



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

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an Inspector appointed by the Secretary of State for  
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TOWN AND COUNTRY PLANNING ACT 1990

SOUTH GLOUCESTERSHIRE COUNCIL

APPEAL BY

BOVIS HOMES LTD and BAE SYSTEMS

Inquiry held on 21-24, 28-30 November, 1, 5-8, 12-15 December 2006; closed 28 February 2007

North Field, Filton Airfield, Patchway, Bristol BS99 7AR

File Ref: APP/P0119/A/06/2019118

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**File Ref: APP/P0119/A/06/2019118****North Field, Filton Airfield, Patchway, Bristol BS99 7AR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Bovis Homes Ltd and BAE Systems against the decision of South Gloucestershire Council.
- The application Ref: PT03/3142/O, dated 3 October 2003, was refused by notice dated 14 March 2006.
- The proposal is a mixed use development comprising 2,200 dwellings, 66,000 sq m employment (classes B1, B2 B8), link road, 1,500 sq m retail (classes A1, A2, A3) and support infrastructure/ uses including primary school, community building, extended Patchway centre, open space, hotel/pub, and changes to Highwood Road.

**Summary of Recommendation: The appeal be ALLOWED and planning permission be granted if the application and S106 obligations can be satisfactorily revised; if not, the appeal be DISMISSED.**

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## INTRODUCTION AND PROCEDURAL MATTERS

### *The application*

- 1.1 The application is in outline, with all matters apart from the means of access reserved for subsequent approval. When submitted in October 2003 it included a series of illustrative plans showing the proposed land uses, building heights, density, landscape and open space, access and movement, and phasing.<sup>1</sup> The application was accompanied by a supporting statement,<sup>2</sup> an Environmental Statement with 8 technical appendices,<sup>3</sup> and a Transport Assessment.<sup>4</sup> Full details of the application and the supporting information, including a detailed description of the development (paragraphs 2.15 – 2.32) are given in section 2 of the Statement of Common Ground.<sup>5</sup>
- 1.2 The application was amended on 3 January 2006 with the submission of a Masterplan, Architectural Strategy and Design Code,<sup>6</sup> an axonometric sketch, and supporting statements covering landscape strategy, energy conservation, waste reduction, noise management, drainage management and water conservation.<sup>7</sup> The Environmental Statement was revised to reflect the amendments made. On 9 February 2006 a series of further amendments were made, mostly to the design strategy which was renamed as the Design and Access Statement and Design Code.<sup>8</sup> This formed the information before the Council when the application was determined; full details are given at paragraphs 2.11 and 2.12 of the Statement of Common Ground.
- 1.3 Following extensive discussions with the Council in the run up to the inquiry, a further revised and expanded Design and Access Statement and Design Code (DAS) was

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<sup>1</sup> Plans CD/OSN/3-8

<sup>2</sup> Document CD/OSN/9

<sup>3</sup> Document CD/OSN/11

<sup>4</sup> Document CD/OSN/12

<sup>5</sup> Document GEN/4

<sup>6</sup> Document CD/AIN/2

<sup>7</sup> Document CD/AIN/4

<sup>8</sup> Document CD/FRN/1

submitted in October 2006.<sup>9</sup> Both parties agree that this is the document upon which the appeal should be determined, and their respective cases at the inquiry are based on this latest revision. This version contained a number of errors and inconsistencies which were set out in an errata document submitted at the inquiry. The appellant arranged for a corrected version of the October 2006 document to be prepared during the inquiry; this is dated 14 December 2006.

- 1.4 Publicity was last given to the application and the Environmental Statement in August 2006. The October/December 2006 revision to the DAS is part of the supporting illustrative information, and the changes made are predominantly to the notional internal layout and design. Consequently I believe that a decision based on this latest version of the DAS would not be prejudicial to the interests of any of the persons affected by the development. In these circumstances I consider that it is appropriate to determine the appeal on the basis of the October 2006 revision (using the corrected December 2006 version), and I have written this report accordingly.
- 1.5 When the application was submitted in 2003, the proposed retail development included all uses within Class A of the Town and Country Planning (Use Classes) Order 1987 (UCO). In March 2005 the UCO was amended, with the former Class A3: *Food and Drink* being disaggregated into Class A3: *Restaurants and Cafes*, Class A4: *Drinking Establishments*, and Class A5: *Hot Food Takeaways*. At the inquiry the appellant confirmed that the proposal continued to relate to all uses within Class A, and that the description of the development should be amended from ‘Classes A1, A2, A3’ to ‘Classes A1, A2, A3, A4, A5’.
- 1.6 The Council’s decision notice listed 14 reasons for refusal, as set out in the Council’s statement of case.<sup>10</sup> In brief these are:
- The absence of an agreed masterplan and architectural strategy which clearly demonstrates (1) how the development has been planned on a comprehensive basis to achieve maximum practical integration between different uses, and (2) how the urban structure, landscaping, density and overall massing would achieve a high quality design which respects and enhances the local character and distinctiveness;
  - The absence of supporting strategies designed to ensure high environmental performance in terms of energy and water efficiency, and waste management;
  - The absence of a planning obligation to secure the provision of necessary affordable housing to meet local needs;
  - The absence of a planning obligation to secure the provision of the following necessary community facilities and infrastructure: public open space, public art, primary and secondary school facilities, youth and children’s services, health care facilities, adult social services, and new and improved public transport services;
  - The absence of a response from the Secretary of State for Transport in respect of the impact of the development on the surrounding motorway network;
  - The absence of a design option enabling the link road to be connected to the San Andreas roundabout;
  - The absence of sufficient information to determine the impact of the development on the setting of the adjacent listed buildings.

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<sup>9</sup> Document CD/DAS

<sup>10</sup> Document GEN/6

*The appeal*

- 1.7 The appeal was recovered for determination by the Secretary of State by direction made on 12 July 2006 for the reason that it raises issues relating to residential development of 5 or more hectares or 150 or more dwellings.
- 1.8 Among the proofs of evidence submitted prior to the inquiry were statements relating to education, ecology, landscape and heritage matters from the appellants,<sup>11</sup> and to education and health provision on behalf of the Council.<sup>12</sup> As a result of discussion and negotiation between the parties during the inquiry, agreement was reached on nearly all these matters. In respect of education, a statement was produced which sets out the basis for the agreement.<sup>13</sup> Consequently, neither party felt it was necessary to call their expert witnesses to give evidence on these matters at the inquiry. Nevertheless, the proofs remain as submitted documents to provide background information on these issues.
- 1.9 As a result, many of the reasons for refusal were not contested. To assist the Secretary of State, I have provided a brief summary of the agreed matters in Section 4 of this report.
- 1.10 The inquiry sat for 16 days. I carried out an accompanied inspection of the appeal site on 8 December, and was accompanied to various locations in and around Bristol on 19 December. At the parties' request, I made unaccompanied visits to other housing and employment sites in the northern and eastern fringes of Bristol during the inquiry.

*Section 106 Obligations and Agreement*

- 1.11 The appellants acknowledge that the proposed development would have significant consequences for community facilities and other infrastructure unless appropriate provision is made. At the inquiry the appellants and the Council established the principle that matters upon which agreement had been reached would be included in a section 106 Agreement (S106) signed by them both, while matters not agreed would form part of one or more Unilateral Undertakings submitted by the appellants. Negotiation between the parties on the content of these obligations continued throughout the inquiry, with the result that their final form was not decided until the penultimate sitting day.<sup>14</sup> At this point it was evident that there remained a number of drafting points to resolve, for both parties acknowledged that the obligations would not actually deliver what was intended.
- 1.12 To enable sufficient time for these documents to be properly drafted, I indicated that I would keep the inquiry open and accept the submission of completed, executed obligations after the final sitting day. I set out a timetable for this process, which had to be extended by one week to enable matters to be finalised. I received one Agreement and two Unilateral Undertakings.<sup>15</sup> I found that certain matters relating to drafting and the mechanisms for delivery were still not clear, and it was necessary for me to put a number of questions in writing to the parties. After a further round of written representations I closed the inquiry in writing on 28 February 2007. I deal with the content of these obligations in Section 9 of this report; I have taken them into account in making my recommendation.

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<sup>11</sup> Documents BOV/6/1-3, BOV/7/1-3, BOV/8/1-2, BOV/9/1-2

<sup>12</sup> Documents SG/4/1-3, SG/7/1

<sup>13</sup> Document GEN/5

<sup>14</sup> Document INQ/63

<sup>15</sup> Document INQ/64 – two copies of each document were received, each signed by one party.

- 1.13 Various handwritten amendments have been made to the printed versions of the agreement; the parties confirmed that all copies had identical endorsements. One of these amendments has led to an error in Annex 3, the draft Bond. The table which lists the Bond contributions includes hand-written changes for the public open space commuted sum which have not been reflected in the bottom line totals. The parties acknowledge this discrepancy and indicate their intention to resolve it.

#### *Environmental Statement*

- 1.14 The Environmental Statement was prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended. In arriving at my recommendation I have taken into account the environmental information contained in the Environmental Statement and presented at the inquiry, and the comments about the likely environmental effects of the proposed development. As required by Regulation 21(2) of the Regulations, a description of the main mitigation measures proposed to avoid, reduce and offset the major adverse effects of the development is included in my conclusions. This is based on a document prepared by the parties which sets out these measures in greater detail.<sup>16</sup>

#### *Recently published Government policy and guidance*

- 1.15 During the inquiry the final versions of Planning Policy Statement (PPS) 3: *Housing* and PPS25: *Development and Flood Risk* were published, along with the policy statement *Delivering Affordable Housing*. Also published were *Preparing Design Codes: A Practice Manual* and the *Code for Sustainable Homes*. Consultation drafts of a supplement to PPS1: *Planning and Climate Change* and *Building a Greener Future*, together with a Planning-gain Supplement consultation *Changes to Planning Obligations*, were released during the same period.
- 1.16 All these publications were taken into account by the main parties in their evidence to the inquiry. PPS3 and the statement on affordable housing had significant implications for their cases, and necessitated some witnesses being recalled. It should be noted that certain aspects of the written evidence, particularly that given by the expert witnesses on affordable housing (Mr Larkin for the Council and Mr Parker for the appellant), have been superseded by verbal evidence which addresses this latest Government policy and advice. I asked the parties to ensure that their closing submissions fully addressed the changed policy background, and my reporting of the parties' cases reflects the up-to-date position.

## **THE SITE AND SURROUNDINGS**

- 2.1 The appeal site comprises the northern part of Filton airfield and extends to some 74ha. It is bounded by two dual-carriageway roads: the A38 Gloucester Road to the east and Highwood Road to the north-west, and includes significant lengths of these highways within the red-line boundary (increasing the gross site area to about 81ha).<sup>17</sup> The site is vacant, unused land that is no longer part of the operational airfield, from which it is separated by a temporary fence. The land slopes gently from Highwood Road down to the southeastern boundary with the airfield.

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<sup>16</sup> Document INQ/48

<sup>17</sup> Plan A

- 2.2 The eastern half of the site is predominantly open, comprising a concrete runway and taxiways, an aircraft parking apron, circulation tracks and extensive areas of grass. It contains a few scattered buildings, including a modern hangar close to the southern boundary which, along with all the existing buildings, would be removed as part of the development. A small triangular area to the north, fronting Highwood Road, is overgrown with dense scrub and bounded by a tall hedgerow. On the western side of the site there are extensive areas of broken hardstanding and the flattened foundations of former buildings, remnants of a former USAF base. A few small brick structures and portacabins remain, and the area is scattered with abandoned vehicles and parts. Scrub has colonised the spaces between the hard surfaces, though the area is relatively open, with few trees. There is a pronounced embankment along part of the boundary with Highwood Road, backed by a line of conifers.
- 2.3 In the southern part of the site the relic of Hayes Lane, a narrow country lane contained by heavily vegetated embankments, marks the northern extent of a former RAF base. This area is much more enclosed, with avenues of trees along a rectilinear pattern of roadways subdividing it into a cellular arrangement of building bases and hardstandings. Although most of this area is derelict, several buildings and structures close to the southern boundary remain in use; it continues beyond the appeal site onto the active airfield, where there are a number of hangars and other buildings. The small broad-leaved woodland known as Filton Airfield Wood also straddles the southern boundary, to the west of which is a more open area of scrub and concrete hardstanding divided by the tree-lined remains of the original alignment of Highwood Road.
- 2.4 The open expanse of Filton Airfield, with its long east-west active runway, lies to the south of the site, beyond which is the Airbus UK industrial complex. To the south-east is a modern Royal Mail regional sorting office; the proposal includes provision for a new access to the western side of this complex. Across the A38 Gloucester Road to the east are further industrial and trading areas along Gypsy Patch Lane, to the north of which the industry is interspersed with small blocks of housing fronting Gloucester Road.
- 2.5 The northern part of the site adjoins the predominantly residential neighbourhood of Patchway, with the back gardens of semi-detached houses on Callicroft Road abutting the north-eastern boundary. The small retail and commercial centre of Patchway is situated across Highwood Road to the north of the site. To the west of the residential area is the Patchway Trading Estate, which merges into the large retail complex at Cribbs Causeway that lies just beyond the western edge of the site. Sandwiched between part of Highwood Road and the western site boundary is an elongated site for travellers.

## **PLANNING POLICY**

- 3.1 The development plan includes Regional Planning Guidance for the South West, published in 2001 (RPG10 – the Regional Spatial Strategy), the Joint Replacement Structure Plan (JRSP) for the four unitary authorities of the former county of Avon, adopted in 2002, and the South Gloucestershire Local Plan (SGLP), adopted in January 2006. The policies most relevant to the proposal are identified below; a full list of applicable policies is included in the Statement of Common Ground.

*Regional Planning Guidance for the South West*<sup>18</sup>

- 3.2 RPG10 policies SS 1, SS 2 and SS 3 indicate that the northern sub-region, which includes Bristol and the surrounding area, will continue to be the main focus for growth, and that the Principal Urban Areas (PUAs) offer the best opportunity for accommodating the majority of development in the most sustainable way. The sub-regional strategy seeks to build on the economic strengths of the north of the region, to make provision for future requirements within the PUAs so as to strengthen their role and foster urban renaissance, and to develop and improve sustainable urban transport networks. Amongst the specific proposals for the Bristol area (policy SS 8) is the balanced provision of additional housing, employment, social and recreational facilities within the urban area.
- 3.3 The approach to economic development (policy EC 1) includes continued growth in sustainable locations in the more prosperous north and east of the region. Policy EC 3 aims for a range and choice of employment sites to be provided to meet the needs of local businesses and inward investment, giving particular preference to previously-developed land within urban areas which would be well-integrated into the existing settlement pattern and provide a realistic choice of access. The policy also proposes a review of existing employment land allocations to ensure compatibility with the sustainable development criteria of the strategy.
- 3.4 The housing objectives include giving priority to the re-use of previously-developed land in urban areas; creating mixed communities with a greater choice and better mix of size, type and tenure; creating more sustainable patterns of development by improving accessibility to jobs and services; and promoting well designed residential environments which improve the quality of life. Policies HO 1, HO 3, HO 5 and HO 6 elaborate and quantify these objectives. They include achieving at least 50% of new housing on previously-developed land, adopting a sequential approach to the identification of sites, making more efficient use of land by encouraging housing at higher densities, and meeting the housing requirements of the whole community, including those in need of affordable and special needs housing.

*Joint Replacement Structure Plan*<sup>19</sup>

- 3.5 Although it was based largely on the earlier (1994) RPG10, the JRSP policies which are relevant to this appeal broadly reflect the strategy of the 2001 RPG10. Policy 1 reiterates the principles of sustainable development by focussing development within the PUAs, encouraging the re-use of land and buildings, providing mixed housing developments in accessible locations, and promoting more sustainable transport. The locational strategy (policy 2) seeks a more balanced pattern of housing and employment by, amongst other means, restraining the expansion of employment uses in the Bristol North Fringe by diversifying development on existing land commitments to provide more housing. This is amplified in policy 12, which seeks a greater mix of higher density land uses at locations within the North Fringe which are well served by public transport.
- 3.6 Policy 33 provides for 16,100 additional dwellings in South Gloucestershire between 1996 and 2011. Local plans should give priority to brownfield sites and the reallocation of sites identified for other uses which are no longer required. Policy 35 states that provision should be made for a wide range of housing which reflects local conditions, including affordable housing identified by local assessments.

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<sup>18</sup> Document CD/RPG/1

<sup>19</sup> Document CD/DP/20



*South Gloucestershire Local Plan*<sup>20</sup>

- 3.7 The recently adopted SGLP was prepared against the background of the JRSP and RPG10. RPG10 identifies a rate of housing provision for the former Avon county area that is some 10% higher than the JRSP. The Local Plan Inspector concluded that the RPG was the more up-to-date guidance (notwithstanding the later adoption date of the JRSP), and recommended an increase in the 1996-2011 housing requirement for South Gloucestershire to 17,760 dwellings. The Council accepted this recommendation and used this figure in the adopted plan. It also undertook the review of employment sites and allocations recommended by the JRSP locational strategy.
- 3.8 One consequence of these shifts in emphasis is that the land at Filton Airfield North Field, which was previously envisaged as a future employment site, is now proposed in policies H1 and E1 for a mixed-use development in which residential forms the main component. Policy M1 sets out the detail and, given its direct relevance to the appeal proposal, it is repeated in full:
- “The development will comprise:
- A. Approximately 2,200 dwellings in a mix of sizes and types, and provision for a range of local facilities including local shopping, health care, education and other community facilities.
- B. Approximately 14 ha for B1 (business) uses, B2 (general industry) uses and small scale B8 (distribution) uses.
- Development will be planned on a comprehensive basis, designed and phased to ensure maximum practical integration between the different uses within and beyond the site and provision of ancillary facilities and supporting infrastructure and safeguard the existing commercial activities and authorised operation of the aerodrome. In particular, provision will be made for:
- A comprehensive network of safe and convenient footpaths and cycleways linking all the uses and destinations beyond the site;
  - A high standard of bus penetration and significantly improved orbital services linking to major employment destinations, the regional shopping centre and other transport interchanges in the North Fringe and services to central Bristol.
  - An alternative through-road to Highwood Road linking the Cribbs Causeway regional shopping centre with the A38 Gloucester Road.
- To this end, developers will be expected to contribute towards the early provision of the comprehensive package of transportation measures set out in figure 8.2 in scale and kind to the development.”
- 3.9 The accompanying text indicates that 14ha of employment land is regarded as sufficient to maintain job opportunities for residents in the Filton/Patchway area. The 2,200 dwellings are expected to be accommodated on a net area of approximately 44ha at an average net density of 50 dwellings per hectare (dph). A range of dwelling types and sizes are proposed, including 33.3% affordable units, as well as supporting facilities and services to meet local needs. The objective is to encourage a degree of ‘self containment’ and minimise the necessity for travel by private car.

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<sup>20</sup> Document CD/DP/1

- 3.10 SGLP policy D1 aims to achieve good quality design by requiring matters such as siting, layout, density, form, scale and massing to respect and enhance the character, distinctiveness and amenity of the site and the locality. Existing features of landscape, nature conservation or heritage value should be safeguarded, and new landscaping should be integral to the overall design. Access should be safe, convenient and attractive by all modes of travel, and the design should have regard to matters such as crime prevention, energy conservation and waste recycling. Maximum parking standards are proposed in policy T8, with provision below the maximum expected in locations which have good accessibility by non-car modes.
- 3.11 The text accompanying policy H1 indicates the Council's desire to achieve attractive, high quality living environments in which people will choose to live. Prospective developers are encouraged to think imaginatively about designs and layouts which make more efficient use of land without compromising the quality of the environment. The authority believes that the best way of achieving these objectives is through the preparation of Concept Statements and the adoption of planning guidance in the form of a Planning Brief, and where appropriate a Master Plan, covering the whole of the site in question. The text states that the Council will seek to work with developers in the preparation of such material.
- 3.12 Policy H6 states that the Council will negotiate the provision of subsidised affordable housing to meet local needs. In seeking to negotiate the maximum feasible level of affordable housing, the policy indicates that the Council will have regard to matters such as the economic viability of the site, likely costs, market conditions, the availability of public subsidy, and the aim of achieving balanced communities. The housing is to be reserved by condition or planning obligation for first and subsequent occupiers in need.

*Draft Regional Spatial Strategy for the South West*<sup>21</sup>

- 3.13 The Draft Regional Spatial Strategy for the South West 2006-2026 was published in June 2006. The draft strategy is based on the identification of Strategically Significant Cities and Towns (SSCTs) as the focus of most new development, and aims to deliver more sustainable communities and a better balance between homes and jobs. To keep pace with potential household and job growth, the level of housing provision is forecast to be above that identified in RPG10.
- 3.14 Bristol is seen as retaining its role as the core city and economic hub of the South West; Policy SR4 makes provision for growth of at least 92,000 jobs in the Bristol TTWA over the plan period. This would be complemented by an average of 3,200 dwellings per annum (dpa) within and adjoining its urban area. This includes 650 dpa in the part of South Gloucestershire within the Bristol urban area, and 400 dpa in the part to the north and east of the city. An additional 100 dpa are proposed in the remainder of South Gloucestershire, giving a total of 1,150 dpa over the plan period. The land requirement for employment sites is not specified: under Policies E1 and E2, local authorities are expected to assess demand and make provision for a range of sites through their LDDs so that a ready supply of sites and premises is maintained.
- 3.15 The draft RSS Development Policy D seeks to ensure that development contributes to the cost of necessary infrastructure and environmental improvements, and that such provision is phased in step with the development. The highest possible standards of design are sought by Development Policy E, both in terms of urban form and

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<sup>21</sup> Document CD/RPG/3

sustainability criteria. Development Policy F indicates that major mixed-use developments should be planned on a comprehensive and integrated basis within an overall masterplan and phasing regime which secures mixed and balanced developments, including housing of varied types and tenures at a density of at least 50 dph.

#### *Non-statutory local guidance*

- 3.16 In consultation with local stakeholders, the Council prepared a Concept Statement for the North Field site in November 2002.<sup>22</sup> This aims to illustrate, in broad terms, how the various elements of the development might be accommodated on the site, and sets out a series of development principles in both written and graphic form. It was approved by the Council as a starting point for the preparation of a more detailed Development Brief, though it has no statutory status.
- 3.17 The Draft North Field Development Brief<sup>23</sup> was published for consultation in October 2006. This builds on the Concept Statement by defining core development objectives relating to matters such as character and form, continuity and enclosure, mixed use, sustainable construction, quality of the public realm, ease of movement and traffic management. It includes a framework plan and individual concept plans addressing matters such as urban design, movement and landscape which, together with the explanatory text, are intended to inform the preparation of a more detailed illustrative Masterplan. Once amended as a result of the consultation process, the Council intends to adopt the Development Brief as a Supplementary Planning Document (SPD). However, the current draft document has no statutory status.
- 3.18 The Council published draft supplementary planning guidance (SPG) on affordable housing in August 2002.<sup>24</sup> This was intended to supplement the SGLP Revised Deposit Draft policy H6, which differs from the adopted policy H6 in relation to the target for affordable housing and site-size threshold. Nevertheless, pending its replacement by a forthcoming SPD, the Council uses the draft SPG to explain its approach to the implementation of policy H6. An appendix which addresses the financial implications of affordable housing provision is updated annually. The draft SPG has not been adopted prepared or in accordance with the advice in PPG12/PPS12, so it has no statutory status.

### **MATTERS AGREED BETWEEN THE COUNCIL AND THE APPELLANTS**

- 4.1 I indicate in paragraph 1.9 that many of the Council's reasons for refusing planning permission were resolved through negotiation before or during the inquiry. In this section I give a brief explanation of the more significant of these matters and, where appropriate, provide references to the relevant documents.

#### *Movement and transport*

- 4.2 The transport proposals are aimed at encouraging walking, cycling and the use of public transport as a priority over the use of the private car. A key element within the overall strategy is a new dual carriageway road across the south of the site, linking Highwood Road with the A38 Gloucester Road. This would enable through traffic to be removed from Highwood Road, which would be downgraded to provide local access to the site

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<sup>22</sup> Document CD/SPD/12

<sup>23</sup> Document CD/SPD/13

<sup>24</sup> Documents CD/SPD/7a and 7b

and to the existing Patchway area. At its western end the new through road was proposed to link to the Standing Stone roundabout on Highwood Road, and the transport Masterplan was designed on this basis.<sup>25</sup>

- 4.3 The Council acknowledges that this arrangement is acceptable, but would prefer the link to connect with the San Andreas roundabout, at the far western corner of the site, so as to provide a more direct east-west strategic route. There is no technical reason why this alternative link could not be built; however, the appellants do not own all the necessary land. Part of the land is owned by the Council, part is highway, and part is owned by J T Baylis (part-owners of the nearby Cribbs Causeway shopping mall). Originally it was feared that the land in private ownership amounted to a “ransom strip”, but J T Baylis have recently indicated their support for the San Andreas link and have offered to make their land available.<sup>26</sup> The Council has also confirmed that its land and the highway land can be utilised for the construction of the San Andreas link. The current position is set out in more detail in Document INQ/20.
- 4.4 Schedule 4 of the S106 Agreement is now drafted such that connection to the San Andreas roundabout is the preferred route for the Principal Link Road. However, if that cannot be provided, the Agreement allows for the connection to be made to the Standing Stone roundabout.
- 4.5 The second transport matter concerns the impact of traffic on the surrounding trunk road network. The Highways Agency (HA) contends that the northbound carriageway of the M5 on the approach to junction 17 should be widened to cater for the additional traffic that would be travelling to the proposed employment development during the morning peak. The HA objects to more than 30,000 sq m of employment floorspace being occupied until a satisfactory widening scheme has been implemented at the developer’s expense. The appellants’ highways consultants have designed a scheme which, although it involves a departure from geometric standards, has been approved by the HA.<sup>27</sup> Consequently a technical solution to the M5 widening issue has been found.
- 4.6 There remains a disagreement between the parties about the mechanism for ensuring that these works are carried out, and the consequences for the mixed use nature of the whole development if they are not. This is elaborated in the section dealing with conditions and obligations (Section 9).

#### *Impact on setting of listed buildings*

- 4.7 The Council was concerned at the lack of information to enable it to determine the impact of the development on the two Grade II listed aircraft hangars on the active airfield close to the southern edge of the site. The evidence of Mr Munby<sup>28</sup> argues that, in their current setting, the listed buildings principally relate to the airfield to the south, outside the site, and that this setting will not be changed by the proposed development. It is pointed out that immediately to the north of the hangars is a bank of woodland that forms a screen between the hangars and the main area proposed for development, which would be substantially retained and enhanced. Consequently, while the development would alter the environs of the listed hangars, it would have minimal impact on their setting and do no harm to the buildings. This evidence was not contested by the Council.

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<sup>25</sup> Plan J

<sup>26</sup> Document GEN/3, letter from Indigo Planning dated 17 November 2006

<sup>27</sup> Document INQ/59

<sup>28</sup> Document BOV/9/1

*Community facilities and infrastructure*

- 4.8 For the most part the Council's reasons for refusal in respect of infrastructure provision were more to do with the absence of a planning obligation rather than a substantive concern that appropriate provision would not be made. Most of these matters were either resolved, or thought to be capable of resolution, when the appellants submitted a draft S106 in the run-up to the inquiry. However, the authority remained concerned about the adequacy of the funding and delivery mechanisms for provision of the two-form-entry primary school that is required as part of the development. The proofs of evidence of Patricia Vedmore (for the Council) and Stephen Clyne (for the appellants) set out the respective positions.
- 4.9 During the inquiry the parties reached agreement and a joint statement was prepared.<sup>29</sup> This indicates that the approximate location for the primary school has been established, that the cost and the timing of provision are agreed, and that the appellants will not have an overriding option to construct the school.

**THE CASE FOR SOUTH GLOUCESTERSHIRE COUNCIL****Introduction**

- 5.1 The Council believes that there are two main issues between the parties for determination by the Secretary of State. These are:
- (a) Whether the Secretary of State is satisfied that the documentation produced by the appellants will produce sufficient control at the outline planning permission stage to ensure a high quality, comprehensive, mixed use scheme in accordance with policies M1 and D1 of the adopted SGLP, PPS1, PPS3 and Circular 01/06;
  - (b) Whether the Secretary of State is satisfied that the proposals for affordable housing provision will make appropriate and adequate provision for those in need of housing in the District in accordance with policy 35 of the JRSP, policy H6 of the adopted SGLP, PPS3 and its companion guide, Delivering Affordable Housing.
- 5.2 The Council submits that the Secretary of State cannot be so satisfied in respect of either of these two main issues and should therefore refuse permission.

**Context**

- 5.3 It is important to put the two issues into their context. The North Field site is a strategic site of considerable importance to the District. It is a site recognised by the Inspector to the Local Plan Inquiry as being "central to the strategy of the plan".<sup>30</sup> It is one of only two mixed use sites in the District, and one of the two largest sites proposed by some considerable way.
- 5.4 In bringing this site forward, it is therefore critical that past mistakes, such as have occurred at Bradley Stoke where 'anywhere' architecture has prevailed and where infrastructure provision has been inadequate, are not repeated. It is equally important to ensure that this development does produce a step change from the mediocrity of

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<sup>29</sup> Document GEN/5

<sup>30</sup> Document CD/DP/19 Paragraph 9.1 page 219

‘anywhere’ architecture, to housing which is high quality in design, which creates a sense of place with its own identity, and which maximises the opportunity to improve the character and quality of this area.<sup>31</sup> Achieving these objectives is all the more challenging given the policy imperative to make more efficient use of land, with the 50 dwellings per hectare (dph) target being substantially higher than the 30 dph previously sought and achieved on previous strategic sites such as Bradley Stoke and Emersons Green.

- 5.5 Achieving high quality design can only be ensured through setting in place the appropriate documentation and controls at the outline planning permission stage in order to properly control the permission. This is particularly important for this strategic site as the appellants intend to sell off parcels to other house builders for them to develop. Once planning permission is granted this site will fragment in terms of ownership and the “substantial advantage” of single ownership, recognised by the Inspector at the Local Plan Inquiry,<sup>32</sup> will no longer exist. It is essential therefore that the documentation and suggested controls are clear and readily understandable by those not involved in this process. The Council submits that they are not.
- 5.6 It is likely that the decision in respect of this appeal will be one of the first, if not the first, relating to a strategic site that is allocated for mixed-use development to be determined under the new national policy guidance regime established by Circular 01/06 and PPS3 and related documents. It will therefore set a precedent for the proper approach to be taken in respect of outline applications for such strategic sites in order to ensure that they do in fact achieve highly quality, well designed development. It is therefore of critical importance that what is needed to achieve that is scrutinised with the utmost care.

### **Masterplanning**

- 5.7 The two main parties agree that at the outline planning permission stage there should be put in place a Design and Access Statement (DAS), which should include a Masterplan and a Phasing Strategy, and a Section 106 Agreement. It is also agreed that the DAS should be in accordance with Circular 01/06.
- 5.8 The DAS upon which the appellants rely has had a chequered history. It was originally produced to the Council over a period in January and February 2006. That document has now been withdrawn and substituted by a document produced in October 2006, four weeks before the start of the inquiry. One week before the inquiry a corrected DAS was produced, together with errata sheets. Nine further errata sheets were produced during the inquiry, and further errors were identified in cross examination. It is not unreasonable to conclude that there may well be other unidentified errors in the document.
- 5.9 The Council suggests that the gestation of this document is symptomatic of the rather haphazard approach of the appellants, and reinforces the need to ensure that all documentation produced at this stage accords with the requirements of Circular 01/06. This is particularly important as CABE’S independent housing audit of seven of Bovis’ previous developments in London and the South East assessed them as either “average” (five schemes) or “poor” (two schemes).<sup>33</sup> No schemes were judged as “good”, let alone

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<sup>31</sup> PPS1 Paragraph 13 (iv); PPS 3 Paragraphs 13 and 14

<sup>32</sup> Document CD/DP/19 page 221 para 9.14

<sup>33</sup> Document CD/CD/10 pages 4; 14; 50 & 51

“very good”. Clearly those schemes did not produce, in the opinion of CABE, high quality well designed schemes.

5.10 The White Paper *Our towns and cities: the future – Delivering an urban renaissance* and CABE’s *Creating Successful Masterplans* demonstrate that a masterplan and accompanying documentation should perform the following role and function:

- Set out a vision and a strategy for the implementation of that vision that will work as a whole or in parts and can be implemented incrementally;
- Shape what happens on the site, giving it coherence and a sense of identity;
- Clarify and show understanding of realistic delivery strategies;
- Demonstrate that the overall objectives and vision can be widely understood;
- Provide sufficient certainty and fix on the principles of development.<sup>34</sup>

There can be no confidence that the documents will in fact perform these functions.

5.11 Guidance on the role, function and content of the DAS, of which the Masterplan forms part, is also found in Circular 01/06. In particular, it is agreed that the current DAS produced by the appellants should do the following:

- Play a particular role in linking general development principles to final detail designs;
- Explain and justify the design principles that will be used to develop future details of the scheme;
- Enable a better understanding of the analysis which has underpinned the design and how that has led to the development of the scheme;
- Enable the design rationale to be transparent to stakeholders including the Council;
- Effectively cover all design issues for the proposed development.

5.12 The role of the outline planning permission is to:

- ensure that the relevant parts of the DAS are adhered to in drawing up and assessing future details;
- fix the principles contained in the DAS to future decisions;
- ensure that the development is constrained to the parameters described in the DAS so that future decisions are consistent with it.

Therefore the principles and parameters must be clear, properly explained and justified to enable this to happen. The DAS must ensure that the development is coherent and that it strikes the right balance between variety and harmony. This is essential if the development as a whole is to have a distinctive identity and engender a sense of place. Furthermore, it needs to be comprehensive, effective and robust so as to ensure the delivery of a high quality and distinctive mixed use development with a strong sense of identity.<sup>35</sup>

5.13 The Council submits that the DAS is fundamentally flawed in several material respects and, as a result, the document does not and will not perform the roles and functions required of it. The reasons for this are set out below.

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<sup>34</sup> Document CD/CD/7 page 33 paragraph 2.2.2 & page 34; page 84 paragraph 4.4; page 97 paragraph 5.1; page 101 paragraph 5.2.4; page 110 paragraph 5.5

<sup>35</sup> Document CD/DAS page 6 paragraph 1.4.5; page 7 paragraph 1.5.2; page 28 paragraph 4.1.1

*Masterplan and Block Development*

- 5.14 Section 5 of the DAS purports to set out the “Vision and Objectives” for the North Field proposal. This section includes the Masterplan<sup>36</sup> which shows a block structure approach containing five “Block Development Principles”.<sup>37</sup> Both of these components are key to ensuring that the vision, and the implementation of that vision, is clear from the outset and is capable of being utilised by other stakeholders who have not been involved in the process. These are fundamental components necessary to ensure the delivery of a well designed, high quality scheme. Circular 01/06 requires in respect of “layout” that the outline application should provide information on the approximate location of buildings, and that the DAS should explain and justify the principles behind the choice of development zones or blocks and explain how these principles will inform the detailed layout. In the Council’s view the documentation does not do that.
- 5.15 Firstly, it is not possible to understand from the DAS the approximate location of the buildings proposed for this site. The Masterplan merely shows development zones or blocks, not the approximate location of buildings, and the Circular clearly draws a distinction between the two. This level of detail was originally provided in the February 2006 DAS and Masterplan, but has now been removed.<sup>38</sup> This simplification does not make the document more robust (as claimed by the appellants), merely more opaque and less robust. Moreover whilst the location of the perimeter block buildings is potentially ascertainable, this is by way of a convoluted route through the document which is neither clear nor readily understandable. Of the forty plus blocks, the approximate location of buildings is shown only in the employment land<sup>39</sup>, south of Hayes Road<sup>40</sup> and in two sample sketches.<sup>41</sup> Therefore in respect of the vast majority of the development blocks the approximate location of buildings within them is not known, even through a convoluted reading of the document. In this respect Circular 01/06, which sets out the minimum level of information required in an outline application, is not complied with.
- 5.16 Secondly, the principles of block development are limited in extent, incomplete and have no explanation or justification. There is no explanation as to how the sample block sketches, one of which contains errors in street hierarchy, are derived from the principles set out. There is no link provided as to how the principles translate into the sketches. Furthermore, there is no guidance in respect of the internal arrangements in the block; how the key issues of the relationship between public and private space are to be addressed; or how car parking is to be approached. There is no explanation or justification of how these design principles will be used to develop the future details of the scheme and no transparency of design rationale. Indeed the DAS itself accepts that the block structure has an “inherent flexibility” and can incorporate “a variety of urban forms”<sup>42</sup>. In the absence of any clear guidance on how the principles should be used, this is just as likely to produce badly designed block layouts as good ones. There would be nothing to prevent the block layout originally proposed by the appellants, but now abandoned, coming forward at the reserved matters stage by another developer.

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<sup>36</sup> Document CD/DAS sections 5.4 and 5.5; figs 5.7 and 5.9

<sup>37</sup> Document CD/DAS section 5.7 page 54

<sup>38</sup> Document CD/DAS compare figs 5.5 with 5.6 page 47

<sup>39</sup> Document CD/DAS fig 5.14 page 53

<sup>40</sup> Document CD/DAS fig 7.13 page 105

<sup>41</sup> Document CD/DAS fig 5.16 and fig 5.20

<sup>42</sup> Document CD/DAS paragraph 5.7.2 page 54



- 5.17 Furthermore the South West Design Review Panel expressed concern over a lack of information in respect of the block structure approach. They suggested that a range of typical block plans should be worked up to highlight any problems.<sup>43</sup> This has not been done beyond the two that were already in front of it. In the absence of such work, the Panel questioned whether the housing density could be achieved with surface car parking, reasonable privacy and adequate amenity space. This concern must still remain. Indeed the sample sketch produced shows the backs and fronts of buildings looking on to each other; this is not ideal in design terms and needs to be handled with particular care. Moreover, English Partnerships identified some disadvantages largely relating to security and street inactivity with the adoption of a block design approach at Poundbury<sup>44</sup> which, as proposed here, relies on placing dwellings within the blocks and allowing public access through their interiors. At Poundbury there was a detailed Masterplan and very prescriptive Design Code – a situation that does not pertain here. These matters reinforce the Council’s concern that more explanation is needed in the DAS to inform the detailed design stage.
- 5.18 Thirdly, the area south of Hayes Lane is a particularly sensitive part of the site. The DAS provides no explanation, analysis or justification as to how the principles in respect of this block, particularly the need to provide for overlooking of Hayes Lane, are to inform the design. The Council is extremely concerned to ensure that the DAS conveys clearly the intended design concept for this area, as well as illustrating the form of development required in order to realize the concept. Given the constraints and opportunities associated with the existing avenues of trees, the DAS needs to provide much clearer guidance on the building forms that should be deployed in order to reconcile all of the stated design principles.
- 5.19 Fourthly, it is not clear from the DAS how certain components of the Urban Design Strategy are to be approached, notably Special Frontages and Space Hierarchy. The Central Green Spine is a special frontage which is “critical to the character and identity of the development”.<sup>45</sup> It is intended to have a “strongly formal edge”,<sup>46</sup> and along the western boundary of the Central Green Spine a lane is proposed.<sup>47</sup> This is the lowest order of street in the hierarchy of streets<sup>48</sup> and is intended to be informal in terms of its character and role.<sup>49</sup> There is therefore a conflict and a lack of clarity between the character and role of the Central Green Spine (formal) and the character and role of the lane (informal). There is no meaningful explanation in the document as to how this conflict is to be resolved.

### *Scale of Development*

- 5.20 Circular 01/06 provides that where scale has been reserved, the application should still indicate the parameters for the upper and lower limits of the height, width and length of each building proposed “to establish a 3-dimensional building envelope within which the detailed design of buildings will be constructed”. The design component of the DAS should “explain and justify the principles behind these parameters and explain how they will inform the final scale of the building”. The submitted DAS cannot provide this

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<sup>43</sup> Document SG/1/1 page 87 paragraph 7.43

<sup>44</sup> Document CD/EPD/1 page 128

<sup>45</sup> Document CD/DAS page 128 paragraph 8.6.3

<sup>46</sup> Document CD/DAS paragraph 8.6.14

<sup>47</sup> Document CD/DAS page 67 fig 6.10

<sup>48</sup> Document CD/DAS page 66 paragraph 6.3.13

<sup>49</sup> Document CD/DAS page 71 paragraph 6.3.37

information: because the approximate location of buildings is not known, even an approximate number of buildings cannot be ascertained, and information in respect of their scale cannot be known or provided either.

- 5.21 Moreover the information that is provided in the DAS in respect of scale is so vague as to be meaningless. It provides parameters of buildings ranging in length between 4m and 100m for a “standard residential building” and 4m to 125m for a “corner residential building”.<sup>50</sup> The widths vary between 7m and 15m, while heights are generally shown on figure 6.8, giving maximums but no minimums. There is very little, if any, explanation and justification behind these parameters, nor how these will inform the final scale of any particular building. A three dimensional envelope of buildings cannot be ascertained from these parameters in any meaningful way, because they are so wide.

#### *Appearance of Development*

- 5.22 Circular 01/06 requires that a DAS should “explain and justify the principles behind the intended appearance and explain how these will inform the final design”. In terms of architectural style, the DAS proposes “a strong contemporary approach to architecture” in respect of the employment provision, while the approach to residential is “a contemporary interpretation of vernacular building forms with a predominant use of traditional materials”.<sup>51</sup> Other different descriptions and phrases, which are equally vague, appear in the document.<sup>52</sup> These are very wide descriptions which are open to a very wide interpretation. Furthermore sample sketches carry ‘health warnings’ that other interpretations are possible. It is difficult to understand in the document how these very wide definitions are informed by the character analysis of the three areas selected in Bristol, namely Clifton, Kingsdown and Southville. There is little or no link between the two.
- 5.23 Furthermore there is no explanation in the document as to how the architectural style is to accommodate the delivery of apartments, which will make up 46% of this development, or how the character analysis informs the development of apartment blocks. There is also no explanation in the document as to the approach to be adopted towards B2 or B8 development. This is particularly important because it became clear at the inquiry that if a business use was not commercially acceptable, then the fallback would be a B2 /B8 scheme. The document should recognise and address this eventuality.
- 5.24 The North Field Supporting Strategies,<sup>53</sup> which were submitted by the appellants in February 2006, purport to “demonstrate how the mixed-use development proposals for North Field will address the wider issues of sustainable development and the creation of a sustainable community”. The Supporting Strategies document makes it clear that “The masterplan will demonstrate how some of the spatial and layout requirements of the strategies will be addressed”.<sup>54</sup> The Energy Conservation Strategy sets out proposed energy savings measures, which have significant architectural implications in terms of materials, building components, treatment of elevations and patterns of fenestration.<sup>55</sup> The DAS does not explain how these proposals are reflected, if indeed they are, in the Architectural Style section or in the Design Code. The Council contends that they are

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<sup>50</sup> Document CD/DAS section 6.2 page 62

<sup>51</sup> Document CD/DAS page 74 paragraph 6.4.1

<sup>52</sup> Document CD/DAS page 75; page 114 paragraph 8.3.10

<sup>53</sup> Document CD/FRN/3/ page 1 paragraph 1.1

<sup>54</sup> Document CD/FRN/3 page 2 paragraph 1.4

<sup>55</sup> Document CD/FRN/3 page 22-23 paragraphs 3.5 to 3.10

not. This is a matter of particular concern given the emphasis that PPS1 and PPS3 place upon making efficient use of resources and promoting housing designs that adapt to and reduce the impact on climate change (PPS3 paragraph 16).

- 5.25 Overall, the Council is extremely concerned that this document gives no real clue as to what the intended appearance of this development really is or what the underlying principles are. The document is vague and meaningless in this respect and provides no fix or certainty to future developers at the reserved matters stage as to what should inform the detailed design. It also provides no understanding of the analysis which has underpinned the design and will not ensure the delivery of a high quality well designed development.

#### *Phasing Strategy*

- 5.26 There is no information before the inquiry as to how the appellants' proposed housing mix relates to the phasing. Therefore there is no information as to the number of units that each block represents, or what the mix of units in respect of each block will be. Consequently the DAS does not demonstrate how 2,200 units will be distributed across the site. This causes real problems for the Council in respect of different developers coming forward at different times to develop different parcels of land, for it has no parameters against which to judge each application. This could lead to the site delivering more than 2,200 units before the site is fully developed or not delivering 2,200 units after it is complete. Both these scenarios have significant implications for the delivery of the comprehensive and integrated scheme required under policy M1.
- 5.27 The failure to provide such information in a transparent way at this stage of the application is a fundamental flaw and would of itself justify a refusal of planning permission. The appellant asserts that nine of the forty blocks have been assessed and that they work, but this is wholly insufficient in the absence of the production of the information and the ability to scrutinise and test it. Despite requests in open inquiry for the production of this information, Bovis declined to produce it. The urban design implications are therefore unknown, and reinforce the concerns already expressed.
- 5.28 Policy M1 requires comprehensive development of 2,200 units, yet it is not clear whether or how that is to be achieved. Furthermore, Circular 01/06 requires an explanation and a justification for the amount of development proposed and how that development will be distributed across the site, but that has not been complied with. Both these failures to comply with policy are fundamental.

#### *Parking ratio for the employment areas*

- 5.29 The sample block structures illustrated in Figure 5.14 of the DAS show the extent of car parking provision within the employment areas. These illustrations reflect the impact on urban form and land use of providing surface parking at a ratio of 1 space per 35 sq m of floor space, the maximum standard for B1 employment development in the Bristol North Fringe as set out in SGLP policy T8. The policy makes it clear that the provision of on-site car parking below the maximum standards "will be expected" at locations "which have good accessibility by non-car modes". All parties agree that this site has good accessibility by non-car modes. The Council therefore contends that the quantum of car parking proposed is excessive and contrary to the provisions of policy T8. It also considers that excessive provision combined with the three surface car parking solutions for the employment areas, as set out in part 8.2 of the Design Code, will result in inefficient use of land contrary to national planning policy guidance.

- 5.30 The South West Design Review Panel reached the same conclusion. They considered that “...*the scheme used land inefficiently with much dead or under-used space. Parking standards were high and provision was all at grade. Lower standards and some use of undercroft parking and shared space would make for more efficient use of land and tighter, more attractive development.*” There was evidence that the use of undercroft car parking would not undermine the marketability of the employment development, but would facilitate a tighter, perimeter block development form. This view is reinforced by the current proposal to erect a new office building with undercroft car parking within the highly successful business development, Aztec West Business Park, which is a short distance north of the appeal site and which clearly serves the same commercial market as would be served by the North Field site.<sup>56</sup> Evidence was also given that in a location such as North Field, which is highly accessible by non-car modes, a parking ratio of 1 space per 40 sq m (or perhaps even 45 sq m) would not undermine the marketability of the employment development.

*Works to junction 17 of the M5 Motorway*

- 5.31 In October 2003 the Highways Agency directed that, in the absence of works being carried out to junction 17 of the M5 Motorway, no more than 30,000 sq m of employment floor space should be constructed. As matters currently stand, there is no certainty that these works will take place. Consequently there is a significant risk that it will not be possible to build out all the employment floor space, and therefore that the development will not be comprehensive in respect of the two main uses allocated on this mixed-use site.
- 5.32 The phasing and implementation information submitted by the appellants does not provide the Council with any certainty that the amount of employment development proposed will be delivered in phase with the residential element. This is contrary to policy M1. The Council is concerned that unless a mechanism is put in place at this stage to explain how and when the required works to the motorway will be carried out (including the proposals for funding), there is a significant risk that no more than 30,000 sq m of employment floor space will be developed at North Field.
- 5.33 The Schedule relating to this matter in the section 106 Unilateral Undertaking is deficient. Firstly, it is an obligation for the appellants to use “all reasonable endeavours” to enter into the ‘M5 Works Agreement’ with the Highways Agency. The Highways Agency are not a party to the S106, so if they are not willing to enter into the M5 Works Agreement, or if terms cannot be agreed, it is not certain that the required works to the motorway will be implemented. Secondly, the terms of the ‘M5 Works Agreement’ have not yet been agreed between the parties, and from the draft it is unclear about the nature or extent of the Works and the timing of their completion. Thirdly, the amount of contribution is yet to be finalised, for it is understood that there remains an outstanding issue relating to the Agency’s requirement for a financial contribution towards the future maintenance of the works. The drafting indicates that this figure will be agreed or otherwise determined, but is unclear what is meant by this, or whether the Highway Agency would accept determination by an Expert/Arbitrator. Overall the Council firmly believes that there is no guarantee that the Undertaking would deliver what it sets out to deliver because of the vagueness of the drafting.

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<sup>56</sup> Document INQ/17

5.34 Policy M1 requires that development “be planned on a comprehensive basis.... and phased to ensure maximum practical integration between different uses”. There is a significant risk that this policy requirement will not be fulfilled. The suggestion that in strategic policy terms all the residential could come forward with no employment is a very cavalier approach, and wholly contrary to the comprehensively phased, planned and delivered mixed-use development sought by policy M1. Furthermore this approach fails to take account of the fact that Policy 12 and the supporting text of the Structure Plan recognises that there was a need to rebalance the employment uses in this location and that that exercise was to be carried out through the local plan process.<sup>57</sup> During that process the Local Plan Inspector recognised the importance of the employment element of this allocation.<sup>58</sup> This was confirmed by the appellants’ commercial witness, who made clear the need for certainty in respect of the employment provision.

### **Affordable housing**

5.35 As with the first main issue in respect of masterplanning, the decision on this strategic site is likely to be the first such decision in the light of the new PPS3 and the companion guide, and will have a significant precedent effect for the provision of affordable housing not just in this District but generally. It is therefore important that very careful consideration is given to the adequacy or otherwise of the appellants’ proposals.

### *Policy framework*

5.36 The policy framework for the consideration of proposals for affordable housing comprises policy 35 of the JRSP, policy H6 of the SGLP, and PPS3 and its companion guide Delivering Affordable Housing (DAH). It is submitted that where possible, policies 35 and H6 should be read consistently with PPS3 and DAH, but that where the two are inconsistent, PPS3 makes it clear that PPS3 may supersede those policies. If the proposals for affordable housing fail to comply with this policy framework, then permission should be refused.

5.37 Policy 35 of the JRSP requires that “provision will be made for a wide range of housing *which reflects local conditions*” and that “Local Plans will include policies and targets for specific locations and/or sites *to meet the need for affordable housing identified by local assessments*”. Policy H6 of the SGLP states that “*the Council will seek an element of subsidised affordable housing to meet local needs on all new housing developments....*” The explanatory text<sup>59</sup> makes it clear that the need for affordable housing outstrips the supply by a considerable amount, a matter clearly recognised by the Local Plan Inspector, and indicates that all the sites allocated in the local plan together, can only make a contribution to that need. The Local Plan recognises that the planning process has “an important role to play in seeking to close the gap between supply and demand” and therefore in meeting the “local needs” of policy H6.

5.38 The explanatory text of the SGLP indicates that the target of 33.3%, whilst tenure neutral as previously required by Circular 6/98, was informed by “expert estates/valuation evidence on the economics of provision of affordable housing”. The viability assessment was carried out on the basis of a 77% : 23% split in favour of social rented housing and a specific mix of house types and sizes with nil public subsidy.<sup>60</sup> This split was based on

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<sup>57</sup> Document CD/DP/20 page 44 paragraph 2.77

<sup>58</sup> Document CD/DP/19 paragraph 9.7 page 220

<sup>59</sup> Document CD/DP/1 paragraph 8.189

<sup>60</sup> Documents CD/DP/19 paragraph 26.7; CD/DP/17 paragraphs 1.01,1.03; 2.06; 3.03; 3.04; 3.05

the Herington Housing Needs Survey (HHNS)<sup>61</sup> which assessed the totality of the need for affordability in the District and its component parts. The HHNS makes it clear that “**social rented** housing is by far the most important of tenures required over the plan period”. This point is further reinforced by the guide to PPS3 which states that the Government aim for affordable housing is to provide a wide choice of housing “to meet the needs of the whole community in terms of tenure and price ranges”. In considering the needs of the whole community the HHNS makes it clear that the component parts of the needs of the whole community are for both social rented and intermediate, with the social rented component being by far the most important. The vital importance of social rented housing in meeting the needs of the whole community is also recognised by the Reverend Byrne and Councillor Orpen, both important figures in the local community.

- 5.39 The appellants have criticised the Council for ‘adhering slavishly’ to the recommended tenure split and unit mix from the HHNS. In fact, in the absence of any justification not to do so, the Council is merely applying policy H6 by ‘seeking to negotiate the maximum level of affordable housing on each site that is feasible’. The Council interprets this as meaning not just the headline 33.3% figure, which would not in itself guarantee that local needs would be met, but also the tenure split and unit mix that were used when the Inspector arrived at this figure. This approach is clearly endorsed by the Inspector in his report when he said ‘the Council is right, in principle, to seek to provide as much affordable housing as possible’.<sup>62</sup> The appellants are misconceived in advocating that because their proposal provides 33.3%, that any tenure split is acceptable because the policy is tenure neutral. This approach ignores the first part of policy H6 which requires that the provision should “meet local needs”. If it does not, the fact that 33.3% is offered becomes immaterial.
- 5.40 The Council has demonstrated its willingness to take a flexible approach on other sites where the specific situation warrants it. For example, at Hewlett Packard the authority has agreed 30% affordable housing at a tenure split of 60% social rented and 40% intermediate housing in the context of an extant planning consent. At Woodstock School, 30% was agreed but all of the units delivered under policy H6 are to be for social rent. In contrast, the appellants have adopted a trenchant position and have consistently refused to take account of the needs as set out in the HHNS, for example by failing to consider increasing the 23% social rented element under Option 1.
- 5.41 The Council submits therefore that in assessing whether or not the appellants’ proposals are meeting the local needs of the whole community in accordance with policy, the HHNS is a highly material consideration to which significant weight should be given. When that assessment is carried out, it is clear that the appellants’ proposals are not a reasonable or proportionate reflection of the local needs of the whole community, in that the proportion of social rented housing proposed is directly in contrast to that survey.

#### *Role of Planning Obligations*

- 5.42 There is recognition in the SGLP and Government policy of the scope of planning obligations to achieve provision of affordable housing through developer contributions. In particular the Government “strongly encourages the best possible use of planning obligations ... to improve delivery..”<sup>63</sup> There is also a requirement that effective use of planning obligations requires “ambitious but realistic targets and thresholds given site

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<sup>61</sup> Document CD/SGD/4

<sup>62</sup> Document CD/DP/19

<sup>63</sup> DAH paragraph 9

viability”,<sup>64</sup> and that the Government is keen to encourage provision of affordable housing without grant “where possible”.<sup>65</sup> This approach is wholly consistent with the Housing Corporation’s policy, which seeks affordable housing on section 106 sites to be delivered without grant input from the Corporation when economically viable. In this case the appellants do not contest that this site could produce a percentage split in favour of social rented housing as demonstrated in the HHNS without affecting site viability (i.e. they could still in those circumstances achieve an appropriate developer’s profit). It is for this reason that the Council submits that the proposals are not making the best possible use of the S106 process, and are not setting ambitious but realistic targets for the delivery of affordable housing on this site.

### *The Bovis Proposals – Option 1*

- 5.43 Option 1, in proposing a tenure split 77% in favour of shared ownership and therefore intermediate provision, does not make adequate provision which is reasonably and proportionately reflective of local needs, where by far the most important need (and the most acute) is for social rented housing. This is a strategic site, of central importance to the local plan, which will set a clear precedent for the delivery of affordable housing on other sites in the District, and its affordable housing provision should properly reflect the local need unless site viability constraints indicate otherwise. There are no such restraints in this case. Whilst the 77% of intermediate provision may still be affordable to those in housing need, it is clear that this form of provision will provide housing for those with the highest incomes, effectively the ‘top slice’ of those in housing need.
- 5.44 The approach is based on the fixing of a price for the affordable units of £1,254 per sq m to be paid to Bovis by an affordable housing provider. This clearly includes some element of profit for Bovis, notwithstanding the claim that Bovis would not be making immense profits on this approach. The £1,254 figure is based on a figure of £1,495 sq m for the shared ownership units to enable a lesser provision of £730 sq m for the social rented. On the appellants’ market values this represents an equity transfer of 50%, and on the Council’s values a 40% transfer. However Bovis do not propose to limit in any way the share to be transferred; their analysis is based on further receipts at a later date from staircasing. In the Council’s view it is imprudent to factor in assumed future receipts, and the Bromford Housing Group appear to take the same view. The appellants’ assertion that their analysis would work without staircasing subject to a few “tweaks”, which apparently included tweaks to maintenance and management costs, was unconvincing and not backed up by the Bromford Group, who confirm that 75% shares would need to be sold. In practice, therefore, the likelihood is that the equity transfer shares could well be much higher than 40% to 50%.
- 5.45 The second element to be taken into account when establishing the affordability of the shared ownership product is the rental on the retained equity. Clearly the lower this percentage is, the more people can afford it. The HHNS identified that 23% of those in housing need can afford 40% shares on the basis of rent at 1%. If the rental percentage goes up, it will only be affordable to the 23% on the basis that the equity share goes down, a fairly simple equation. However, no control to this effect is contained within the unilateral obligation. Consequently if these proportions are to go up, those who can afford it will again be at the upper end of those in need.

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<sup>64</sup> DAH paragraph 10

<sup>65</sup> DAH paragraph 96

- 5.46 The appellants' offer is predicated on the Affordable Housing Provider (AHP) borrowing against future staircasing receipts. This is out of line with the guidance in PPS3, which states that receipts from staircasing should be recycled to provide additional affordable housing.<sup>66</sup> If staircasing receipts are taken out, the average £1,254 per sq m payable is not viable to the AHP unless the equity share and/or the residual rent goes up. This would push up into an even higher element of the 'top slice' of those who could afford this sort of intermediate housing.
- 5.47 The general levels of incomes that would be required to afford this type of intermediate housing range from £18,913 to £24,355 for a one bedroom flat and from £31,490 to £36,901 for a three bedroom house.<sup>67</sup> The higher figures relate to the shared ownership element of the Woodstock School site, which the Council believes that the appellants have significantly over-emphasised. The appellants conveniently forget that the shared ownership element of the Woodstock School site was provision over and above that required and delivered in accordance with policy H6, which was 30% affordable housing all of which was for social rent. The shared ownership element represented a further 33% additional provision on the site, giving an overall provision of 63%. Grant was introduced to fund the additional affordable housing – the 'additionality' – which is an entirely legitimate use of grant funding under the Housing Corporation's policy. The housing association was also providing 37% market housing on the site, and had assumed that profit from this element would cross-subsidise the shared ownership housing. The additional provision was clearly appealing to the 'top slice' of intermediate housing. To use the shared ownership element to justify a similar provision in respect of the 33% which comes under policy H6 is misconceived.
- 5.48 The proposed provision of 77% intermediate housing would be significantly at odds with the level of provision on other sites that have come forward at nil public subsidy in the post Local Plan era, where an average split of 67% in favour of social rented housing has been considered appropriate in meeting local needs and has been achieved.<sup>68</sup> It would be extraordinary if this site, of strategic significance for the District, was to provide a level of social rented housing significantly lower than that achieved on other smaller sites. Such an approach would indicate that, contrary to Government objectives, the best possible use of planning obligations in order to meet the local needs for affordable housing is certainly not being achieved.

#### *Option 1 - Availability of Public Subsidy*

- 5.49 Policy H6 requires the decision maker to take into account the availability of public subsidy in assessing proposals for affordable housing. Option 1 is dependant upon public subsidy to bring the tenure split in line with the local need as identified in the HHNS. As matters currently stand, no public subsidy has been agreed or negotiated with the Housing Corporation.
- 5.50 Under the Housing Corporation's procedures, a viability assessment must be provided to inform a decision on whether grant should be made available for a site. This is to establish whether the Local Plan requirements for affordable housing can be provided by the developer without the need to call on public subsidy. If no viability argument is made, as is the case here, the assumption is that the full Local Plan requirement should be met through developer subsidy and no public subsidy will be required. Alternatively,

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<sup>66</sup> PPS3 Annex B and DAH paragraph 67

<sup>67</sup> Document INQ 30

<sup>68</sup> Document SG/2/3 Appendix 3



if there is an acceptable viability argument, and the S106 Agreement is signed on the basis of a lower percentage of affordable housing (or an alternative mix of tenure), the Council and the AHP would make a joint approach to the Housing Corporation to provide grant to make up the shortfall in the Local Plan requirement.

- 5.51 The position seems different to that which pertained at West Stevenage. Clearly there had been a degree of involvement with the Housing Corporation in respect of the developer's proposals for that site. In that case they had been shown a copy of the draft S106 and it was submitted they were content with it.<sup>69</sup> Discussions appear to have taken place with them which led to the submission that there "is no reason to believe that funding in the manner anticipated would not be available". Submissions were also made that the Housing Associations were supportive of the arrangements.<sup>70</sup>
- 5.52 Here the only indication of the Housing Corporation's view is set out in their letter dated 12 October 2006.<sup>71</sup> This was written in the knowledge of the appellants' letter dated 18 September 2006<sup>72</sup> where there are references to public funding. However the letter from the Housing Corporation gives no comfort as to the availability of such public funding. On the contrary, they state that their starting point is one of nil grant and that grant would be only forthcoming if needed, as demonstrated through a financial appraisal. It would appear that no such appraisal has ever been produced to the Housing Corporation (this is consistent with Bovis' acceptance that site viability would not be affected by a greater level of provision of social rented housing and that public subsidy therefore cannot be demonstrated as needed through an economic appraisal). On the evidence before the inquiry, therefore, there can be no confidence that public funding will be made available for this site in order to uplift the social rented provision to a level in line with local need.
- 5.53 For all these reasons Option 1 is contrary to the policy framework set out above and is not reflective of the local need, nor does it make a proportionate contribution in respect of it.

### *Option 2 and the Fallback*

- 5.54 Option 2 and the Fallback are essentially the same, comprising 100% intermediate housing which, in essence, would provide housing at a discount. Similar concerns apply to these options as apply to the 77% shared ownership provision of Option 1. The Council has set out the general levels of income that would be necessary to benefit from this product.<sup>73</sup> It would only benefit those at the higher end of the income levels and would represent 'top slicing'.<sup>74</sup> Unlike Option 1, however, this provides no tenure mix and for that reason is contrary to PPS3 and DAH, which emphasises<sup>75</sup> the need for tenure mix. If the Council's primary submissions on Option 1 are accepted, this is equally unacceptable for similar reasons.

### *Option 3*

- 5.55 This option makes provision for 77% intermediate rent for a period of 25 years and 23% shared equity. Although this includes a rented element and so is superficially mixed-

<sup>69</sup> Document ADM/4 paragraph 7.13

<sup>70</sup> Document ADM/4 paragraph 7.24

<sup>71</sup> Document SG/2/2 Appendix 6

<sup>72</sup> Document SG/2/2 Appendix 2

<sup>73</sup> Document SG/2/4 paragraph 2.17

<sup>74</sup> Document CD/SGD/4 page 146 paragraph 7.21

<sup>75</sup> PPS3 paragraphs 10,20,24; DAH paragraph 3

tenure, intermediate rented housing is an intermediate housing option as opposed to housing available at an affordable rent. This is therefore a wholly intermediate option, which lacks tenure mix and would only be affordable to those with higher incomes. The appellants agreed that this provision was aimed at “the higher end of those in need”. As with Option 2 and the Fallback, if the Council’s primary submissions on Option 1 are accepted this is equally unacceptable for similar reasons.

#### *Option 4*

- 5.56 This option makes provision for 23% shared equity and 77% social rented for a period of 20 years, and is therefore time limited. The appellants produced no analysis to demonstrate what would occur at the end of the 20 year period, but accepted that it was likely that some of the dwellings would need to be sold to pay off the debt outstanding at that time, although the amount could not be quantified. Bromford Housing Group’s view was that 100% of units would be sold and the tenants would have to be re-housed elsewhere. The Council submits that Option 4 is wholly unacceptable and in reality would never be chosen by them. It would seem that the Bromford Housing Group also have significant reservations about such an option.<sup>76</sup>
- 5.57 Option 4 merely creates potentially significant problems in the future, where a substantial number of households in the most acute category of need would need to be re-housed over a concentrated period of time. This is likely to create uncertainty, instability and ultimately a potentially unbalanced community, raising serious social issues. For the appellants to suggest that this option is acceptable because temporary accommodation exists elsewhere in the District (which is used as an alternative to Bed and Breakfast) is astonishing for a strategic site such as this. It does, however, demonstrate Bovis’s cavalier attitude to justifying Option 4.
- 5.58 When these options are considered as a whole the Council submits that they are significantly and disproportionately biased in favour of intermediate housing to an extent which is significantly at odds with the local needs in the area. They would also provide a very limited mix of tenure, for in reality the Council would never trigger option 4. There is no public subsidy agreed, discussed, negotiated or earmarked for this site, and in the absence of a viability case being made, the policy and attitude of the Housing Corporation indicates that no reliance can be placed on any such subsidy coming forward. In short, the four options taken either individually or cumulatively are contrary to policy H6 of the adopted SGLP, policy 35 of the JRSP, and the objectives of PPS3 and its companion guide.

#### *Scale and Kind*

- 5.59 If the Secretary of State agrees with the Council that the provision for affordable housing is inadequate and does not properly and proportionately reflect local need, then that deficiency needs to be remedied. It is not sufficient to say that the contributions made elsewhere in respect of other matters which are equally necessary to render this proposal acceptable are significant. That is no justification for the appellants to argue that they should not be required to make good the inadequacy of provision of affordable housing and the failure, contrary to policy, to properly meet local needs in the absence of a viability argument. Moreover, it is possible that the achievement of the other community provision secured by the S106 obligations could have implications for the affordability of housing. The Unilateral Undertaking which would enable the public open space to be

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<sup>76</sup> Document INQ55 pages 5-6

privately maintained allows for an unspecified annual service charge to be levied, which could potentially affect the ability of some households in need to afford housing that would otherwise be available to them.

### *Mix and mobility*

- 5.60 An essential part of meeting the need for affordable housing is to provide the mix of unit types that the community needs. There is disagreement between the parties on what this mix should be. The Council maintains that regard should be had to the HHNS on which policy H6 is based. This clearly identifies a need for family-sized homes, which become available only rarely through re-letting of existing stock. The requirement for family-sized homes is firmly in line with PPS3, which specifically emphasises the need to provide larger dwellings. In her written statement, The Minister for Housing and Planning says: ‘Local Authorities will have more ability...to ensure larger homes are being developed alongside flats and smaller homes’, and in the Press Release that accompanied PPS3 it states: ‘Local Authorities will need to make sure that they are getting the mix of homes right and meeting the needs of all of their community. Specifically, Councils will need to ensure there are enough family homes...’
- 5.61 Another essential element is meeting specific needs that are even less likely to be met in the housing market; this is also recognised in PPS3. Whilst the appellants’ decision late in the inquiry to provide 6% mobility or wheelchair provision is welcomed, the Council submits that it is unclear why the level of 18% identified by the HHNS cannot be met on this site. Further, the appellants derive an 8% mobility requirement by adding in the emerging households, but assume that none of them has any mobility or wheelchair requirements. Bovis’s offer contrasts poorly with the provision agreed at Hewlett Packard, where 4% of the affordable homes are to full wheelchair standard and the remaining 96% will all be built to Lifetime Homes standard.

### *The submitted Section 106 obligation*

- 5.62 Lastly the Council has various concerns about the phrasing of the S106 Unilateral Undertaking, as finally drafted. Firstly, the form of tenancy for the social rented housing is defined as ‘Tenancy at a Target Rent’, which offers no guarantee of security of tenure. This lack of security raises a serious concern about the social rented housing remaining a long term option on the site. Secondly, if either the Council or the HomeBuy agent fails to nominate a household in housing need, there is no provision to ensure that the affordable home would be let or sold to a household in genuine need. In addition, there is a provision that 50% of subsequent occupations should be to someone in need of affordable housing, but no indication who will occupy the remaining 50% - it could be someone not in need.
- 5.63 Thirdly, because the appellants would not wish to build the shared ownership dwellings any larger than the minimum space standards set out in the obligation, it appears that the cut-off point for bringing grant into the site will be the commencement of development. Fourthly, as there is no definition of ‘Affordable Social Rented Dwellings’, there is no direct link to the Optimum and Default Tenure Mixes of Tables 1 and 2, and no guarantee that the dwellings will be built to the required size to receive grant funding. Similarly, there is no specified minimum size for the wheelchair and mobility housing. Fifthly, by tying the Offer to reserved matters applications rather than reserved matters approvals, funding could be made available for a scheme that, because of subsequent

design changes, is not the approved scheme; as a result, the Optimum Tenure Mix may not subsequently be deliverable.

- 5.64 Sixthly, the Affordable Housing Distribution Plan as defined would not prevent clusters of affordable housing having contiguous boundaries with those on other development parcels, potentially resulting in large clusters contrary to the aim that affordable housing should be distributed in small groups throughout the site. Seventhly, the potential for a large number of different AHPs across the site remains, despite the minimum offer of 50 units to any one AHP, leading to concerns about the efficiency of management; moreover, there is a drafting point about the “offer” not relating directly to the definition of “Offer”. Eighthly, the Council would prefer the disputes procedure to be overseen by an “expert” rather than an “independent arbitrator”.
- 5.65 Finally, there are two other drafting discrepancies. The definition of Nominee includes at clause (2) “a person.... who cannot afford to rent or buy *houses* generally available.....”; ‘houses’ should be replaced by ‘dwellings’. Under Options 2 and 3 the developer is required to construct the affordable housing units in accordance with either the Optimum or the Default Tenure Mix. This has replaced an earlier reference to floor areas; as the Tenure Mixes refer only to the distributions between social rent and shared ownership provision, with no mention of floor areas, the reference to the mix is irrelevant in Options 2 and 3, as all the properties would be intermediate provision.

### **Deliverability**

- 5.66 The appellants’ failure to put in place a robust masterplan and phasing regime is unacceptable given the requirements of SGLP policy M1 and the thrust of national planning policy guidance. The Council has already referred to the haphazard approach to the masterplanning of this site, which in the Council’s view has prevented the speedy and satisfactory resolution of the outline planning applications. In the circumstances the Council contends that it would be wholly inappropriate for the Secretary of State to grant outline planning permission, despite serious concerns about the quality of the DAS, simply to avoid further delay in the delivery of new housing on this strategic site. Moreover the Council submits that dismissal of this appeal need not lead to an unacceptable delay in the delivery of new housing.
- 5.67 The Barton Willmore design team only started work on the North Field project in July 2005, following Bovis Homes’ decision to replace the previous masterplanning team. Despite being unfamiliar with the site and the scheme proposals, Barton Willmore produced the February 2006 DAS and Masterplan over a period of approximately six months. The Council has since provided the design team with detailed guidance, and they are now familiar with what needs to be done in order to satisfy the Council’s concerns. The Environmental Statement masterplan changes were prepared over the same six month period.
- 5.68 With the exception of affordable housing, the Council and the appellants have reached a consensus on all of the substantial S106 Agreement issues, and the Agreement that has been submitted to the inquiry could equally be attached to the duplicate outline application. The determination period for that application has already been extended up to May 2007, and the Council would be minded to agree a further extension to enable revised masterplanning work to be concluded. The recent DCLG publication ‘Preparing Design Codes: A Practice Manual’ describes how design codes, which are primarily technical documents, can be prepared pursuant to a planning condition in approximately

- 13 weeks.<sup>77</sup> The Council therefore suggests that the required site-wide design code for North Field could be prepared in a relatively short period of time once a robust masterplan is in place and outline planning permission is granted.
- 5.69 The Council's requirement for a more detailed masterplan to be prepared and approved for each phase of the development, prior to the submission of reserved matters applications for that phase, is entirely consistent with the 'detailed design' stage identified in the ATLAS generic 'route map' for large applications<sup>78</sup> and in the English Partnerships 'design management flowchart'<sup>79</sup>. ATLAS describes how this stage in the masterplanning process for large sites should focus on manageable areas of the site, prior to the submission of individual reserved matters applications. The Council suggests that the detailed design work for the first phase of development at North Field could proceed in tandem with work on the site-wide design code, allowing the detailed masterplan for that phase to be approved very shortly after approval of the design code. Work on the detailed masterplans for subsequent phases could then proceed in tandem with the implementation of the first phase. The Council therefore believes that the appellants' evidence regarding the implications of dismissing this appeal is unduly pessimistic.
- 5.70 Given a clear signal from the Secretary of State as to what is required to rectify the fundamental deficiencies in the current DAS, a revised masterplan could be prepared before the end of 2007, and a robust site-wide design code could follow shortly after the granting of outline planning permission. The Council therefore suggests that this outcome would enable a substantial amount of development to come forward on this strategic site within the local plan period, while at the same time setting a high standard in terms of masterplanning that will help to secure the step change in design quality required by national planning policy, not only on this site but across South Gloucestershire and the West of England.
- 5.71 The Council's position is that the DAS does not form a sound basis on which to grant outline planning permission. Nonetheless should the Secretary of State wish to consider options other than dismissing the appeal, the Council would respectfully suggest the following as a possible way forward. The Secretary of State could set out what she regards as being the deficiencies in the DAS and the masterplanning process described therein. She could also set out a timetable for structured negotiations between the parties aimed at resolving those deficiencies, and for the preparation of whatever additional and/or revised masterplanning material the Secretary of State may consider necessary in order to grant outline planning permission. The Council considers that this would be an alternative route to approval of a robust masterplan that would meet the requirements of policy M1 of the adopted local plan and ensure high quality development at North Field.
- 5.72 The Council strongly objects, however, to the alternative approach described by the appellants, whereby the Secretary of State would allow the appeal subject to a planning condition which sets out the deficiencies in the DAS and requires these to be rectified as part of an interim design stage between the granting of outline planning permission and the submission of reserved matters. This approach is fundamentally different to that described in the ATLAS 'generic route map' and the English Partnerships 'design management flowchart'. ATLAS and English Partnerships envisage that the interim or detailed design stage should focus on manageable areas of the site within the framework

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<sup>77</sup> Document CD/INQ/28 page 90

<sup>78</sup> Document CD/AD/1 page 9

<sup>79</sup> Document CD/EPD/2 page 110

of a robust site-wide master plan. The Council concurs with this approach. The Council is extremely concerned at the suggestion that the interim design stage could provide the opportunity to rectify deficiencies in the side-wide masterplan, rather than refining the designs for the different phases of the development, as this would represent an unacceptable watering down of the masterplanning process.

### **Housing Delivery in South Gloucestershire**

- 5.73 Insofar as the delivery of house-completions across the District is concerned, both parties are agreed that on any analysis there is likely to be a shortfall in meeting the target set out at SGLP policy H1 of 17,760 new dwellings for the period 1996 to 2011. Moreover, until the appellants' evidence on the penultimate day of the inquiry, there was a large measure of agreement on the methodology to be adopted in appraising this matter. The difference in the scale of the shortfall calculated by the two witnesses was due primarily to the different assumptions they adopted in respect of the likely start-dates and build-out rates for each of the larger committed sites.
- 5.74 The appellants' forecast for the larger sites was expressed as a range, the lower figure reflecting a pessimistic view on the likely start-dates in circumstances where it was assumed that the Council would seek to adopt additional stages in the design and masterplanning process. It was made clear, however, that the Council does not now intend to prepare further development briefs (i.e. beyond those prepared for the two largest strategic mixed-use allocations at North Field and Emersons Green East). Nor will the Council be preparing its own Concept Statement for Harry Stoke; the material hitherto prepared on behalf of the developers of that site is expected to be endorsed in January 2007 as a basis for completing the masterplanning work in support of the current outline planning application. Furthermore, the appellants are wrong to assume that the Council would seek to apply a multi-staged approach to masterplanning in respect of the smaller sites East of Coldharbour Lane and at the former Hanham Hall Hospital.
- 5.75 Insofar as 'windfalls' are concerned, it is the Council's view that the appellants' witness is wrong in now seeking to apply what paragraph 59 of PPS3 says about not making an allowance for them. This advice is clearly put forward in the context of determining how much land local planning authorities should seek to allocate in their LDFs, and is not the approach that should apply in the current circumstances. Rather, in seeking to understand the context in which the Secretary of State will make her decision, it is the Council's view that it is still appropriate to examine the level of actual dwelling-completions it would be reasonable to expect in the next 5 years.
- 5.76 The parties agree that there is no good reason not to anticipate that brownfield windfalls would continue to come forward over the next 5 years at a similar level to that delivered over the last 5 years. This is significantly higher than the 230 dwellings per annum which was agreed at the Local Plan inquiry.<sup>80</sup> On average, over the 3 year period since that inquiry an additional 89 dwellings per annum has been achieved. On greenfield windfalls, the appellants accept that, as a matter of fact, they are a source of dwelling-completions, though it is deduced that they are set on a declining trend. In fact the Council's evidence<sup>81</sup> confirms that the average of 164 dwellings completed on greenfield windfall sites per annum over the last 3 years, represents a marginal increase on the average of 158 greenfield windfalls contributed per annum in the previous seven years.

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<sup>80</sup> Document SG/5/1 paragraph 3.27

<sup>81</sup> Document SG/5/1 paragraph 3.28

- 5.77 The Council calculated that if these higher rates were sustained over the remainder of the plan period, and there is no reason why they should not be, it is reasonable to anticipate a further 1,265 windfalls over and above the level assumed at the Local Plan inquiry. This would go some way to plugging the shortfall identified using the previously agreed methodology.
- 5.78 With respect to the weight to be attached to the likely shortfall in housing delivery, it is the Council's view that the impact of the Secretary of State dismissing this appeal, with a decision published in May/June 2007, should not be overstated. There is every prospect of the Council subsequently moving to grant an outline planning permission in the context of the duplicate application which remains undetermined. Given the considerable amount of work already undertaken to date, the considerable measure of agreement reached between the parties now on most of the matters, and the prospects of a report and a Secretary of State's decision giving a clear steer on where the application before this inquiry is deficient, it would be reasonable to assume a delay of the order of 6 months; a delay which is already factored into the Council's assumptions.<sup>82</sup>
- 5.79 Paragraph 71 of PPS3 indicates that where local planning authorities cannot demonstrate an up-to-date five year supply of deliverable sites, they "should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in paragraph 69." Paragraph 69 makes particular reference to the two substantive matters at issue at this inquiry, for it advises local planning authorities that they should have regard to, amongst other things, "Achieving high quality housing" and "Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people". These two objectives are elaborated in PPS3 at paragraphs 12 to 19 and 20 to 30 respectively.
- 5.80 It is the Council's case that it would be wholly unacceptable for a shortfall in housing land supply to justify a permission which, contrary to clear policy objectives, would not deliver a high quality, well designed development and which would not make adequate provision for affordable housing. Such an approach would set an extremely unfortunate precedent in dealing with large (and small) proposals for development.

## Conclusions

- 5.81 The decision in respect of this appeal will be one of the first, if not the first, relating to a strategic site that is allocated for mixed-use development to be determined under the new national policy guidance regime established by Circular 01/06, PPS3 and related documents. This decision will therefore set a precedent for the proper approach to be taken in respect of outline applications for such strategic sites (not just in this District) in respect of masterplanning and the delivery of affordable housing. It is therefore critical that the Secretary of State sends a clear message that proposals such as this, which do not achieve high quality design and the proper provision of affordable housing, will be refused.
- 5.82 Alternatively, should the Secretary of State decide not to dismiss this appeal, the Council suggests that she should at the very least set out what she regards as being the deficiencies in the DAS and Masterplan and in the Unilateral Undertaking for affordable housing. In that event the Secretary of State should set out a timetable for the necessary remedial measures to be taken by the appellants to remedy these deficiencies in order for planning permission to be granted.

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<sup>82</sup> Document SG/5/1 Para 4.3

## THE CASE FOR BOVIS HOMES LTD & BAE SYSTEMS

### Introduction

- 6.1 The background to this inquiry is the widely recognised need for new houses and jobs in this part of Bristol, and the fact that development on the North Field site is particularly apt to meet that need. It comprises previously developed and largely derelict land, in single ownership, forming part of the urban area; it is accessible by public transport, and close to Cribbs Causeway. Development here would thus be both deliverable and sustainable.
- 6.2 Further, there is no dispute that this particular development is in principle acceptable. It provides the right amount of the right type of housing and employment, at the right locations, fully in accordance with the development plan. And almost all of the supplementary matters – transport, open space, schools, community facilities, and many others – are in line with what is reasonably required by the planning authority. Thus the majority of the points that seemed at one time to be contentious have now been resolved. There are now only two significant points still at issue. The first is ensuring that this development achieves the necessary quality of design and layout, whilst not impeding its prompt delivery through an over-prescriptive approval process. The second is confirming that appropriate affordable housing is provided in accordance with the relevant policies.

### National policy framework

- 6.3 The general approach of central Government to encourage sustainable development is set out in PPS1. In particular, planning authorities should:
- “(iii) ensure that suitable locations are available for industrial, commercial, retail, public sector (e.g. health and education), tourism and leisure developments, so that the economy can prosper; ...
  - (vi) actively promote and facilitate good quality development, which is sustainable and consistent with their plans;
  - (vii) ensure the provision of sufficient, good quality new homes (including an appropriate mix of housing and adequate levels of affordable housing) in suitable locations, whether through new development or the conversion of existing buildings. The aim should be to ensure that everyone has the opportunity of a decent home, in locations that reduce the need to travel;
  - (viii) ensure that infrastructure and services are provided to support new economic development and housing. ...”<sup>83</sup>

These are precisely what this development would deliver.

- 6.4 More specifically, Government policy on the provision of housing, including affordable housing, is now set out in PPS3. It provides that planning authorities are not required to take it into account as a material consideration until 1<sup>st</sup> April 2007, but it may be capable of being a material consideration in particular circumstances prior to that date. Thus if the decision is after 1<sup>st</sup> April 2007 it is to be a material consideration. If before, it will be for the Secretary of State to decide whether or not its policies are material in any specific respect. The appellants’ case is made on the basis that it is considered material to the decision.

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<sup>83</sup> PPS1 paragraph 23



- 6.5 The outcomes that the Government expects to be delivered by the planning system towards its key housing policy goal and objectives, as set out in PPS3, are:
- “high quality housing that is well-designed and built to a high standard;
  - a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural;
  - a sufficient quantity of housing, taking into account need and demand and seeking to improve choice;
  - housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure; and
  - a flexible, responsive supply of land – managed in a way that makes efficient and effective use of land, including re-use of previously developed land, where appropriate.”<sup>84</sup>

PPS3 also lays emphasis on the deliverability of identified specific housing sites as part of the supply – that is, they should be available, suitable and achievable.<sup>85</sup> In addition, the supply of land should be managed in a way that ensures that a continuous five-year supply of deliverable sites is maintained.<sup>86</sup>

- 6.6 Annex B to Circular 05/2005 sets out what is appropriate in respect of planning obligations. The policy tests at paragraphs B8 and B9 include whether the obligations sought are “fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects.” Paragraphs B12-14 specifically deal with affordable housing. Paragraph B12 makes clear that a planning obligation can be used to secure “the implementation of a planning policy in order to make acceptable a development that would otherwise be unacceptable in planning terms”. Paragraphs B13 and B14 emphasise that any planning obligation for the provision of affordable housing should be in line with the development plan policies.

### **The development plan framework**

- 6.7 The Regional Spatial Strategy for the South-West (RSS 10) encourages the development of previously developed land as a first priority, with a balance of land uses.<sup>87</sup> It points to the sub-region including Bristol as the main focus for growth, and highlights the North Fringe area of Bristol – including the appeal site – as the preferred location for a balanced provision of additional housing, employment, and social and recreational facilities within the urban area, along with improvements to the public transport system. The Joint Replacement Structure Plan also recognises the key role played by the North Fringe in the economic development of the region, but encourages more, higher density residential development, along with improved public transport, and other local facilities. Policy 12 commits local planning authorities to make provision for such development in their local plans.
- 6.8 The JRSP and the existing RSS are soon to be replaced by a new RSS, to be considered at an examination in public (EIP) in spring 2007. The emerging draft also emphasises the role of this part of the Bristol urban area, but little weight can be attached to it at this stage.

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<sup>84</sup> PPS3 paragraph 10

<sup>85</sup> PPS3 paragraph 54

<sup>86</sup> PPS3 paragraph 57

<sup>87</sup> Document CD/RPG/1 policy VIS2

- 6.9 Policy M1 in the Local Plan sets out the site-specific proposals for North Field (see paragraph 3.8). The first part of the policy, a description of what is to be provided, is precisely what this development would provide. The second part of the policy describes the nature of the development. The submitted Design and Access Statement (DAS) contains a masterplan and supporting strategies that ensure the integration between the different land uses, and a design code that provides the basis for implementing that masterplan in more detail. The DAS also provides for the necessary ancillary facilities and supporting infrastructure, underpinned by the proposed conditions and the planning obligations. The third strand of policy M1 deals with the movement of people and vehicles; this too is met through the proposals and the various measures in the conditions and the obligations. There is now little, if any, dispute in this respect.
- 6.10 Other relevant local plan policies, including T8 in respect of parking, D1 relating to site planning and design, and H6 concerning the provision of affordable housing, are dealt with later. In addition, the report to the Council's committee identifies some 20 other, more general policies in the Local Plan that are relevant to this proposal.<sup>88</sup> However, these other policies do not feature in the evidence of the Council's witnesses, and there has been no discussion of any of them at the inquiry. It can be concluded that compliance is accepted in all these respects.
- 6.11 Thus the appellants submit that, for the purposes of section 38(6) of the 2004 Act, the granting of planning permission for the appeal proposal – subject to appropriate conditions and obligations – would be wholly in accordance both with the specific policies of the development plan noted above, and with the others referred to by the Council, and thus with the development plan as a whole, so far as material.

### Supplementary planning guidance

- 6.12 The 2004 Act provides that the other local development documents (LDDs) identified in the relevant local development scheme (LDS) are the supplementary planning documents (SPDs). Together with the development plan, these are to specify the entirety of the local planning authority's policies, however expressed, relating to the development and use of land in its area.<sup>89</sup> In other words, there is no longer any scope for "bottom drawer" informal plans.
- 6.13 In this case, the LDS was adopted by the Council and approved by the Secretary of State (Government Office for the South West - GOSW) in April 2005.<sup>90</sup> This includes the following SPDs in relation to the various matters canvassed at this inquiry:
- Development Brief for North Field
  - Development Brief for Emersons Green
  - Design Checklist
  - Harry Stoke Development Brief.
- The North Field and Emersons Green Development Briefs were both to be approved in draft in December 2005, and adopted in September 2006.<sup>91</sup>
- 6.14 The production of the SPDs has slipped significantly behind the hoped-for timetable. The North Field Development Brief<sup>92</sup> was produced in draft form for public consultation

<sup>88</sup> Document CD/SGD/13

<sup>89</sup> Planning and Compulsory Purchase Act 2004, section 17(3)

<sup>90</sup> Document CD/DP/40

<sup>91</sup> Document CD/DP/40 pages 35, 36

<sup>92</sup> Document CD/SPD/13

in October 2006, just before the start of this inquiry. The appellants, GOSW and others have made representations. It may or may not be adopted at some stage in 2007, and may or may not be amended – not least in the light of the outcome of this appeal. The Council accepted at the inquiry that the draft Brief should therefore be given little or no weight in the determination of this appeal.

- 6.15 The 2005 LDS explicitly stated<sup>93</sup> that it did not include SPDs on various topics, including affordable housing. Insofar as the Affordable Housing supplementary planning guidance (SPG) exists in emerging form, it is not SPD, and has no weight. It should therefore form no part of the basis for the decision.

### Need for housing

- 6.16 The Local Plan states (at paragraph 8.35) that additional sites capable of accommodating 5,815 dwellings in the period to 2011 will need to be released. This figure is derived from the residual housing land supply calculation at March 2004 (Figure 8.1). An updated version of this table appears at section 8 of the Statement of Common Ground:

<b>Requirement for dwellings by 1st April 2011:</b>		<b>17,760</b>
<b>Provision:</b>	(a) Completions to March 2006	10,690
	(b) Other sites with planning permission (excluding Wallscourt Farm)	910
	(c) Assumed contributions from windfalls (at 230 pa)	1,150
	Total	12,750
	<b>Shortfall</b>	<b>5,010</b>

- 6.17 Since the preparation of that table, there has been a policy change with the introduction of PPS3. This makes it plain, at paragraph 7, that:

“on publication of this PPS, LPAs will need to assess and demonstrate the extent to which existing plans already fulfil the requirement set out in this statement to identify and maintain a rolling five-year supply of deliverable land for housing, particularly in connection with making planning decisions (see paragraphs 68 to 74).”

In the present case, it is agreed by all that – however it is calculated – there is not an up-to-date 5-year supply of deliverable sites. In that case, the relevant policy is at paragraph 71, which states that planning authorities should “consider favourably planning applications for housing, having regard to the policies in this PPS, including the considerations in paragraph 69.” One of the considerations at paragraph 69 is “the suitability of a site for housing, including its environmental sustainability” – as to which, there is no dispute whatsoever in this case. All of the other considerations relate to the nature of the housing, not whether or not it should be allowed.

### *Calculation of 5-year supply*

- 6.18 Paragraph 7 of PPS3 indicates that the five year supply is a rolling five year supply, and thus to be assessed in connection with and at the time of the particular development control decision. Paragraph 57 requires the supply of land to be managed in a way that

<sup>93</sup> Document CD/DP/40 page 10, paragraph 43

ensures that a continuous supply of “deliverable” sites is maintained (i.e. at least enough to deliver the housing requirements over the next five years of the housing trajectory). The maintenance of the five year supply of land is not necessarily through reviewing LDDs. It is management through development control and other planning tools to ensure that there are the identified specific “deliverable” sites to make up the requirement, including that the sites “are available now.” The object is the maintenance of an immediate pot of identified specific sites at any given point.

- 6.19 Paragraph 59 deals with windfalls, which are explained in the footnote as sites “which have not been specifically identified as available in the local plan process.” They should not be included in the first 10 years of land supply unless the exception applies. That is where there is robust evidence of genuine local circumstances that “prevent specific sites being identified.” That is a direct link with the requirement for the identification of specific deliverable sites in the first five years and developable sites in the following five years (paragraph 55). There is no evidence to support the application of the exception here, and it is assumed that it does not apply.
- 6.20 The appellants have addressed the advice in PPS3 by removing reliance on unidentified sites in assessing the supply of identified specific deliverable sites available now to deliver the five year requirement in the development plan. The revised table includes sites with planning permission that should be relied on as 1,313, but makes no allowance for windfalls. The shortfall in the rolling five year supply increases from 5,010 to 5,757.<sup>94</sup> This approach is consistent with the advice in PPS3 and with its objective of maintaining a rolling identified supply of specific deliverable and immediately available sites for development to ensure the actual delivery of housing. It is recognised that this requires something of a shift from the old approach under PPG3, but that has regrettably not been performed in achieving housing delivery – something of great concern to the Government at a time of rising house prices and increasing housing shortfalls.

#### *Delivery of houses in South Gloucestershire*

- 6.21 There is, on any analysis, a need for some 5,010 additional dwellings to be provided in the period to 31st March 2011, and 5,757 once the allowance for windfalls is eliminated. The Local Plan accordingly allocates fourteen sites, identified in the table at policy H1, which will between them make at least some contribution towards meeting that need, of which two (Sites 2 and 8) now have planning permission. Site 3 (BAe, Filton) is to be retained in employment use, leading to a loss of 290 potential dwellings. That can be set against Siston yielding 250 more than anticipated – as it happens, a net gain of 40, but it demonstrates the inherent uncertainty of the arithmetic.

#### *Delivery of houses – smaller sites*

- 6.22 Of the smaller sites, Nos 6, 7 and 14 (Woodstock School, Waterworks Depot, and Coopers) are agreed between the parties to yield between them 162 dwellings. Site 11 (Hortham Hospital) is also agreed, at 270 dwellings, despite numerous problems in the past. Site 12 (the Old Colstonians Playing Fields) was also agreed, to provide 152 dwellings. However, it has very recently been refused planning permission.<sup>95</sup> This setback is a classic example of the way in which development can be delayed, even on those sites that were agreed to come forward.

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<sup>94</sup> Document INQ/57

<sup>95</sup> Document INQ/23

- 6.23 As for the smaller sites that were not agreed, the first is Site 1 – south of Douglas Road, in Kingswood, which is in use for industrial purposes. This was assigned 100 dwellings by the Local Plan Inspector, although he explicitly stated that he knew nothing about the plans of the existing businesses. It is now known that the principal occupier (Knorr Bremse) has recently extended its lease to 2015. Even if this occupier were to vacate, the site would not be an easy one to develop. In any event it is not deliverable under PPS3 for inclusion in the rolling five years supply, as it is not available “now”.<sup>96</sup> The appellants consider that this site will not produce any dwellings by 2011.
- 6.24 The Hewlett Packard site at Wallscourt Farm (Site 9) has planning permission, but no approval of reserved matters. The developer (Redrow Homes) estimates there would be a maximum of 250 up to December 2010.<sup>97</sup> The Council accepted that the developer would be best able to make an accurate prediction, and will complete units as fast as it can; accordingly this site would yield a maximum of, say, 285 by April 2011. The site east of Coldharbour Lane (Site 10) is owned by the University of the West of England and is surplus to its requirements. Here there is no concept statement, development brief, or masterplan, and no development activity whatsoever by the University. Moreover, half of the site is still actively used as a car park. Once again, the Council’s figure of 200 is hopelessly optimistic.
- 6.25 The last of the smaller sites is Hanham Hall Hospital – a listed building and not in the Local Plan, but recently acquired by English Partnerships, who expect to submit a planning application in 2007. Again the Council is somewhat over-optimistic, suggesting that all 230 dwellings will be completed by 2011. The appellants suggest a range of 50-200 as a more realistic forecast. The summary of the position so far is thus as follows:

	Policy H1	Roberts	Capner
<b>Shortfall</b>		<b>5,010</b>	<b>5,757</b>
Smaller sites allocated in Policy H1:			
1. Douglas Road, Kingswood	100	100	0
6. Woodstock Special School	50	52	52
7. Waterworks Depot	65	75	75
9. Wallscourt Farm	700	500	285
10. E of Coldharbour Lane	500	200	0–50
11. Hortham Hospital	270	270	270
12. Old Colstonians	70	152	0–152
14. Coopers, Yate	35	35	35
Total	1,790	1,384	717–919
Hanham Hall Hospital		230	50–200
<b>Remaining shortfall</b>		<b>3,396</b>	<b>4,638 –4,990</b>

#### *Delivery of houses – large sites*

- 6.26 To meet the remaining shortfall there are three large sites – North Field (Site 4); Emersons Green (Site 5); and Harry Stoke (Site 13). The table at policy H1 in the Local Plan suggests that, between them, these three sites will contribute a minimum of 5,400 dwellings – almost exactly twice the total capacity of all the remaining eleven sites taken

<sup>96</sup> PPS3 paragraph 54

<sup>97</sup> Document SG/5/2 appendix 5 paragraph 38

together. However, there is no chance of those 5,400 dwellings coming forward in the period to April 2011.

- 6.27 North Field, Filton The appeal site is the easiest to develop, for it is in single ownership, it is previously developed land, and it has everything going for it. However, even with all its advantages, it has taken years to get from a planning application to being considered at appeal. Even if this appeal is successful, and results in a permission with no condition requiring a multi-stage approval process, the appellants estimate it would yield a maximum of 575 dwellings by April 2011.<sup>98</sup> The Council contends that this is unduly pessimistic, in that the process would go much faster if a design code had been agreed, but in reality it is believed that this theoretical saving of time would not occur.
- 6.28 The next scenario is that this appeal is allowed, but that permission is granted subject to a condition requiring a detailed masterplan to be prepared and approved, followed by a detailed design code for the whole site, followed by a detailed masterplan for the phase in question, followed by the submission and approval of reserved matters. If the outline permission is granted in July 2007, the appellants believe that the first dwellings would be delivered in January 2010, giving 50 in the year to April 2010 and a total of 250 by April 2011.<sup>99</sup>
- 6.29 A third scenario is that this appeal is dismissed, so that the planning permission for the development of this site emerges in response to the duplicate application that is still before the Council. In that scenario, the position would be as set out in the draft Development Brief<sup>100</sup> - section 18 sets out the approval process involving independent appraisal, and then all the further documents as mentioned already (detailed masterplan, design code, phase masterplan, etc). The Council accepted that outline permission would probably emerge at the end of 2007; on that assumption, the appellants consider it would be doing well to deliver 50 dwellings by 2011. And of course there is still a lot that could go wrong, so as to delay the process further – such as, at one extreme, the time it might take to negotiate an acceptable affordable housing package, if that was why permission were to have been refused, or, at the other, the general delays arising from causes such as change of staff etc.
- 6.30 A fourth scenario where there is an interim decision, as for example to consider further the provision of affordable housing, would lie between the last two, depending on the extent of the matters to be reconsidered and negotiated. We would not encourage a Quedgley style condition but, if that was the outcome, as at Quedgley the delay would probably be greater, as the decision would lie with the Council and not be retained by the Secretary of State for determination. Overall, it would seem to be sensible to assume that the most optimistic figure for the delivery of dwellings at North Field is 575 by 2011; it might well happen that there could be zero, if the appeal is allowed subject to an unduly onerous process of subsequent approval or if it is dismissed. The Secretary of State will be in a better position to know the likely outcome in the light of the course she determines to follow.
- 6.31 Emersons Green is not dissimilar in terms of size, although it is in multi-ownership and it is a rural location. The development brief prepared for that site is similar to the one for North Field, and the section dealing with the approval process<sup>101</sup> is more or less identical.

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<sup>98</sup> Document BOV/1/1 paragraphs 4.23-4.27

<sup>99</sup> Document BOV/2/3, table at page 7

<sup>100</sup> Document CD/SPD/13

<sup>101</sup> Document CD/SPD/11, pages 83ff

The Council agreed that the outcome of this appeal will be highly influential in relation to that site – both in terms of the design process to be followed and in relation to the package of affordable housing to be secured. It is thus likely that delay here will be mirrored by delay there. The net result is that, depending on what approval process is followed, the delivery at Emersons Green by 2011 will be within the range 0 to 750.

- 6.32 Harry Stoke. The Local Plan stated that the allocation would be followed by a requirement for concept statements, masterplans and development briefs.<sup>102</sup> The Council's evidence was confused on this point, though it should be noted that the 2005 LDS includes a development brief for Harry Stoke. Here the delay may well be worse than at North Field and Emersons Green. A concept statement has been produced, but by the developers, not the Council, with no indication as to when or if it will be approved, or subject to what amendments. No masterplan has been produced, and no development brief. And the site appears not to be without its problems, being open countryside, crossed by a major power line and with a newt reserve next door.<sup>103</sup> The Secretary of State may feel that the appellants' token figure of 50 completed by 2011 is somewhat optimistic as a minimum figure. In any event, as with Emersons Green, it is likely that the outcome of the present appeal will influence what happens at Harry Stoke.

- 6.33 The summary of the position is thus as follows:

	Policy H1	Roberts	Capner
<b>Shortfall (excluding larger sites)</b>		<b>3,396</b>	<b>4,638 –4,990</b>
4. North Field	1,600	750	50–575
5. Emersons Green	1,200	750	50–750
13. Harry Stoke	900	450	50–350
Total	3,700	1,950	150–1,675
<b>Remaining shortfall</b>		<b>1,446</b>	<b>2,963–4,840</b>

- 6.34 It is clear that if the multi-stage design approval process is required to be followed at North Field, it will almost certainly be followed at Emersons Green and Harry Stoke – with the result that all three sites will deliver few if any dwellings by 2011, and the large shortfall of dwellings will remain. If on the other hand the more rapid process advocated by the appellants is followed, here and at the other two sites, there will still be a shortfall by 2011, but a significantly lower one. What is not likely is that a low figure of dwellings achieved on one site will be offset by a high figure elsewhere. There is, in other words, no easy middle way. It is thus probable that the contribution of the three sites to the total housing needs of South Gloucestershire will either be around 1,950, as optimistically predicted by the Council, or around the appellants' token 150 (or less).

- 6.35 This was considered by the Local Plan Inspector:

“The achievement of the housing requirement is dependent upon the development of a relatively small number of large sites. These sites have relatively long lead-in times, and can only deliver the new housing needed over an extended period. To hold these sites back would seriously threaten the delivery of the housing requirement, including the affordable element.”<sup>104</sup>

<sup>102</sup> Document CD/DP/1 paragraph 8.150

<sup>103</sup> Document SG/5/2 appendix 5, paragraph 50

<sup>104</sup> Document CD/DP/19 paragraph 4.3

- 6.36 It is for that reason that it is so important that the delivery of houses at North Field is not delayed more than is absolutely necessary. Any delay would affect not only the appeal site, but others further down the line – with consequentially severe effects on the bringing forward of the dwellings needed. It is pertinent to reiterate the emphasis of PPS3 on managing the housing trajectory so as to maintain a flexible, responsive supply of land, and to identify obstacles and constraints to housing delivery.<sup>105</sup> In the light of the above analysis, it is clear that one of the greatest of those obstacles and constraints is the insistence of South Gloucestershire Council on imposing the multi-stage approval process, with all the inherent delays that that causes.

### **The approval process**

#### *The policy framework*

- 6.37 Policy D1 of the Local Plan, which seeks good standards of site planning and design, is supplemented by the site-specific policy M1. This requires development to be planned on a comprehensive basis, designed and phased to ensure maximum practical integration between the different uses within and adjoining the site, with appropriate provision of ancillary facilities and supporting infrastructure. The Plan also states that the implementation of Policy M1 will be achieved through development control “in line with other policies in the Plan and any *adopted* supplementary planning guidance/documents”.
- 6.38 At a national level, the importance of good design and the efficient use of space is also emphasised in PPS3 – in paragraphs 10, 12 (“good design is fundamental to the design of high quality new housing”) and also paragraphs 16, 18, 38, 40 and 46. Section 3 of DCLG Circular 01/2006 (Changes to the Development Control System) deals with the new requirement for design and access statements. It points out that:
- “Fixing the principles contained within the statements to future decisions will be particularly relevant in the case of outline planning applications. Here, the local planning authority should ensure that the development approved by an outline planning permission is constrained to the parameters described in the design and access statement submitted with the application and that any future decisions relating to that outline permission are consistent with the statement.”
- 6.39 In addition, CABI have produced a number of useful documents, providing general guidance (*By Design*) and considering different elements of the design process (*Design and Access Statements: How to Write, Read and Use Them; Creating Successful Masterplans; Design Coding: Testing its Use in England*, and, most recently, *Preparing Design Codes: A Practice Manual*). Also relevant is the guidance produced by English Partnerships.
- 6.40 No-one disputes the relevance of these policies and this guidance, nor the importance of good design and good layout. The appellants accept that if the design is inappropriate in its context, it should be rejected. They are as keen as the Council to avoid a repeat of Bradley Stoke. Further, the Council has provided a concept statement, and a development brief in draft; and the masterplan is to a large extent not controversial. All that is between the parties in this regard is the appropriate process of approval.

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<sup>105</sup> PPS3 paragraph 62



*The Design and Access Statement*

- 6.41 The masterplan for this development has emerged through a series of stages. It ensures both the overall vision and the detailed strategy for implementation, with the masterplan and design principles as the forerunner to the detailed implementation through the development control process. The DAS provides the urban design and architectural strategy for the development; comprehensive information on the amount of development, layout, scale, access and circulation, phasing and landscaping; and a full design code.<sup>106</sup> It fully complies with the requirements of DCLG Circular 1/06 in that respect.
- 6.42 The Council asserts that there is no certainty provided by the DAS – for example, as to where specific buildings would go. However, the DAS needs to be taken as a whole. Sample block layouts are provided at figure 5.13 (employment) and figures 5.16 and 5.20 (residential). References to the approximate location of buildings occur at figure 5.7 and on pages 52-54, 58-61, 64-67, 86-87, in section 7 and from page 110 onwards. Taken together with the masterplan layouts, the height plan, the phasing and the other plans, and more especially with the design code, they provide, to an extent that is appropriate and sufficient at this stage, the fix and certainty sought by the authority. Similarly, car parking is indicated in the sample block layouts, and shown in more detail in the design code.
- 6.43 As for the analysis of other types of townscape, the appellants examined other areas that are successful in townscape terms, as suggested by authority, to establish principles that could be transferred to North Field. But clearly it would not be appropriate to extract part of, say, Clifton and transpose it to North Field; it is broad principles that are involved, such as the size of green spaces and the mews layout. There is no standard approach to a block; the DAS puts forward basic patterns which can be adapted as appropriate. Similarly, the descriptions of proposed styles need to be read alongside the more detailed requirements (as to, for example, plot width, height to width ratio, density etc) of the design code. The intention is to set out a framework – as did the developers of Notting Hill (and possibly those of Clifton) – which will lead to a particular appearance.
- 6.44 On a detailed point, it is accepted that the treatment of the lane along the west side of the central green spine is not shown altogether consistently; a note has been inserted in the December 2006 revision to make clear that, where street typologies overlap with a special frontage, the latter will take preference. As for undercroft parking, it should be used with some caution. As pointed out in the English Partnerships document on parking (What Works Where), it comes at a cost; it can destroy the relationship between the building and the street and make it difficult to achieve access.
- 6.45 Essentially, design is a process of evolution. The appellants have taken on board as far as possible the comments of the South-West Design Review Panel and those of the Council. There is the inevitable danger that, if a masterplan is over-prescriptive, it will be overtaken by events and will stifle the creativity of designers (particularly where other developers are involved, as will inevitably be the case here). It is accepted that the masterplan must not be so vague as to be useless, but there should be a balance.
- 6.46 Taken as a whole – and along with the proposed conditions and undertakings, as well as other material (such as the BS on trees, and the EcoHomes and BREEAM standards) – the DAS thus ensures that the development will be in accordance with the Government's objectives of achieving a balanced, sustainable community. It provides sufficient detail

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<sup>106</sup> Document CD/DAS paragraph 1.4.5

of how the block structure will work, both at an overall level and in relation to typical residential and employment blocks, as well as at key points such as the local centre, and the junction with the A38. It explains the proposed transportation hierarchy (including bus routes); the landscaping; and the principles that will govern the detailed design decisions to be made in due course. The DAS also provides a phasing programme for implementation; it would be unheard of to provide a detailed phasing strategy at this stage.

### *The Council's approach*

- 6.47 The North Field Concept Statement<sup>107</sup> was produced by the Council “to illustrate in broad terms how the various elements of development set out in Policy M1 ... might be accommodated on the North Field site” and “to form the basis of a comprehensive Development Brief.” Paragraph 8.82 of the Local Plan states that “The Concept Statement has been approved for development control purposes, and as a basis for the preparation of a development brief, which is in preparation.” It was not included in the LDS as a material policy document and is not therefore of weight in that respect.
- 6.48 The draft Development Brief, on the other hand, was included in the 2005 LDS and the draft 2006 LDS – although it is significant that the proposed adoption date had slipped by nine months in the intervening year. The delay was said to be due to the limited urban design resources of the authority. That is likely to continue to be the case as all the successive stages sought by the Council are reached. It is clear that the authority regards the approval process primarily as an exercise in urban design, as opposed to the delivery of housing. By contrast, the Government response to the Emerson’s Green development brief – which in essence is very similar to the North Field brief – is particularly relevant.<sup>108</sup> The principle is clear: it is not appropriate to require excessive detail. GOSW has taken the same approach to the North Field brief.<sup>109</sup>
- 6.49 The Council accepts that there is no requirement in the local plan for a multi-stage masterplanning process, but considers that the need for the elaborate approval process is in line with “best practice”. On the other hand, it acknowledges that the guidance from ATLAS highlights precisely the problems that had occurred in this case, with authorities asking for too much detail too early in the process. That guidance also suggests that the more detailed stage, either by design coding or briefing, should focus on manageable areas of a site prior to the submission of reserved matters applications.<sup>110</sup> In short, the Council’s quest for more fix and certainty is at odds with the flexibility that will inevitably be needed to respond to changing or unforeseen circumstances, and the creativity that would be desirable to enable more creative design.

### *Specific design points of the Council*

- 6.50 The first concern is about the legibility of the street hierarchy. The appellants maintain that the DAS is entirely clear – it provides a layout that is legible and thought through, and balances the architectural and townscape concerns against those of ensuring an appropriate pattern of access and movement through the site. The Council had no

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<sup>107</sup> Document CD/SPD/12

<sup>108</sup> Document INQ/4: “The SPD should aim to set out how the Local Plan policies should be taken forward, rather than setting out the successive layers of documents that will be required in advance of a planning application.”

<sup>109</sup> Document BOV/1/2 appendix 3, email 1<sup>st</sup> November 2006 from GOSW

<sup>110</sup> Document CD/AD/1 page 13

concern over the concept of special frontage areas, and the concern over the lane fronting the green spine would be met by the amendment in the December 2006 version.

- 6.51 The second concern relates to the block structures, and the contention that the principles of their layout and composition are not sufficiently clear. However, the Council accepted that block structures are not meant to be prescriptive, but may be flexible in giving guidance on what could be achieved. The same applies to the mews design. The authority is happy that the DAS has addressed some of the issues, and how to resolve them, and that it is moving in the right direction; but wants reassurance on the principles. It was made clear that there is no intention to resist variety, but greater certainty is sought. As to the parking solutions, this was not a point of detail but of principle.
- 6.52 The appellants contend that the DAS is quite clear: the sample block layouts, coupled with the more detailed design code, provide sufficient certainty. The Council accepts that sample block structure is a satisfactory approach. It complies fully with the requirements of Circular 01/2006 as to layout.<sup>111</sup> The block sizes are set out, as a range – and the different block solutions arise from a variety of practical concerns, such as the need to ensure permeability, access by service vehicles, and safety design. The details will have to be established at a later stage, and commitment to too much detail at this stage would be abortive.
- 6.53 Thirdly the Council is concerned about the woodland area south of Hayes Lane. In fact, the DAS provides plenty of detail – see paragraph 6.4.9, section 7.5, and p 119. There is agreement on the general townscape and design principles, including architectural reference to larger buildings in larger plots (as in the leafy suburbs of Bristol); accordingly there would not necessarily be perimeter blocks in this area. In any event, there will be a design brief. Similarly, the intention to provide a special design brief for Patchway Square, an important element in the overall plan, overcomes any concerns on that front. Once again, the DAS complies with the requirements of the Circular.
- 6.54 Turning to the architectural strategy and concept, the Council found the pattern book work “encouraging”, although it was concerned that the principles might not be followed through in detailed designs, particularly where a number of architects were involved. It would of course be possible to reject detailed designs at reserved matters stage, but the authority felt that you should not have to fall back on that. The appellants are clear that the architectural and townscape framework set out in the revised DAS provides an informed, well-explained basis for detailed design, especially in connection with the detailed design code. The design code itself (section 8 of the DAS) is criticised as being too flexible and not providing certainty. But in fact the design code is a clear embodiment of the more general vision set out in the earlier sections, and would provide designers with the required steer to ensure that it is brought to fruition. In these as in other respects, the DAS complies entirely with the requirements of Circular 01/2006.
- 6.55 Finally the Council is concerned as to phasing. However, there is a clear phasing plan in the DAS, which would ensure that the residential and employment areas are developed in a coordinated way, and that the roads and other infrastructure are brought forward on time. Further, the various conditions and the undertakings in the Agreement also ensure that the phasing would be properly controlled. Patchway Town Council and Revd Byrne are also understandably concerned on this point, and experience of other developments suggests that this aspect of large-scale housing development is not always handled

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<sup>111</sup> Circular 01/2006 paragraphs 84-87.

particularly well. However, in this case, there can be no doubt that the site would be developed as an integrated whole, as required by policy M1 in the Local Plan. There would also be a phasing plan in relation to the affordable housing.

- 6.56 In the light of these considerations, the set of six conditions proposed by the Council are excessive. They require in effect the production of a masterplan (which presumably would be distinct from the DAS already proposed), followed by a design code for the whole site, followed by a detailed masterplan for each phase; and then of course approval of reserved matters. As has been shown, that would lead to a substantial delay in the delivery of the first dwelling on the site. But these conditions are wholly unnecessary; all that is required is a single condition, requiring that the reserved matters are generally in accordance the principles and parameters described and illustrated in the DAS (in the December 2006 amended form). That would secure the need for fix and certainty that was in the mind of the Secretary of State when she wrote paragraph 73 of Circular 01/2006.
- 6.57 That single condition can be supplemented by further conditions (2a and 3a) requiring more detailed design briefs to be prepared and implemented in relation to the Patchway local centre, Highwood Road, the hotel site, and the central green spine. The principle underlying those conditions could be extended to require a design brief to be prepared for any other feature that is considered appropriate. This would be a much better approach than simply to require more details of everything, as would be required by the Council's multi-layered approach.

### **Employment provision**

- 6.58 The proposal allows for 14 hectares of land for employment uses, at two locations at either end of the site, on which would be 66,000 sq m of employment floorspace. The principle of this component of the scheme is not in issue. However, there is some disagreement as to the form of the employment buildings and land, the parking levels and the form of the parking, and the potential problems of a restriction on employment development as a result of the Highways Agency concerns.
- 6.59 The DAS provides details of the employment land in terms of its general location, the block layout of the two principal allocations, and the generic design types. The Council initially argued that the provision of campus-style buildings surrounded by open parking areas at the maximum standard would be an inefficient use of land. On the other hand, it was not suggested that the amount of floorspace should be increased, and it was accepted that the block layout of the buildings proposed in the DAS reflected the perimeter block principle favoured by the authority. The appellants indicated that if supported by the required parking, the most likely use would be B1, with B2 or B8 as a fall back – that reflects the demand.
- 6.60 The Council would prefer to achieve a mix of uses within the employment area, arguing that its size is sufficient to ensure that it would have critical mass, even if other uses (including residential) were intermingled. The appellants disagree. Uses such as a nursery (if not too noisy) or a gym, etc, would not be a problem – in other words, uses that would be properly complimentary to the offices and other employment uses; but not residential in the main employment areas. There must be a critical mass of employment uses, particularly given that the employment site is split.
- 6.61 The Council is also unhappy with the form of the parking proposed for the employment buildings, arguing that the provision of parking at the maximum standard would be an

inefficient use of land. But it is clear that prospective occupiers would want as much parking as possible. The Local Plan policy T8 maximum provision of 1 space per 35 sq m is already more restrictive than the PPG13 standard of 1:30. Anything more restrictive would not be acceptable to occupiers, except possibly in locations well-served by public transport, such as Uxbridge (on two tube lines). This is particularly so in a context where permissions are being granted and implemented at standards not less than 1:35, and in many cases more generous.<sup>112</sup> The appellants consider that the imposition of a 1:40 standard would result in B1 uses not proceeding, resulting instead in an industrial and warehousing scheme.

- 6.62 The type of parking is important. Undercroft parking, as favoured by the Council, is not generally acceptable to occupiers. There are exceptions – developments such as Pegasus in Swindon, which is on a sloping site, and Hartwell House in the middle of Bristol, but generally it is not attractive to occupiers. The Atkins building at Aztec West<sup>113</sup> is designed to enable a specific occupier to consolidate its previously dispersed operations onto a particularly densely developed site. It is thus not typical of what is proposed here, which will largely be for unknown occupiers. Of course, if a particular occupier wants undercroft parking, that could be provided.
- 6.63 It is clear from Arlington's evidence that, given a favourable basis, they are ready to produce a quality development in line with the aspirations of the development plan and the DAS as part of a comprehensive mixed development. The more that that is fettered by the introduction of incompatible uses and parking restrictions, the less the prospect of successful delivery of the plan's fundamental objectives in this respect.

### **Other aspects of the development**

#### *Community facilities and infrastructure*

- 6.64 Clearly the provision of housing and employment buildings on the scale proposed will generate a need for ancillary facilities and infrastructure of many kinds. Government policy (in Circular 05/2005) is clear that, where a proposed development will give rise to the need for additional or expanded community infrastructure which is necessary – as opposed to merely desirable – in planning terms, and not provided for in the application, it may be acceptable for a financial contribution to be sought towards the cost of such provision through a planning obligation. However, such contributions must be fairly and reasonably related in scale and kind to the proposed development. In this case, there is agreement with the Council in relation to the great majority of these requirements.
- 6.65 It is important not to lose sight of the substantial benefits that would be offered by this development. The new facilities would help to ensure that the new community at North Field would be integrated with the existing Patchway community to the north of Highwood Road. The new Patchway centre, which has been deliberately located alongside the existing Patchway centre, would serve as a focus both for the existing and the new community. There would be shops and other facilities, as shown in section 7.3 of the DAS, and it is one of the elements for which a more detailed design brief would be prepared. It would be provided generally towards the end of Phase 1, and continuing through the construction of Phase 2. A further important element would be the improvement of Highwood Road, transforming it from a dual carriageway into a boulevard used only by buses and local traffic. This would prevent the new community

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<sup>112</sup> Document INQ/22

<sup>113</sup> Document INQ/17

being cut off by the road pattern, and would improve conditions for existing residents living close to the road.

- 6.66 The new centre would also be the location for a new 420-place 2 form entry primary school, to be paid for by Bovis at a cost of £4.9 m. Bovis will not insist on being the provider of any new school, thus opening the way to the Council being the provider if that looks to be the appropriate way forward at the time. As to the timing, if planning permission is granted in 2007, the school would be planned to open in September 2010. Alternatively, provision can be made for the improvement of school facilities off-site if that seems more appropriate. It has also been agreed that Bovis would make provision, as part of the development, for a sixty-place nursery.<sup>114</sup> The Council has accepted that it will not be necessary to make any contribution towards youth and children's services, or to provide extra secondary school places, as there are already sufficient places in the area.
- 6.67 The development would also provide for a new doctors and dentists surgery. This is the subject of Schedule 3 to the Unilateral Undertaking – the only reason that it is not in the Agreement being because there is an outstanding issue in relation to the valuation of the land to be transferred. A new 50-bed extra-care facility would be provided – early in the development – as required by Schedule 15. There is no need for a new library; however, towards the end of Phase 1, a contribution of £242,000 would be made towards the improvement of the existing one, which is close to the new centre – see Schedule 10. A payment of £86,000 would be made towards the cost of a community development worker – see Schedule 9.
- 6.68 The location of the public open space – amounting to 6.3 hectares – is shown in the DAS, and would be provided on a phase-by-phase basis. The Council is content that the location and other details are acceptable. More details of the open space are provided in Schedule 11 to the Agreement, while its management and maintenance are the subject of Schedule 1 to the Unilateral Undertaking. Agreement has also been reached as to the payment of a further contribution (of £2.9 m) towards the provision and enhancement of off-site public open space playing fields – see Schedule 2. The Council is not pursuing a requirement for public art, but Bovis will nevertheless be providing £80,000 towards the implementation of a public art strategy; this is the subject of Schedule 1. Litter bins (including dog litter bins) are the subject of Schedule 3 to the agreement.

#### *Environmental and heritage matters*

- 6.69 The ecology of the site has been carefully considered, and a biodiversity strategy has been agreed with the Council. The DAS was also drawn up with reference to the retained features of ecological significance – notably the Airfield Wood (a SNCI) and the grassland buffer around it, the hedgerows along Hayes Land and Highwood Lane, the other woodland and hedgerows, and the grassland south of Highwood Lane. More generally, the landscaping of the new development has always been a crucially important element of the masterplan. It includes the important existing features already noted, and would provide a coherent strategy of landscaping, including open space, to complement the buildings and roads. It would also provide a foil to the retained listed buildings.
- 6.70 Two of the remaining historic aircraft hangars on the airfield were relatively recently listed; it is therefore appropriate that the new development, which would change their setting, is designed accordingly. However, the Council is content that, in the light of the

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<sup>114</sup> Document INQ/64 schedule 12

information supplied by the appellants (not least in the revised DAS), this matter has been satisfactorily resolved. The relatively modest archaeological potential of the site would also be explored satisfactorily under the terms of a standard condition.

- 6.71 The appellants are committed to achieve EcoHomes “very good” rating in respect of the dwellings to be provided, which would be achieved through the imposition of a suitable condition. This standard may change at some stage in the future, in the light of the new policy initiatives in relation to planning and climate change (including a new PPS, the draft of which was issued towards the end of the inquiry). Clearly the appellants cannot sign up to a standard that does not yet exist, but the commitment to the EcoHomes standard is evidence of their intentions in that regard. There is also a commitment to achieve BREEAM “very good” rating in respect of the employment development, and this too would be achieved through the imposition of a suitable condition.

#### *Noise and construction*

- 6.72 Both parties are content that this site is no worse than any other comparable site in respect of noise, and indeed generally rather quieter. Three conditions are proposed to ensure that dwellings and their gardens would be protected from traffic and aircraft noise, and from any excessive noise from plant or machinery arising from the employment buildings. A contract has already been signed for the remediation of the site (at £3.5m), subject to planning permission. A construction waste audit is to be secured through a suitable condition. Sewer bating is also the subject of an undertaking (at Schedule 3 to the agreement). As for the point raised by local people with regard to construction traffic, the intention is that it would all be routed via M5 junction 17, and then to the site along Merlin Road. There would not be the feared congestion at the existing Patchway roundabout.

#### *Transportation*

- 6.73 It is accepted that this site is a highly sustainable location, with good access to public transport. That would increase as a result of the provision of off-site highway improvements (see Schedule 6 to the agreement), the delivery of extra bus services (Schedules 7 and 8), and the setting up of a car club (Schedule 5). The development thus complies fully with Government policy on sustainability. Moreover, the inclusion of employment and residential uses in close proximity would in due course lead to an increasing degree of containment, with a correspondingly reduced load on the surrounding highway network.
- 6.74 The construction of the link road (at a cost of £14.2 million) would be carried out by Bovis as part of the first phase of the development. That would enable the improvements to Highwood Road to be brought forward correspondingly early. It has also been agreed that the best route for the western end of the link road would be to the San Andreas roundabout; all this is secured by Schedule 4 to the agreement.
- 6.75 The only outstanding issue relates to the concern of the Highways Agency that the development would place strain on junction 17 of the nearby M5 motorway. This results from traffic heading for the employment buildings seeking to leave the motorway in the morning peak.<sup>115</sup> There has never been any suggestion of the lane-gain scheme being required, in highway terms, as a consequence of the residential development. The Agency has now approved the departure (INQ/59), and is content to see the development

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<sup>115</sup> Documents BOV/5/1 paragraphs 4.15.1 – 4.15.6 and SG/3/1 paragraphs 4.18 – 4.22

proceed subject to an appropriate Grampian condition.<sup>116</sup> The appellants have accordingly accepted a condition (11) that will enable the development to be started, but with not more than 30,000 sq m of the employment floorspace being occupied before the works are completed. A commitment to fund the implementation of the M5 works is given in Schedule 2 of the Unilateral Undertaking.

6.76 As to the Council's concerns about the deliverability of these works, whilst it is accepted that the Highways Agency is not a party to the Undertaking and could not be compelled to enter into the M5 Works Agreement, that does not detract from the provisions as they are set out in the Schedule. It is apparent from the Highways Agency's position that it seeks the improvement of the M5 motorway in the vicinity of the development. The appellants are making it clear that they intend to fund these works and to negotiate in good faith with the Highways Agency on that basis. It is therefore difficult to see why agreement would not be reached. Moreover, since the employment development on the site cannot exceed 30,000 sq m until the works have been carried out, it is in any event in the appellants' best interests to progress negotiations with the Highways Agency.

6.77 The Council has sought at a late stage to impose a further restriction, whereby no more than 1,000 dwellings can be occupied prior to the completion of the M5 works. However, the reduced employment allocation was a strategic provision in the development plan, and was not required to support the housing allocation. Whilst this is an excellent location for employment, it is also a wholly sustainable location for housing, with two district centres, substantial existing employment (13,000 jobs within 1.6 km), and public transport. Without the proposed residential development the Council would be even further short of their housing target than would otherwise be the case. There is thus no case for the imposition of a link between the motorway works and the completion of dwellings.

## **Affordable housing**

### *The development plan*

6.78 JRSP policy 35 provides that the relevant policies on affordable housing should be set out in local plans. The 1999 Development Plan Regulations require a local plan to set out the policies and proposals of the local authority in the plan, which should be clearly distinguished from the justification for those policies and proposals. While the whole document constitutes the statutory development plan for the purposes of section 38(6) of the 2004 Act, the relevant policy is in the bold type and its justification is in the supporting text. Thus under section 38(6) the decision is to be made in accordance with the policy in the local plan; it is inappropriate and incorrect in law to elevate the justification to constitute an additional policy in its own right.

6.79 Local Plan Policy H6 requires that the proposals for the site provide a 33.3% share of the permitted housing which will be subsidized and will meet the definition of affordable housing (that is, to be available to those unable to afford to rent or buy houses generally on the open market). That requirement is to be met irrespective of tenure or ownership or financial arrangement. It is required, however, to meet a local need. There should be an obligation or condition to ensure that the housing provided is reserved for first and subsequent occupiers who need it.

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<sup>116</sup> Document GEN 3 - Letter to South Gloucestershire Council dated 6 February 2007



- 6.80 The policy deliberately does not require any tenure split, which in any event would have been contrary to prevailing policy at the time. It does not require that the affordable housing provided should seek to address any or all specific sectors of local housing need. Moreover the policy does not exclude the prospect of public subsidy. It does however recognise as a legitimate aim the achievement of a balanced and stable community.
- 6.81 In the present case the percentage of the units provided as affordable housing is 33 $\frac{1}{3}$ %. The issue is accordingly whether the units provided for each affordable housing site (and thus able to have regard to the current conditions at the time) would be capable of being made available to those unable to afford to rent or buy in the general market. The policy would in fact allow that the provision of affordable housing could be wholly in the form of one tenure or another, as long as the units were available to those unable to rent or buy on the open market.
- 6.82 The Council places weight upon the justification in the Local Plan as part of its case in seeking to impose specific tenure splits in the provision of affordable housing. Accordingly it is necessary to consider that justification to see whether it leads to any different conclusion. The most relevant part is paragraph 8.193, which recognises that the policy could not prescribe tenure. It goes on to explain that *“In seeking to negotiate subsidised affordable housing on a site-by-site basis the Council will have regard to the identified housing need in the area, by reference to the JHA HNS and other relevant up-to-date information held by the Housing Department. In practice, the type of subsidised affordable housing being sought will be aimed at addressing a range of needs and will accordingly cover a range of tenures including social rent, shared ownership, and intermediate “near” market rents and discounted home ownership.”* That means what it says: it is not part of the policy and it does not alter the policy to include tenure. Thus the relevant question remains that set out in the policy itself.

#### SPG / SPD

- 6.83 In July 2002 the Council published draft supplementary planning guidance (SPG) that set out a prescriptive formula for requiring provision for affordable housing.<sup>117</sup> This was the subject of consultation and attracted objection, amongst others, from GOSW.<sup>118</sup> That draft version preceded both the examination of the Local Plan and the HHNS. Since that time there has been no comprehensive amendment of the draft in the light of the consultation responses, nor any further consultation in the light of the Local Plan or the HHNS. Instead the Council has replaced certain parts, in particular Appendix 3 of the plan, and added an introduction (see CD/SPD/7a). However, it never completed the steps required under PPG12 paragraphs 3.15 to 3.18. Consequently, although in practice the Council relies on the draft SPG as a basis for imposing its particular affordable housing requirements, it is a draft document on which no weight should be placed as policy relevant to the decision in the present case.
- 6.84 Paragraph 8.198 of the Local Plan refers to the Council’s intention to prepare planning guidance that will explain arrangements for negotiating planning obligations or conditions for the purposes of subsidised affordable housing. The new regime introduced under the 2004 Act imposed a strict framework for supplementary planning documents (SPDs) in place of SPG. PPS12 deals with the status of SPG existing at the time the new regime came into position (see paragraphs 5.22 - 5.24). Approved SPG can

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<sup>117</sup> Document CD/SPD/7a/b

<sup>118</sup> Document BOV/3/1 appendix 2, letter dated 9 October 2002

continue to be relevant so long as the sponsor policy is saved or if it is progressed through community involvement and the other required stages to become SPD. However there is no opportunity to progress draft SPGs to approval other than as SPDs. Thus the draft SPG was not able to progress further other than formally under the new regime.

- 6.85 An SPD is required to be within the LDS and to satisfy the stated procedures for consultation and adoption. In this respect the SPG or SPD relating to affordable housing was deliberately excluded from the approved LDS, which deals with the period to August 2007.<sup>119</sup> The Council is in the process of rolling forward the LDS; the September 2006 draft includes the preparation of an affordable housing SPD, but the final decision on the content of the LDS (for submission to GOSW) is still to be decided. It is pertinent that Appendix 4 of the 2006 draft LDS sets out SPG and “other non statutory policy advice”, but does not include the draft affordable housing SPG as a material consideration. Thus the draft SPG is now of historic relevance only, and no weight should be given to it in terms of draft or emerging policy.

*PPS3: Housing*

- 6.86 PPS3 emphasises as its overall objective the provision of “a wide choice of high quality homes, both affordable and market housing, to address the requirements of the community” (paragraph 9(1)). That is linked with the overall objective “to widen opportunities for home ownership ... for those who cannot afford market housing ...” (paragraph 9(2)). Those objectives should have a particular resonance in South Gloucestershire, where the Council has sought to impose a tenure regime that has little regard to the importance of securing the second objective, that is widening the opportunities for home ownership for those who cannot afford market housing.
- 6.87 Paragraph 22 of PPS3 provides that, based upon the findings of the Strategic Housing Market Assessment (SHMA) and other local evidence, local planning authorities should set out in LDDs “the likely overall proportions of households that require market or affordable housing, for example, X per cent market housing and Y percent affordable housing”. That is yet to be done in the context of the SHMA and through the LDDs. The SHMA is of particular significance in this area, where South Gloucestershire is only part of the Greater Bristol conurbation. For present purposes the split is to be found in Local Plan policy H6, which provides for 33.3% affordable housing.
- 6.88 At paragraph 22(3) provision is also to be made in LDDs as to the “size and type of affordable housing required”. That is a reference to the numbers of bedrooms (size) and whether the accommodation should be flats or houses (type). Paragraph 24 deals with the planning of large strategic sites such as the appeal site, and provides:
- that the proposed mix of housing should reflect the proportions of households who require market or affordable housing - that is here addressed in the context of the development plan by provision of the 33.3% split; and
  - that the proposed mix should also “achieve: (i) a mix of households; as well as (ii) a mix of tenures and (iii) price”.

The present proposals plainly provide through the pallet of options a mix of households, a mix of tenure and a mix of price in accordance with the policy and the PPS.

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<sup>119</sup> Document CD/DP/40

6.89 Paragraph 29 provides that authorities in their LDDs should set targets for the amount of affordable housing to be provided. It is misconceived to seek to elevate the HNS to a surrogate LDD for this purpose, for it does not qualify either in respect of the basis on which it was formulated, or procedurally. In due course the relevant LDD should:

- **set out an overall (plan wide) target** for the amount of affordable housing. This will comprise the percentage of affordable housing, including re-examination of policy H6 33.3% in the light of the SHMA and other considerations;
- **set separate targets for social rented and intermediate housing**, where appropriate. This is a new requirement and will plainly require scrutiny as to whether separate targets are appropriate and, if so, what they should be. The sub-paragraph particularly draws attention to the relevance of a sufficient supply of intermediate affordable housing, which can help address the needs of those seeking to gain a first step on the housing ladder as well as reducing the call on social rented housing, freeing up existing social rented homes, providing wider choice for households and ensuring that sites have a mix of tenures; and finally
- **specify the size and type of affordable housing** likely to be needed “in particular locations and where appropriate on specific sites”. The sub-paragraph refers specifically to the importance of considering the findings of the SHMA and any “specific requirements”; reference is made to the need to integrate the affordable housing into the existing immediate neighbourhood as well as the wider surrounding area.

6.90 Finally it is appropriate to have regard to the definition of affordable housing in PPS3 at Annex B. This is precise and important. It “includes” (but is not limited to) “social rented and intermediate housing, provided to specified eligible households” whose needs are not met by the market. The definition continues that affordable housing should:

- “meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices”; and
- “include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision”.

Social rented housing is defined by reference to the 3 year review of rent restructuring (July 2004), a definition that the appellants have adopted in the S106 obligation for the definition of target rents. Intermediate affordable housing is defined as housing at prices and rents above those of social rent but below market price or rents. These can include (but are not limited to) shared equity products (e.g. HomeBuy), other low cost homes for sale, and intermediate rent.

6.91 PPS3 goes on to make some additional points, including that:

- the definition does not exclude homes provided by private sector bodies or without grant funding;
- if a home is provided by a private sector body or without grant funding and meets the definition of affordable housing, it may be considered affordable housing;
- if it does not (for example low cost market housing) it may not be considered as affordable housing; and
- further “guidance” is given in the Affordable Housing Policy Statement.

*Delivering Affordable Housing*

- 6.92 The policy statement Delivering Affordable Housing (DAH) is to be read with PPS3. Paragraph 12 explains that “there needs to be a good mix of tenure on new developments” and warns against the dangers of “rigid monotenure developments”. It advises that “no one should promote significant scale development including nothing but social rented housing”. The appeal proposals would secure a good mix, which through the palette of options the Council is able to monitor and adjust. In terms of mix, the scheme goes some way to mitigate the emphasis of the Council on social rented tenure. Moreover, if 77% : 23% is a “good mix” for social rent and shared ownership, equally one can assume that for these purposes 77% : 23% of shared ownership/social rent is also a “good mix”.
- 6.93 The relevance and importance of shared ownership for meeting affordable housing need is persuasively reflected in the commitment of public funds (£1.5 million) at Woodstock School<sup>120</sup>, so as to secure 34% of the proposed units as shared ownership (22 out of 65) as opposed to the already committed 30% social rented (20 out of 65). That was a proposal made by the Sovereign registered social landlord (RSL), supported by the Council and tested and approved by the Housing Corporation. There has been no suggestion that that proposal has not been successful or that it is inappropriate or otherwise misconceived.
- 6.94 Annex A of DAH deals with the roles of national and local government. The Government wants to see a “mixed economy” of providers “adopting flexible practices when considering choice of provider”. Paragraph 42 (Annex C) notes the special position of RSLs, being registered with and regulated by the Housing Corporation, and their particular advantages for the provision of affordable housing. Paragraph 44 draws attention to the role played by unregistered bodies who own and manage affordable housing under contract to the Housing Corporation, duplicating the conditions followed by RSLs. This is an approach adopted by the appellants in defining the affordable housing managers under the S106, requiring unregistered managers to be accredited through the Housing Corporation’s scheme.<sup>121</sup>
- 6.95 Paragraphs 48-50 of Annex C address the choice of affordable housing provider, advising against “restrictive practices which preclude innovation and competition between potential affordable housing providers”. This advice is relevant to the current regime imposed by the Council on the provision of affordable housing in its area. The authority has a particular position of influence, which should not be misused through domination or monopolistic practices. Whatever the theory, it is plain that the Council is able to impose restrictions which may well not be justified or in accordance with the best interests of the provision of affordable housing or compliant with Government policy.
- 6.96 In this context it is particularly relevant to note the “compliance statement” to which favoured affordable housing providers must sign up if they are going to be within the ‘inner circle’.<sup>122</sup> The process of allocation by the Council is dealt with on page 2, implicitly indicating that those not in the ‘inner circle’ will be disadvantaged. All negotiations regarding the percentage of affordable housing, nil subsidy, house type and tenure split are to be conducted by the Council. That effectively precludes any competition, innovation or free market provision, which the Government wishes to

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<sup>120</sup> Document INQ/13

<sup>121</sup> Document INQ/65 clause 2

<sup>122</sup> Document INQ/41, document 3 appendix 4

encourage in the overall interests of affordable housing provision. Moreover, there is an absolute requirement to adhere to the particular payment levels set out in the draft SPD Appendix 1, irrespective of the opportunities that there would otherwise be to negotiate with the RSL different forms and levels for provision.

- 6.97 The basis for management adopted in the S106 is the Housing Management Accreditation Scheme,<sup>123</sup> which is applied by the Housing Corporation nationally and sets out in detail standards for the accreditation of affordable housing managers who are not approved RSLs. The Council sets out further requirements in its “Ownership and management of affordable housing as part of private residential developments” paper dated 5 December 2006.<sup>124</sup> That seeks to impose additional layers of control even for affordable housing managers which are RSLs, including gaining “executive approval from the Council”. The only exceptions are those within the Council’s ‘inner circle’. This is inconsistent with the Government’s desire to encourage a “mixed economy” for the provision of affordable housing across the country.
- 6.98 The “recycling of public subsidy to ensure the most efficient and proper use of public resources and to meet future affordable housing needs” is required by paragraph 19 of the DAH. The current regime is set out in the Housing Corporation’s Capital Funding Guide; that is the basis for recycling adopted in the S106 (see schedule 1 paragraph 14). Further detail on recycling is included in Annex D; whilst this is specifically in the context of the Government’s HomeBuy scheme, it has wider applicability. Paragraph 72 states that *“If a property comes within the definition of affordable housing and was grant funded by the Housing Corporation, but is subsequently lost to the affordable housing sector because... a shared owner staircases to full ownership... then any subsidy obtained by the developer upon sale is required to be re-invested by him to meet future identified affordable housing needs.”* The paragraph explains that, if the developer is an RSL, this is required by statute or grant conditions. If the developer is unregistered, it will be imposed through grant conditions. The reference to “any subsidy obtained by the developer upon sale” is not a reference to the point of 100% staircasing, but the original sale to the developer of the affordable housing unit in the first place and the subsidy then provided to the developer, who may be any form of affordable housing provider. That is consistent with the Capital Funding Guide and with the provision for recycling in the proposed S106.
- 6.99 The role of the Housing Corporation is considered in the DAH at paragraphs 27-29 and in Annex E. Its functions include facilitating the proper performance and regulation of RSLs and other affordable housing providers. That is the proper basis for controlling an affordable housing provider and does not justify the additional regime sought to be imposed by the Council. At paragraph 79 of Annex E the DAH refers to the Housing Corporation’s National Affordable Housing Programme (NAHP) and the prospectus setting out the basis upon which grant will be made available.
- 6.100 Paragraph 83 of the DAH identifies other sources of funding including “on-site developer contributions through planning obligations”. That is then considered further in paragraphs 84 to 88, including reference to the requirement that contributions fairly and reasonably relate in scale and kind to the proposed development and are reasonable in all other respects under Circular 05/2005. Thus it can be seen that the S106 contributions are regarded as a species of subsidy, equivalent to public subsidy through grant from the

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<sup>123</sup> Document INQ/41, attached to document 4

<sup>124</sup> Document INQ/41 document 4

Housing Corporation, and thus subject to the same requirement for recycling. The appellants' understanding is that the private subsidy is the equivalent of the discount on market value implicit in the fixed transfer price. That is the equivalent of public subsidy through grant and accordingly to be recycled on the basis of the Capital Funding Guide.

- 6.101 Annex B gives guidance on definitions, which are in substance the same as those in PPS3. This is followed by further details on the two main types of affordable housing, social rented and intermediate. There is a degree of ambiguity in paragraph 38, which deals with intermediate affordable housing, and states: "... The purchaser may buy additional shares ('staircasing'), and this payment should be 'recycled' for more affordable housing. ..." One question that needs to be addressed is what is the significance of 'recycled' being in quotes in that, if it was simply intended that the payment for the additional share should be used in its entirety for more affordable housing, recycled could have been used without quotes. Paragraph 40 makes it clear that it is the subsidy provided by the private sector which should be retained for future provision of affordable housing, not the staircasing payments. That in turn reflects the position in the public sector.

#### *Application of the Policy*

- 6.102 In determining whether the S106 obligation satisfies policy, the first issue is whether the proposals would enable housing to be provided that would be available as social rented or intermediate affordable housing for those not able to buy or rent in the general market. A preferred route is provision through an accredited affordable housing provider (AHP). An AHP is under a duty to provide for those in need of affordable housing and is subject to approval and regulation by the Housing Corporation. Thus the critical question is whether the procurement cost offered to the AHP is at a level which enables the AHP to deploy the housing resource in a way that would meet the definition of affordable housing.
- 6.103 In the present case the quantified extent of the discount in financial terms depends on the assessment of market value. The basis of the offer is a proposed transfer cost of £1,254 per sq m. That figure is derived from Proval (INQ/7), a widely used economic model for assessment of affordable housing schemes.<sup>125</sup> Based on the appellants' assessment of market values, this would give discounts of some 30% on market value for the shared ownership units and some 64% for the social rented units. The overall discount would amount to £64m on the Council's valuations and £42m on the appellants', being discounts of 51% and 40% respectively.

#### *Market Valuation*

- 6.104 An irony of this case is that the more that the appellants' valuations are on the cautious side and the higher the market values are found to be:
- (a) the greater the discount and benefit that is provided (and is secured for the future by way of recycling the subsidy); and
  - (b) the greater is the need for intermediate tenures because of the widening gap between incomes and market value and with it the commensurate inability to have access to home ownership.

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<sup>125</sup> Document BOV/3/1 appendix 8

As to the Council's assessment,<sup>126</sup> their market values are averages across South Gloucestershire as a whole. It is common ground that the Filton sub-area is significantly lower in value, being 23% and 24% respectively below South Gloucestershire and Bristol, based on Land Registry records of sales. The Council believes the differential to be closer to 10%, based on the HHNS. It may be that the best approach is to consider the discount as a bracket based on the respective market valuations, albeit recognising that the higher the valuation the greater the discount and the public benefit which is offered.

#### *Comparison of procurement costs*

6.105 The average procurement cost for S106 developments which include affordable housing is £1,363 per sq m during the current accounting period (2006-2008).<sup>127</sup> The median figure is £1,482 per sq m. For non-S106 sites, the equivalent figures are an average of £1,525 per sq m and a median of £1,576 per sq m. That is entirely consistent with the Council's analysis,<sup>128</sup> which gives a procurement cost (i.e. the land and build costs excluding on-costs) of £1,442 per sq m<sup>129</sup> in the period from 2002 to the present day.<sup>130</sup> It is also instructive to note the procurement cost of £3,898 per sq m for the shared ownership units at the Woodstock School site, the subject of the bid by Sovereign as RSL, supported by the Council and approved by the Housing Corporation in providing £1.5 million of public subsidy. That powerfully demonstrates the value in the discounted offer being made by the appellants. The suggestion that the appellants would make a profit out of the affordable housing is contested, for the serviced land would be provided free and the buildings would be provided at cost.

#### *Provision*

6.106 It is then appropriate to consider what are the terms of shared ownership that can be provided by the RSL on the basis of the procurement offer made. There is no issue as to the social rented units, which are accepted to be capable of being provided at the procurement cost indicated by the Council (an average transfer price of £700 per sq m, compared to the appellants' assessment of £730 per sq m). On the Council's valuations, the AHP would be able to provide an initial equity share of 40% and an equity rent of 1%, still maintaining the predicted level of average occupier costs for the shared ownership units.

6.107 The CORE statistics for the provision of affordable housing in 2005/6<sup>131</sup> indicate that the initial equity stake offered during the most recent statistical year is a mean of 47% and a median of 50%, together with an average equity rent of nearly 3%. This demonstrates the reasonableness of the opportunity provided through the appellants' subsidy or discount. That can be compared with the actual offers made at Filton, where the shares are being offered at 50%, with the equity rent at 2.5%. At Woodstock School an initial 40% share is proposed, but with an equity rent of 3%. Thus on all the comparable evidence the opportunity being offered to the RSL is a product which is significantly less

<sup>126</sup> Document SG/2/3 appendix 5(1), tables 2 and 5

<sup>127</sup> Document SG/2/1 appendix 6 page 2; the figure excludes care provision which could artificially inflate the figures

<sup>128</sup> Document SG/2/3 appendix 2

<sup>129</sup> £1,442 equals the sum of £4,846,997 and £14,128,293 divided by the square meterage of 13,160 sq m.

<sup>130</sup> The figure of £1,074 per sq m on page 1 of Appendix 2 to Document SG/2/3 only deals with the build costs and excludes the land cost, which is a necessary cost of procurement

<sup>131</sup> Document BOV/3/3 appendix 3, CORE tables 24-27

expensive than appears otherwise generally to be the case in the provision being made by RSLs with the support of the Council in this area.

- 6.108 It is because of the extent of the discount offered that the appellants have amended the definition of Shared Equity Terms in the S106 so as not to put an unnecessary fetter on the balance between the initial equity share and the retained equity rent, both of which are simply percentages of the prevailing market value against a fixed procurement cost. It may well be that the AHP (with Housing Corporation approval) may wish to provide a smaller initial share with a higher equity rent, which would still meet (as it is bound to) the affordable needs of the particular Council nominee. By not imposing a limit on the initial equity share the AHP is able to offer a range of initial shares, some perhaps as high as 75% to those households who can afford it, balanced by smaller shares of, say, 25% to those who can only afford a smaller share.
- 6.109 There seems to be no justification for the arbitrary imposition of the 1.5% limit on the equity rent, especially as this would conflict with standard Housing Corporation guidance. That is reinforced by the practice of AHPs in the area to prefer in many cases equity rents in excess of 1.5%, albeit with (as at Woodstock School) an initial share of 40%. This can be regarded as an example of the “best possible” use of planning obligations<sup>132</sup> to ensure the maximum deployment of the very considerable subsidy provided by the appellants towards affordable housing provision on the site, and to ensure that it is not artificially constrained by unnecessary restrictions contrary to the advice in PPS3. Nevertheless, the S106 does give the option to the Secretary of State of imposing a cap of 1.5% on the equity rent should she so choose.

### *Sensitivities*

- 6.110 It is appropriate to examine the sensitivities in the assessment of the transfer or procurement offer. The transfer cost is fixed, subject only to indexing. The BCIS index has been established by the RICS and is widely adopted in S06 agreements for the purpose of indexing property prices. The mortgage costs are agreed at 5.5% repayment over 25 years. As to on-costs, while the Housing Corporation allows a maximum of 14%, the Council indicated that 7% would be more likely. The appellants do not disagree, for the AHP would be procuring completed units on serviced land with planning permission in place. In those circumstances the on-costs would be likely to be modest.
- 6.111 Finally, there is the question of staircasing and the recycling of subsidy. Paragraph 14 of the S106 obligation incorporates provision for recycling in accordance with the Capital Grant Guide and PPS3/ DAH. This allows for the subsidy (amounting here to £42-£64m) to be recycled from the net receipts. It is also consistent with the testing of viability through Proval, because that allows for repayment of the proportionate amount of the outstanding loan in accordance with the principles in the Capital Grant Guide, and with the Housing Corporation’s bid documentation, which expressly allows for staircasing receipts, thus allowing for better value in the use of public funds.
- 6.112 As to the assumptions in respect of overall staircasing, it is probably appropriate that a bracket should be allowed. In this respect the inquiry now has a series of sensitivity tests, at 85% which is the norm,<sup>133</sup> and at 60% and 65%.<sup>134</sup> It was also indicated that this

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<sup>132</sup> DAH paragraph 9

<sup>133</sup> Document BOV/3/2 appendix 8

<sup>134</sup> Document INQ/30



offer would work with no staircasing, however unrealistic that proposition may be. Thus all the evidence indicates that on the sensitivities, such as they are, the offer is robust and would enable an AHP to provide affordable housing in accordance with the definition in PPS3 and the DAH.

- 6.113 The costs to the occupier remain fixed, subject only to the servicing charge for the flats. The appellants have used the CORE statistics, which give an average service charge of £14.64 per month or £176 per annum.<sup>135</sup> In contrast, the Council has used a figure of £400, though this is not supported by statistical or other independent evidence. The appellants' view is that the average figure is to be preferred for units which would be constructed specifically for the affordable housing market.

#### *Affordability to occupiers*

- 6.114 The CORE statistics<sup>136</sup> show that over the past year some 34 units of shared ownership dwellings have been provided by way of affordable housing. It is worth bearing in mind that some 7,070 dwellings remain to be provided within the next 5 years, 33.3% of which would be expected to be affordable (2,354 units). Of those, on the Council's approach, some 23% (541) should be in shared ownership tenure, equivalent to 108 units per annum. It is evident that on the CORE statistics, actual provision appears to be well below target.
- 6.115 The CORE statistics are also helpful to indicate the level of incomes of those who have acquired shared ownership in South Gloucestershire, and have thus satisfied the requirement for housing need.<sup>137</sup> The household income varies between the minimal up to between £30,000 and £40,000. The majority are focused in the income bracket £22,000 to £30,000. It is not to be assumed that those within the bracket of £30,000 to £40,000 are evenly spread, for they may well be just within or at the lower end of the bracket. They are mostly those with a joint income; it is also to be expected with joint incomes that the scale of the dwelling sought will not be a single bedroom flat.
- 6.116 Turning to the Council's assessment of household incomes,<sup>138</sup> a factor of 13.9% is applied to the 2003 figures to allow for the increase in household incomes. This means that a 2003 £15,000 income is uplifted to £17,085, what was £20,000 is uplifted to £22,780, and £30,000 to £34,170. However, the Council's table is flawed insofar as the housing costs (which were based on a 50% share and 1.5% equity rent as opposed to the fixed transfer cost of £1,254) are not relevant to this proposal. The costs generated by the appellants offer would be £4,539 to £4,610 per annum for the one-bedroom flat, £5,492 for the two-bedroom flat, £6,024 to £6,293 for the two-bedroom house, and £7,092 to £7,558 for the three-bedroom house.<sup>139</sup> Thus the suggested figure of 2.2% in the Council's table has no relationship to the offer made in the present case.
- 6.117 The income levels at 2006 can be compared to the brackets of income used in of the HHNS<sup>140</sup> for the different forms of non-social rented provision (between £15,000 - £30,000 and between £25,000 - £39,000). The overall figures at paragraph 7.21 of the

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<sup>135</sup> Document BOV/3/3 appendix 3

<sup>136</sup> Document BOV/3/3 appendix 3, table 23

<sup>137</sup> Document BOV/3/2 appendix 3, table 8

<sup>138</sup> Document SG/2/3 appendix 5(2)

<sup>139</sup> Document INQ/30 tables 1 and 2

<sup>140</sup> Document SGD/4 table 6.10, page 137

HHNS indicate some 2,106 households in need who would be able to afford tenures other than social rented.<sup>141</sup>

- 6.118 As to potential access to market housing (and in particular the example of the £93,000 second hand unit), it is important to have regard to the types of units required by those likely to be in the £30,000 plus bracket of housing need. The HHNS indicates that the units needed for households with incomes above £30,000 are all larger houses up to 4 bedrooms. Thus the income brackets identified all properly relate to housing need in the sense that the households are not able to afford access to market housing. With the rise in property prices, that area of need is likely to have become the more pressing in recent years.
- 6.119 It is also relevant to consider the costs that formed the basis for the shared ownership bid at Woodstock School.<sup>142</sup> The costs for the shared ownership units in that case are significantly in excess of those that could be offered as a result of the discount or subsidy provided through the present scheme (for example, £5,845 for a one-bedroom flat at Woodstock as against £4,539/4,610 here). Moreover it is relevant that the bid on behalf of Sovereign was expressly premised on the basis that there was a good demand for more affordable low cost home ownership of the type provided, and that it would be meeting a local need assessed by the Council. If that was a proper basis for the bid made for the Woodstock School site, it would also in principle apply to the present proposal.
- 6.120 Reference has been made to ‘top slicing’ and the question whether the offer is sustainable. That it is sustainable is demonstrated by the provisions in the S106 obligation (1) to restrict occupation to those in need of affordable housing, (2) for the nomination rights of the Council, and (3) for the recycling of any subsidy that is derived through staircasing. As to “top slicing”, the importance of the intermediate option is made clear as part of Government policy in PPS3 to secure access to the housing ladder. That it is a local need is reflected in the bids made for Woodstock School by Sovereign, the support of the Council, and the endorsement of those bids by the Housing Corporation in deciding to give £1.5m grant as public subsidy.
- 6.121 While there has not been an examination, either through the SMHA or the LDD, of any target for social rented or shared ownership tenures, PPS3 paragraph 24 deals with the requirements for large strategic sites. It requires the split of housing to reflect the proportions of households which require market and affordable housing and furthermore achieve “a mix of households as well as a mix of tenure and price”. If the Secretary of State is satisfied that the requirements for affordable housing are met, as is plainly the case, and that the policy in paragraph 24 is met, there can be no proper basis for imposing some more extensive requirement on the development to meet other different forms of housing need, particularly having regard to the costs of doing so.
- 6.122 The S106 obligation provides in the first place an obligation to offer the particular affordable housing tranche to the AHP with a two-stage iteration, and then a palette of options for the Council to elect, including nomination by the Council of the offeree AHP. This means that the Council is able to vary the form and balance of provision during the period of development, including the tenure provided. If there is a public need for different forms of tenure, as identified at Woodstock School, then it can properly be considered for public funding.

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<sup>141</sup> Being 22.6%, the sum of the percentages given, as a percentage of 9,320 (the total of backlog and emerging need)

<sup>142</sup> Set out in Document INQ/13, and analysed in INQ/30 table 3

*Public Subsidy*

- 6.123 There is no policy in the development plan or elsewhere that precludes public subsidy as part of the provision of affordable housing through private sector development. PPS3 makes it clear that that is not part of the Government's policy. The Housing Corporation's position is plain – it seeks additionality to justify public grant. It is currently able to provide significant funding to support social rented as well as other tenures (£47,939 per unit for S106 schemes for social rented, and £62,965 per unit for non-S106 social rented schemes). At Woodstock School the grant to support the shared ownership units worked out at £68,182 per unit. The additional public funds required in the present case to support the increase in social rented units from a total of 23% to 77% of the provision amounts to £40,000 per unit. That is not out of scale with the level of funding that the Housing Corporation has committed on sites subject to a S106 by way of additionality, such as Woodstock School.
- 6.124 There is no reason why the same would not apply to additionality in the present case. The Housing Corporation were sent a copy of the letter to the Council dated 18<sup>th</sup> September 2006 setting out the appellants' proposed terms for affordable housing. Their response dated 12<sup>th</sup> October does not preclude public grant.<sup>143</sup> It leaves open any decision until the development actually comes forward, as was the case with Woodstock School. Moreover, there is no need or justification for the Housing Corporation to commit itself to a change of tenure across the whole development. The position can be considered in respect of each affordable housing site during the progress of the development and in accordance with the priorities at the time.
- 6.125 The discount or subsidy provided by the appellants is £42-£64m. The additional requirements sought to be imposed by the Council without the backing of policy and, in the appellants' submission, contrary to the provisions of the Local Plan, PPS3 and the DAH, is some £22.5 million.<sup>144</sup> Quite apart from the overall scale of obligation, there is no justification for that additional cost and provision when the scheme would in fact provide affordable housing within the definition and meet the policies in the development plan, in PPS3 and the DAH.

*Role of RSL / AHP*

- 6.126 The Council seeks to impose constraints on the terms on which the RSL/AHP could offer the units to those in need. That would be both unjustified and unnecessary, and in any event contrary to the advice in PPS3. It would be unnecessary because the RSL and accredited AHP are under a duty to provide the units to those in housing need; that is subject to supervision by the Housing Corporation and is also subject to 100% initial occupation nomination rights of the Council. Thus the terms offered to the nominee have by definition to be affordable. If they were not, both the Council and the Housing Corporation would have powers of redress through the S106 or the regulation/accreditation of the AHP concerned. In any event, proscribing the particular basis for offering terms would not be justified as it would place an unnecessary fetter on the AHP's ability to use its resources to address the affordable housing needs to best effect. That would itself be contrary to the advice in PPS3 and the DAH, which advises against restrictive controls of local authorities.

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<sup>143</sup> Document SG/2/2 appendix 6

<sup>144</sup> Document BOV/3/1 paragraph 6.12

*Option 3 – Intermediate rent*

6.127 Option 3 provides for a discounted rent for 25 years through the AHP. The annual incomes required to afford this option are in each case markedly less than those required for the Council's HHNS compliant version.<sup>145</sup> At the end of the lease period the AHP remains owner of the units, and would be required to put them to best use in furtherance of its objectives to provide for affordable needs. Thus there would be both a medium term and a long term contribution to meeting the affordable needs of the area if the Council chose to elect for this option. There is no assessment to support the suggestion that there might not be any subsidy balance to recycle at the end of the tenure period, and this seems most unlikely given the 51% market value discount at the commencement of the period.

*Option 4 – Social rent*

6.128 A similar analysis applies to the provision of social rented units. The level of rent is in accordance with the definition in PPS3 for target rents and therefore accepted to be affordable. At the end of the period the units remain in the ownership of the AHP as part of its resource to provide for affordable housing needs, subject to the supervision of the Housing Corporation. As an option available to the Council, should it so choose, it would be entirely in line with the guidance in PPS3 and the DAH.

*The fall-back option*

6.129 The obligation is to transfer the units to a Nominee or AHP at a price not exceeding the fixed transfer price. That provision would be at a discount of some 51-54% on the Council's open market values, which is well in excess of the market discount of 30% in the HHNS or the 25% discount in the definition of HomeBuy in appendix 3 of the draft SPG/SPD.<sup>146</sup> The suggestion that only 10% would be able to afford this option is evidently based on table 6.10 of the HHNS (1077 households able to afford submarket rent), but this ignores the extent of the discount (51-54% as opposed to 25%) and in any event the obligation to transfer at a cost "not exceeding" the transfer price, so that the actual price will be whatever is in fact affordable. Whether the fall-back option comes into play depends on the likelihood of the other options failing, and in particular the primary route requiring staged offers to an AHP. The appellants believe the evidence demonstrates that the offer under this route would be viable and attractive to an AHP.

*Other appeal decisions*

6.130 The interim decision at West Stevenage<sup>147</sup> confirms that provision in the form of a fixed period tenure without the support of public funds is acceptable, albeit with the opportunity for further enhancement by public subsidy. There was no viability case at West Stevenage or for that matter at Cardington.<sup>148</sup> Both inquiries took place in the context of policy announcements from the Housing Corporation that S106 obligations should not assume public subsidy for private sector development. The decision at Cardington also confirms a similar approach, with a cascade of options enabling the local authority to choose the particular form of provision.<sup>149</sup>

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<sup>145</sup> Compare Document SG/2/4 paragraph 2.23 with INQ/30 table 1. Eg. for a one bedroom flat £19,920 as against £20,321, and so on

<sup>146</sup> Document CD/SPD/7a/b

<sup>147</sup> Document CD/ADM/4, DL48 and IR IC 67/8

<sup>148</sup> Document CD/ADM/6

<sup>149</sup> Document CD/ADM/6a, DL47 and paragraphs 7.156 and 14.153

6.131 Lintham Drive<sup>150</sup> is an example of a decision by an Inspector made very recently (13<sup>th</sup> November 2006) in relation to a proposed S106 obligation with a form of cascade, in the sense that it allowed for a fall back provision including transfer to the Council should the initial transfer to an AHP not succeed. In that case the Council's attempt to impose its particular regime and to dictate the form of the S106 obligation was rightly rejected by the Inspector.

#### *Wheelchair provision*

6.132 Provision is made in paragraphs 12.1 and 12.2 of Schedule 1 of the S106 for 6% of the affordable housing units to be to mobility or wheelchair standard. That figure is based on Table 2.48 of the HHNS, which indicates a maximum figure of 5.9% of those seeking to move who require mobility or wheelchair provision.<sup>151</sup> The Council's figure of 18% appears to be derived from the backlog housing need, but ignores the emerging need. Alternatively it was said that 18% became 8% if taken as a percentage of total backlog and emerging need. But that ignores the fact that the incidence of disability is not restricted to any particular classes of income or need; the only overall indicator in that respect is the 5.9%.

6.133 The Council's figure is also inconsistent with the provision required elsewhere. For example at Hewlett Packard the requirement was 4%,<sup>152</sup> and at Lintham Drive the provision was 4.5%. The Council's own partnership RSLs have been providing 2.8%, while at Woodstock School it was one wheelchair compliant dwelling, constituting some 2.4% of the units. For something that is not supported in policy, the proposal for 6% mobility or wheelchair standard units is appropriate, reasonable and proportionate. In addition, the S106 confirms that mobility and wheelchair dwellings would be delivered to the standards published by the Housing Corporation. It can therefore be anticipated that they would be large enough to incorporate the required design standards.

#### *Housing mix*

6.134 Document INQ/33 provides a useful summary of the mixes put forward on behalf of the Council and otherwise required. It demonstrates that the appellants' proposal, which provides an increased proportion of houses as opposed to flats, is consistent with the provision elsewhere. It also reflects closely the provision in the Filton sub area, as set out in table 6.2 of the HHNS. The housing register suggests a greater number of smaller units for emerging households;<sup>153</sup> this pattern is continuing, as confirmed by the 2006 register.<sup>154</sup> The proposals for Filton College in December 2004 are very closely in line with those made by the present appellants.<sup>155</sup> The Lintham Drive appeal decision<sup>156</sup> again indicates proportions that, if anything, would favour fewer larger houses than are proposed here. Hewlett Packard is similar, as is Woodstock School.

6.135 The Council's proposals are based upon table 6.1 of the HHNS, but that only deals with backlog need and is for the whole of the District. It is accepted that emerging needs are, as a matter of common sense and record, likely to comprise smaller households rather

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<sup>150</sup> Document INQ/5

<sup>151</sup> A combination of both wheelchair and those with walking difficulties, constituting some 713 households out of a total of 12,061

<sup>152</sup> Document INQ/32

<sup>153</sup> Document INQ/35

<sup>154</sup> Document INQ/53, giving 53%, 36% and 9% for one, two and three bed units respectively

<sup>155</sup> Document INQ/37

<sup>156</sup> Document INQ/5

than those requiring larger houses.<sup>157</sup> The 10% difference from the proposed mix for houses and flats, which has already apportioned greater provision of houses to the affordable housing sector, would be significant and would potentially have a seriously adverse effect on urban design. For example the increased instance of houses would militate against the ability to secure effective perimeter block treatment whilst maintaining the higher density proposed for the site. In all the circumstances there is nothing to justify rejection of the proposals on the ground that the mix would not satisfy the requirements of PPS3.

### *Section 106 obligation*

- 6.136 The Council's concern regarding the security of the tenants is misplaced. Although it would be necessary (as the Bromford Housing Group confirmed) to use a periodic Assured Shorthold Tenancy for dwellings offered on a social rent basis for a finite period, the dwellings would be owned and managed by organisations accredited for such purposes by the Housing Corporation. In addition the Council is confusing an individual's security of tenure with the provision of the dwelling. Should an individual tenancy be terminated, the affordable dwelling would still exist. The concern about nomination to a person in need should the Council or Homebuy Agent be unable to nominate a tenant within the six week period is also unfounded. In this situation the Affordable Housing Manager would make the selection decision and, bearing in mind such organisations have to be accredited by the Housing Corporation, their selection procedures would be subject to scrutiny and audit.
- 6.137 It is not the case, as the Council contends, that the cut-off point for bringing in grant is the commencement of development. It is possible for grant to be invested at any stage; however once an option has been selected by the Council, a developer would enter into a contractual commitment which would, of necessity, fix the size of the dwellings to be built. Such a commitment may or may not be in place prior to the commencement of development. The baseline position is that the Affordable Housing Distribution Plan (AHDP), which must be agreed by the Council, defines the mix and size of affordable dwellings such that the Optimum Tenure Mix, ie 77% social rent, can attract grant funding. A developer must make a reserved matters application and make a bid for grant based on the AHDP.
- 6.138 The Optimum Tenure Mix would therefore be delivered if grant funding is available. A developer could not change the size of dwellings unless he had undertaken this stage of offer and it had failed. Furthermore, a developer has no ability to change the mix of dwellings without the submission of a further reserved matters application, and paragraph 4.1.7 (b) confirms the offer must be based on the Optimum Tenure Mix. The delay that would occur if offers could not be made until a reserved matters application is approved would unnecessarily postpone the involvement of an AHP, potentially affecting the delivery of the housing parcel. In relation to the necessity to offer 50 units to each AHP, the Council's concern was that there should not be too many RSLs involved in the application site. Paragraph 2.2 does not link back to the "Offer" because there will be instances where there are fewer than 50 units and therefore it would not be possible to transfer 50 units at one time.
- 6.139 As to the Council's concern about a lack of control over the reinvestment of recycled capital receipts, that is standard practice. An AHP must be accredited by the Housing

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<sup>157</sup> Document CD/SGD/4 page 59, table 2.39

Corporation and will therefore be audited to ensure that any receipts are appropriately invested in accordance with Housing Corporation procedures, bearing in mind the constraints imposed via the commitment at paragraph 14 of the S106 schedule. The Council's argument is not about a deficiency in drafting, but is a reflection of its desire to prescribe and control.

- 6.140 The Undertaking confirms that mobility and wheelchair dwellings will be delivered to the standards published by the Housing Corporation, so there should not be any problem about their size; the imposition of a minimum floor area would be an arbitrary control that would not serve any useful purpose. The error in the definition of Nominee (whereby the word 'houses' is used rather than 'dwellings') is unfortunate, but the meaning is clear and this does not negate the intent within the Undertaking. With regard to the distribution of affordable housing across the site, the AHDP must be approved by the Council prior to the submission of a reserved matters application and will show the approximate location and number of affordable dwellings, the mix, number of beds and proportion of flats for each development parcel. It is therefore extremely unlikely that the authority would approve a plan that proposed individual Affordable Housing Sites having contiguous boundaries with those on other development parcels.

### Conclusion

- 6.141 The benefits being secured as a result of this development would be very substantial. On the evidence put forward by the Council, they amount to £115m. The appellants argue that not only would it comply with the test in Circular 05/2005, but also that it would be a very generous set of proposals. The development would be fully integrated – both within the appeal site and in relation to the adjoining areas – on previously developed land within an urban area. It would be fully in accordance with the Local Plan and the regional and sub-regional strategy, and with all relevant Government policy. Accordingly the Secretary of State is requested to allow the appeal, and to grant planning permission, so as to enable this important and beneficial proposal to proceed without further delay.

### THE CASE FOR INTERESTED PARTIES

- 7.1 **Cllr Eve Orpen**, Mayor of Patchway and speaking on behalf of **Patchway Town Council**, stated that the Town Council does not object to the development, but does not want the same mistakes made on this site as were made in Bradley Stoke. Patchway is a thriving community with a good community spirit and a community centre that is always fully booked by groups covering all ages and interests. The new development must be part of this community and not a separate enclave. The Town Council is aware that the development of this site is a long-term project, but all the safeguards must be in place before any development starts, and the Masterplan must be adhered to by all the individual developers over the time it takes for the development to be completed.
- 7.2 A particular concern of Patchway residents, as demonstrated by the substantial petition, is the proposal to delay construction of the new link road so that it is not available for use until the end of Phase 1, which is likely to be four years into the development. The initial phase of up to 150 dwellings would be accessed from Highwood Road, which would place an intolerable burden on the already over-burdened road system and would impact negatively on the quality of life of Patchway residents. Residents already suffer from the difficulty of getting in and out of Patchway at times when the dual carriageways

of Highwood Road and Gloucester Road (A38) are congested. This occurs during the morning and evening rush hours throughout the year, and at weekends and daytime during busy periods at the Cribbs Causeway Retail Shopping Centre. Furthermore, although the applicants state that construction traffic will use the link road during all phases, it appears that the link road will not be in place before construction commences.

- 7.3 Due to the layout of Patchway, it has always been difficult to see how to create a town centre for the community - not just a concentration of shops and services, but also an attractive centre to give the residents civic pride and a sense of identity. The proposal to build housing on part of Filton Airfield gives an opportunity to change this situation. A town of 20,000 (as Patchway will be) deserves a town centre containing good quality public buildings, a variety of modern shops and facilities served by a public transport system responsive to public needs. It also needs community facilities for all ages and an attractively maintained central area. The Town Council supports the proposals for a new town centre with appropriate shops and buildings to link the new and existing communities, and with a financial contribution in lieu of a new community centre and nursery to enable the existing community centre in Rodway Road to be rebuilt as a landmark building including the library, cafe, and community offices.
- 7.4 Patchway Town Council is concerned at the proposed site of the primary school, which it considers is too close to Callicroft Primary School in Rodway Road. Whilst appreciating the point that the new primary school as located would enhance the town centre, it is considered that the new school should be further into the site to spread the primary school provision throughout the site. It should also be noted there are a considerable number of places available in the existing primary schools which will have to be filled before a new school is built. This would be beneficial in mixing the existing and new communities.
- 7.5 The Town Council is pleased that indoor leisure and recreation facilities are included in the Draft Brief, but is disappointed that facilities are proposed off-site at Patchway Community College. Scott Park in Coniston Road is the major outdoor sports facility for Patchway, providing football and cricket pitches for all ages and abilities. The Council would like more funds to be spent on upgrading and extending these facilities, which would be much nearer to the new development than Patchway Community College. The Council would also like to see the travellers' site at Highwood Lane enlarged to accommodate at least 6, but preferably 10, additional places. Since the site was developed there have been fewer problems of travellers parking on roadsides, playing fields, road verges and other small green sites. At the present time the site is over-full, and there are always travellers trying to secure places on the site.
- 7.6 Patchway Town Council is concerned that the applicants' proposals are not in accordance with South Gloucestershire policy on affordable housing. More social rented housing is required for the numbers of people in the immediate area, and South Gloucestershire as a whole, who cannot or do not want to buy property. This housing should be of the same high standard as all other housing being developed across the site. Furthermore, there appears to be no provision for any form of sheltered housing; there is a great need for this to meet the needs of an ageing population. The Council also shares the concern of South Gloucestershire regarding urban layout and the overall design. The Local Plan should be followed as it sets out the requirements of the outline application. Every effort must be made to ensure that there is an overall vision for the whole site, and that the principles of the Masterplan are followed.



- 7.7 **Revd David Byrne**, Vicar of St Chad's Church, Patchway, refers to personal experiences in other parts of the country which highlight the need for careful phasing of the building of major roads, family homes, shops, schools, sheltered housing and employment areas to enable a reasonably healthy sense of community to grow early on. It is important that controls are sufficiently rigorous to ensure a sophisticated phasing of the various types of development, so that individuals and families moving in experience a healthy sense of belonging at an early stage. It is accepted that society has an urgent need for new housing, and there is recognition of the vital role that companies with vision and enterprise play in such developments. However, it is hugely worth taking the time to build in robust safeguards at this planning stage.
- 7.8 Traffic management is a significant concern, particularly the intention to force construction traffic through the existing bottleneck at Patchway roundabout. A related issue is the need to ensure easy pedestrian movement between new community facilities in North Field and the existing shops and facilities centred round the Rodway Road/Durban Road crossing, so that as far as possible these become a single entity. It is also important to ensure that the mix of new housing actually corresponds to known local needs, especially in the areas of affordable and family accommodation.
- 7.9 **Mr Ian Cross**, a local resident, opposes the development primarily because of the large amount of additional traffic that would overload an already inadequate road network. The area is crippled, with major traffic problems regularly occurring on 1960s infrastructure. The Aztec West roundabout was put in place to keep traffic flowing on the A38 to Aztec West, Bradley Stoke and the M5, but it has failed to do this. Another roundabout on the A38 in the vicinity of the Royal Mail would further slow down the traffic.
- 7.10 There would be additional problems if the proposed dual carriageway links this roundabout to one of the roundabouts at the Cribbs Causeway Mall. The sheer volume of traffic which now visits the Mall and the surrounding area jams up the road system, which was never built to take this level of traffic. Another 2,200 houses and additional offices/ warehouses would have an enormous impact on this overloaded system, resulting in constant peak hour traffic jams on all the existing roads.
- 7.11 It has been estimated that 2,200 houses would produce on average 1 car per household, but these days most households have two cars per household. As an example, the 6 houses close to where Mr Cross lives have a total of 16 cars, which are all used on a daily basis. The reason for such a high number of vehicles is that 3 of the houses have children in their early 20's who are still at home; they cannot get onto the housing market because houses are priced out of their reach. If this ratio were applied to the North Field site there would conservatively be 5,800 additional cars. This does not take into account the extra traffic entering the area for work purposes. With the existing developments at Horfield, Lockleaze, Rolls Royce Eastfield, Emersons Green and the proposed development between Long Ashton and Weston-Super-Mare, it is questionable whether the infrastructure can cope with developing North Field to its proposed size.

## WRITTEN REPRESENTATIONS

- 8.1 **Philip Winter**, a local resident, expresses disquiet at the amount of development that has taken place in the Filton area over the past 20 years. He also questions whether the North Field site can properly be regarded as brownfield land, for in the early 1970s the

then Secretary of State for the Environment made an order which protected much of the airfield from future building expansion. The intention was to create a buffer zone separating the north of Bristol city from the southern fringes of South Gloucestershire. However, what was then given to the people as a protective measure to safeguard communities from unscrupulous developers has since been conveniently overlooked.

- 8.2 The quality of life for Filton residents is already poor, and will not be improved by the development. The main roads are already choking with high levels of traffic, and air pollution is one of many serious environmental problems. To encourage more traffic would be a short-sighted and backward decision. Another concern, highlighted by climate change, is whether the drainage system can cope with all the surface water without causing flooding.
- 8.3 The need for more business parks, hotels and the like is unclear, particularly with evidence of an economic slowdown. Moreover, much of the past employment creation has not led to jobs for local people, as firms moving in have tended to transfer key personnel, leaving vacancies mainly for low-grade or part-time labour. The shortage of houses in this region is also a misnomer. Bradley Stoke was built on the misguided assumption that property was in short supply, but no-one really wants to live there now. Moreover, building large numbers of properties in an attempt to make housing affordable is just not feasible.
- 8.4 **Indigo Planning Ltd** represent the owners of most of the Cribbs Causeway retail and commercial complex. They support the principle of the North Field development given its ability to deliver a more sustainable community through the promotion of a wider mix of uses within the Bristol North fringe, achieving a more sustainable pattern of development, balancing travel patterns in the area, and meeting housing needs. They believe it is imperative that the North Field development integrates with its surrounding communities, including the commercial area in their ownership; as such, transport links between the site and Cribbs Causeway area are very important.
- 8.5 The principle of a distributor route connecting the M5 with the A38 is supported, which should be routed via the San Andreas roundabout. They believe that this would enable the best public transport access to The Mall, and provide opportunities for further linkages between the development and the Cribbs Causeway commercial uses. It is acknowledged that the appellants do not control all of the land necessary to create the link to the San Andreas roundabout, which is owned by JT Baylis and the Council. They state that both parties are agreeable to providing the land to create this connection. The use of a S106 Agreement to secure delivery of the connection to the San Andreas roundabout is supported.
- 8.6 **Mr T Shorland** (Lords Lease Ltd) claims that he has rights over the ownership of the minerals in the soil of the appeal site.

## CONDITIONS AND OBLIGATIONS

### *Planning Conditions*

- 9.1 Conditions were the subject of considerable negotiation between the parties and were discussed on a number of occasions during the inquiry. Document INQ/62 sets out the final version from the Council's standpoint, indicating which conditions are agreed and

- which are not. The reasons for the conditions are also given. The alternative conditions preferred by the appellants are included in this document.
- 9.2 Most of the disagreement concerns the nature of the further approval process and the need (or otherwise) for additional design information. The Council's case is that, to overcome the shortcomings it perceives in the DAS, the submission and approval of a site-wide Masterplan (condition 1), a Design Code (condition 3) and a detailed Masterplan for each phase (condition 5) are necessary prior to the submission of reserved matters applications. Conditions 2, 4 and 6 would ensure that the reserved matters applications accorded with the approved Masterplans and Design Code. Notwithstanding their opposition to the principle of the multi-layered approval process, the appellants would prefer condition 1 to be as succinct as possible, and condition 2 to require reserved matters applications to be "in *general* accordance" with the Masterplan. In the Council's view, however, "general" accordance is not good enough.
- 9.3 An alternative set of conditions (1a to 4a) is suggested by the Council in the event that the Secretary of State allows the appeal subject to the submitted DAS. Condition 1a sets out the elements of the DAS with which reserved matters applications should accord, while condition 4a requires a detailed phasing strategy to be submitted and approved before reserved matters applications are made. Conditions 2a and 3a seek a separate Design Brief for the local centre (Patchway Square), Highwood Road, the hotel site and the central green spine.
- 9.4 Based on their contention that the submitted DAS is adequate and fit for purpose, the appellants seek a much simpler process altogether, proposing via condition 1c that reserved matters applications should be generally in accordance with the principles and parameters of the DAS. There is, however, no objection to conditions 2a and 3a regarding the site-specific Design Briefs. The appellants point out that, if the Secretary of State considered it appropriate, additional aspects of the development could be made subject to Design Briefs. There is agreement that, because of the large scale of the proposal, a ten year time limit is appropriate for the submission of reserved matters applications.
- 9.5 Certain conditions in the early drafts were designed to secure the provision of community facilities and other infrastructure; as these matters are now included in the S106 Agreement or Unilateral Undertakings, the conditions are unnecessary and have been deleted. Most of the other conditions are agreed, for the reasons stated, though a few contain elements which remain in dispute. For these contested conditions, I address briefly the cases for each party below.
- 9.6 Condition 11 imposes a restriction on the amount of employment floorspace (30,000 sq m) until the M5 improvement works have been completed, and is a requirement of the Highways Agency.<sup>158</sup> The Council argues that as well as the cap on employment floorspace, no more than 1,000 dwellings should be built until these works have been completed, so that a phased development would result. The appellants oppose any link to the number of houses, pointing out that the reason for the condition relates solely to the traffic generated by the employment element of the proposal.
- 9.7 As part of the provision for waste recycling (condition 13), the Council is seeking an area of 400 sq m within the employment area for community composting. The appellants do

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<sup>158</sup> The latest form of this condition comes from the direction of the Highways Agency dated 6 February 2007; this was circulated to both parties, and no comments were received.

not oppose this in principle, if it can be justified, but object to the 400 sq m stipulation, believing that the size of site and implications for traffic should be resolved at the reserved matters stage.

- 9.8 As part of condition 14, which requires the submission of a travel plan framework for the employment floorspace, the Council seeks a monitoring strategy for the reduction of single occupancy car journeys and associated car parking provision. The appellants object to the strategy applying to a reduction in car parking provision, for they attach considerable importance to the amount of space available for parking. There is a related issue with condition 24, which sets out the level of parking provision: the appellants propose a maximum of 1 space per 35 sq m of B1 office floorspace, whereas the Council seeks 1 space per 40 sq m.
- 9.9 The final disputed condition is 36, which stipulates that residential development should achieve at least the BRE EcoHomes “Very Good” rating and employment development the BREEAM “Very Good” standard. The Council argues that the relevant standard should be the one in place at the time of the reserved matters application, so that if the standard changes in future years, the requirement changes as well. The appellants strongly oppose this, arguing that it is not possible to impose a requirement to meet some unknown future standard resulting from the actions of a third party. Their view is that the standard should be that in force now, so that the developer has certainty about what is required.
- 9.10 A further issue with condition 36 is the requirement for a formal post-construction assessment regime. The Council believes that such a procedure – which usually involves spot checks on the first houses of a particular type to be built – is necessary, and is recommended as good practice by the BRE. The appellants argue that individual residential occupiers will ensure compliance, and that in any event adequate controls exist through the breach of condition notice procedure. Moreover the condition requires a scheme to be agreed, which could include provisions for assessment. The appellants propose a shorter alternative condition (36a) which addresses their concerns.

#### *S106 Obligations*

- 9.11 The S106 Agreement includes 16 schedules which would, as part of the development, ensure the phased provision of a wide range of community facilities and infrastructure. The principal matters are listed below:
- Schedule 1: £80,000 contribution towards public art;
  - Schedule 2: £2,942,928 contribution towards off-site public open space improvements and enhancements;
  - Schedule 3: Contributions towards sewer baiting (£918) and litter and dog bins (£29,920);
  - Schedule 4: Construction of link road between San Andreas roundabout and A38 Gloucester Road;
  - Schedule 5: £80,000 contribution towards a car club;
  - Schedule 6: £3,800,000 contribution for off-site highway works (9 schemes listed, mainly bus lanes and gates, pedestrian and cyclist upgrades);
  - Schedule 7: £1,800,000 contribution towards new and improved bus services (X18);
  - Schedule 8: Either the provision of new bus services (75 and X75), or a contribution of £3,644,500 towards the provision of these services;

- Schedule 9: £84,600 contribution towards employment of a community development worker;
- Schedule 10: £242,521 contribution towards expansion of Patchway library;
- Schedule 11: Provision of 6.3652ha of public open space to include 1 multi-use games area, 1 neighbourhood play area, 2 local equipped play areas, 5 local unequipped play areas and 1 teen shelter, together with contributions of £1,213,207 towards maintenance of public open space and up to £64,000 towards maintenance of surface water infrastructure;
- Schedule 12: Construction of a 60-place private nursery within the neighbourhood centre;
- Schedule 13: Provision of 2ha of land for a primary school at a nominal price of £1;
- Schedule 14: £4,935,991 contribution towards cost of two form-entry primary school on above land (or up to £1,600,000 contribution towards extending capacity of neighbouring primary schools if new school not required);
- Schedule 15: Provision of a 50-bed extra care housing facility for sale or lease;
- Schedule 16: Either the provision on-site of a 870 sq m community building at a nominal price of £1, or an unspecified contribution towards an off-site community building.

9.12 The parties could not reach agreement on (1) the appellants' desire to have the option of privately maintaining the public open space, (2) the mechanism for delivering the required works to the M5 motorway, (3) the calculation of rent for the healthcare building, and (4) the price, tenure and mix of the affordable housing provision. These matters are addressed in two Unilateral Undertakings submitted by the appellants. With regard to the M5 motorway works and affordable housing, the main points at issue have already been fully documented as part of the cases of the main parties (Sections 5 and 6 of this report). The differences between the parties in respect of the two other matters are noted below.

*Private maintenance of public open space*

9.13 The Council considers that Schedule 1 of the Unilateral Undertaking cannot deliver the maintenance of public open space by a private management company because it cannot operate as a freestanding obligation. The provisions of the deed conflict with the terms of the Agreement, and there is no mechanism or agreement between the parties for the Agreement to be varied. Consequently the Council believes that Schedule 11 of the Agreement remains in force and continues to have effect irrespective of the Unilateral Undertaking. Therefore a breach of the bilateral Agreement would occur in the event that the developers elect to implement Schedule 1 of the deed.

9.14 The appellants point out that the Council refused to have any provisions included within the S106 Agreement that would cater for privately maintained open space, and specifically removed provisions from the Agreement which would have aided private maintenance. Consequently it is regrettable for the authority to now say that a breach would occur if the unilateral deed is implemented. In any event, the appellants refute the suggestion that the provisions of the Undertaking would not work effectively. Schedule 1 of the Undertaking simply amends the operation of Schedule 11 of the S106 Agreement. It is stated quite clearly that the deed will take precedence over the S106 Agreement in the event that the Secretary of State in her decision determines that the appellants be allowed to maintain the open space privately.

- 9.15 Notwithstanding this legal point, the Council opposes the principle of private management on the basis set out in the Undertaking because it fails to ensure that the larger public open spaces would be available for use by the wider existing community as well as residents of the development itself. Integration between the new and existing communities is an important objective of the draft North Field Development Brief, and management by the Council would ensure full public accessibility. Schedule 1 gives no such assurance, and even if the private management company were to be controlled by residents of the scheme (which is not certain), the Council has experience in other areas of restrictions or prohibitions on the use of open spaces by those not contributing to the annual service charge. In addition, the introduction of a service charge has implications for the affordability of the affordable housing.
- 9.16 The appellants fail to understand the Council's resistance to the principle of private maintenance, for it is included as an option in the North Field Development Brief. The Council seem intent on only one model for delivery of private maintenance, by a Trust, whereas the appellants believe that there may be other mechanisms which would be successful. Furthermore, Schedule 1 of the Unilateral Undertaking is drafted such that the Council will be able to approve the structure of the Management Brief and the Management Company. It can therefore content itself that such arrangements are satisfactory and adequate. There is no suggestion by the appellants that the privately maintained open space would not be made available to the wider public; this would be dealt with through the agreed Management Brief.
- 9.17 The Council's detailed comments on the drafting of Schedule 1 of the Undertaking are at paragraphs 17-30 of the representations document (INQ/67). It criticises the lack of guidance as to what will be in the Management Brief, particularly with regard to funding and the period of management. It regards the trigger of 750 dwellings as too late for the formation of the Management Company, and objects to the lack of detail about the nature and objectives of such a Company, the extent of local representation, and the quality standards it would apply to ensure satisfactory maintenance. It is concerned that there is no fall-back position should the Management Company arrangements fail, especially in the light of the clause removing the obligation in the Agreement to pay a bond in respect of the carrying out of the landscape works. It also believes that the option for the appellants to retain part of the open space and offer other parts to the Council is unsatisfactory, for it would result in a very confused situation.
- 9.18 The appellants accept that much of the process would be subject to further negotiation. However, the Council would have the opportunity to agree a maintenance regime appropriate to the open spaces to be privately maintained, and would be able to agree an appropriate Management Company to oversee this. The deed makes it plain that the Management Company is responsible for carrying out the maintenance, that this must be given sufficient resources, and that it will operate in perpetuity. Whilst there is no stated fallback position, there is no reason to assume that private management will fail and require the Council to step in. In any event, there is nothing which would prohibit the Council and Management Company from agreeing a transfer of the open space to the Council should this become necessary.
- 9.19 As to the issue that only part of the public open space might be maintained privately, the appellants argue that because the Council would not guarantee to accept all of the open space, there seemed little alternative. There is no reason why such a situation should not work effectively. As an example, it may be that areas of incidental open space associated with a block of flats are rejected by the Council and are transferred to a

Management Company which is also responsible for maintaining the block of flats. In this way the residents who would primarily benefit from the incidental open space would have responsibility for its maintenance.

*Healthcare provision*

- 9.20 The Council accepts that the Schedule relating to the healthcare space could in theory deliver what it purports to deliver. However the authority believes that the drafting does not provide adequate safeguards to secure delivery. For example, there is no mechanism for the design or specification of the building to be agreed with the Primary Care Trust (PCT). Without the safeguards that the building to be provided is fit for its intended purpose, there can be no guarantee that a suitable tenant will be found. A failure to find a suitable tenant would ultimately enable the developer to disregard this obligation. Secondly, the PCT is required to enter into a lease on terms to be agreed by the District Valuer. However, as the PCT are not party to the Undertaking, it is not possible for them to be bound to enter into such a lease.
- 9.21 The appellants point out that many of the amendments suggested on behalf of the PCT, which only came forward at the very last minute, were accommodated. For example, a new definition for “contract” was added, amendments were made to the definition of “Lease”, and amendments were made to the definition of “Market Rent”. As to the design and specification of the building, the Council would be in control of any reserved matters for the healthcare space, and could therefore ensure that it is provided in accordance with approved details prior to an agreed trigger point.

## CONCLUSIONS

*(In this section the numbers in square brackets refer to the relevant paragraphs in the preceding sections of the report)*

- 10.1 The appeal site is allocated in the development plan for a mixed use development of precisely the scale and nature proposed in the outline application. The development plan is up to date, and a continuing need for housing and employment provision on the scale envisaged is affirmed in the emerging Regional Spatial Strategy. In principle, therefore, the acceptability of the proposal is not in doubt. [3.8, 3.14-15, 6.9]
- 10.2 The specific requirements are set out in SGLP policy M1. As well as 2,200 dwellings and 14ha for employment uses, the proposal includes a range of local facilities including local shopping, health care, education and other community facilities, planned on a comprehensive basis. The application proposes a comprehensive network of footpaths and cycleways, a high standard of bus penetration with links to major destinations nearby, and a new through road linking the Cribbs Causeway regional shopping centre with the A38 Gloucester Road. The existing commercial activities and authorised operation of the adjacent aerodrome would be safeguarded. Consequently, all the main requirements of policy M1 are met. [3.8, 6.9]
- 10.3 The dispute between the main parties is confined to points of detail. The matters raised by third parties are similarly specific, for there is very little public opposition to the proposal. Consequently, in the light of the evidence given at the inquiry, the written representations and my inspection of the site and the surrounding area, I believe that there are three main considerations in this appeal:
- (a) whether the information and illustrative material submitted with the application is sufficient to ensure that the development would achieve a high quality design which respects and enhances the local character and distinctiveness;
  - (b) whether the proposal would provide a suitable mix of affordable housing that would meet the needs of the whole community; and
  - (c) whether the mechanisms proposed for delivering the proposed infrastructure and community provision are adequate.

### High Quality Design

- 10.4 DCLG Circular 01/2006 gives advice on the requirement introduced by section 42 of the 2004 Act for the majority of applications for planning permission to be accompanied by a Design and Access Statement (DAS). Although this only came into force on 10 August 2006, some months after the appeal was lodged, both parties acknowledge that it is material to the consideration of the North Field proposal at the inquiry. Indeed, the appellants had recognised the impending requirement much earlier, for in February 2006 the supplementary information was revised and restyled in the format of a DAS. This version was prepared prior to the advice of the Circular; further revisions were made in the October 2006 DAS to ensure that, in the appellants' opinion, there is compliance with the Circular. [5.11, 6.41]
- 10.5 Circular 01/2006 sets out the information to be submitted with an outline application and the nature of a DAS, indicating that the latter should explain the design principles and concepts that have been applied to particular aspects of the proposal. There is no dispute



about the first of these aspects, the amount of development proposed for each use. The application manifestly seeks planning permission for a specific number of residential units and precise amounts of employment and retail floorspace, all of which accord with SGLP policy M1. The DAS explains and illustrates in broad terms how these uses would be distributed across the site, together with the open space and other ancillary uses, and how accessibility between parts of the development would be maximised. Paragraph 83 of the Circular is therefore satisfied. [3.8]

#### *Layout of residential areas*

- 10.6 The next aspect is layout. Outline applications should (as a minimum) have an indicative layout (paragraph 52) to include information on the approximate location of buildings, routes and open spaces (paragraph 85). The DAS should explain and justify the principles behind the choice between development zones and blocks or building plots, and explain how the principles will inform the detailed layout (paragraph 85). The February 2006 DAS included a Masterplan which showed the approximate location of most of the built form, adopting the ‘perimeter block’ principle favoured by the Council. There was, however, no clear indication of how the internal elements of the blocks (any sentinel houses, private and communal gardens, garages, parking and circulation areas) would be deployed. [5.15-16]
- 10.7 This led the South West Design Review Panel (SWDRP) to comment that a range of typical block plans should be worked up in detail to highlight any problems. The October 2006 DAS does include a small number of worked examples, but at the same time the block structure has been reduced to its basic shapes with no clear indication of the possible disposition of built form. The appellants argue that the relevant information can be gleaned from a combination of sources including the street typology and the Design Code, but that seems to me to be an unduly convoluted means of portraying the layout information, with considerable potential for uncertainty and misinterpretation. In any event, in most instances the necessary level of detail cannot be deduced in this way. [5.17, 6.42]
- 10.8 I agree with SWDRP that the layout structure appears over-complicated. Many of the blocks seem reminiscent of the irregular shapes that would typically be derived from the organic growth of an unplanned settlement, and together they lack any sense of coherence or of contributing to a recognisable overall structure. In this respect they bear little relation to the historic examples in Bristol from which they are purportedly derived. In my view the Council’s notional layout in the draft Development Brief draws more successfully on this heritage, and would produce a place with better legibility, though it is by no means the only solution. I recognise that it is desirable to have some variety in the shape and size of blocks to create interest, but that is dictated in any event by the way that the site is divided into large irregularly-shaped parcels by open spaces and main transport routes.
- 10.9 A further concern about legibility arises from some apparent inconsistencies between the street typology (Fig 6.10) and the access/movement strategy (Fig 6.11). For example, the route parallel to Highwood Road is a ‘Primary Street’ according to the typology (the second highest order in this category) but an ‘Other Access’ (the lowest order) in terms of access and movement. In practice I would have thought that this street would function as a Primary Route (or at least as a Secondary Route) in access terms, for it would act as the collector for the part of the development it runs through. On the other hand, there appears to be a disproportionate number of Primary Streets in the typology, their extra

width making it difficult to achieve an urban character (for example, it is not clear why the road parallel to Callicroft Road should be a Primary Street when one side is limited to 2½ storey housing). [5.16, 5.19, 6.50]

- 10.10 I suspect that part of the problem derives from the designation of two short loops as the sole ‘Primary Routes’ in Fig 6.11. I believe that such a circuitous arrangement would detract from the ease of movement and legibility of the layout, contrary to the principles in “By Design”. The loops arise as a result of removing most traffic from the north-south bus corridors across the site, but I remain to be convinced that these main avenues could not function as Primary Routes as well, provided only buses can use them as through routes. In this regard I note that the SWDRP thought that there was more segregation of traffic routes than is necessary. Moreover, the Council’s draft Development Brief shows the north-south route through the eastern part of the site as both a segregated public transport route and a primary street, with the link south to the new through-route being for buses only. The same principle could be applied to the (almost) direct route through the western part of the site, with the bus-only section at the Hayes Lane crossing.
- 10.11 Turning to consider the sample block layouts, these do not provide the clarity or certainty that the appellants’ contend. Example A adopts a “watercolour” graphic style which is difficult to interpret because of its lack of detail and precision. The treatment of many spaces is not related to the street typology, the parking arrangements are vague, and the relationship between public and private space is unclear. Although the cross-sections provide some indication of building heights, they are too selective to provide a clear understanding of the three-dimensional form. The computer-generated model assists little, as it does not show the interiors of the perimeter blocks. [5.15-16, 6.52]
- 10.12 With sample block structure B, the layout, treatment of spaces and street hierarchy are better addressed, and the graphic style is clearer, but the building heights are not given, so a proper assessment of the urban form is still not possible. The distribution and adequacy of parking and amenity space is difficult to judge, for it is not clear which buildings are flats, which are houses and which are garages. To properly demonstrate how the principles set out in the text might be applied in practice, it is reasonable to expect a worked-up example to show building heights, distribution between flats and houses, allocation of parking spaces and garages, public and private spaces, and so on. [5.15-16, 6.52]
- 10.13 The Council is concerned about the treatment of the Woodland area, where it is accepted that a different approach is required to accommodate buildings within the established landscape and create a distinctive character area. In my view section 7.5 of the October 2006 DAS sets out appropriate principles, which are then shown on the sketch layout. Further detail is in the Design Code, though this lacks precision. The Council appears to be seeking a detailed layout for the entire sector, but given the constraints and complexity of the Woodland area, this could only be achieved by a full design process and is not necessary at this stage. Rather, I believe that the detailed strategy for this individual area would be best achieved by a Design Brief. [5.18, 6.53]
- 10.14 Overall there are too few worked-up sample block structures, with inherent weaknesses and uncertainties, to demonstrate that a successful, high quality development would emerge. The appellants stated at the inquiry that they have tested 9 areas in detail to satisfy themselves that they work, but these were not produced. I gained the distinct impression that the appellants were reluctant to accede to the Council’s desire for “fix

and certainty” for fear that this would unduly fetter the creativity of subsequent designers at the reserved matters stage, particularly as parts of the site are to be built by other developers. But the purpose of the DAS at the outline stage is to establish the principles that will guide the development, and to demonstrate – typically by reference to examples – how those principles will ensure good design. Thus the “fix” is one of quality, not detailed design; other interpretations may subsequently prove to be equally acceptable, provided they meet the quality standard. [5.14, 5.27, 6.45]

*Layout of employment and other areas*

- 10.15 The layout of the employment area appears to fall between two stools in attempting to marry the campus-style business park approach (dispersed individual buildings in a high quality landscaped setting) with the perimeter block structure. I appreciate that the perimeter block form gives reasonable enclosure to the street, but it has led to parking-dominated interior spaces for which no amount of landscaping can adequately compensate. SWRDP criticises the scheme for high parking standards and the inefficient use of space; the sample block structure for area A, in particular, shows large areas of surface parking in comparison with the amount of built form. [5.30, 6.59]
- 10.16 In the employment area there is a strong case on both urban design and transport sustainability grounds for a lower parking ratio (1 space per 40 sq m floorspace) than the 1:35 ratio that is proposed. In an area of good public transport accessibility, as this would be, such a reduction is expected under SGLP policy T8. I have considered carefully the appellants’ concern about the marketability of B1 employment uses at this lower level of parking, but in the absence of hard evidence and with a contrary view from the Council, I do not believe that the viability of B1 uses would be significantly undermined. It remains to be seen whether this relatively small reduction in parking provision would be sufficient to resolve the urban design issues; it may be that the introduction of additional complementary uses and/or a reconfiguring of the employment built form is necessary to produce a satisfactory design. [5.29-30, 6.61-63]
- 10.17 The layout of the employment area appears to focus solely on B1 uses. The application (and the SGLP policy) proposes B2 and B8 uses as well, yet there is no indication in the DAS as to how and/or where such uses, with their different space requirements and amenity considerations, might be accommodated. The SGLP also requires “maximum practical integration between different uses within and adjoining the site”, yet apart from some limited integration in the Woodland area, the employment and residential uses are found on separate zones across the site. I accept that the active airfield and the proposed link road impose certain constraints which dictate that much of the employment land is best located close to the south-eastern and south-western fringes of the site, but there is scope for a better mix. The Council wishes to see some residential uses within the employment areas, but I agree with the appellants that this is unlikely to be practical or desirable. A much better solution, in my view, would be the distribution of a significant amount of B1 floorspace to other parts of the site; for example, offices around Patchway Square and along the primary bus routes would be highly sustainable and would provide a welcome mix of uses and built form. [6.60]
- 10.18 Patchway Square is one of the areas singled out in the DAS for individual consideration and, apart from the potential for a more extensive mix of uses, the design principles are broadly acceptable. But one of the most important principles, the provision of active frontages to the space, is not reflected in the illustrative design. To function as a lively focal point where people will congregate, the space should be close to the facilities that

will attract people on a regular basis throughout the day – the supermarket, shops, health centre and so on. Instead it is separated from these uses by a wide expanse of highway combined with a bus route and on-street parking, and relates to the primary school where the focus of activity is limited to two (perhaps four at the most) concentrated periods during the day when children arrive and leave. Although the detailed design for this area would be determined following preparation of a Design Brief, it is important that appropriate guidance is given in the DAS. [6.53]

### *Scale*

- 10.19 Circular 01/2006 states that outline applications should indicate the parameters for the upper and lower limits of the height, width and length of each building proposed, to establish a 3-dimensional building envelope for the subsequent detailed design. With the omission of all buildings from the October 2006 DAS version of the Masterplan, this requirement is not met. Nor is it possible to establish this information in any meaningful way from the Design Code. For example, the depth of every building for which a dimension is given in the Code is simply “6-10m”, and while plot widths are specified (again in broad ranges), there is no indication of the lengths of terraces. Moreover, for certain areas such as the Woodland and employment zones, no dimensions are given. A broad range of building heights exists for each street typology, but without reference to an illustrative plan it is not possible to establish “a 3-dimensional building envelope”. [5.20-21]

### *Appearance*

- 10.20 If appearance is reserved at the outline stage, the Circular indicates that no specific information is needed. Instead the DAS should explain and justify the principles behind the intended appearance, and explain how these will inform the final design. The section on Architectural Style (DAS 6.4) explains and justifies the principles in broad terms, and the analysis is based on the historic character reference areas and the views expressed at the Design Workshop. It is evident that the type of architectural style is a major issue between the parties, with the Council seeking a contemporary style throughout and the appellants preferring a more traditional approach to the main residential areas. I regard the principles set out in section 6.4 as an appropriate conceptual solution, and agree that an element of variety is desirable to avoid monotony across such a large site. [5.22]
- 10.21 The problem with the analysis in section 6.4 and the associated Design Code is its highly generalised nature in many key areas, particularly with regard to the main residential development. Whilst it is possible that the principles could lead to a high quality appearance, it is also possible that bland architecture could ensue. I would have expected more detail explaining how the formality of the primary and secondary streets would be expressed – for example, in terms of window/door styles and surrounds, how different external materials might be combined, and the degree of embellishment (walling details, balconies, chimneys, etc). Similarly, there should be greater explanation of how the informality away from the primary and secondary streets might be expressed. [5.22, 5.25, 6.54]
- 10.22 The idea of a “pattern book” of treatments is an appropriate way of illustrating the principles of the intended appearance and explaining how they will inform the final design. However, the few examples included in the DAS (notably pages 75-77) are of limited assistance, using a broad-brush, artist’s impression style which makes it difficult to judge what is being proposed. In many cases they do not reflect the street typology – the Primary Street treatment (illustration 5 on page 76) shows mainly 2½ storey

dwellings, which is inconsistent with the design strategy and Code, and other sketches are unattributed to any typology. As with layout, it appears that the appellants are unwilling to provide detail for fear of being tied to it. But the “fix” required at this stage is an acceptable level of quality, not the specific appearance of buildings; a range of good illustrative examples is needed to demonstrate how the written principles can be carried through to the final design. I agree that it is appropriate for the DAS to state that the sample perspectives are only one possible interpretation of what might be acceptable; however, what is needed are sketches of sufficient clarity and quality to serve as exemplars of good design. [5.22-25, 6.54]

### *Landscaping*

10.23 Where landscaping is reserved, Circular 01/2006 requires an explanation and justification of the principles that will inform a future landscaping scheme. The landscape strategy is based on retaining as much of the existing vegetation as possible and supplementing that with a network of open spaces, coupled with structural planting within the residential areas in the form of avenue planting and squares. A detailed explanation is provided in the February 2006 Supporting Strategies, and some illustrative designs (such as the Central Green Spine) are included in the DAS. This is a logical approach, and the level of detail supplied is sufficient to suggest that a high quality landscape should result.

### *Access*

10.24 Access is not reserved for subsequent approval. The appellants have prepared detailed drawings of the main points of access to the site, and demonstrated how the SGLP requirements for a major new route through the site, and a high level of public transport accessibility, would be accommodated. This is backed-up by a comprehensive Transport Assessment. The Council acknowledges that the submitted scheme would provide satisfactory access to the site by a range of travel modes, and considers that the accompanying package of public transport measures and provision for pedestrians and cyclists should encourage a modal shift away from the private car. I see no reason to disagree. [4.2]

10.25 The only outstanding issue is the point at which the major east-west through-route should enter the western end of the site. The Council’s strong preference is for a link to the San Andreas roundabout at the western tip; it believes that this would provide the most direct route and facilitate better separation of buses from other traffic. The appellants are concerned that this alignment would further subdivide the employment areas to the detriment of a cohesive urban form, pedestrian linkages and the efficient use of land. Nevertheless, they do not have an overriding objection to the San Andreas route. [4.2-3]

10.26 There is no technical reason why such a link could not be made. However, the appellants do not control all the land needed to connect to the highway. The small intervening strip of land is partly owned by the Council, part highway, and partly in private ownership. Whilst the Council is content to make its land available (including the highway land), there was a fear that the private land amounted to a ransom strip that could threaten the viability of this link. Consequently the scheme presented to the inquiry shows the access connecting to the Standing Stone roundabout, which creates a less satisfactory (though still acceptable) dog-legged through-route. [4.3]

10.27 During the inquiry the question over the land to enable the San Andreas link appears to have been resolved. The private landowners, who part-own the adjacent shopping mall,

have indicated their strong preference for the San Andreas link and their agreement to make available the land they own. I share the Council's view that this route is strongly preferable, for the reasons it gives, though I also agree that this should not be allowed to prevent or delay the implementation of the scheme if the land does not materialise. Schedule 4 of the S106 is now written on this basis, and section 5.5 of the DAS shows an alternative Masterplan based on the San Andreas link. [4.3-4, 6.74]

- 10.28 I agree that the necessary alteration to the proposal could be achieved by a separate planning application for the new road alignment. However, if the Secretary of State decides that this appeal should be dismissed or the application amended, there should be the opportunity to incorporate the San Andreas route into a revised proposal. The new alignment would also necessitate a re-design of the western employment area, which could form part of a revised DAS.

#### *Approval process*

- 10.29 At the inquiry the possibility was explored that, instead of dismissing the appeal, planning conditions might enable an objection to the proposal on design grounds to be overcome. The Council suggests a multi-layered approach involving the preparation and approval of a site-wide masterplan, then a design code, followed by a detailed masterplan for each phase, as the basis for the submission of reserved matters applications. While I accept that this approach has the potential to produce the desired high quality design, I believe it would be a lengthy and complex process, introducing unnecessary stages of control and leading to delays in the delivery of the development. [5.68-9, 6.56]
- 10.30 Instead I think it is preferable to have a good, well-reasoned, consistent and thorough DAS in place at the outline stage, to include a phasing strategy. This establishes the design principles and the commitment to quality and delivery at the appropriate stage. Whether it is essential for a detailed site-wide masterplan to accompany the DAS is debatable. Such a masterplan (by which I mean a detailed plan graphically illustrating the layout and built form, designed to accord with the principles in the DAS) is a necessary precursor to the submission of reserved matters applications, for without it the relationship of each development parcel to the scheme as a whole will not be clear. A detailed site-wide masterplan has the advantage of providing clarity and certainty at an early stage, and obviates the need for masterplans for each phase of the development. It is time consuming to prepare, however, and as variations inevitably occur as a large scheme progresses, some of the work will be abortive. [5.68, 6.45]
- 10.31 The alternative is a detailed masterplan for each phase of the development, to be approved prior to the submission of reserved matters applications for that phase. There is considerable merit in this approach, for it would allow the masterplan to respond to changing circumstances as the site develops, while still being guided by the overarching principles set out in the DAS. In this situation the DAS should include a strategic masterplan which shows the different land use elements and the broad urban form, including the block structure and street pattern, etc. This would form the basis for the individual strategies and detailed sample layouts needed to demonstrate how the vision would work and how the desired level of quality would be achieved. In practice the Masterplan in the October 2006 DAS provides an appropriate level of detail for this purpose, though it requires amendment to address the shortcomings previously identified. While this approach would introduce an additional stage into the approval process, it would not significantly alter the nature of the information that has to be submitted, merely its timing. Such an approach would be consistent with the advice given by

ATLAS, though it leaves some of the detail sought by Circular 01/2006 to a later stage. [5.69, 6.49]

- 10.32 In addition to a decision about the timing of the detailed masterplan(s), there is a similar choice about when to submit a design code. On a scheme of this size, a design code is a useful way of ensuring that the vision, the structure and the coherence sought by the DAS is reflected in the final design. Whether the code accompanies the DAS or is approved subsequent to an outline permission matters little; its quality, clarity and the right balance between prescription and flexibility are the important factors. If detailed masterplans are prepared on a phase-by-phase basis after outline consent, there is a stronger case for the design code also to be drawn up at the time the Phase 1 masterplan is submitted. Together these two elements would build on the DAS and provide an appropriate level of detail for the submission of individual reserved matters applications. [5.70, 6.49]
- 10.33 An alternative set of conditions was suggested by the Council in the event that the Secretary of State approves the proposal subject to the submitted DAS. The Council's reserved matters condition (1a) identifies some elements of the DAS but not others, and makes no reference to the design code. However, if the Secretary of State is content with the DAS then presumably there would be no need to identify specific elements, and the condition could simply require reserved matters applications to accord with the whole document. To this extent the appellants' suggested condition (1c) is to be preferred, though I share the Council's view that the use of the word "*generally* in accordance with the principles and parameters of the DAS..." introduces a vagueness that is not appropriate. The inclusion of the phrase "unless otherwise agreed in writing by the local planning authority" provides sufficient latitude for ensuring that non-compliant proposals can receive proper consideration. [5.71, 6.56]
- 10.34 The conditions requiring detailed design briefs to be prepared for specific parts of the site (2a and 3a) are necessary because there is insufficient guidance on these aspects in the DAS. As indicated earlier, because of its complexity and the requirement for individual treatment, The Woodland area should be added to the list. I do not believe, however, that the condition requiring a detailed phasing strategy is necessary, for sufficient information should be provided in the DAS. The three phases of the development, together with the number of dwellings in each, are already set out. Although an approximate breakdown of the dwelling mix in each phase would be desirable, the Council's desire for a fix on the number and mix of units in each block is unnecessary, as this can be monitored (and adjustments made) as the development progresses. Many other phasing matters, such as the distribution of affordable housing, are controlled by the planning obligations or conditions. I agree with the Council and local residents that it is essential for the infrastructure and community facilities to be provided as the site is developed, but the phasing of these matters is established in the S106 obligations. [5.26-28, 6.55, 6.57]

### *Conclusion*

- 10.35 In terms of its approach to the masterplanning of the North Field development, the DAS has a logical and thorough structure. The early sections dealing with the context, constraints and character analysis are generally of high quality and, where necessary, are supplemented by supporting statements. The overall vision and the basic design principles are drawn from the contextual analysis and represent a solid foundation for the creation of a high quality development, while the land use and urban design strategies are fundamentally sound. However, at the final, critical stages the DAS and Design Code does not deliver, for it fails to demonstrate with the necessary clarity and consistency

how the strategies would inform the detailed design and ensure a high quality development.

- 10.36 The *layout* suffers from problems of legibility and a confused relationship with the access and movement strategy, and does not provide sufficient indication of the approximate location of buildings, routes and open spaces to satisfy Circular 01/2006. The sample residential block structures lack the necessary detail to demonstrate that they would provide high quality, attractive, accessible, safe and workable environments, and they are far too few in number to illustrate the range of approaches that might be followed. It is not possible to establish a meaningful 3-dimensional building envelope from the DAS and Design Code, so the requirements of the Circular in respect of *scale* are not met. And the treatment of *appearance* in the DAS and the Code is, for the most part, highly generalised and fails to illustrate how the principles would be translated into high quality design. For these reasons I consider that the submitted proposal does not satisfy the requirements of DCLG Circular 01/2006, and would not ensure a high quality design which respects and enhances the local character and distinctiveness.

### **Affordable Housing Mix**

#### *Development plan*

- 10.37 The starting point is the development plan. RPG10 policy HO3 seeks the provision of sufficient affordable housing to meet community needs by means of, amongst other measures, the identification of targets in development plans indicating the levels of affordable housing required, based on local housing needs assessments. This is repeated in JRSP policy 35. The detail is provided in SGLP policy H6. This indicates that the Council will seek, through negotiation, the provision of a maximum level of 33.3% of dwellings as subsidised affordable housing to meet local needs, having regard to matters such as site viability, market conditions, availability of public subsidy and the achievement of balanced and stable communities. There should be controls to ensure that the housing is reserved for first and subsequent occupiers in need. [3.6, 3.12, 5.37, 6.78-9]
- 10.38 The written justification for SGLP policy H6 summarises the main findings of the 2004 housing needs survey (HHNS), concluding that the need for affordable housing is greater than the total forecast supply of all new housing in the District to 2011. The Local Plan Inspector recommended the target of 33.3% affordable housing as a proportion that would be generally viable across a range of sites. Contrary to the Government's definition of affordable housing at that time in Circular 6/98, but supported by the Local Plan Inspector, all affordable housing is to be subsidised (ie low cost market housing is excluded). The text indicates that the Council will have regard to the identified housing need in the area, based on the HHNS, and that a range of tenures will be sought including social rent, shared ownership, intermediate rents and discounted home ownership. [5.38, 6.82]

#### *Stage 1/ Option 1*

- 10.39 The basis for the Stage 1 offer is the provision of 33.3% affordable housing at a ratio of 77% shared ownership to 23% social rent. The appellants have calculated that this would be viable to potential affordable housing providers (AHPs) at a transfer price of £1,254 per sq m. The S106 requires AHPs to bid for grant funding to increase the proportion of social rent to a maximum of 77%. The 77:23 tenure split in favour of social rent is the figure identified in the HHNS as the appropriate mix to address the backlog and emerging need, based on incomes in 2003. If the Stage 1 offer fails to



attract an AHP, Stage 2 is a repeat of the same process; if that fails, the process is repeated again as Option 1, this time with an AHP nominated by the Council. [5.38, 6.103]

- 10.40 If grant funding is available to bring the proportion of social rent up to 77%, then Stage 1/Option 1 fully addresses the identified local need. However, when determining what proportion of affordable housing should be sought through SGLP policy H6, the viability assessment carried out for the Council found that a 40% affordable housing target would be achievable without any public subsidy with a 77:23 tenure split in favour of social rent. The Local Plan Inspector decided to lower the target to 33.3%, but accepted that the 77:23 tenure split in favour of social rent was likely to be sustainable where no grant is available. [5.39, 6.105]
- 10.41 In some respects, the appellants' argument that the Stage 1/Option 1 offer fits with the concept of additionality is correct, in that the grant would be used to secure a tenure mix that better meets the local housing need. On the other hand, the 77:23 tenure split in favour of social rent is expected to be achievable on most sites in South Gloucestershire without grant, so the additionality for which grant is sought should, according to the Council, form part of the grant-free offer. Policy H6 recognises that there may be circumstances where the maximum level of affordable housing may not be feasible, but requires evidence that the scheme would not be viable. The appellants have declined repeated requests to supply a financial appraisal, so there is no evidence that a higher proportion of social rented housing could not be achieved without grant. [5.39, 6.123-124]

#### *Stage 1/ Option 1 – Availability of grant*

- 10.42 In its current (2006-2008) grant Prospectus, the Housing Corporation confirms its preference for affordable housing on S106 sites to be delivered without grant input. Where grant is sought, the objective is to secure more affordable housing or a different mix so as to provide best value-for-grant. The Prospectus indicates the Housing Corporation's desire to be involved in the negotiations over the S106 at an early stage. Financial appraisal tools will be used to ensure that additional benefits are obtained from the use of grant, and that land prices are not artificially inflated. This advice is repeated in Annex E of the PPS3 policy statement, Delivering Affordable Housing (DAH). [5.50, 5.52]
- 10.43 The appellants place considerable reliance on the Housing Corporation's involvement in the Woodstock School development, where grant was paid to enable a 34% increase in the proportion of affordable housing. But as the Council points out, that was wholly a Housing Association scheme on publicly-owned land which already complied with the Council's requirements, in that 20 of the 65 houses were provided for social rent without grant by means of the S106 agreement. At Woodstock School the grant raised the proportion of affordable housing to 65% by funding the provision of 22 shared ownership homes. [5.47, 6.119, 6.123]
- 10.44 This example clearly demonstrates how the principle of additionality can work in practice. However, Woodstock School is a significantly different scheme, both in scale and nature. It would be wrong to draw from this the conclusion that grant would be forthcoming on the much larger North Field development, where it would be sought for some 396 dwellings<sup>159</sup> over a lengthy period. It is acknowledged that the Housing Corporation is currently considering different approaches to the funding of large strategic sites, with the aim of providing greater certainty to support long-term planning, but the

<sup>159</sup> The difference between 23% social rent (168 dwellings) and 77% social rent (564 dwellings)

results of that exercise are not yet known. Consequently the discussion document has only limited weight. [5.47, 6.123]

- 10.45 The Housing Corporation's letter to Bovis dated 12 October 2006 is the most up-to-date statement of its approach to the appeal proposal. As well as re-affirming the policy set out in the 2006-2008 Prospectus, this reveals two important factors. Firstly, the Housing Corporation has not been involved in any meaningful negotiations on the S106; it appears to regard the letter of 18 September 2006 (which sets out the appellants' offer) as the starting point for negotiations, for it stresses the need for early involvement. Secondly, the Corporation is seeking a detailed understanding of the project's economics by means of a transparent financial appraisal before it can be satisfied that grant support is necessary. [5.52, 6.124]
- 10.46 Both these steps are entirely consistent with the process set out in the Prospectus. As neither has occurred, it is premature to conclude that there is a reasonable prospect of grant support. Moreover, the Corporation makes the point that the 'nil-grant' starting position for S106 schemes is not just one of nice aspiration, for it refers to examples in South Gloucestershire where satisfactory affordable housing provision has been achieved without grant. In short, the Housing Corporation's attitude to grant assistance is not known, but it would only be provided if (1) the Corporation is involved in the negotiations and (2) it is satisfied by recourse to a financial appraisal that grant would be necessary to achieve desirable affordable housing outcomes. At this stage it cannot be assumed that there is a reasonable prospect of grant to substantially increase the proportion of social rented housing. [5.52, 6.124]

#### *Affordability of Stage 1/ Option 1*

- 10.47 In these circumstances it is appropriate to consider the Stage 1/Option 1 offer on the basis of the 23% social rent and 77% shared ownership provision that is assured. There can be no doubt that the social rented element would be affordable by a substantial proportion of those in need, as target rents would be set by reference to average rents in the area. At the inquiry there was considerable debate over the affordability of the shared ownership provision, and whether or not it would cater only for the top of the income range of those qualifying for affordable housing (the 'top-slice' argument). Much depends on the share of equity purchased and the amount of rent payable on the remainder. Clearly the lower these figures, the greater will be the affordability to households in need. [5.43, 6.106, 6.120]
- 10.48 Each party produced a welter of statistics at the inquiry in support of its case; as often happens, there was little common ground over their accuracy and interpretation. The price of new-build housing was one of the disputed key indicators. I believe that the most reliable evidence derives from shared ownership schemes being marketed in the nearby locality, rather than District-wide averages from the HHNS inflated to current values and adjusted to the lower price levels of the local area. Whilst acknowledging the limitations of the evidence and the inherent subjectivity of any valuation process, I consider that the appellants have significantly under-estimated the current new-build market values (perhaps by about 20% for flats, less for houses). The Council's estimate for 1 bed flats is probably about right, but I believe the authority has over-estimated the value of the houses, given the relatively small size of those proposed for shared ownership (perhaps by up to 10% for the 3 bed houses, and by a lesser amount for the 2 bed units). [6.104, 6.118]

- 10.49 Another key indicator is the income levels of households in need and the proportion of income available for shared ownership. I regard the Council's locally derived uplift of 13.9% on the 2003 HHNS annual income figures as preferable to the appellants' slightly lower compounded growth at 3.5% pa. The proportion of income available has traditionally been accepted as 30% of net income, and both parties have used this in their assessments. Draft Government guidance on Housing Market Assessments suggests that 30% of gross income may be more appropriate for shared equity, based on the investment benefits of part ownership and its greater attractiveness compared to renting. Moreover, using 30% of gross incomes more closely reflects the lending criteria for market housing. At this stage the draft guidance has little weight, though it does suggest that there may be some scope for flexibility at the upper end of the affordability range. On the other hand, it is important that income levels are not raised to the level that would enable households to afford market rents, for at this point they would no longer qualify for affordable housing. [6.116]
- 10.50 The key variables, the amount of equity purchased and the rent level on the residual, feed directly into the modelling process. In the original offer, the appellants' assumed that occupants would buy a 50% share and pay a rent of 1.5% on the unpurchased equity; the draft S106 stipulated a share of "at least 50%" being purchased. The final S106 removed any reference to a specific equity share or rent level,<sup>160</sup> the appellants contending that the additional flexibility would allow for the possibility of a lower initial share, such as the 40% favoured by the Council, coupled with a commensurately higher rent.<sup>161</sup> Although the undertaking undoubtedly gives this flexibility, the problem in terms of affordability is the absence of any upper limit on the initial equity share and/or rent, or on the relationship between the two variables. A further problem of this open-ended approach is the need to ensure that what is affordable to potential occupants is also viable to the AHP. [5.44-45, 6.108-109]
- 10.51 With my findings on the key indicators lying somewhere between the assumptions of the two parties, I am unable to rely on the forecasts of either side. Moreover, the forecasts supplied by the parties cover a narrow range of possible permutations, making it difficult to establish the effect on affordability of progressive changes in the equity shares and/or rent levels. In effect, the sensitivity testing that might have been produced had there been any meaningful negotiation on affordable housing was absent. Ultimately, to gain a better understanding of the process, I found it necessary to compile my own assessment. Apart from the open market values, which are my estimates,<sup>162</sup> I used the mortgage multiplier and service charge (on flats only) of the Council, though the results would only differ marginally had the appellants' parameters been used.
- 10.52 I found that there would be no significant difference in cost to the occupier (i) between a 40% equity share/ 3% rent on residual equity and a 50% equity share/ 2% rent; (ii) between a 40% equity share/ 2.5% rent on residual equity and a 50% equity share/ 1.5% rent; and (iii) between a 40% equity share/ 2% rent on residual equity and a 50% equity share/ 1% rent. Clearly with these similar-cost scenarios, potential occupiers would opt for the higher equity share/ lower rent option if given the choice by the AHP. However,

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<sup>160</sup> Though the agreement does allow for the possibility that the Secretary of State might decide to limit the rent to 1.5%

<sup>161</sup> Because the Council uses higher current market values than the appellants, in practice there is not a substantial difference between a 50% share of the appellants' market value and a 40% share of the Council's value.

<sup>162</sup> I used values of £125,000 for a 1-bed flat, £145,000 for a 2-bed flat, £160,000 for a 2-bed house, and £180,000 for a 3-bed house.

it is not known whether the similar cost-to-occupier scenarios would have significantly different viability implications for the AHP.

- 10.53 Having established a range of costs to occupiers, it is necessary to examine which would be affordable and which would not. In making my assessment I have had particular regard to the Council's HHNS-based benchmark incomes for market rents, the CORE statistics, actual schemes approved in recent years (particularly Woodstock School and Filton College), and the views of the Bromford Housing Group on the appellants' forecasts (the only AHP whose comments were made known to the inquiry). As these inputs do not produce a consistent picture, a significant element of subjective judgement has to be made. I also note the Council's concern about the potential affect on affordability should a service charge be imposed to fund the maintenance of public open space by a private company; whilst recognising the validity of the argument, in the absence of information on the level of any such charge, it is not a matter to which I can attribute significant weight. [6.114, 9.15]
- 10.54 I believe that the upper limit of affordability is probably around the level of a 50% equity share coupled with a rent on the unsold equity of 2%; given its high cost,<sup>163</sup> this is likely to be affordable only to a relatively small proportion of those in need of intermediate housing. I suspect that occupiers able to afford even higher costs will be approaching the point at which they could rent in the open market. Significantly more qualifying households would be able to afford a 50% equity share if the rent drops to 1% (or the equivalent 40% equity share and 2% rent).<sup>164</sup> Nevertheless there is a wide spread in the incomes of households eligible for shared ownership housing, and the cost of 50% equity/ 1% rent would be much greater than many could afford. Consequently, I think that provision at these cost levels would only be affordable to those in the upper and middle income ranges of qualifying households.
- 10.55 It follows that the lower cost options, such as a 40% equity share and 1.5% or even 1% rent, would be affordable to increasing numbers of those in need of intermediate housing. However, there must be some doubt whether, at the fixed transfer price, shared ownership provision would be viable to AHPs at these lower repayment levels. For example, Bromford felt that fixing the rent at 1.5% would require a 75% share to be sold to make the scheme viable to them (based on the appellants' market values and other parameters),<sup>165</sup> which would not be affordable to those in need. Other potential permutations exist, the general principle being that the greater the viability of the product to the AHP, the higher the cost to the occupier and the smaller will be the pool of qualifying households. [5.44-45]
- 10.56 Bromford's assessment excluded any allowance for staircasing receipts. The appellants maintain that most AHPs will factor such receipts into their models, and in their initial forecasts they assumed that staircasing receipts totalling 35 % would be achieved, which significantly increases the affordability to AHPs. The Council believes it is imprudent to build-in staircasing receipts, and clearly it is a practice that Bromford does not employ. This limited and conflicting evidence on staircasing is not sufficient basis for relying upon such receipts to reduce the cost of borrowing to the AHP. [5.44, 5.46]

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<sup>163</sup> 50% equity and 2% rent represents an annual cost of about £6,300 for a 1-bed flat rising to £8,500 for a 3-bed house.

<sup>164</sup> The annual cost ranges from about £5,650 for a 1-bed flat to £7,600 for a 3-bed house.

<sup>165</sup> Because of the lower market values used by the appellants, their 1.5% rent calculation is not comparable to my analysis at this rent level, which is based on higher market values.

- 10.57 Thus, adopting the cautious approach of not allowing for staircasing receipts, there must be doubts over the ability of an AHP to offer the lower cost options to occupiers. This is a tentative conclusion, however, for the evidence is limited and there was no testing through the modelling process. It would have been helpful to establish if, and by how much, the equity share and/or rent level could drop below the 50% and 1-1.5% (or 40% and 2-2.5%) ranges, thereby increasing the pool of qualifying households, whilst still being viable to AHPs without reliance on staircasing receipts.
- 10.58 In the absence of detailed sensitivity testing, the simple conclusion to be drawn is that Stage1/Option 1 would be affordable to a sufficiently large pool of households who seek shared ownership provision if a particular equity share and rental level is adopted, but that it is unlikely to be affordable to all households who qualify for intermediate housing. There is, however, no control over the levels of equity sold or rent charged under the terms of the S106, so other less affordable outcomes are possible. Although the S106 does allow the Secretary of State to impose a 1.5% cap on the rent of the unsold equity, it follows from the above analysis that this would only increase potential affordability if there was also some commensurate control over the share of equity purchased. On its own, such a cap would serve little purpose.

### *Option 2*

- 10.59 In the event that the Stage 1/Option 1 offer is not taken up by the AHPs on any tranche of the development, the S106 includes a series of alternatives. Option 2, which is also the fallback position, would provide all the affordable housing for sale on a 125 year lease at the transfer price of £1,254 per sq m, with subsequent resales at the same discount to ensure that the product remains affordable. This represents a discount of around 50% on the market value (slightly more for flats than for houses), and the cost to occupiers would be below most of the likely shared ownership offers under Option 1 as a result of there being no rent on unsold equity. Although this is likely to be affordable to a greater proportion of those in need of intermediate housing, in the absence of any social rent provision this is a single tenure, wholly intermediate offer which would not cater for the large majority of those in housing need. [5.54, 6.129]

### *Option 3*

- 10.60 Option 3 would provide 77% of the affordable housing on an intermediate rent (80% of market rent) for a 25 year period, and 23% on a shared equity basis on the same terms as Stage 1/Option 1. After 25 years the rental properties could be sold on the open market. The intermediate rent element of this option would be expected to cost less than the shared equity element (depending on the equity share and rent level), and would therefore be available to more of those who qualify for affordable housing. Nevertheless, this is another wholly intermediate option which fails to make any social rent provision. It is also time-limited, though the houses would revert to the AHP, who would have an obligation to recycle any subsidy balance at the end of the period. [5.55, 6.127]
- 10.61 It is unclear how much of the subsidy would be available for recycling once any outstanding debt had been repaid, though given the extent of the initial subsidy and the relatively high rent, it is reasonable to assume that the sum would be significant. Alternatively, it might be feasible to pay off the whole debt with the proceeds from the sale of just some of the houses, enabling the others to remain as affordable housing. [6.127]

*Option 4*

10.62 This would provide the tenure mix sought by the Council, in that 77% of the properties would be for social rent and 23% on a shared ownership basis. However, the rental properties would only be available for 20 years, after which they would be sold on the open market. With rental income much lower than under Option 3, there would be much less (if any) subsidy available for recycling once the properties were sold. Consequently there are potentially significant adverse social implications of having to re-house substantial numbers of tenants at the end of the 20 year period, together with the loss of most of the affordable housing in a relatively short period of time. For these reasons the Council indicated that it would never choose this option. With an AHP (Bromford) also expressing reservations, its prospect of implementation is likely to be small. Unquestionably the short-term nature of this option, with the insecurity of tenure for tenants and the loss of community mix, are substantial drawbacks in an otherwise attractive offer. [5.56-7, 6.128]

*Size and type*

- 10.63 The Council seeks a greater proportion of affordable family-sized homes than is proposed, on the basis that the HHNS found that the availability of such properties is limited. However the affordable element of the proposal is already skewed towards larger properties. The affordable housing would be approximately 60% houses and 40% flats, compared to a broadly even split within the market housing provision, while over 60% of all the larger (4+ bed) houses would be for social rent. [5.60]
- 10.64 In a scheme of this large scale it is important to achieve a balance between the needs of the wider community and the aim of achieving a sustainable mix within the development itself. There is a risk that a greater number of larger affordable houses would create an imbalance between family-sized market and affordable homes, to the detriment of a mixed community within the site. In my view the overall balance within the affordable housing offer is appropriate, and is consistent with the support for larger accommodation in PPS3. It is also broadly similar to the mix achieved through negotiation on other sites in the Bristol North Fringe which have been agreed by the Council. [6.134]
- 10.65 The Council is also critical of the level of mobility and wheelchair standard housing to be provided, which would be 6% of the affordable housing units (3% to each standard). It points out that the HHNS identified a level of 18% as necessary to meet the backlog need, or 8% if the emerging need is included. The appellants used the HHNS to calculate that the combined figure to meet the needs of wheelchair users and those with walking difficulties seeking to move was 5.9%. I do not think it is reasonable to base the requirement on the backlog need alone, and in practice there is not a significant difference between the Council's 8% and the appellants 6%. I regard the appellants' assessment, which is based on total households, as appropriate; moreover, 6% provision would be broadly similar to the levels achieved on other sites in South Gloucestershire. I therefore consider that the proposal makes adequate provision for those in need of mobility and wheelchair housing. [5.61, 6.132-133]

*Staircasing*

- 10.66 The S106 Unilateral Undertaking states that any subsidy realised from the sale of an affordable housing unit, after deduction of any outstanding loans and costs, shall be recycled for the provision of additional affordable housing. The subsidy is defined as any grant funding and the "indexed difference"; the latter is the difference between the

market value and the transfer price, ie the developers' original discount. In this way some of the benefits of the intermediate housing should be preserved if occupiers 'staircase out' to full purchase. However, there is very little detail in the S106 about the mechanics of the recycling process. The appellants point out that the Housing Corporation has an established procedure in the Capital Funding Guide for calculating the amount of subsidy to be recycled, which would be followed by accredited AHPs and affordable housing managers. While it is reasonable to assume that this would be so, it would have been better had the recycling process been made explicit in the S106. [6.139]

- 10.67 Government advice in DAH indicates that staircasing payments from the purchase of additional equity shares should be recycled. It appears from the S106 that recycling applies only to outright purchase rather than individual staircasing payments, so the proposal is not wholly compliant. Furthermore, it is not clear from DAH whether it is appropriate to deduct outstanding loans and other costs from the subsidy to be recycled. A literal interpretation of paragraphs 38 and 40 of DAH would suggest that the entire subsidy should be recycled, but that would not be consistent with the procedure set out in the Capital Funding Guide, which allows deductions for such items. [6.98, 6.101]

#### *S106 Unilateral Undertaking*

- 10.68 The Council has other concerns about the mechanisms proposed for the delivery of affordable housing in the S106 Undertaking. In particular, it objects to the possibility of affordable housing being managed by an organisation that is not on its approved list of AHPs, fearing that low cost, low quality managers could lead to residents being offered only a minimum standard of service. The S106 requires AHPs to be approved partners of the Housing Corporation, and affordable housing managers to be accredited by the Housing Corporation. The advice in DAH cautions planning authorities against adopting restrictive practices which could stifle innovation and competition between potential AHPs, and the appellants argue that the control sought by the Council amounts to such a practice. I agree that prior approval by the Council has the potential to restrict competition, and in the light of the advice in DAH, I see no reason why any organisation which is subject to the standards and regulation of the Government agency responsible for social housing should not be acceptable. [6.94-97]
- 10.69 For similar reasons I do not believe that there would be a significant risk of housing being offered to someone not in need in the unlikely event of having to resort to the fallback procedure in the nominations process. The same would apply to the 50% of subsequent occupations not covered by the nominations process. Likewise, I consider that the Council's fears about security of tenure with the use of an Assured Shorthold Tenancy for social rent dwellings under Option 4 are misplaced. And with wheelchair and mobility dwellings required to be to the standard used by the Housing Corporation, there is no basis for the contention that they might not be large enough. The criticism of the potentially large number of AHPs across the site has to some extent been addressed by the minimum number of 50 units for each; moreover, it should be for AHPs to decide whether the scale of their involvement would be efficient and manageable, not the Council. [5.62-64, 6.97, 6.136, 6.140]
- 10.70 Turning to the Council's criticisms about the nature and timing of the offer of affordable housing units, whilst in principle it would be preferable for an offer to accord with a reserved matters approval rather than an application, the fact that an application has to be made on the basis of the 77% social rent provision (ie the Optimum Tenure Mix in terms of house sizes) largely overcomes the problem and avoids potentially significant delays.

The point about clause 2.2 of Schedule 1 not referring to ‘the Offer’ is deliberate because, as the appellants indicate, there will be instances when less than 50 units are offered. As to the concern about contiguous areas of affordable housing, I believe that the Council has sufficient control through both the Affordable Housing Distribution Plan and reserved matters processes to ensure that this would not arise. [5.63-64, 6.137-138]

- 10.71 The affordable housing Unilateral Undertaking contains a few drafting errors, probably as a result of the frequent amendments made at the end of the inquiry as the parties continued to negotiate to the last. Firstly, there is no definition of ‘Affordable Social Rented Dwellings’. Secondly, clause 2 of the definition of ‘Nominee’ refers to ‘houses’ instead of ‘dwellings’. Thirdly, the definition of ‘Indexed Difference’ refers to the ‘Affordable Housing Transfer Price’; this should be ‘Affordable Housing *Unit* Transfer Price’. This last error was not picked up by the parties, and it serves to demonstrate that, because the completion of the Undertaking was hurried, there may be other, as yet undiscovered, mistakes which more rigorous scrutiny would reveal. [5.65, 6.140]
- 10.72 Whether these errors materially affect the ability of the Undertaking to deliver what it purports to deliver is a matter of law on which the Secretary of State may wish to take advice. The main concern is the absence of the Affordable Social Rented Dwellings definition; while I believe that there is a generally accepted view among practitioners of what this means, I do not know whether it could be misinterpreted or misapplied. Nor do I know whether, in legal terms, the absence of a definition in a deed which should include that definition is critical. It does, however, put an element of doubt in my mind which, coupled with the other errors and the worry that there may be more, means that I am not wholly confident that this Undertaking would fully deliver what is intended.

*Other examples of affordable housing through S106 agreements*

- 10.73 In support of their case, the appellants point to similarities between the options and cascade mechanisms proposed in the S106 for the delivery of affordable housing, and those accepted by the Secretary of State in both the RAF Cardington decision and the interim West Stevenage decision. Whilst I acknowledge the similarities, there is no fundamental objection to the delivery mechanisms, nor to the overall quantum of provision. Instead, the primary concern is whether the proposed tenure mixes would adequately address the identified local need. At Cardington the gap between what was agreed to be an acceptable minimum provision (33% social rented and 67% intermediate tenures) and the optimum tenure mix (50% of each) is much narrower than at North Field, so these two proposals are substantively different. Comparable information was not provided for West Stevenage. [6.130]
- 10.74 It also appears, from the limited information provided, that there are other differences between North Field and the considerations which led to the Cardington and West Stevenage decisions. For example, in both those cases the local Councils agreed with the affordable housing proposals, the Housing Corporation appears to have had some involvement, and there was strong support from potential AHPs. Whilst financial appraisals may not have been provided, that does not appear to have caused a problem for the Housing Corporation at that time, in contrast to the position expressed in this case in the October 2006 letter to the appellants. [5.51, 6.130]
- 10.75 Recently completed S106 affordable housing agreements in South Gloucestershire, negotiated against the same local policy background, have potentially greater relevance. The evidence reveals that not all the proposals fully meet the Council’s HHNS-based



target, which amounts to 25.7% of total dwellings for social rent and 7.7% for intermediate provision.<sup>166</sup> However, there is not generally a massive shortfall, with most post-SGLP schemes securing well over 20% social rent plus some intermediate provision. The closest comparable example, a 950 dwelling scheme at Hewlett Packard, will provide 18% social rent and 12% intermediate housing without public grant, but that had some extenuating circumstances (notably an extant planning permission). By contrast, the highest proportion of long-term social rent provision without grant under the appellants' offer (Stage 1/Option 1) is 7.7%, plus 25.7% intermediate housing. [5.40, 5.48]

- 10.76 Precedents can be helpful in establishing certain principles, and to that extent support for the appeal proposal can be drawn from the fact that the broad mechanisms used in the S106 to deliver a range and choice of affordable housing have been accepted elsewhere. However, the particular circumstances of this proposal are materially different to the other cases cited at the inquiry. It is an established principle that each proposal should be determined on its individual merits, and there is nothing in the precedents which suggests that it is inappropriate to focus on a particular tenure mix derived from an up-to-date housing needs survey.

### *PPS3 and Delivering Affordable Housing*

- 10.77 PPS3 and the accompanying DAH were published mid-way through the inquiry. Though much of the advice is not new, the weight it should be given is profoundly increased by its status as Government policy. Consequently, the publication of PPS3 and DAH necessitated various adjustments and changes in emphasis to the cases put to the inquiry. Nevertheless, many of the policy changes were anticipated by the parties as a result of their inclusion in earlier drafts, and the appellants had clearly taken on board the 'direction of travel' of affordable housing policy in their original proposal.
- 10.78 There are many elements in the affordable housing S106 obligation which reflect the advice in PPS3. It would provide a choice of tenures, a suitable mix of house types and sizes, a cascade mechanism to provide a range of delivery methods with a fallback option, and the recycling of subsidy. There would be a 'mixed economy' of providers, and a facility for the input of both private and public investment. But, as previously indicated, the principal issue here is not one of process or flexibility or choice, but whether the provision would adequately address the identified local need. [6.88]
- 10.79 One important change in PPS3 is the recognition of the role of intermediate housing, with paragraph 29 indicating that, where appropriate, separate targets should be set in LDDs for social rented and intermediate affordable housing. The appellants rightly point out that the robust assessment of these categories of tenure sought by PPS3, based on Strategic Housing Market Assessments, has yet to be carried out through the LDF process. While the geographic area to be covered by a 'strategic' housing market assessment is not yet known, a question that arises in this appeal is whether it is appropriate to rely on the HHNS, a local housing market assessment, to justify the particular tenure split sought by the Council. [6.89]
- 10.80 There was no evidence that the HHNS is deficient in terms of rigour or thoroughness. Based on District-wide data, it identified a need for different forms of tenure, quantified in terms of the 77% social rent: 23% intermediate split. The basis for that conclusion has not been challenged, nor are there serious doubts about its continued relevance today. Consequently, it can reasonably be regarded as the best available assessment of local

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<sup>166</sup> Applying the 77% social rent and 23% intermediate split to the 33.3% requirement for affordable housing.

housing needs. Furthermore, affordability in South Gloucestershire does not appear to be a greater problem than in neighbouring areas – if anything, the evidence of slightly lower house prices compared to much of the former Avon county suggests that affordability may be worse in the wider area. Consequently, there is nothing to suggest that the strategic housing market assessment sought by PPS3 is likely to find a lower level of need than has been identified in South Gloucestershire. This adds a degree of robustness to the findings of the HHNS. [5.38]

- 10.81 Paragraph 69 of PPS3 states that, for decisions made after 1 April 2007, its policies are material considerations which may supersede policies in existing development plans. There is clearly a tension between SGLP policy H6, which does not differentiate between tenures because to do so would have been out of step with PPG3 and Circular 6/98, and the accompanying text, which seeks a range of tenures including social rent, shared ownership, intermediate rent and discounted home ownership. In practice, when negotiating affordable housing the Council has generally sought to give as much weight to the text as to the policy. As the appellants point out, in applying section 38(6) of the Planning and Compulsory Purchase Act 2004, it is only necessary to comply with the policy. [6.78, 6.80-82]
- 10.82 PPS3 advocates (albeit subject to targets being set through LDDs) much of what the Council was seeking to achieve when applying the text of policy H6. Consequently, the argument that the Council is going beyond the requirements of policy H6 by seeking a particular tenure mix has now been overtaken by PPS3. Of course, policy H6 remains the starting point for the determination process, and includes the ‘local needs’ test. However, PPS3 gives greater legitimacy than existed under previous Government advice to the authority’s attempts to secure particular tenure quotas which meet local needs.

#### *Application of SGLP policy H6*

- 10.83 It seems to me that the positions adopted by the parties at this appeal, where the Council set out its requirements based on policy and the appellants responded with an offer, would in many situations be the opening gambits in a process of negotiation. Little meaningful progress was made during the inquiry. Although there was much discussion about the wording of the affordable housing S106 and its fitness for purpose, there was little substantive ‘negotiation’ in terms of the willingness of either side to depart from their established positions. Furthermore, because the limited testing of various options that was conducted during the inquiry took place against the background of a fixed, rather than a negotiable, offer, there was no scope to explore alternative possibilities.
- 10.84 In assessing the proposal against SGLP policy H6, it is clear that the headline target of 33.3% provision of subsidised affordable housing would be satisfied. The S106 obligation ensures that a range of needs would be met (not itself a policy requirement but part of the text), and the nominations and recycling provisions would ensure that the housing is reserved for households in need, insofar as is feasible under current Housing Corporation procedures. However, there are serious doubts about the ability of the S106 to deliver the tenure mix that would adequately address local needs.
- 10.85 The Stage 1/Option 1 offer could provide the 77% social rent: 23% shared ownership ratio that would be fully compliant with the identified local need, but only if grant is available. It is far from certain, however, that grant would be forthcoming. Recent experience elsewhere in South Gloucestershire demonstrates that the HHNS-based target is broadly achievable without grant, and the Housing Corporation confirmed as much in

- its October 2006 letter to the appellants. Without grant only 23% social rent is assured, which falls far short of the 77% target. Instead, 77% of the provision under this offer would be shared ownership; this is likely to be affordable only to those with incomes in the middle and upper ranges of households in need of intermediate housing. Moreover, as there is no control over the levels of equity sold or rent charged, other less affordable outcomes are possible.
- 10.86 Options 2 and 3 are wholly intermediate offers which would not satisfy any of the predominant need for social rented housing, though they would be available to more of those who can afford intermediate housing than under Option 1. Option 4 does meet the identified need for social rented provision in the short term, but it is likely that most of these properties would have to be sold after 20 years to pay off the outstanding debt, with serious consequences for tenants and detriment to the community mix and cohesion. As such it is unlikely to be chosen. Consequently, on the evidence available, there is a significant risk that the S106 would not satisfy the local needs test of policy H6.
- 10.87 The viability of site development, likely costs and public subsidy are three of the factors that policy H6 indicates should be taken into account when seeking to negotiate the maximum feasible level of affordable housing. Dealing with the latter first, the starting assumption is that no public subsidy will be available, given the views of the Housing Corporation; however, that does not justify a lesser provision than the HHNS-based requirement unless there is a proven viability case.
- 10.88 It is evident that the North Field project is likely to incur high development costs arising from the major infrastructure requirements and its brownfield status. But despite the Council's repeated requests for a detailed financial appraisal which would enable a judgement about viability to be made, no such appraisal has been supplied. At the inquiry the appellants gave an indication, but no evidence, that there was little or no slack once the subsidy in the form of free serviced land for affordable housing had been factored into the equation. The Council expressed the contrary view, again without producing evidence. Such protestations can be given very little weight. In the absence of a demonstrable case to the contrary, it is reasonable to apply the SGLP presumption that the development is able to withstand the cost of providing the 77:23% split in favour of social rented provision without grant. [5.50, 6.141]
- 10.89 Even if it was decided that the development could not provide 77% social rented housing without grant, the options in the S106 are constrained by the intention to provide the full SGLP quota (33.3%) of all housing as affordable. There is no opportunity, for example, for the Council or an AHP to opt for a lower percentage of affordable housing but, within that, a higher ratio of social rented provision which better meets the identified need. There may well be other ways of securing a better targeted affordable housing offer without changing the overall cost to (or subsidy from) the developer, but as there has been no meaningful negotiation, these have not been explored. The Council acknowledged at the inquiry that the potential of such alternatives would merit investigation if it was decided that the development could not withstand the additional cost of increasing the proportion of social rented housing whilst maintaining the 33.3% headline provision.
- 10.90 A further factor specified in policy H6 is existing market conditions. All the evidence points to a buoyant local housing market, so there is nothing to suggest any adverse consequences for the delivery of affordable housing. The final factor is the aim of achieving balanced and stable communities. A balanced community is one which

includes a range of income levels and housing tenures; this would be best achieved by securing the 77:23% mix in favour of social rent upon which the provision in policy H6 is predicated.

- 10.91 Consequently none of the factors which might be capable of justifying a lesser provision than the 73:23% split in favour of long-term social rented housing are seen to apply. Thus there is nothing within the application of policy H6 (or for that matter the accompanying text) which would warrant a determination contrary to its principal requirements of 33.3% subsidised affordable housing to meet local needs. As has repeatedly been demonstrated, the proposal fails the local needs part of this test. Nothing in PPS3 or DAH outweighs that consideration – indeed, PPS3 espouses the principle of separate targets for different tenures, thereby adding weight to the case based on the development plan.

### **Delivery of Infrastructure and Community provision**

- 10.92 As part of the housing and employment development at North Field, SGLP policy M1 seeks a range of health care, education and other community facilities and a comprehensive package of transportation measures. The provision of these facilities and infrastructure is a major component of the appeal proposal, and the measures would be implemented primarily by means of S106 planning obligations and conditions. The obligations propose a substantial package of infrastructure and community provision, with a total value of over £110m,<sup>167</sup> designed to meet the needs of the new community and mitigate the impacts of the development on the surrounding area. [6.64-68, 9.11]

#### *Planning Obligations*

- 10.93 As a result of lengthy negotiations since the application was made in 2003, most of the provision, including its phasing and delivery, has been secured to the satisfaction of the Council and forms part of the S106 Agreement. Matters that could not be agreed are included in two S106 Unilateral Undertakings: one deals with affordable housing, while the other deals with the maintenance of public open space, the lane widening works to the M5 motorway, and the health care facility. The concerns about the nature and delivery of affordable housing have been addressed in the previous section. [9.12]
- 10.94 The argument about public open space is primarily about whether the mechanism which would allow the developer to opt for private maintenance would ensure a satisfactory standard of maintenance and full accessibility of the open space to the wider community. Firstly, however, the Council contends that Schedule 1 of the Unilateral Undertaking cannot operate as a freestanding obligation which takes precedence over Schedule 11 of the Agreement (which provides for transfer of the open space to the Council and subsequent maintenance by the authority). [9.13-14]
- 10.95 This is a matter of law, and there were no legal precedents cited which might have assisted me, as a planner, to reach a conclusion. That said, it is difficult to see how the Council could be denied its right to enforce the Agreement if it so determined, notwithstanding an intention by the appellants to implement the provisions of the Undertaking. Whether a decision by the Secretary of State that the appellants should be entitled to privately maintain the open space (clause 2.1 of Schedule 1 of the Undertaking) can override clause 1.10 of Schedule 11 of the Agreement is a matter upon which the Secretary of State may wish to take legal advice. Of course, if the Council is

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<sup>167</sup> Based on my estimate of land values as the input to the affordable housing subsidy calculation.

correct in its assertion that Schedule 1 of the Unilateral Undertaking cannot supersede the Agreement, the argument about a proper standard of maintenance falls because the arrangements agreed in the Agreement would continue to apply. [9.13-14]

- 10.96 If it is determined that Schedule 1 can be implemented, it requires the developer to prepare and agree with the Council a Management Brief for the maintenance of the open space, and to appoint a Management Company (again in a form agreed by the Council) to implement the Management Brief. It also requires the developer to ensure that the Management Company has sufficient resources to be able to implement the Management Brief in perpetuity, and it confirms that the open space must first be provided by the developer in accordance with Schedule 11 of the Agreement. Effectively the Undertaking leaves decisions about the nature and quality of the maintenance regime, the level of funding and rights of public access to a later date. However, the Council's position is safeguarded by the clauses which require the Management Brief and the Management Company to be approved by the authority. [9.15-19]
- 10.97 In my view it would have been preferable for at least basic details about the nature and funding of the private maintenance of public open space and the form (or potential forms) of the Management Company to have been established through the S106 process, so as to give some clarity to both parties. With no such guidance in the Undertaking, there is considerable potential for future disagreement. Nevertheless, in the event of a dispute there is a procedure for referral to an independent arbitrator. Consequently there is in principle a reasonable prospect that private management, achieved by the mechanism proposed, could deliver public open spaces that are maintained to a satisfactory standard and are available to the wider community, as sought by the Council.
- 10.98 Because of the main parties' insistence on continuing to negotiate during the course of the inquiry, the planning obligations were hurriedly prepared. As a result, Schedule 1 of the Unilateral Undertaking contains a number of drafting errors and inconsistencies. Clause 1.5 is meant to define a 'NEAP', but instead repeats the later definition for a 'MUGA'. Clause 1.11 includes provisions for a commuted sum to be paid which, according to clause 2.10.2, does not apply. Clauses 2.5 and 2.8 refer to the disputes procedure under clause 16 of the Undertaking; the reference should be to clause 9, as clause 16 does not exist.
- 10.99 Finally, I am uncertain whether clause 2.10.4, which states that the developer shall not be required to bond the carrying out of the open space under the terms of the Agreement, means that the entire bond arrangements for open space cease to apply if the developer elects to privately maintain only part of the open space. I appreciate that this was not the appellants' intention, in that clause 2.10.4 was meant to relate only to that part of the open space to be privately maintained, but in my view the drafting is ambivalent and could be interpreted differently. Whether these matters are critical to the effective implementation of the Unilateral Undertaking is again a matter of law on which the Secretary of State may wish to take advice.
- 10.100 Schedule 2 of the Unilateral Undertaking requires the developer to enter into an Abortive Costs Undertaking to the Highways Agency for the design of the M5 carriageway widening works, and to use all reasonable endeavours to enter into the M5 Works Agreement, which requires the developer to pay for those works. Because the Highways Agency is not party to the Unilateral Undertaking, the Council is concerned that the Schedule amounts to 'an agreement to agree' and gives no certainty that the works to the motorway would be carried out in a timely fashion. Whilst that is true, the Highways

Agency is fully aware of the proposal and has approved the drawings (including acceptance of a departure from its normal standards). [4.5, 5.33, 6.76]

- 10.101 In these circumstances there is no reason to suppose that agreement between the developer and the Agency would not be secured. Although the timing of the works would be determined by the Agency rather than the developer, there should be ample time between the completion of the M5 Works Agreement and the occupation of more than 30,000 sq m of business floorspace to enable the works to be carried out. Consequently, whilst the Unilateral Undertaking gives no guarantee that the necessary works would be implemented, I consider that the risk of failure is very small. [6.76]
- 10.102 The Council's concern about Schedule 3, the provision of health care space, relates to the lack of adequate safeguards to ensure satisfactory delivery. The lack of detail about the lease or rent should not be a significant problem, in my view, for the Unilateral Undertaking provides for the terms of the lease to be agreed by the District Valuer, and for the market rent to be determined in accordance with the appropriate NHS Direction. However, I consider that the absence of any mechanism for the design or specification to be agreed with the PCT is more problematic, for I do not believe that the reserved matters procedure would provide adequate control (it seems unlikely that a particular design could be rejected simply because it does not meet the PCT specification). Whilst the Schedule is capable of delivering a satisfactory health care building, and on balance it probably would, there remains an element of uncertainty without a mechanism to ensure that the space would be suitable for its intended purpose. [9.20-21]
- 10.103 In the overall context of the substantial package of measures to be provided, the concerns I have about the maintenance of public open space and the health care facility are relatively minor and, in practice, would probably not materialise. Nevertheless, whether there would be sufficient certainty of delivery in the face of a developer intent on exploiting all potential loopholes in the non affordable housing Unilateral Undertaking is difficult to answer. Much depends on the legal opinion that I believe should be sought. If the Undertaking is considered to be sound, then in my view there is a slight risk that delivery cannot be assured; if it is unsound, then the risk to delivery is much greater.
- 10.104 Finally, the claim by Mr Shorland that he has rights over the minerals on the appeal site raises questions about the appellants' title to the land. The relevance to this proposal is whether all parties with an interest in the land are joined into the S106 obligations. Both main parties took legal advice on this matter, and are satisfied that even if such rights do exist, they would be insufficient to enable Mr Shorland to develop the land. Although the legal opinions have not been disclosed, there is no basis for concluding that the S106 obligations are legally suspect in this respect. [8.6]

### *Conditions*

- 10.105 Planning conditions are the second method by which aspects of infrastructure and community facilities would be delivered; they are also necessary to regulate the design and construction process and to mitigate potentially adverse effects of the development. A list of suggested conditions was prepared by the parties; most were agreed between them and are repeated, together with the reasons for imposing them, in Annex 1. Where appropriate, the detailed wording of the submitted conditions has been adjusted to conform more closely with the model conditions in Circular 11/95. Other adjustments have been made to avoid repetition and to ensure consistency. I am satisfied that the conditions are necessary and meet the tests set out in the Circular. [9.1]

- 10.106 Certain aspects of some conditions were contested. I have already given my views on those relating to the design process and the framework that should be in place prior to the submission of reserved matters applications. I set out below my observations on the other disputed conditions.
- 10.107 As part of condition 11 the Council proposes that, as well as a cap on the amount of employment floorspace that can be occupied prior to the completion of the M5 widening works, the number of dwellings should also be restricted. It is evident that this is not a concern of the Highways Agency, as the reason for the condition relates solely to the traffic generated by the employment development. The Council argues that the link is necessary to ensure a phased development, though in my view it would have only a limited effect in achieving this objective. In any event, given the pressing need for dwellings in the District (see below), I do not believe that any restriction on the pace of housing delivery can be justified. [9.6]
- 10.108 The Council seeks via condition 13 the provision of a 400 sq m site within the employment area for community composting; the appellants do not object in principle, but argue that the size of site should be resolved at the reserved matters stage. There was no hard evidence before the inquiry on which to base a reasoned judgment. In this situation, the precise need for 400 sq m has not been demonstrated and I consider that a non-specific general provision is appropriate. [9.7]
- 10.109 As part of the aim of reducing travel by car, the Council seeks a maximum level of parking for office floorspace of 1 space per 40 sq m (condition 24), and the facility to remove car parking provision as part of the Travel Plan monitoring strategy (condition 14). I have already indicated that I regard the 1:40 parking provision as appropriate in this accessible location. Having set this lower figure, I do not believe it would then be reasonable to put in place a strategy which could reduce it further, as this could potentially affect the attractiveness of the employment floorspace to businesses and investors. [9.8]
- 10.110 The appellants oppose the Council's intention in condition 36 to require the environmental rating for building construction to relate to the standard in force at the time of the relevant reserved matters application, and argue that a formal post-construction assessment regime is unnecessary. I appreciate the Council's desire to ensure that the development is as sustainable as possible in all respects, but I share the appellants' view that it would be unreasonable to require the developer to have to commit to some future undefined voluntary code over which it has no control. Moreover, it is not clear what would happen if the current BRE standards were replaced by others – for example, if the recently published DCLG *Code for Sustainable Homes* were to supplant the BRE standards, a condition requiring compliance with some future BRE standard would be meaningless. As to enforcement, it is reasonable to expect that the 'scheme' required by condition 36 would include provision for monitoring, and I see no reason why any subsequent breaches could not be resolved by the statutory enforcement procedures. In these circumstances I prefer the appellants' shorter version of the condition, numbered 36a. [9.9-10]

## **Other matters**

### *Need for housing*

- 10.111 The SGLP states that, based upon completions and commitments to March 2004, sites capable of accommodating 5,815 dwellings will need to be released to meet the policy

H1 target of 17,760 dwellings in the 1996-2011 period. The residual requirement has been updated in the Statement of Common Ground, and at March 2006 stands at 5,010 dwellings. North Field is the largest (in housing terms) of the 14 sites allocated in policy H1 to meet that need; the Plan predicts that 1,600 of the total of 2,200 dwellings at North Field are likely to be completed by 2011. [3.7, 5.73, 6.16]

- 10.112 From the analysis of housing supply carried out by both parties at the inquiry, it is clear that the pace at which the allocated sites are likely to be developed falls far short of that predicted in the Local Plan. North Field is a prime example: the Council's current estimate of completions by 2011 is 750, less than half the provision assumed in the Plan, and the appellants contend that (depending on the appeal decision and the subsequent approval regime) the yield would be in the range 50-575 dwellings. All the other large sites, and most of the small ones, are similarly behind schedule. [6.27-30]
- 10.113 There was much debate about the likely level of completions to 2011 on a site-by-site basis. There is little to be gained by a detailed analysis here; my general impression is that the Council has taken a somewhat optimistic view and the appellants have been rather pessimistic. I acknowledge the appellants' point about delivery on large sites being heavily influenced by the approval regime that flows from this appeal decision. I indicated earlier that I do not accept the need for a multi-stage process after the grant of outline permission, so it is likely that, at worst, completions will be towards the upper rather than the lower end of the appellants' ranges. However, in practice it is not necessary to reach a precise conclusion about the likely level of completions to 2011, for it is clear that the shortfall will be large and that the need for the dwellings proposed at North Field is urgent. [5.74, 6.22-25, 6.31-33]

#### *PPS3 and housing supply*

- 10.114 PPS3 states that the supply of land for housing should be managed in a way that ensures that a continuous five year supply of 'deliverable' sites is maintained; 'deliverable' sites should be available now, offer a suitable location for development, and be achievable within five years. Assessed against this new policy advice, it appears that the required five year supply is not available in South Gloucestershire. [5.79, 6.18]
- 10.115 PPS3 also changes the advice on windfalls, indicating that allowances should not be included in the first 10 years of land supply unless there is robust evidence of genuine local circumstances that prevent specific sites being identified. The appellants argue that if windfalls are excluded from the calculation of future supply, the shortfall increases by about 750 dwellings. While this may be so, the available evidence strongly suggests that brownfield windfalls (the category included by the Council) will continue to be delivered at least at the rate of the past 5 years. Indeed, it seems highly likely that greenfield windfalls (excluded by the Council in line with the now superseded PPG3 advice) will also continue to be a substantial source of dwelling completions in coming years. Therefore, notwithstanding the changed approach in PPS3, I believe that a more accurate assessment of the likely shortfall at 2011 can be gained by including brownfield windfalls, as the Council has done, than by excluding them. Nevertheless the debate about housing numbers is largely academic, for whatever scale the shortfall turns out to be, there is a pressing need for a site which is deliverable. [5.75-77, 6.19-20]
- 10.116 Where an up-to-date five year supply of deliverable sites cannot be demonstrated, PPS3 indicates that planning authorities should consider favourably planning applications for housing, having regard to the policies in the PPS and the considerations in paragraph 69.



Two of those considerations, achieving high quality housing and ensuring a good mix of housing which reflects the accommodation requirements of specific groups, are the central issues in this appeal. Consequently a balanced judgement has to be made between the presumption in favour of a site which would deliver houses, and the need for high quality design and a suitable housing mix. I return to this in my overall conclusions. [5.79, 6.17]

#### *Environmental Statement and mitigation of major adverse effects*

- 10.117 I consider that the Environmental Statement (ES) provides the information necessary to assess the significant effects of the development, and thereby satisfies the 1999 EIA Regulations. Regulation 21(2) requires a description of the main mitigation measures proposed to avoid, reduce and offset the major adverse effects of the developments. For ease of reference these are summarised below. The main sources which document mitigation are the ES, the Transport Assessment, the DAS and Masterplan, and the supporting strategies.
- 10.118 Dealing firstly with landscape and ecology, the important existing natural features such as Filton Wood, the tallest trees, the treed avenues and some hedges and grassland would be retained within the development. A landscape strategy would provide open spaces within the urban form and large-scale planting of new trees, including around parts of the perimeter. A biodiversity strategy would manage features of nature conservation interest and introduce others; it includes the construction of artificial badger setts, the translocation of the slowworm population, and a careful approach to felling trees with bat roost potential. The cultural heritage would be addressed by a programme of archaeological investigation, the recording of historic airfield-related structures, and the preservation of the setting of the adjacent listed buildings.
- 10.119 Mitigation of the transport impacts of the development would be achieved through off-site highway improvements and a substantial package of measures aimed at encouraging non-car usage, including a new bus interchange, dedicated bus routes, improvements to bus services, facilities for pedestrians and cyclists, and a travel plan. The effects on social and community infrastructure would be offset by the provision of a primary school, nursery, healthcare space, community hall, extensive areas of public open space and play space, and a contribution to library facilities. Affordable housing would meet some of the needs of those unable to enter the housing market.
- 10.120 Appropriate measures would be taken to protect the water environment, including a sustainable urban drainage system. Investigation and remediation of ground conditions would deal with any contamination present on the site. All buildings subject to high noise levels would be designed and constructed to minimise noise penetration, and construction activity would conform to relevant EC Directives. All these measures would be secured through the S106 Agreement and Undertakings, and by planning conditions and reserved matters approvals.

#### **Overall conclusions**

- 10.121 The appeal took place against an evolving policy background, and some of the changes introduced by Circular 01/2006, PPS3 and DAH had significant implications for the matters under consideration. Because this is one of the first cases to be examined under the new policy regime, the parties have asked, in the event that the proposal is deemed unacceptable, for a clear 'steer' as to how the unsatisfactory aspects might be resolved. To facilitate as speedy a resolution as possible, and thereby hasten the delivery of the

North Field scheme, I have examined the matters at issue in greater detail than might typically be necessary in a report of this nature. Clearly the Secretary of State will decide whether this approach is appropriate, and how best to take matters forward.

- 10.122 The application is accompanied by a DAS, as required by the Circular. The overarching design concept, which is supported by the Council, is to create a distinctive development which expresses in a modern form the high quality urban environments of certain historic parts of Bristol, rather than focussing on the non-descript suburban character of the immediate locality. The contextual and analytical sections of the DAS are fundamentally sound, and provide a solid foundation for the preparation of individual design strategies. However, the illustrative designs lack the clarity and coherence necessary to ensure a high quality development. The layout seems over-complex and, in parts, has poor legibility, the masterplan gives insufficient detail about the approximate location and scale of the buildings, and the sketches of architectural style are indistinct and not always consistent with the Design Code.
- 10.123 Overall the DAS and Design Code displays a reluctance to translate the underlying principles and strategies into detailed, high quality examples for fear, it seems, of a commitment to specific designs. In my view that concern is unfounded; the purpose of the DAS at this outline stage is to fix the quality of the development, not the particular design. There is no reason why other interpretations should not be equally acceptable, provided they meet the quality standard. I conclude that the proposal would not ensure a high quality design which respects and enhances the local character and distinctiveness, contrary to SGLP policy D1 and the guidance in Circular 01/2006 and PPS1.
- 10.124 There is considerable doubt that the proposed affordable housing would adequately address local needs. The HHNS established that the predominant need (77%) is for social rented housing, with the remaining 23% of households able to afford intermediate provision. The desired split could be achieved under the terms of the S106 Undertaking, but requires grant assistance. The likelihood of grant being available is not known, though in the absence of a viability assessment the baseline assumption is that local needs can be fully met without grant. Under the options likely to be chosen (Stage 1/ Option 1 being the most likely), all that is guaranteed without grant is 77% intermediate provision. This would be a disproportionate response to the main area of need, housing for social rent. Consequently there is a real prospect that the proposal would not provide the “wide choice of housing to meet the needs of the whole community in terms of tenures and price ranges” that is sought by paragraph 3 of DAH. Similarly there is a real risk that it would fail to satisfy the ‘local needs’ test of SGLP policy H6.
- 10.125 The application is supported by three planning obligations which aim to provide a wide range of infrastructure and community provision to meet the needs of new residents and to mitigate the effects of the development on the wider existing community. The Agreement, which deals with the majority of the provision, is sound and would deliver a substantial package of measures in phases designed to provide facilities as they are needed. Both Unilateral Undertakings contain a number of drafting errors and inconsistencies; whether these are sufficiently serious to prejudice their implementation is a matter of law on which the Secretary of State may wish to seek advice. In addition, the way in which the non affordable housing Undertaking is phrased does not give absolute certainty that what it purports to provide would actually be delivered, though I regard the risk of failure as slight.

- 10.126 In recent years, progress on the sites allocated for housing development in the SGLP has fallen way behind schedule, to the extent that there is no longer a five year supply of sites that are ‘deliverable’ in the terms set out in PPS3. In these circumstances PPS3 indicates that applications should be considered favourably, having regard to the need to achieve high quality housing and a mix that reflects the requirements of specific groups. As there are no known constraints to the delivery of the North Field proposal, a balanced judgement has to be made between what are, in this instance, competing objectives. In addressing this matter, it is helpful to explore the likely outcome of alternative courses of action.
- 10.127 The usual decision in cases where, as here, a proposal is unacceptable is to dismiss the appeal. That would normally result in a completely new application to the Council. In this case, however, work would resume on the duplicate application that is with the authority. It is reasonable to assume that the parties would take heed of the reasoning given by the Secretary of State in her decision. The errors and uncertainties in the non affordable housing Undertaking could easily be resolved. Whether the appellants would produce a revised DAS and an affordable housing offer that fully addressed, to the Council’s satisfaction, the matters identified in the appeal decision is difficult to predict. The experience of this appeal process, where both sides have tended to adopt entrenched positions, is not encouraging, but in a less adversarial environment, and guided by the Secretary of State’s reasoning, I expect that planning permission would be granted. However, there remains the risk of a second appeal if agreement cannot be reached.
- 10.128 The main alternative is a “minded to approve” decision by the Secretary of State which gives the appellants a chance to address the matters of concern. This is an approach often adopted by the Secretary of State in suitable cases, and has the advantage that the decision remains with her. The process of revising the application would be broadly the same, though there may be less opportunity for negotiation with the Council. The main concern is whether the affordable housing issue is capable of resolution in this way, for two reasons. Firstly, if the appellants decided to put forward a viability argument, it could be difficult to properly test any evidence submitted. Secondly, targeting the affordable housing offer to those most in need might involve negotiation with the Council and/or a third party such as the Housing Corporation, and might lead to a significant restructuring of the S106; whether a satisfactory outcome could be achieved by a process of written submissions from the parties is uncertain.
- 10.129 As to the timescales involved, based on the views expressed at the inquiry I believe that both methods could lead to an outline planning permission within six months or so of the Secretary of State’s decision, with the ‘minded to approve’ route likely to be slightly faster. While any further delay in the delivery of houses at North Field is regrettable, this is a relatively short period in the evolution of this scheme and one that can be tolerated in order that significant improvements are secured. Consequently, despite the urgency of the housing need, I consider that the significant shortcomings of the design process and the failure to appropriately target the affordable housing offer outweigh the PPS3 presumption in favour of the proposal.
- 10.130 These are not the only ways forward, and the parties gave their views on various other scenarios. They generally focus on an interim stage between the grant of outline planning permission and the submission of reserved matters applications. The Council believes that an interim stage is necessary after a revised site-wide DAS and masterplan has provided the basis for granting outline permission, whereas the appellants suggest that an interim stage could be required by a condition of outline permission granted for

the proposal as it now stands. I regard the Council's multi-layered approach as unnecessarily complex and time-consuming, while the appellants' suggestion is far from ideal, as it would necessitate granting permission for a scheme which has significant shortcomings. [5.69-72, 6.56-57]

- 10.131 However, a limited interim stage would be justified if it is decided that the site-wide masterplan submitted as part of a revised DAS at the outline stage should be strategic in nature rather than displaying the level of detail necessary to guide individual reserved matters applications. In this case a detailed masterplan for each phase of the development should be approved prior to the submission of reserved matters applications for that phase. The design code could also be submitted at this interim stage, if desired, for it is not essential that the code forms part of the DAS. Although this would introduce an additional stage into the approval process, it should facilitate a speedier grant of outline permission, and does not involve a significant amount of additional work.
- 10.132 On balance I consider that a "minded to approve" decision is to be preferred, giving the appellants the opportunity to produce a DAS of sufficiently high quality and to improve the affordable housing offer so that it better meets local housing needs. I also believe that it would be advantageous for detailed masterplans to be submitted on a phased basis after the grant of outline planning permission. I regard this as the most likely means of achieving the earliest implementation of an acceptable scheme. However, I recognise the risk that this process may not result in a proposal that can be approved, either for procedural reasons or because the revisions fall short of satisfying the policy tests. If the Secretary of State believes that the risk of failure is significant, then it would be better to dismiss the appeal.

## RECOMMENDATION

- 11.1 As submitted, the proposal is unacceptable and I recommend that the appeal be **DISMISSED**. However, I believe there is a reasonable prospect that the application could be amended by the appellants to make it acceptable. If such revisions produce a sufficiently high quality design framework, and affordable housing that adequately meets local needs, then I recommend that the appeal be **ALLOWED** and planning permission granted subject to (1) conditions as set out in Annex 1 to this report, and (2) suitably revised S106 planning obligations which ensure delivery of the necessary infrastructure and community facilities.
- 11.2 If the Secretary of State decides that planning permission should be granted for the proposal as submitted, then consideration should be given to the imposition of the conditions set out in Annex 1 (or as may be varied to reflect the further approval process preferred).

*Martin Pike*

INSPECTOR

**APPEARANCES**

## FOR THE LOCAL PLANNING AUTHORITY:

Suzanne Ornsby of Counsel	Instructed by Mrs G Sinclair, Solicitor, South Gloucestershire Council
<i>She called</i>	
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Mr M Knock BSc MRICS	Partner, Donaldsons LLP, Rivergate House, 70 Redcliff Street, Bristol BS1 6AL
Mr P Slane BSc CEng MICE FIHT	Principal Engineer, Transportation Development Control, South Gloucestershire Council
Mr T Roberts BTP MRTPI	Director, Development Land and Planning Consultants Ltd, 2A High Street, Thornbury, Bristol BS35 2HA

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<i>They called</i>	
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Mr J Donald BSc FRICS	Consultant, Strutt & Parker, 13 Hill Street, London W1J 5LQ
Mr C Rand DipTP DipLA MRTPI MLI	Partner, Barton Willmore, Beansheaf Farmhouse, Bourne Close, Calcot, Reading RG31 7BW
Mr D Parker BA(Hons) MSc DMS FCIH	Managing Director, Pioneer Property Services Ltd, Hartham Park, Hartham Lane, Corsham, Wiltshire SN13 0RP
Mr G Capner BA(Hons) MA FRTPI	Joint Senior Partner, Barton Willmore, Beansheaf Farmhouse, Bourne Close, Calcot, Reading RG31 7BW

## INTERESTED PERSONS:

Reverend D Byrne	St Chad's Vicarage, 1B Southsea Road, Patchway, Bristol BS34 5DP
Councillor E Orpen	Chairman, Patchway Town Council, 14 Bourton Avenue, Stoke Lodge, Patchway, Bristol BS34 6EA
Mr I Cross	30 Callicroft Road, Patchway, Bristol BS34 5BX

**DOCUMENTS**

## APPLICATION DOCUMENTS

*Original submission*

CD/OSN/9	North Field Outline Planning Application, Supporting Statement
CD/OSN/11	Environmental Statement
CD/OSN/12	Transportation Assessment
CD/ADM/1	Architectural Concept (April 2004)
CD/ADM/2	Sketch Book 2 (13 May 2005)

*January 2006 revision*

CD/AIN/2	Architectural Strategy and Design Code incorporating the description of the Master Plan
CD/AIN/4	Supporting Statements covering: Landscape Strategy; Energy Conservation; Waste Reduction; Noise Management; Drainage Management; Water Conservation
CD/AIN/5	Revised Environmental Statement drawings and information
CD/AIN/6	Design Workshop Document

*February 2006 revision*

CD/FRN/1	Design and Access Strategy incorporating the Design Code for the site and Masterplan
CD/FRN/2	Schedule of response to the Masterplan design requirement contained in the 23rd January 2006 letter from the Council
CD/FRN/3	Supporting Statements covering: sustainability, landscape strategy, energy conservation, waste reduction, noise management, drainage management, water conservation
CD/FRN/4	Environmental Statement Masterplan changes incorporating revisions to Environmental Statement
CD/FRN/7	Bovis Homes' address to SGC Development Control (West) committee on 5th January 2006

*October 2006 revision*

CD/DAS	Design and Access Statement and Design Code – October 2006 revision
CD/DAS/v2	Design and Access Statement and Design Code – corrected December 2006 reprint
CD/ED/3	Biodiversity strategy

*Correspondence files*

CD/COR/1	Transport key correspondence – Vol 1
CD/COR/2	Transport key correspondence – Vol 2
CD/COR/3	Transport key correspondence – with Highways Agency
CD/COR/4	Infrastructure key correspondence
CD/COR/5	Correspondence between Council and Bovis Homes – Vol 1
CD/COR/6	Correspondence between Council and Bovis Homes – Vol 2
CD/COR/7	Transport and Infrastructure documents

## CORE DOCUMENTS

*(Note: Government Acts, Circulars, White Papers, PPGs, PPSs and their consultation drafts, Companion/Practice Guides and other DETR/ ODPM/ DCLG publications are not listed)*

CD/RPG/1	RPG10 - Regional Planning Guidance for the South West (September 2001)
CD/RPG/2	Draft Regional Spatial Strategy: Version 3.2 (March 2006)
CD/RPG/3	Draft Regional Spatial Strategy for the South West (June 2006)
CD/REG/1	West of England Sub-Regional Housing Study, Main Report by DTZ (May 2004)
CD/REG/2	Functional Analysis of Settlements, Roger Tym and Partners (April 2005)
CD/REG/3	Joint Committee for Strategic Planning and Transportation, 11 April 2003 – Agenda Item 10: Affordable Housing
CD/REG/4	Barton Willmore's Representations to the Draft Regional Spatial Strategy for the South West (August 2006)
CD/REG/5	South West Regional Housing Strategy 2005-2016, South West Housing Body
CD/REG/6	Analysis of Section 106 Agreements to Establish Good Practice for Promotion within the South West Region (November 2004, Three Dragons, The Centre for Residential Development (Nottingham Trent University) and Trowers & Hamlins)
CD/DP/1	South Gloucestershire Local Plan – Adopted January 2006
CD/DP/3	South Gloucestershire Local Plan - Revised Deposit Draft, Proposed Modifications to Revised Deposit Draft (March 2005)
CD/DP/16	South Gloucestershire Local Plan, Public Local Inquiry (June 2003) – Topic Paper TP17: North Field Development Brief

CD/DP/17	South Gloucestershire Local Plan, Public Local Inquiry (June 2003) – Topic Paper TP14: Affordable Housing (Policy H6)
CD/DP/18	Inspector’s Interim Note - South Gloucestershire Local Plan Inquiry (August 2004)
CD/DP/19	Inspector’s Report - South Gloucestershire Local Plan Inquiry (November 2004)
CD/DP/20	Joint Replacement Structure Plan for BANES, Bristol, North Somerset and South Gloucester (September 2002)
CD/DP/21	South Gloucestershire Local Plan, Public Local Inquiry (June 2003) – Topic Paper TP10: Housing Land
CD/DP/23	South Gloucestershire Local Plan Inquiry, Document SGC/99 Round Table Session 2: Housing Land 4th September 2003 – The Council’s Response to Matters Raised in Position Papers
CD/DP/35	South Gloucestershire Local Plan Inquiry, Document SGC/321 Affordable Housing Viability Assessment – Joint report of Chesterton and Driver Jonas
CD/DP/39	South Gloucestershire Local Plan Inquiry, Document 514D Round Table Session: North Field Bovis Position Statement
CD/DP/40	Local Development Scheme (Sept 2004 – Aug 2007)
CD/SPD/2	Biodiversity and the Planning Process SPG (November 2005)
CD/SPD/3	Trees on Development Sites SPG (November 2005)
CD/SPD/7a	Affordable Housing, Draft SPG (August 2002)
CD/SPD/7b	Appendices to Affordable Housing SPG, 2005/06 Version
CD/SPD/9	Land at Harry Stoke, Concept Statement (November 2005)
CD/SPD/10	The South Gloucester Design Checklist, Draft Consultation SPD (September 2006)
CD/SPD/11	Emersons Green East, Draft Consultation Development Brief (March 2006)
CD/SPD/12	North Field concept statement (adopted November 2002)
CD/SPD/13	Consultation Draft of the North Field Development Brief (6th October 2006)
CD/SPD/14	Draft Sustainability Appraisal Report: North Field Development Brief
CD/SGD/4	South Gloucestershire Council - Housing Needs Survey 2003 (Final report, March 2004)
CD/SGD/5	Local Transport Plan for South Gloucestershire - Five Year Plan (July 2000)
CD/SGD/7	South Gloucestershire Enabling Strategy 2005/06-2009/10 (2005)
CD/SGD/8	South Gloucestershire Housing Strategy 2004-09
CD/SGD/9	The Developers Guide: Infrastructure, Service and Amenity Requirements for New Developments within South Gloucestershire and the Use of Section 106 Agreements (June 2006)
CD/SGD/10	Employment Land and Non-Residential Land Availability Survey (April 2006)
CD/SGD/14	Residential Housing Land Availability Survey (April 2006)
CD/SGD/15	Housing Monitoring Bulletin (April 2005)
CD/CD/3	Design and Access Statements: How to Write, Read and Use Them (CABE, 2006)
CD/CD/5	Better Places to Work (CABE and Llewellyn Davies Yeang, 2005)
CD/CD/6	Design Reviewed Master Plans: Lessons learnt from projects reviewed by CABE’s expert design panel (April 2004)
CD/CD/7	Creating Successful Master Plans (CABE, March 2004)
CD/CD/8	Housing audit: Assessing the design quality of new homes in the North East, North West and Yorkshire & Humber (CABE, November 2005)
CD/CD/9	Design Code Testing: Its Use in England (CABE, February 2005)
CD/CD/10	Housing audit: assessing the design quality of new homes (CABE, October 2004)
CD/AD/1	Planning Delivery Agreements Report (ATLAS, January 2006)
CD/EPD/1	English Partnerships Car Parking - What works where (May 2006)
CD/EPD/2	Urban Design Compendium, English Partnerships and The Housing Corporation (2000)
CD/EPD/3	Employment Densities: A Simple Guide
CD/ESD/1	South Gloucestershire Local Authority – Draft Schools Organisation Plan 2006-2011
CD/ESD/2	Dfes area guidelines building bulletin 99 (1st draft)
CD/ED/4	Avon Biodiversity Action Plan
CD/AHD/1	National Affordable Housing Programme 2006-08: Prospectus (August 2005)
CD/AHD/4	Future Investment Approaches – Discussion Paper, Housing Corporation (September 2006)

CD/ADM/3	Review of Housing Supply - Delivering Stability: Securing our Future Housing Needs – Final Report (Kate Barker, March 2004)
CD/ADM/4	Secretary of State's decision letter (application PA5) dated 1 December 2004 and Inspector's Report, Land west of the A1(M) at Stevenage
CD/ADM/4a	Letter from ODPM to Shoemsmiths dated 14th Sept 2005, Appeal by Bellway Homes, RAF Cardington and Adjoining Land, Shortstown, Bedford
CD/ADM/5	Appeal decision APP/V3120/A/01/1067882, Gallagher Estates Ltd v Vale of White Horse DC 20/12/01
CD/ADM/6	Inspector's Interim Note on Affordable Housing, RAF Cardington Inquiry
CD/ADM/6a	Inspector's Report and Appeal Decision Letter dated 14 September 2005, RAF Cardington and Adjoining Land, Shortstown, Bedford
CD/ADM/7	Tewkesbury Local Plan Inquiry - Inspector's Report (Volume 1: Section 1.3)
CD/ADM/8	South Somerset Local Plan Inquiry - Inspectors Report (Chapter 10: Housing)

#### GENERAL DOCUMENTS

GEN/1	Lists of persons present at the inquiry
GEN/2	Council's notification letter and list of persons notified
GEN/3	Representations received
GEN/4	Statement of Common Ground
GEN/5	Agreed Statement on Education Matters
GEN/6	Council's Statement of Case
GEN/7	Appellants' Statement of Case

#### COUNCIL PROOFS

SG/1/1	Anthony Keown – Proof of Evidence
SG/1/2	Anthony Keown – Appendix to Proof
SG/1/3	Anthony Keown – Rebuttal Proof
SG/2/1	Stuart Larkin – Proof of Evidence
SG/2/2	Stuart Larkin – Appendix to Proof
SG/2/3	Stuart Larkin – Rebuttal Proof
SG/2/4	Stuart Larkin – Second Rebuttal Proof
SG/2/5	Stuart Larkin – Appendices to Second Rebuttal Proof
SG/2/6	Stuart Larkin – Errata to Proof
SG/3/1	Peter Slane – Proof of Evidence
SG/4/1	Pat Vedmore – Proof of Evidence
SG/4/2	Pat Vedmore – Appendix to Proof
SG/4/3	Pat Vedmore – Rebuttal Proof
SG/5/1	Tim Roberts – Proof of Evidence
SG/5/2	Tim Roberts – Appendix to Proof
SG/6/1	Mark Nock – Proof of Evidence
SG/7/1	Lynda Dando – Proof of Evidence

#### APPELLANT PROOFS

BOV/1/1	Gareth Capner – Proof of Evidence
BOV/1/2	Gareth Capner – Rebuttal Proof
BOV/1/3	Gareth Capner – Appendix to Rebuttal Proof
BOV/2/1	Clive Rand – Proof of Evidence
BOV/2/2	Clive Rand – Rebuttal Proof
BOV/2/3	Clive Rand – Appendix to Rebuttal Proof with errata schedule (see also CD/DAS)
BOV/3/1	David Parker – Proof of Evidence
BOV/3/2	David Parker – Appendix to Proof



BOV/3/3	David Parker – Rebuttal Proof
BOV/4/1	James Donald – Proof of Evidence
BOV/4/2	James Donald – Rebuttal Proof
BOV/5/1	Anthony Russell – Proof of Evidence
BOV/5/2	Anthony Russell – Appendix to Proof
BOV/5/3	Anthony Russell – Rebuttal Proof
BOV/6/1	Stephen Clyne – Proof of Evidence
BOV/6/2	Stephen Clyne – Appendix to Proof
BOV/6/3	Stephen Clyne – Rebuttal Proof
BOV/7/1	Gary Coulson – Proof of Evidence
BOV/7/2	Gary Coulson – Appendix to Proof
BOV/7/3	Gary Coulson – Rebuttal Proof
BOV/8/1	Andrew Mahon – Proof of Evidence
BOV/8/2	Andrew Mahon – Rebuttal Proof
BOV/9/1	Julian Munby – Proof of Evidence
BOV/9/2	Julian Munby – Rebuttal Proof

### INQUIRY DOCUMENTS

INQ/1	Letter from Lords Land Brokers to Planning Inspectorate dated 20 November 2006
INQ/2	List of Appearances for Appellants
INQ/3	List of Appearances for South Gloucestershire Council
INQ/4	Letter from GOSW to SGC dated 6 July 2006
INQ/5	Appeal Decision - Land at Lintham Drive
INQ/6	Secretary of State's decision letter dated 24 July 2006 – Land at East and West of Sports Park, Peacehaven, East Sussex.
INQ/7	SDS ProVal
INQ/8	Extract from Town and Country Planning Regulations 2004
INQ/9	Proposed Decision by SGC Executive Councillors
INQ/10	Current sales values in Filton/Patchway area
INQ/11	Bovis Homes Ltd and BAE Systems PLC draft Unilateral Undertaking
INQ/13	Woodstock School – Kingswood Housing Corporation Bid
INQ/14	Letter from Barton Wilmore to DCLG dated 27 November 2006
INQ/15	Example of undercroft parking – Hartwell House, Bristol
INQ/16	Example of undercroft parking - Windmill Hill Business Park – Pegasus
INQ/17	Copy planning application PT06/3255/F, Plot 500 Aztec West
INQ/18	Planning permission P92/2321 – Land East of Parkway Station
INQ/18a	Aerial Photograph – Land East of Parkway Station
INQ/19	Planning Permission PT05/0749/O – Redevelopment of site at Airbus UK, Golf Club Lane & Committee Report dated 22 March 2005
INQ/20	Note for the Inspector – San Andreas Route Link – Land Issues
INQ/21	2001 Census – Work Place Statistics
INQ/22	Car parking ratios – North Fringe, recent employment permissions
INQ/23	Refusal of Planning Permission PT/06/0164/F – land at Playing Fields, New Filton Road
INQ/24	Bundle of Correspondence extracted from Vol 1 & 2 of Inquiry Correspondence Bundles
INQ/25	Ward Plan of Patchway
INQ/26	Appellants' response to CD/INQ/24 – Chronology of requests to Council for viability documentation
INQ/27	Development Control committee report – Application at 1550, Aztec West
INQ/30	Note on cost of procurement to an affordable housing provider
INQ/31	Affordable Homes – Strong Communities (Housing Corporation) – extract
INQ/32	Wallscourt Farm section 106 Agreement – extract
INQ/33	Bovis Homes, Filton – Housing mix: table
INQ/34	Lintham Drive, Kingswood – Unilateral Undertaking – extract

INQ/35	Housing Strategy Statistical Appendix – extract relating to S Gloucestershire
INQ/36	Core Annual Sales Reports 05/06 – email
INQ/37	Filton College – Affordable housing (note from Claire Wood, SGC)
INQ/38	Letter of 30 November 2006 from Bromford Housing Group
INQ/39	Documents from West Stevenage inquiry
INQ/40	Letter of 2 April 2004 from Housing Corporation to East Hertfordshire DC
INQ/41	Documents put in by SGC in relation to affordable housing
INQ/42	Letter of 7 December 2004 from Bromford HA to David Parker
INQ/43	Note: Lintham Drive, Kingswood
INQ/44	Draft conditions schedules
INQ/45	S106: summary position, 8th December 2005
INQ/46	New conditions
INQ/47	Condition 1 (appellants) and Conditions 1 to 6 (LPA)
INQ/48	Mitigation schedule
INQ/49	Statement by Councillor Orpen
INQ/50	Statement by Reverend Byrne
INQ/51	Lintham Drive: Note (see CD/INQ/5)
INQ/52	Statement of Mr Cross
INQ/53	Housing Strategy Statistical Table 2006
INQ/54	Extract from Housing Corporation Capital Funding Guide (see CD/INQ/31)
INQ/55	Exchange of correspondence between SGC and Bromford Housing Association
INQ/56	Analyst / Investor site visit to Horfield, Filton Avenue
INQ/57	Housing Land Availability (Gareth Capner)
INQ/58	SGC memo – Ron Moss to Alun White, Land at Harry Stoke
INQ/59	Email from Highways Agency to Anthony Russell & Others dated 1 December 2006
INQ/60	Update of S106 schedules
INQ/61	Street Plan Portishead – Port Marine
INQ/62	Final conditions schedule
INQ/63	Final draft S106 Agreement and Unilateral Undertakings
INQ/64	Completed S106 Agreement
INQ/65	Completed S106 Unilateral Undertaking – affordable housing
INQ/66	Completed S106 Unilateral Undertaking – public open space, M5 works, healthcare provision
INQ/67	Closing submissions – South Gloucestershire Council
INQ/68	Closing submissions – Bovis Homes and BAE Systems
INQ/69	Correspondence between Council and Appellants, January – February 2007.

## PLANS

A		Drawing Number 1687.03/SAB/02 rev B – Site Application Boundary
B	CD/OSN/3	Drawing Number 1687.03/ES/01 rev D – Land Use
C	CD/OSN/4	Drawing Number 1687.03/BH/ES/ rev G – Building Heights
D	CD/OSN/5	Drawing Number 1687.03/DS/ES rev C – Density
E	CD/OSN/6	Drawing Number 1687.03/LOS/01 rev D – Strategic Landscape and Open Space
F	CD/OSN/7	Drawing Number 1687.30/AM/01 rev A – Access and Movement
G	CD/OSN/8	Drawing Number 1687.03/PH/02 rev C – Phasing
H	CD/AIN/1	Master Plan for the site (drawing No: 06 Rev C)
I	CD/AIN/3	Axonometric Sketch showing development form (drawing SK100)
J	CD/FRN/5	Revised Access drawing No. 12866-104-019 – Transport Masterplan
K		Master Plan, February 2006 – Drawing Number 06 Rev D
L		Master Plan with OS base overlay, 08.12.2006 – Drawing Number 20-1

## ANNEX 1

## CONDITIONS

1. Approval of the details of the siting, design and external appearance of the buildings and the landscaping of the site (hereinafter called “the reserved matters”) shall be obtained from the local planning authority in writing before development on land to which the reserved matters relate commences. Development shall thereafter be carried out in accordance with the approved details.

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

2. No development, except that associated with exempt infrastructure works, shall take place in any of the geographical phases identified in the approved North Field Site Wide Design and Access Statement (*and Design Code*), (*insert date of version approved, and delete reference to Design Code if no longer part of DAS*), until there has been submitted to and approved in writing by the local planning authority a detailed Masterplan for the geographical phase in question (*and a Design Code*)(*include if not part of DAS*). The detailed Masterplan (*and Design Code*) shall be so approved before the submission of applications for the approval of the reserved matters within that geographical phase (excluding applications relating to exempt infrastructure works).

*Reason: To ensure that high standards of urban design and comprehensively planned development, designed and phased to achieve maximum practical integration between different land uses within and beyond the site, is achieved.*

3. Applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and illustrated in the North Field Site Wide Design and Access Statement and Design Code, (*insert date of version approved*), and with the approved detailed masterplan for the phase to which the reserved matters application relates, unless otherwise agreed in writing by the local planning authority.

*Reason: To ensure that high standards of urban design and comprehensively planned development, designed and phased to achieve maximum practical integration between different land uses within and beyond the site, is achieved.*

4. No development shall take place in respect of the following, as identified in the North Field Site Wide Design and Access Statement Figures 1.5 and 7.13, until a Design Brief relating to these matters has been submitted to and approved in writing by the local planning authority:

- i. The Local Centre (Patchway Town Centre extension) including Patchway Square;
- ii. Highwood Road;
- iii. Hotel Site;
- iv. Central Green Spine; and
- v. Woodland Area south of Hayes Lane.

*Reason: To ensure that high standards of urban design and comprehensively planned development, designed and phased to achieve maximum practical integration between different land uses within and beyond the site, is achieved.*

5. Applications for the approval of the reserved matters relating to the design components identified in condition 4 shall be in accordance with the requirements set out in the approved Design Brief for the component in question.

*Reason: To ensure that high standards of urban design and comprehensively planned development, designed and phased to achieve maximum practical integration between different land uses within and beyond the site, is achieved.*

6. Applications for approval of the reserved matters shall be made to the local planning authority before the expiration of ten years from the date of this permission.

*Reason: To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).*

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

*Reason: To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).*

8. The retail floorspace (Class A1, A2, A3, A4 and A5) hereby approved shall not exceed 1,500 sq m unless otherwise agreed in writing by the local planning authority. The Use Classes are those set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

*Reason: To protect the vitality and viability of existing local centres.*

9. The employment floorspace (Class B1, B2, and B8) hereby approved shall not exceed 66,000 sq m gross unless otherwise agreed in writing by the local planning authority.

No more than 30,000 sq m gross of the Class B1, B2 and B8 employment floorspace shall be occupied or otherwise brought into use until a lane gain improvement scheme on the north-bound carriageway of the M5 Motorway (from the top of the existing climbing lane at Hallen Hill to Junction 17) has been completed and opened for public use. This scheme shall be:

- (i) in accordance with drawings numbered 12866-119-R01 and 12866-119-V01 Rev B and containing a motorway queue and detection system comprising electronic message signs, traffic detection loops and associated infrastructure; or
- (ii) in accordance with an alternative scheme broadly in accordance with (i) above which takes account of any works carried out to this section of the motorway network by the Highways Agency before the works specified in (i) above commence. Such a scheme is to be submitted to and approved in writing by the local planning authority.

*Reason: To ensure satisfactory capacity is maintained in the strategic highway network and in the interests of highway safety.*

10. As part of the reserved matters application for (a) the Patchway Centre and (b) the employment area at the south west part of the site, details shall be submitted to and approved in writing by the local planning authority of waste recycling facilities on an area not exceeding 225 sq m. Such details shall in each case include a timetable for implementation and a variety of shared recycling banks for paper, cans, separated glass, textiles, books and plastic bottles. Such details submitted in respect of (b) above shall also include, if appropriate, additional provision for community composting. The provision of waste recycling facilities at each location shall be carried out in accordance with the approved details and implementation plan, unless otherwise agreed in writing by the local planning authority.

*Reason: To ensure that adequate provision is made to meet the needs arising from the occupiers of the development for supporting facilities.*

11. No development comprising any of the Class B1, B2 and B8 floorspace hereby approved shall commence until an overall Travel Plan Framework covering all the Class B1, B2 and B8 floorspace has been submitted to and approved in writing by the local planning authority. The Travel Plan Framework shall set out:
- the aims and objectives of the Framework, including reducing the need to travel by car, encouraging healthy commuting and work related journeys;
  - a monitoring strategy and targets for the reduction of single occupancy car related journeys over the first five years of the development;
  - an intervention strategy for achieving the approved aims, objectives and targets in the event that monitoring reveals that those targets are not being achieved.

The agreed Travel Plan Framework shall be implemented before any part of the Class B1, B2 and B8 floorspace is first occupied, or otherwise as agreed in the Travel Plan Framework.

*Reason: To encourage means of transportation other than the private car.*

12. The relevant Class B1, B2 or B8 floorspace hereby approved shall not be occupied until an Occupier Travel Plan based on the Travel Plan Framework has been submitted to and approved in writing by the local planning authority (the 'relevant Class B1, B2 or B8 floorspace' being the floorspace to which the Occupier Travel Plan relates). The Occupier Travel plan shall include provision for:
- a staff travel survey to be carried out;
  - an assessment of operational constraints such as out of hours travel;
  - an assessment of opportunities for intervention such as car sharing, subsidised travel on public transport and travel information;
  - allocation of parking spaces for specific user needs such as pool cars and car sharers;

and shall set individual Occupier Travel Plan targets for reducing single occupancy car related journeys with procedures and timetables for implementation, monitoring and reporting.

*Reason: To encourage means of transportation other than the private car.*

13. No development shall take place until there has been submitted to and approved in writing by the local planning authority a programme of archaeological investigation and recording for the site. Thereafter, the approved programme shall be

implemented in all respects, unless the local planning authority agrees in writing to any variation.

*Reason: In the interest of archaeological investigation or recording.*

14. No development shall take place on land to which the reserved matters relate until a Waste Management Audit has been submitted to and approved by the local planning authority in writing. The Waste Management Audit shall include details of:
- a. the volume and nature of the waste which will be generated through the demolition and/or excavation process;
  - b. the volume of that waste which will be utilised within the site in establishing pre-construction levels, landscaping features, noise attenuation mounds etc;
  - c. proposals for recycling/recovering materials of value from the waste not used in schemes identified in (b), including as appropriate proposals for the production of secondary aggregates on the site using mobile screen plant;
  - d. the volume of additional fill material which may be required to achieve, for example, permitted ground contours or the surcharging of land prior to construction;
  - e. the probable destination of that waste which needs to be removed from the site and the steps that have been taken to identify a productive use for it as an alternative to landfill;

Development shall be carried out in accordance with the agreed details.

*Reason: To accord with the local planning authority's adopted Waste Management Strategy.*

15. No development shall take place on land to which the reserved matters relate until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include: proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines, manholes); retained historic landscape features and proposals for restoration where relevant. Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme.

*Reason: To protect the character and appearance of the area and the amenities of future occupiers.*

16. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the final dwelling on land to which the reserved matter relates or in accordance with the programme agreed in writing with the local planning authority.

*Reason: To protect the character and appearance of the area and the amenities of future occupiers.*

17. The plans and particulars submitted in accordance with condition 1 above shall include:
- a. a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
  - b. details of the species, diameter (measured in accordance with paragraph (a) above) and the approximate height, and an assessment of the general health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
  - c. details of any proposed tree works to any retained tree or of any tree on land adjacent to the site;
  - d. details of any proposed alterations in existing ground levels, and of the position of any proposed excavation within the RPA (root protection area) as defined in BS5837:2005 of any retained tree or of any tree on land adjacent to the site;
  - e. details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

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

All fencing shall be in accordance with BS5837:2005, Trees in Relation to Construction and retained and maintained for the duration of the construction period.

*Reason: To protect the character and appearance of the area and the amenities of future occupiers.*

18. No development shall take place until the detailed design of each phase of the strategic sustainable drainage attenuation systems (SUDs) within the development and the details of phasing in relation to the development have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved phasing details.

*Reason: To ensure that a satisfactory means of drainage is provided.*

19. No development shall take place on land to which the reserved matters relate until drainage details of proposals incorporating SUDS and confirmation of hydrological conditions (eg soil permeability, watercourses, mining culverts) within the development have been submitted to and approved in writing by the local planning authority. The scheme as approved shall be implemented in accordance with the approved details before the occupation of the final dwelling on land to which the reserved matters relate.

*Reason: To ensure that a satisfactory means of drainage is provided.*

20. No development shall take place on land to which the reserved matters relate until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include an investigation and assessment to identify the extent of contamination, the measures to be taken to avoid the risk to the public and the environment when the site is developed and the

timing of the implementation of the measures in relation to the development on land to which the reserved matters relate. The scheme shall be implemented as approved.

*Reason: To ensure that adequate measures have been taken to mitigate against contaminated land.*

21. Prior to the commencement of development on land to which the reserved matters relate, detailed plans showing the provision of car and cycle parking facilities in accordance with the standards set out in Policies T7 and T8 of the South Gloucestershire Local Plan (Adopted January 2006) (and in the case of Class B1 Office Use shall not exceed 1 space per 40 sq m of floor space) shall be submitted to and agreed in writing by the local planning authority. Thereafter, the development on land to which the reserved matters relate shall proceed in accordance with the agreed scheme, with the parking facilities provided prior to the occupation of the associated buildings and thereafter retained for that purpose.

*Reason: To ensure the satisfactory provision of parking facilities and in the interest of highway safety and the amenity of the area and to maximise the efficient use of land.*

22. The buildings on the land to which the reserved matters relate shall not be occupied until the associated parking areas and manoeuvring areas have been drained and surfaced in accordance with the details approved in writing by the local planning authority. The facilities so provided shall not thereafter be used for any purpose other than the parking and manoeuvring of vehicles, unless otherwise agreed in writing by the local planning authority.

*Reason: To ensure the satisfactory provision of parking facilities and in the interest of highway safety and the amenity of the area.*

23. Details of the means of access for construction traffic shall be submitted to and approved in writing by the local planning authority and provided before the development commences on land to which the reserved matter relates. No other access points for construction traffic shall be provided.

*Reason: In the interests of highway safety and of the amenities of nearby residential occupiers.*

24. The hours of working on site during the period of construction shall be restricted to 8.00am-6.00pm Mondays to Fridays, 8.00am-1.00pm on Saturdays, and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the curtilage of the site. Any 'working' outside these hours shall have the prior written consent of the local planning authority.

*Reason: To minimize disturbance to occupiers of completed and nearby dwellings.*

25. No development shall take place on land to which the reserved matters relate until details of wheel-washing facilities to be provided on site have been submitted to and approved in writing by the local planning authority. These facilities shall be



provided prior to development commencing on land to which the reserved matters relate and maintained during the period of construction. All commercial vehicles shall have their wheels washed before entering the public highway.

*Reason: To safeguard the amenities of the locality and in the interests of road safety.*

26. The Design Noise Criterion will be to achieve Exposure Category NEC B (Planning Policy Guidance 24) across the site to meet the agreed Noise Management Strategy as follows:

Internal Noise Levels:

No development shall take place within the areas marked on Figure 3.1 of the DAS (identifying the areas within Noise Exposure Category C – Daytime) until a scheme for protecting the proposals from traffic noise has been submitted to and approved in writing by the local planning authority. Thereafter, the building envelope of all plots within this area shall be constructed so as to provide sound attenuation against noise, not less than 20 dB(A), with windows shut and other means of ventilation provided.

External Noise Levels:

Directly exposed private areas and gardens to residential properties in NEC C shall be protected by constructing continuous acoustic barriers (to include built form) to the boundaries not less than 2 metres in height or such measures that may be agreed in writing by the local planning authority.

*Reason: To protect the amenities of the occupiers of completed dwellings.*

27. The rating level of noise emitted from plant and machinery at the industrial and commercial development hereby approved shall not exceed the background noise level at any time. The noise level shall be determined on the boundary of the nearest residential areas shown on the approved masterplan and shall be measured and assessed in accordance with the British Standard BS4142: 1997 (as amended) 'Method for Rating Industrial Noise'.

*Reason: To minimize disturbance to neighbouring occupiers.*

28. The directly exposed playing and external areas of the Primary School hereby approved shall be protected by constructing acoustic barriers (to include built form) not less than 2 metres in height at agreed strategic locations in order to meet the Building Bulletin Schools 93 noise criterion – BBS93 (ie. 60 dB(A) LAeq 1 hour) or such measures that may be agreed in writing by the local planning authority.

*Reason: To protect the amenities of the occupiers of the school.*

29. No development shall take place until an Ecological Management Plan for slow-worms has been submitted to and approved in writing by the local planning authority. The Management Plan shall include the results of a survey of slow-worms and any proposals for translocation of the same, together with a timetable for the implementation of the proposals. The requirements of the Management Plan shall subsequently be carried out in accordance with the approved timetable for implementation.

*Reason: To ensure that adequate measures have been taken to translocate any slow-worms.*

30. No development shall take place until a scheme for the protection of all retained hedgerows on the site has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the specification and position of all temporary fencing that will be erected to protect the retained hedgerows for the duration of the remediation and construction periods, together with a management plan for the buffer zones between the protective fencing and each of the retained hedgerows, and details of an appropriate monitoring regime. The development shall be carried out in accordance with the approved scheme.

*Reason: To protect the character, appearance and bio-diversity of the area and the amenities of future occupiers.*

31. No development shall take place until a scheme for the protection of Filton Wood SNCI has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the specification and position of all temporary fencing that will be erected to protect the Wood and a buffer zone around it for the duration of the remediation and construction periods, together with a management plan for the Wood and buffer zone, and details of an appropriate monitoring regime. The development shall be carried out in accordance with the approved scheme.

*Reason: To protect the character, appearance and bio-diversity of the area and the amenities of future occupiers.*

32. No development shall take place until an ecological management plan for the site has been submitted to and approved in writing by the local planning authority. The plan shall include the results of an ecological survey of the site and a detailed scheme of protection, mitigation and compensation measures to be incorporated within the development, together with a timetable for the implementation of the scheme and for the monitoring of the impact of the development on the ecological features. The development shall be carried out in accordance with the approved plan.

*Reason: To protect the character, appearance and bio-diversity of the area and the amenities of future occupiers.*

33. No residential or employment development on land to which the reserved matters relate shall take place until a scheme detailing how the development hereby approved shall achieve at least BRE EcoHomes 2006 “Very Good” or BREEAM 2006 “Very Good” respectively has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in full accordance with the approved scheme.

*Reason: To achieve improved energy conservation and the protection of environmental resources.*

34. No development shall take place until a scheme for the future responsibility and maintenance of the underground SUDS infrastructure (referred to in the section 106 agreement as underground storage features) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details so approved.

*Reason: To prevent pollution of the water environment.*

35. No development shall take place until a scheme for prevention of pollution during the construction phase has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the following:
- a. site security;
  - b. fuel oil storage, bunding, delivery and use;
  - c. how both minor and major spillage will be dealt with;
  - d. containment of silt/soil contaminated run-off;
  - e. disposal of contaminated drainage, including water pumped from excavations;
  - f. site induction for workforce highlighting pollution prevention and awareness.

The development shall be carried out in accordance with the details so approved.

*Reason: To prevent pollution of the water environment.*

36. There shall be no discharge of foul or contaminated drainage or trade effluent from the site into either groundwater or any surface waters, whether direct or via soakaways.

*Reason: To prevent pollution of the water environment.*

37. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls, details of which shall be submitted in writing to the local planning authority for approval. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%; or 25% of the total volume which could be stored at any one time, whichever is the greater. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground, where possible, and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

*Reason: To prevent pollution of the water environment.*

38. Prior to the submission of any reserved matters application, a plan shall be submitted to and approved in writing by the local planning authority showing the distribution of 733 affordable dwellings across the site in the residential land parcels shown in the approved Site-wide Design and Access Statement. For each development parcel, the plan shall show the approximate location and number of affordable dwellings to be provided, together with the mix of dwellings in terms of the number of bedrooms and the proportion of houses and flats.

*Reason: To ensure that the distribution of houses assists the creation of an inclusive, mixed community.*