland Bolton
RM	- Reserved Matters
RPOE	- rebuttal proof of evidence
RPUD	- Record of persistent under delivery
RR	- Reason for refusal
RS	- Regional Strategy
SCG	- Statement of Common Ground
SNPP	- Sub National Population Projections
SOS	- Secretary of State
TW	- Telford and Wrekin
TWC	- Telford and Wrekin Council
VFQC	- Vincent Fraser QC
WLP	- Wrekin Local Plan
XX	- cross examination

5YS - Five year supply of housing land

**Part B: Referencing used in these closing submissions**

- NPPF/1 - Paragraph number in the NPPF
- PPG/1/1 - Chapter and Paragraph number in the PPG
- DL/1 - Paragraph number in a SoS decision
- ID/1 - Paragraph number in an Inspector's decision
- IR/1 - Paragraph number in an Inspector Report
- J/1 - Paragraph number in a Court Judgment



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**IN THE MATTER OF**

**LAND TO THE EAST OF KESTREL  
CLOSE AND BEECHFIELDS  
NEWPORT, SHROPSHIRE**

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**CLOSING SUBMISSIONS**

**ON BEHALF OF**

**THE APPELLANT**

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JVH Planning