



# Appendices

**Proof of Evidence of Mr. Steven Bainbridge MRTPI  
On Behalf of the Appellant:  
Capital Community Developments Ltd.**

**Planning Appeal Against the Refusal of Planning Permission for:**

**A phased development of 75 dwellings, car parking, public open space,  
hard and soft landscaping and associated infrastructure and access**

**Land North Of Gardenia Close And Garden Square Rendlesham Suffolk**

**Our ref. PS-2018-0645/POE  
LPA ref. DC/19/1499/FUL  
PINS ref. APP/X3540/W/19/3242636  
Date: March 2020**

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**Norfolk Office 01603 516319**

Orchard House  
Hall Lane  
East Tuddenham,  
Norfolk, NR20 3LR

**Suffolk Office 01284 336348**

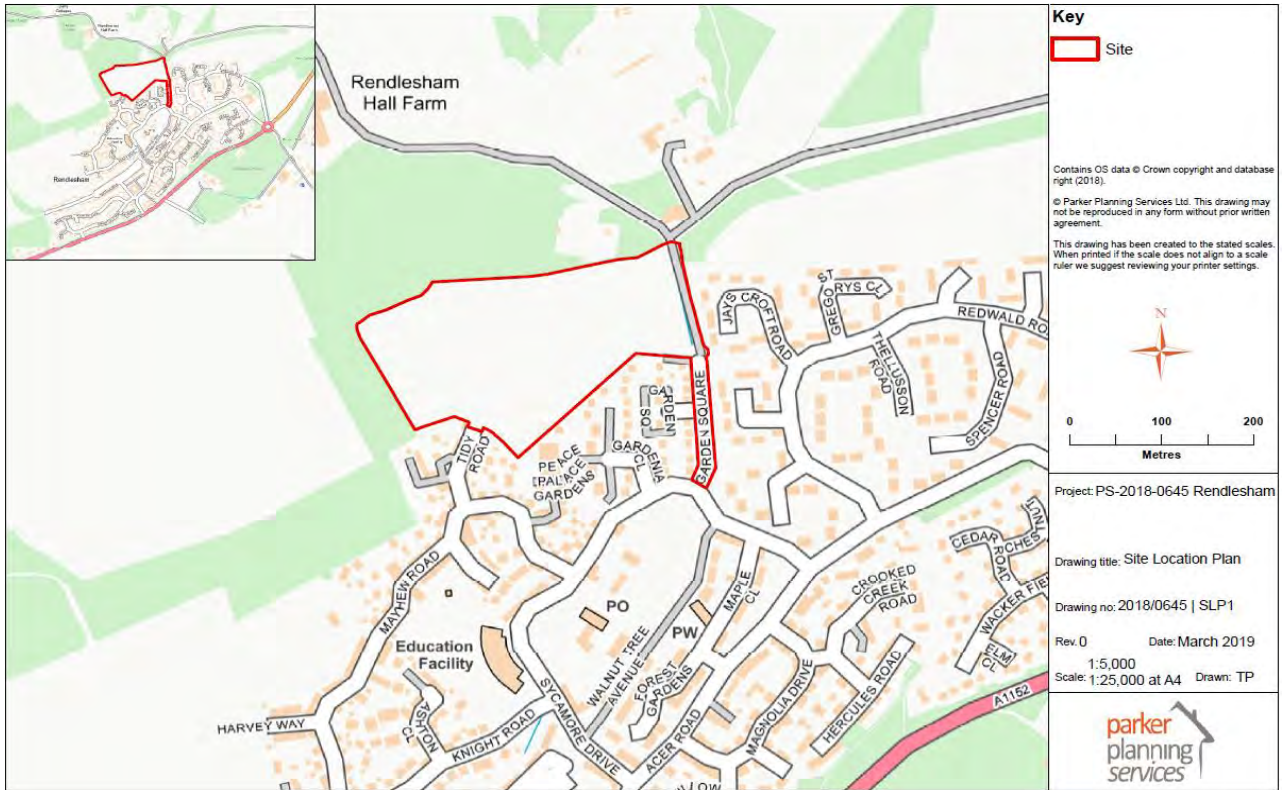
The Northgate Business Centre,  
10 Northgate Street,  
Bury St Edmunds,  
Suffolk, IP33 1HQ

**Essex Office 01245 934 184**

Moulsham Mill,  
Parkway,  
Chelmsford  
Essex, CM2 7PX

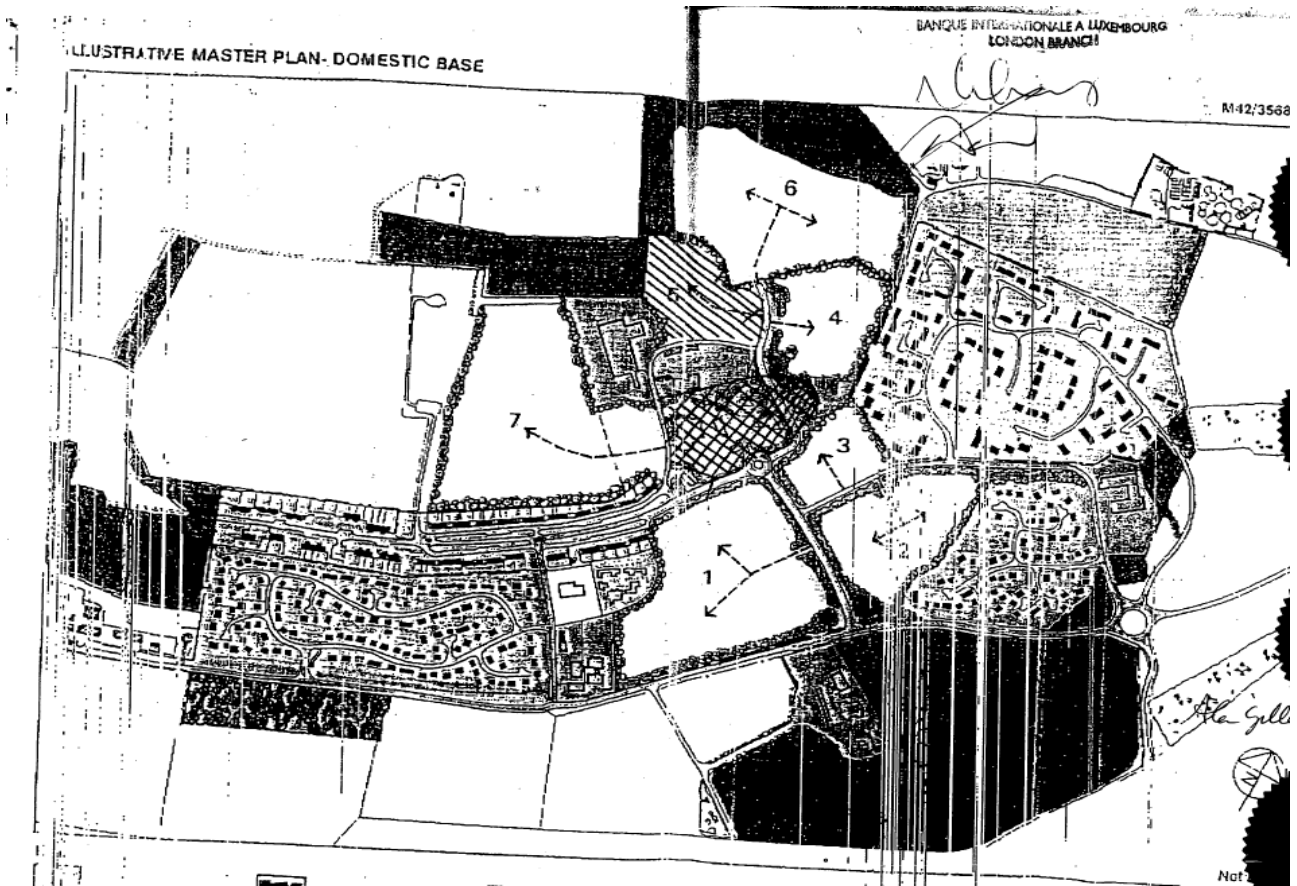
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**Appendix 1**





## Appendix 2





c. 2000 Post USAF departure and pre-development. This shows the extent of the former USAF areas.



c. 2007 Clearance of USAF areas and Garden Sq. during construction. new housing being developed.



c. 2011 Tidy Road being developed. Garden Square completed.



c. 2019 all previous phases of development completed. Sites SSP12 and SSP13 awaiting development.



Google Earth aerial photo overlay with Figure from Rendlesham Neighbourhood Plan Appendix O

## Appendix O

### Neighbourhoods and housing stock in Rendlesham

- A** Former USAF Housing. Semi-detached 2-3 bed medium density homes, now mostly privately owned or privately rented. Sufficient off-road parking to avoid congestion or obstruction of footways.
- B** Former USAF officer quarters consisting mainly of bungalows with semi detached homes at the far end. Sufficient off-road parking to avoid congestion or obstruction of footways.
- C** New housing consisting of large 4—5 bed detached low density homes. Sufficient off-road parking to avoid congestion or obstruction of footways.
- D** New housing consisting of large 3—6 bed homes in a high density layout. Insufficient off-road parking and road layout causes congestion and vehicles obstructing footways.
- E** This development within Rendlesham is constructed in accord with the principles of Maharishi Sthapatya Veda and provides a mix of low density detached, semi-detached, maisonettes and flats. Sufficient off-road

parking to avoid congestion or obstruction of footways.

- F** A mix of former USAF 2-3 bed flats, maisonettes and homes. There is a high proportion of privately rented accommodation in this area. Sufficient off-road parking to avoid congestion or obstruction of footways.
- G** New housing representing a mix of privately owned and privately rented. Flagship Housing has a small number of properties in Library Mews. The majority of the properties in this area are 2-3 bed terraced with insufficient off-road parking and road layout causes congestion and vehicles obstructing footways.
- H** Former USAF houses built but never used by the USAF before they left Bentwaters in 1992. Now mainly privately owned semi-detached 2-3 bed homes. Sufficient off-road parking to avoid congestion or obstruction of footways.
- I** Care Centre (home for the elderly)

#### Potential Housing deficiencies

- Sheltered housing
- Bungalows



OS PSMA Licence No: 0100052013

**Appendix 3**



Type	1 bed Sudbury	2 bed Sudbury	2 bed Sudbury (2 <sup>nd</sup> floor)
Number AR	10	2	
Number DMS		8	5



## Appendix 4



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### Suffolk Coastal Local Plan Examination

#### Hearing Day 2

**Matter 2C – Distribution of Growth and the Settlement Hierarchy – Whether the plan sets out a clear strategy for the pattern of development consistent with national policy**

#### Strategic and Non-Strategic Policies

1. This note responds to an action arising in the hearing session on Matter 2C (Wednesday 21<sup>st</sup> August) and the Inspector's questions about Strategic and Non-Strategic Policies.
2. The Council has reconsidered the policies within the Final Draft Local Plan in the context of the National Planning Policy Framework (paragraphs 20-30). In doing so the Council has identified strategic policies as being those which contribute to the overall pattern, scale and quality of development, as per paragraph 20 of the NPPF. Policies which relate only to the local level or which set out specific development management criteria, and which do not form a part of the overall pattern, scale and quality of development, have been identified as Non-Strategic. The policies listed below are considered to be Non-Strategic:

Policy Reference	Policy Name
SCLP4.10	Town Centre Environments
SCLP5.5	Conversion of buildings in the countryside for housing
SCLP5.6	Rural Workers Dwellings
SCLP5.13	Residential Annexes
SCLP5.14	Extensions to residential curtilages
SCLP6.5	New Tourist Accommodation
SCLP6.6	Existing tourism accommodation

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SCLP8.3	Allotments
SCLP8.4	Digital Infrastructure
SCLP11.2	Residential Amenity
SCLP11.4	Listed Buildings
SCLP11.5	Conservation Areas
SCLP11.6	Non-Designated Heritage Assets
SCLP11.7	Archaeology
SCLP11.9	Areas to be Protected from Development
SCLP11.10	Newbourne – Former Land Settlement Association Holdings
SCLP12.11	Felixstowe Ferry and Golf Course
SCLP12.12	Felixstowe Ferry Golf Club to Cobbolds Point
SCLP12.13	Cobbolds Point to Spa Pavilion
SCLP12.14	Spa Pavilion to Manor End
SCLP12.15	Manor End to Landguard

3. In identifying a number of non-strategic policies, it is necessary to propose modifications to paragraphs 1.33, 1.46 and 12.7, as set out below, and to include an Appendix M which lists which policies are Strategic and which are Non-Strategic. The NPPF (paragraph 21) states that plans should make explicit which policies are strategic policies. Modifications are shown in ~~strikethrough~~ for deleted text and in underline for additional text.

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Paragraph 1.33:

“The Local Plan sets out the level of growth which needs to be planned for in Suffolk Coastal and identifies where this should be located and how it should be delivered. The Plan sets out the strategic and non-strategic planning policies which the Council will use to determine planning applications across Suffolk Coastal, along with policies in made Neighbourhood Plans. This Local Plan will cover the period 2018-2036.”

Paragraph 1.46:

“~~All~~Many of the policies in the Local Plan are ‘strategic policies’ (as set out in Appendix M). This means that policies and proposals within future Neighbourhood Plans should be in general conformity with these policies. ~~The p~~Policies in the Plan do provide flexibility for Neighbourhood Plans to develop their own locally specific policies and in a number of policies there is specific reference to the types of policies that Neighbourhood Plans may choose to include. However, Neighbourhood Plans may cover other topics and provide local detail in relation to other policy areas where appropriate.”

Paragraph 12.7:

“In accordance with the National Planning Policy Framework, the Local Plan identifies policies which are strategic and those which are not strategic. ~~All~~Many of the policies in the Local Plan are ‘strategic policies’, and these policies together set the overall strategy for the pattern, scale and quality of development. ~~This means that~~In meeting the ‘basic conditions’ for Neighbourhood Plans, policies and proposals within future Neighbourhood Plans should be in general conformity with these policies. The pPolicies in the Plan do provide flexibility for Neighbourhood Plans to develop their own locally specific policies and in a number of policies there is specific reference to the types of policies that Neighbourhood Plans may choose to include. However, Neighbourhood Plans may cover other topics and provide local detail in relation to other policy areas where appropriate. Where policies are identified as not being strategic, as they relate solely to local or specific development management matters, Neighbourhood Plans which cover these topics will not need to demonstrate general conformity with these policies, however they must still have regard to any relevant parts of national policy. Appendix M of the Local Plan identifies whether policies are strategic or non-strategic.”

4. Proposed Appendix M is set out overleaf (modifications would also be required to the contents page in respect of the addition of Appendix M). The Council will include this revised wording in the schedule of modifications that is being collated as part of the Examination.

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Appendix M

Schedule of Strategic Policies

<u>SCLP2.1</u>	<u>Growth in the Ipswich Strategic Planning Area</u>
<u>SCLP2.2</u>	<u>Strategic Infrastructure Priorities</u>
<u>SCLP2.3</u>	<u>Cross-boundary mitigation of effects on Protected Habitats</u>
<u>SCLP3.1</u>	<u>Strategy for Growth in Suffolk Coastal District</u>
<u>SCLP3.2</u>	<u>Settlement Hierarchy</u>
<u>SCLP3.3</u>	<u>Settlement Boundaries</u>
<u>SCLP3.4</u>	<u>Proposals for Major Energy Infrastructure Projects</u>
<u>SCLP3.5</u>	<u>Infrastructure Provision</u>
<u>SCLP4.1</u>	<u>Existing Employment Areas</u>
<u>SCLP4.2</u>	<u>New Employment Development</u>
<u>SCLP4.3</u>	<u>Expansion and Intensification of Employment Sites</u>
<u>SCLP4.4</u>	<u>Protection of Employment Premises</u>
<u>SCLP4.5</u>	<u>Economic Development in Rural Areas</u>
<u>SCLP4.6</u>	<u>Conversion and Replacement of Rural Buildings for Employment Use</u>
<u>SCLP4.7</u>	<u>Farm Diversification</u>
<u>SCLP4.8</u>	<u>New Retail and Commercial Leisure Development</u>
<u>SCLP4.9</u>	<u>Development in Town Centres</u>
<u>SCLP4.11</u>	<u>Retail and Commercial Leisure in Martlesham</u>
<u>SCLP4.12</u>	<u>District and Local Centres and Local Shops</u>
<u>SCLP5.1</u>	<u>Housing Development in Large Villages</u>
<u>SCLP5.2</u>	<u>Housing Development in Small Villages</u>
<u>SCLP5.3</u>	<u>Housing Development in the Countryside</u>
<u>SCLP5.4</u>	<u>Housing in Clusters in the Countryside</u>
<u>SCLP5.7</u>	<u>Infill and Garden Development</u>
<u>SCLP5.8</u>	<u>Housing Mix</u>
<u>SCLP5.9</u>	<u>Self Build and Custom Build Housing</u>
<u>SCLP5.10</u>	<u>Affordable Housing on Residential Developments</u>
<u>SCLP5.11</u>	<u>Affordable Housing on Residential Developments</u>
<u>SCLP5.12</u>	<u>Houses in Multiple Occupation</u>

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<u>SCLP5.15</u>	<u>Residential Moorings, Jetties and Slipways</u>
<u>SCLP5.16</u>	<u>Residential Caravans and Mobile Homes</u>
<u>SCLP5.17</u>	<u>Gypsies, Travellers and Travelling Showpeople</u>
<u>SCLP6.1</u>	<u>Tourism</u>
<u>SCLP6.2</u>	<u>Tourism destinations</u>
<u>SCLP6.3</u>	<u>Tourism Development within the AONB and Heritage Coast</u>
<u>SCLP6.4</u>	<u>Tourism Development outside of the AONB</u>
<u>SCLP7.1</u>	<u>Sustainable Transport</u>
<u>SCLP7.2</u>	<u>Parking Proposals and Standards</u>
<u>SCLP8.1</u>	<u>Community Facilities and Assets</u>
<u>SCLP8.2</u>	<u>Open Space</u>
<u>SCLP9.1</u>	<u>Low Carbon and Renewable Energy</u>
<u>SCLP9.2</u>	<u>Sustainable Construction</u>
<u>SCLP9.3</u>	<u>Coastal Change Management Area</u>
<u>SCLP9.4</u>	<u>Coastal Change Rollback or Relocation</u>
<u>SCLP9.5</u>	<u>Flood Risk</u>
<u>SCLP9.6</u>	<u>Sustainable Drainage Systems</u>
<u>SCLP9.7</u>	<u>Holistic Water Management</u>
<u>SCLP10.1</u>	<u>Biodiversity and Geodiversity</u>
<u>SCLP10.2</u>	<u>Visitor Management at European Sites</u>
<u>SCLP10.3</u>	<u>Environmental Quality</u>
<u>SCLP10.4</u>	<u>Landscape Character</u>
<u>SCLP10.5</u>	<u>Settlement Coalescence</u>
<u>SCLP11.1</u>	<u>Design Quality</u>
<u>SCLP11.3</u>	<u>Historic Environment</u>
<u>SCLP11.8</u>	<u>Parks and Gardens of Historic or Landscape Interest</u>
<u>SCLP12.1</u>	<u>Neighbourhood Plans</u>
<u>SCLP12.2</u>	<u>Strategy for Felixstowe</u>
<u>SCLP12.3</u>	<u>North Felixstowe Garden Neighbourhood</u>
<u>SCLP12.4</u>	<u>Land north of Conway Close and Swallow Close</u>
<u>SCLP12.5</u>	<u>Brackenbury Sports Centre</u>
<u>SCLP12.6</u>	<u>Land at Sea Road, Felixstowe</u>

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<u>SCLP12.7</u>	<u>Port of Felixstowe</u>
<u>SCLP12.8</u>	<u>Land at Bridge Road</u>
<u>SCLP12.9</u>	<u>Land at Carr Rd / Langer Rd</u>
<u>SCLP12.10</u>	<u>Land at Haven Exchange</u>
<u>SCLP12.16</u>	<u>Felixstowe Leisure Centre</u>
<u>SCLP12.17</u>	<u>Tourism Accommodation in Felixstowe</u>
<u>SCLP12.18</u>	<u>Strategy for Communities Surrounding Ipswich</u>
<u>SCLP12.19</u>	<u>Brightwell Lakes</u>
<u>SCLP12.20</u>	<u>Land at Felixstowe Road</u>
<u>SCLP12.21</u>	<u>Ransomes</u>
<u>SCLP12.22</u>	<u>Recreation and Open Space in Rushmere</u>
<u>SCLP12.23</u>	<u>Ipswich Garden Suburb Country Park</u>
<u>SCLP12.24</u>	<u>Land at Humber Doucy Lane</u>
<u>SCLP12.25</u>	<u>Suffolk Police HQ, Portal Avenue, Martlesham</u>
<u>SCLP12.26</u>	<u>Strategy for Aldeburgh</u>
<u>SCLP12.27</u>	<u>Land rear of Rose Hill, Aldeburgh</u>
<u>SCLP12.28</u>	<u>Strategy for Saxmundham</u>
<u>SCLP12.29</u>	<u>South Saxmundham Garden Neighbourhood</u>
<u>SCLP12.30</u>	<u>Land north east of Street Farm, Saxmundham</u>
<u>SCLP12.31</u>	<u>Strategy for Woodbridge</u>
<u>SCLP12.32</u>	<u>Former Council Offices, Melton Hill</u>
<u>SCLP12.33</u>	<u>Land at Woodbridge Town Football Club</u>
<u>SCLP12.34</u>	<u>Strategy for Rural Areas</u>
<u>SCLP12.35</u>	<u>Innocence Farm</u>
<u>SCLP12.36</u>	<u>Former airfield Debach</u>
<u>SCLP12.37</u>	<u>Carlton Park, Main Road, Kelsale cum Carlton</u>
<u>SCLP12.38</u>	<u>Levington Park, Levington</u>
<u>SCLP12.39</u>	<u>Land at Silverlace Green (former airfield) Parham</u>
<u>SCLP12.40</u>	<u>Former airfield Parham</u>
<u>SCLP12.41</u>	<u>Bentwaters Park, Rendlesham</u>
<u>SCLP12.42</u>	<u>Riverside Industrial Estate, Border Cot Lane, Wickham Market</u>
<u>SCLP12.43</u>	<u>Land to the East of Aldeburgh Road, Aldringham</u>

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<u>SCLP12.44</u>	<u>Land South of Forge Close between Main Road and Ayden, Benhall</u>
<u>SCLP12.45</u>	<u>Land to the South East of Levington Lane, Bucklesham</u>
<u>SCLP12.46</u>	<u>Land to the South of Station Road, Campsea Ashe</u>
<u>SCLP12.47</u>	<u>Land behind 15 St Peters Close, Charsfield</u>
<u>SCLP12.48</u>	<u>Land to the South of Darsham Station</u>
<u>SCLP12.49</u>	<u>Land North of The Street, Darsham</u>
<u>SCLP12.50</u>	<u>Land off Laxfield Road, Dennington</u>
<u>SCLP12.51</u>	<u>Land to the South of Eyke CoE Primary School and East of The Street, Eyke</u>
<u>SCLP12.52</u>	<u>Land to the West of Chapel Road, Grundisburgh</u>
<u>SCLP12.53</u>	<u>Land South of Ambleside, Main Road, Kelsale cum Carlton</u>
<u>SCLP12.54</u>	<u>Land North of the Street, Kettleburgh</u>
<u>SCLP12.55</u>	<u>Land to the rear of 31-37 Bucklesham Road, Kirton</u>
<u>SCLP12.56</u>	<u>Land at School Road, Knodishall</u>
<u>SCLP12.57</u>	<u>Land at Bridge Road, Levington</u>
<u>SCLP12.58</u>	<u>Land North of Mill Close, Orford</u>
<u>SCLP12.59</u>	<u>Land adjacent to Swiss Farm, Otley</u>
<u>SCLP12.60</u>	<u>Land adjacent to Farthings, Sibton Road, Peasenhall</u>
<u>SCLP12.61</u>	<u>Land between High Street and Chapel Lane, Pettistree (adjoining Wickham Market)</u>
<u>SCLP12.62</u>	<u>Land West of Garden Square Rendlesham</u>
<u>SCLP12.63</u>	<u>Land East of Redwald Road, Rendlesham</u>
<u>SCLP12.64</u>	<u>Land opposite The Sorrel Horse, The Street, Shottisham</u>
<u>SCLP12.65</u>	<u>Land off Howlett Way, Trimley St Martin</u>
<u>SCLP12.66</u>	<u>Land adjacent to Reeve Lodge, High Road, Trimley St Martin</u>
<u>SCLP12.67</u>	<u>Land off Keightley Way, Tuddenham</u>
<u>SCLP12.68</u>	<u>Land South of Lower Road, Westerfield</u>
<u>SCLP12.69</u>	<u>Land West of the B1125, Westleton</u>
<u>SCLP12.70</u>	<u>Land at Cherry Lee, Darsham Road, Westleton</u>
<u>SCLP12.71</u>	<u>Mow Hill, Witnesham</u>
<u>SCLP12.72</u>	<u>Land at Street Farm, Witnesham (Bridge)</u>

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Schedule of Non-Strategic Policies

<u>SCLP4.10</u>	<u>Town Centre Environments</u>
<u>SCLP5.5</u>	<u>Conversion of buildings in the countryside for housing</u>
<u>SCLP5.6</u>	<u>Rural Workers Dwellings</u>
<u>SCLP5.13</u>	<u>Residential Annexes</u>
<u>SCLP5.14</u>	<u>Extensions to residential curtilages</u>
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<u>SCLP12.12</u>	<u>Felixstowe Ferry Golf Club to Cobbolds Point</u>
<u>SCLP12.13</u>	<u>Cobbolds Point to Spa Pavilion</u>
<u>SCLP12.14</u>	<u>Spa Pavilion to Manor End</u>
<u>SCLP12.15</u>	<u>Manor End to Landguard</u>



## Appendix 5

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ENVIRONMENTAL ASSESSMENT

Env. L.R.

### R. v. ROCHDALE METROPOLITAN BOROUGH COUNCIL *ex p.* MILNE

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

(Sullivan J.): July 31, 2000<sup>1</sup>

[2001] Env. L.R. 22

H1 *Environmental assessment—information as to scale provided but design of development to be a reserved matter for planning authority—whether sufficient description of proposed development provided for purposes of environmental assessment regulations—whether proposals in accordance with the development plan*

H2 In 1998, the respondent council ("R") granted 'bare' outline planning permission for a business park and full permission for a spine road to serve the business park. R considered that an environmental assessment was required and the developer had provided an environmental statement, based upon an illustrative masterplan and indicative schedule of uses of the business park. The permissions included conditions as to the submission of further details which would address the minimisation of certain environmental impacts, and one in particular which required the preparation of a Framework Document which would show the design and layout of the proposed development with plans for phasing different aspects of the development. Local residents challenged the decisions to grant planning permission, *inter alia*, on the grounds that there had been a failure to provide the information required under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988, No. 1199). The High Court held (in *R. v. Rochdale MBC, ex p. Tew* [2000] Env. L.R. 1) that, whilst R took 'environmental information' into account about the effects of carrying out a business park development in accordance with an illustrative masterplan and schedule of land uses, that was not the actual development proposed, nor for which permission was granted. The court further held that, in any event, insufficient information as to mitigating measures had been provided so that the Regulations had not been complied in that respect, and that R therefore, did not have the power to grant the planning permissions. R did not appeal against that decision.

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<sup>1</sup> Paragraph numbers in this judgment are as assigned by the court.

depending on market demand, there was no reason why “a description of the project” for the purposes of the Directive should not recognise that reality. What was important was that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of flexibility. The assessment process could well be easier in the case of projects which were “fixed” in every detail from the outset, but the difficulty of assessing projects which did require a degree of flexibility was not a reason for frustrating their implementation. It was for the authority responsible for granting the development consent to decide whether the difficulties and uncertainties were such that the proposed degree of flexibility was not acceptable in terms of its potential effect on the environment. Provided the outline application had acknowledged the need for details of a project to evolve over a number of years, within clearly defined parameters, provided the environmental assessment had taken account of the need for evolution, within those parameters, and reflected the likely significant effects of such a flexible project in the environmental statement, and provided the local planning authority in granting outline planning permission imposed conditions to ensure that the process of evolution kept within the parameters applied for and assessed, the project, as it evolved with the benefit of approvals of reserved matters, remained the same as the project which was assessed.

H8 The Directive sought to ensure that as much knowledge as could reasonably be obtained, given the nature of the project, about its likely significant effect on the environment was available to the decision taker. It is not intended to prevent the development of some projects because, by their very nature, “full knowledge” was not available at the outset. This did not give developers an excuse to provide inadequate descriptions of their projects. It would be for the authority responsible for issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has “full knowledge” of its likely significant effects on the environment. The local planning authority was entitled to say that it had sufficient information about the design of a project to enable it to assess its likely significant effects on the environment, and that it did not require details of the reserved matters because it was satisfied that such details, provided they were sufficiently controlled by condition, were not likely to have any significant effect. Whilst R had deferred a decision on some matters of detail, which could have some environmental effect, it had not deferred a decision on any matter which was likely to have a significant effect, or on any mitigation measures in respect of such an effect.

H9 It was sufficient that the proposed development was in accordance with the development plan as a whole, and did not have to accord with every relevant policy within it. Policies could pull in different directions

- H3 The developers substantially revised the application for the business park, amendments were made to the spine road application, and both were then renewed, together with an application regarding estate roads and ancillary services. A new environmental statement covering the project as described in the three applications was presented to R, which then granted permission. A new application for judicial review was then made by the applicant ("M"), submitting: that a sufficient description of the development had not been provided in the revised applications in accordance with the Regulations, the scale or size of the development being provided, but design being a reserved matter; that outline planning permission could not be granted for a project which required environmental assessment; and that the development did not accord with the development plan with regard to creation of public open space and/or recreational areas.
- H4 M argued that to comply with the requirements of paragraph 2(a) of Schedule 3 the development proposed had to be described in such detail that nothing was omitted which could be capable of having a significant effect on the environment if comprehensively assessed, and that since it was impossible to say that the ultimate treatment of any of the reserved matters in an outline application was incapable of having a significant effect on the environment, the outline application procedure was inconsistent with the requirements of environmental assessment. Directive 85/337 was not aimed at permitting decisions to be taken "in principle" on relevant projects, but only after a comprehensive assessment of them.
- H5 **Held, in refusing the application:**
- H6 The proper starting point was the Regulations themselves, rather than the Directive, since it was not suggested that they did not fully and accurately transpose the Directive into domestic law, although the Regulations should be construed, so far as possible, to accord with the objectives of the Directive. The objective of the Directive was that the likely significant environmental effects of such projects should be comprehensively assessed before development consent was granted, and not to frustrate the carrying out of important projects.
- H7 It was for the decision maker to determine whether a sufficient description had been provided in an environmental statement, not the courts. The requirement in Article 5(2) to provide "information on the site, design and size of the project" was intended to be sufficiently flexible to accommodate the particular characteristics of the different types of project listed in Annexes I and II. It could be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed. If a particular kind of project was, by its very nature, not fixed at the outset, but was expected to evolve over a number of years

and it was for the local planning authority to make a judgement, bearing in mind the importance of the various policies and the extent of compliance or breach.

**Legislation considered:**

- H10 E.U. Treaty, Art. 174 (ex 130r).  
Town and Country Planning (Assessment of Environmental Effects) Regulations (S.I. 1988 No. 1199), reg. 21, Sched. 3, paras 2(a), 3(a).  
Town and Country Planning Act 1990, ss.54A, 70

**Legislation referred to:**

- H11 Town and Country Planning (Scotland) Act 1972, s.18A.  
Directive 85/337, Arts. 2(2), 3, 5(2), Annex I, II.  
Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988, No. 1199), Regs 2(1), 4(2), Schedules 1–3.  
Town and Country Planning Act 1990, s.70(2).  
Directive 97/11, 1st and 11th Recitals.  
Regional Development Agencies Act 1998.  
Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999 No. 293).

**Cases considered:**

- H12 *City of Edinburgh Council v. Secretary of State for Scotland* [1997] 1 W.L.R. 1447.  
*R. v. Rochdale MBC, ex p. Tew* [2000] Env. L.R. 1; [1999] 3 P.L.R. 74  
*Berkeley v. Secretary of State for the Environment* [2000] 3 W.L.R. 420; [2001] Env. L.R.  
*World Wide Fund (WWF) v. Autonome Provinz Bozen (Case C-435/97)* [2000] 1 C.M.L.R. 149; [2000] Env. L.R. D14.

**Cases referred to:**

- H13 *Kraaijfeld v. Gedeputeerde Staten van Zuid-Holland (Case C-72/95)* [1997] Env. L.R. 265; [1999] 3 C.M.L.R. 1.  
*R. v. Bromley London Borough, ex p. Barker* [2001] Env. L.R. 1.  
*R. v. London Borough of Hammersmith and Fulham, ex p. CPRE London Branch* [2000] Env. L.R. 549.  
*R. v. North Yorkshire C.C., ex p. Brown* [2000] 1 A.C. 397; [1999] Env. L.R. 623.

R. v. Secretary of State for the Environment, ex p. Webster [1999] J.P.L. 1113.

**Policy considered:**

H14 D.E.T.R. Circular 2/99, paras 48, 82.

**Policy referred to:**

H15 D.o.E. Circular 15/88, para.42.

H16 *Mr J. Howell* Q.C. and *Ms K. Markus* appeared on behalf of the applicant.  
*Mr T. Straker* Q.C. and *Mr P. Kolvin* appeared on behalf of the first respondent.  
*Mr B. Ash* Q.C. and *Mr P. Greatorex* appeared on behalf of the second respondent.

**SULLIVAN J.:**

**Introduction**

- 1 This is round 2 of the battle for Kingsway Park. Round 1 concluded with my judgment on May 7, 1999 reported as *R. v. Rochdale MBC, ex p. Tew* [1999] 3 P.L.R. 74. ("*Tew*") The applicant in the present proceedings was among the "others" in that title.
- 2 The background to the matter is set out in some detail in *Tew* and repetition in this judgment is unnecessary. For convenience, I will use the same definitions or abbreviations as were adopted in *Tew*. If no other source is cited, page references in parenthesis are to *Tew*.
- 3 In summary, two applications for planning permission were made by Wilson Bowden Properties Limited (Wilson Bowden) and English Partnerships on February 23, 1998. These were a bare outline application for a business park and a full application for a spine road to serve the park. The Council considered that the proposal required an environmental assessment under the assessment regulations. A detailed environmental statement was prepared by ERM. Having considered that environmental statement and a lengthy report by Mr Beckwith, the Council's Director of the Environment, the Council granted the two planning permissions on August 6, 1998.
- 4 The applicant and others challenged the validity of the planning permissions on five grounds set out on pages 79E to 80A. I upheld the challenge of grounds 2 and 3 and quashed both planning permissions. The Council did not appeal against this decision.
- 5 The applicants for planning permission made extensive revisions of the form to the business park application, minor amendments to the form of

the spine road application and added a new, full application for planning permission to construct the estate roads leading off the spine road together with surface water attenuation areas. A new environmental statement dealing with the project as described in all three applications was prepared by ERM. The three applications (two amended and one new) were submitted for approval accompanied by a new environmental statement on July 23, 1999. Mr Beckwith prepared a lengthy report recommending the grant of planning permission subject to numerous conditions. The Council accepted his recommendation and granted the three planning permissions on December 17, 1999. The applicant returns to the fray and challenges the validity of these planning permissions.

- 6 Before turning to the submissions advanced by Mr Howell Q.C. on behalf of the applicant, a brief explanation of the basis of the decision in *Tew* will be helpful.

#### The *Tew* decision

- 7 I have mentioned that the business park application as submitted in 1998 was a "bare" outline, reserving all detailed matters for subsequent approval. It was accompanied by an illustrative masterplan and an indicative schedule of land uses. ERM's environmental assessment and the resulting environmental statement were based on the illustrative masterplan and indicative schedule.
- 8 Although condition 1.3 in the business park planning permission required the development to be carried out in accordance with the mitigation measures set out in the environmental statement, unless otherwise provided for by any other condition in the planning permission, the Council did not approve the illustrative masterplan. It was, effectively, rejected by condition 1.11 and the applicants for planning permission were required by condition 1.7 to submit a new "Framework Document ... showing the overall design and layout of the proposed business park".
- 9 The indicative schedule of uses was not incorporated into the planning permission and the hectareage of B8 uses was substantially altered by condition 1.10 which would in turn have had a knock on effect for the amount of other uses in the schedule: see pages 98G to 99C.
- 10 Against that background, Mr Howell had submitted under ground 2 of his challenge that the application for planning permission did not contain "a description of the development proposed, comprising information about the site and design and size or scale of the development", as required by paragraph 2(a) of Schedule 3 to the assessment regulations.
- 11 In response to that submission I concluded:
- "In summary, while the council took into consideration 'environmental information' about the effects of carrying out a business park develop-

ment in accordance with an illustrative masterplan and an indicative schedule of land uses, that was not the development that was proposed to be carried out in the application for planning permission, nor was it the development for which planning permission was granted; nor was the information sufficient in any event to comply with the requirements of Schedule 3: see, for example, para 2(d), as to mitigation measures. It follows that the council did not have power to grant planning permission for the business park: see regulation 4(2) of the assessment regulations." See page 99C to E.

- 12 During the course of his submissions under ground 2 Mr Howell had argued:

"That an application for outline planning permission may not be made if the development falls within Schedule 2 or 3 to the assessment regulations", see page 90F.

- 13 At page 96C to D I said this:

"I would not wish to go as far as Mr Howell and say that it is not possible to make any application for outline planning permission for a development that falls within Schedule 1 or Schedule 2. An outline application with only one or two matters reserved for later approval might enable the environmental statement to provide a sufficient description of the development proposed to be carried out. I would not dissent from the approach suggested in para. 42 of Circular 15/88, subject to the proviso that the description in the outline application of the development proposed to be carried out must be such as to enable the environmental statement to comply with the requirements of para. 2(a) of Schedule 3."

- 14 Paragraph 42 of Circular 15/88 is to be found on page 93F.

- 15 I then turned to the description of the development in the 1998 business park application and reached the conclusions set out above. At page 96H I acknowledged that the outline application procedure is particularly valuable for projects such as a business park which are demand led and which may be expected to evolve over many years (if the 1999 permissions are upheld the new environmental statement explains that construction will commence in 2001 and all the buildings are not expected to be occupied until 2013).

- 16 In response to the practical difficulties posed by such developments I said this at page 98F to G:

"Recognising, as I do, the utility of the outline application procedure for projects such as this, I would not wish to rule out the adoption of a masterplan approach, provided the masterplan was tied, for example, by the imposition of conditions, to the description of the development permitted. If illustrative floorspace or hectareage figures are given, it may be appropriate for an environmental assessment to assess the impact of a range of possible figures before describing the likely significant effects.

Conditions may then be imposed to ensure that any permitted development keeps within those ranges.”

- 17 Turning from the assessment regulations to the UDP, policy EC/6 allocates the application site for business park use but says that:

“The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park): ...

- (c) the creation of new, and extension of existing, public open space and informal recreation areas, including the extension and improvement of Stanney Brook Park.”

- 18 The Council had proceeded on the basis that the business park application complied with this criterion and was therefore in accordance with the provisions of the UDP. At pages 100H to 101D I concluded that the 1998 business park application did not comply with criterion (d): specifically it did not include any proposals for open space and the Council could not, under the terms of the outline planning permission granted, insist on the provision of 32 hectares of land for open space for informal recreation purposes. However, I added this at page 101D to F:

“There is very often an element of planning judgment as to whether or not a proposed development complies with a development plan policy. It could not reasonably be concluded that this application complied with criterion (d). However, that is but one of a long list of criteria in the policy. The council clearly considered that the remaining criteria within policy EC/6 were fulfilled. The primary purpose of the policy is, after all, to allocate the land as a business park, not the creation of additional open space. It would be for the council to decide whether the failure of this application to meet one of the criteria in policy EC/6 meant that the application was contrary to either the district plan or the emerging UDP. To the extent that the Council erred in concluding that criterion (d) in policy EC/6 was met, ground 3 is made out.”

#### The amended/new applications

- 19 As amended in 1999 the business park application, whilst still an application for outline planning permission, is no longer a “bare outline” application. It comprises the application form which cross refers to and incorporates into the application:

- (i) an Attachment which describes the development.
- (ii) a Schedule of Development.
- (iii) a Development Framework.
- (iv) a Masterplan.

- 20 The attachment describes the proposed development as:



“Outline application together with certain Reserved Matters for a proposed Business Park including buildings on Plots C to X inclusive as identified on the masterplan for:

General and light industrial uses in classes B1 and B2.

- Offices in use Class B1.
- Distribution and storage use in Class B8.
- Research and development facilities in use Class B1.

Uses ancillary to the Business Park uses including:

- Retail in use Classes A1, A2 and A3.
- Leisure in use Classes D2 and *sui generis*.
- Housing in use Class C1.
- Hotels in use Class C3.

Other commercial and local service uses.”

- 21 Details of landscaping, design and external appearance of all the buildings were reserved. The application sought approval for siting and means of access to seven out of the 20 plots (there is no plot V). Thus, on 13 of the 20 plots all matters were reserved. It has been explained that access requirements dictated the need to fix the siting of and means of access to the buildings on the seven plots where approval was sought for those matters. Reference is made to the schedule of development, and Note 1 says this:

“This Outline Planning Application also includes a masterplan and a framework document showing the overall design and layout of the whole site.”

- 22 Other notes refer to the environmental statement, to traffic impact assessments and to the full applications for the spine road and estate roads and other infrastructure.
- 23 The Schedule of Development lists each of the plots, dividing them into those plots where approval is sought for siting and means of access and those plots where those matters are reserved for detailed approval. A summary of the total hectareage and floorspace is given, which is then broken down by reference to use class.
- 24 Using plot T (which is proposed to contain the largest building in the business park) as an example: the schedule sets out the hectareage, 19.46; the use, B8; the floorspace, 80,412 square metres; the unit size, in the case of plot T 80,412 since there is proposed to be only one very large building on this plot; the height of the building, 25 metres; and the car parking numbers, 804. Assessments are also provided of traffic flows and employment generation.
- 25 More than one plan is described as a “Masterplan” in the application, but the plans build up to “The Masterplan”, which is identified in and annexed to the development framework. It shows, within the framework provided by the spine and estate roads, the buildings proposed on each

plot together with their associated car parking and servicing areas, levels, the areas set aside for landscaping within and structural landscaping around, each plot, and areas to be left undeveloped along the Stanney Brook corridor, and the surface water attenuation measures proposed in that corridor.

26 Having described the site, the development framework (63 pages) sets out the "Development Concept" under a number of subheadings, such as, "Land uses", "Urban design framework", "Open space network", etc. ERM's assessment of the environmental effects of the proposed business park was based on the development described in these documents. The 1998 environmental statement was reviewed where necessary and new information was provided. Subject only to the criticisms advanced in the applicant's grounds of challenge, which I consider below, the new environmental statement would appear to be a model of its kind, meeting in full measure the aim set out in directive 97/11: to provide the Council with relevant information to enable it to take a decision on the business park project "in full knowledge of the project's likely significant impact on the environment", (see page 89G for the full text of the directive).

27 Similarly, apart from the matters raised in the applicant's grounds, Mr Beckwith's report to the Council is not, and in my judgment could not fairly be, criticised. In a comprehensive report running to 116 pages he deals with all relevant aspects of the three applications and recommends a series of conditions which are intended, *inter alia*, to tie the outline planning permission for the business park to the documents which comprise the application and which I have set out above. These recommendations were accepted, so in addition to incorporating the masterplan and the application and documents submitted therewith into the description of the development permitted, the following conditions, *inter alia*, were imposed:

28 Condition 1.7:

"The development on this site shall be carried out in substantial accordance with the layout included within the Development Framework document submitted as part of the application and shown on (a) drawing entitled 'Master Plan with Building Layouts'."

29 The reason given for the imposition of this condition was:

"The layout of the proposed Business Park is the subject of an Environmental Impact Assessment and any material alteration to the layout may have an impact which has not been assessed by that process."

30 Condition 1.8:

"No building within any plot shall exceed the height specified for

- buildings within that plot as set out in the 'Schedule of Development ... submitted with and forming part of the application.'
- 31 Conditions 1.9 and 1.10 modified this by reducing the maximum eaves height of certain buildings in the interests of the amenity of residents in adjacent dwellings.
- 1.11:  
"The development shall be carried out in accordance with the mitigation measures set out in the Environmental Statement submitted with the application unless provided for in any other condition attached to this permission."
- 1.12:  
"The development shall be carried out in accordance with the principles and proposals contained in the Development Framework document submitted as part of the application unless provided for in any other condition attached to this permission."
- 1.13:  
"The phasing of works within the site shall be carried out in accordance with the details set out in the Section entitled 'Phasing' in the Development Framework document, subject to the detailed requirements of other conditions in this permission."
- 32 In respect of the Stanney Brook Corridor, condition 1.15 said:  
"The area of the Stanney Brook Corridor (as defined on (a) drawing and described in the Development Framework Document) shall remain undeveloped apart from the construction of surface water attenuation areas and footpaths/cycleways."
- 33 The reason given was:  
"To ensure that an area of undeveloped open space is retained in the interests of amenity."
- 34 Conditions 1.16 to 1.18 effectively divided the corridor into three parts and required the different parts of the corridor to be enhanced and landscaped in accordance with the principles shown on three application drawings and in accordance with detailed treatment to be approved in writing by the local planning authority, concurrently with the construction of buildings on certain of the plots. The reasons given were:  
"In order to ensure the maintenance of areas of nature conservation interest and to create areas of wildlife habitat in a phased order prior to the loss of existing habitat within the application site."
- 35 Under the subheading "Policy Setting" Mr Beckwith set out the terms of policy EC/6 in the UDP in full. He added that other policies in the UDP

were also relevant in assessing the applications. Having concluded that the distribution of uses within the application accorded with the uses set out in policy EC/6 he examined each of the 16 criteria in the policy in turn and advised that, "The proposals accord with the relevant policies of the UDP and are not departures from the development plan".

- 36 His report responded to representations made by third parties. In response to a letter from the applicant's solicitor, which alleged that the proposal was a departure from the UDP. He said this:

"In my view, it is only that part of criterion (d) relating to the creation of formal rights of access by the public which is not being achieved at this stage. I consider that this is not material to make the application contrary to the UDP. Recommended condition 1.15 requires that land within the Stanney Brook Corridor shall remain undeveloped, apart from the construction of water attenuation areas and footpaths and cycleways. Following on from that, recommended conditions 1.16, 1.17 and 1.18 require phased enhancement and landscaping of the corridor in accordance with the general principles in the submitted drawings. Therefore, the retention of the open nature of the land within the corridor, together with its enhancement and landscaping, would be secured by the recommended conditions. The securing of the formal rights of public access to the land cannot be achieved at this stage. This has been raised with applicants and North West Development Agency, which now encompasses English Partnerships, have commented as follows."

- 37 He then set out the text of the NWDA's letter. In summary, NWDA were supportive of the proposal to provide public open space and said this, in conclusion:

"We will undertake that once we have control of the land we will then offer to transfer the ownership of the Stanney Brook Corridor to the Council, at no cost and in its improved state, so that the Council can secure public access, as appropriate, to the open space and thereby satisfy the requirements of this sub-section of UDP policy and allow the Council to decide on the management regime for the open space."

#### **The legislative and policy framework**

- 38 For practical purposes the legislative framework remains unchanged from that described in *Tew*. As from March 14, 1999 the assessment regulations referred to in *Tew* were replaced by the Town and Country Planning, (Environmental Impact Assessment) (England Wales) Regulations 1999, (the 1999 assessment regulations), which apply to any application received after that date. It is common ground that the estate roads application falls under the 1999 assessment regulations. The parties are not agreed as to whether the amended business park and spine roads applications fall under the assessment regulations or the 1999 assessment

regulations. It is not necessary to resolve that dispute since the parties are agreed that nothing turns on the minor differences of phraseology between the two sets of regulations. For convenience I will continue to refer to the assessment regulations which are set out in *Tew*.

- 39 Policy guidance on the implementation of the 1999 assessment regulations is contained in Circular 2/1999 entitled "Environmental Impact Assessment", which replaces Circular 15/88. For present purposes, the guidance remains substantially unchanged, paragraphs 48 and 82 of Circular 2/99 are as follows:

"48. Where EIA is required for a planning application made in outline, the requirement of the Regulations must be fully met at the outline stage since reserved matters cannot be subject to EIA. When any planning application is made in outline, the local planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects of the proposal to enable them to determine whether or not planning permission should be granted in principle. In cases where the Regulations require more information on the environmental effects for the Environmental Statement than has been provided in an outline application, for instance, on visual effects of a development in a National Park, authorities should request further information under regulation 19. This may also constitute a request under article 3(2) of the GDPO.

...

82. Whilst every E.S. should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'main' or 'significant' environmental effects to which a development is likely to give rise. In many cases, only a few of the effects will be significant and will need to be discussed in the ES in any great depth. Other impacts may be of little or no significance for the particular development in question and will need only very brief treatment to indicate that their possible relevance has been considered. While each ES must comply with the requirements of the Regulations, it is important that they should be prepared on a realistic basis and without unnecessary elaboration."

#### The grounds of challenge

- 40 These fall under two heads: failure to comply with the requirements of the assessment regulations and failure to comply with UDP policy EC/6d.
- 41 Under the former, it is submitted that, notwithstanding the amendments to the form of the business park application, it still does not provide "a description of the development proposed", which is sufficient for the purposes of paragraph 2(a) of Schedule 3 to the assessment regulations, because although information is provided in respect of the size or scale of the development, design is a reserved matter. The submission that an application for outline planning permission may not be made for

development which requires environmental assessment is renewed and it is further contended that if this submission is not accepted, the description of the development provided in the 1999 outline application was insufficiently detailed to comply with the requirements of Schedule 3.

- 42 Under the second ground of challenge it is argued that criterion (d) was not satisfied, because the business park planning permission did not require the creation of new public open space and informal recreation areas or the extension and improvement of Stanney Brook Park. Since the UDP required the criteria in policy EC/6 to be "strictly applied", failure to meet criterion (d) meant that the development was not in accord with the development plan, even though it did not infringe other policies. Even if the failure to meet criterion (d) did not have that consequence, Mr Beckwith's report should have referred to the fact that the UDP inspector had specifically rejected a request made during the course of the UDP inquiry that (*inter alia*) what is now criterion (d) should be omitted, saying that the open spaces proposed in the policy "are an essential element of the scheme and of the plan's proposals for South Rochdale". Moreover, the Council failed to consider imposing a negative condition preventing the erection of some or all of the proposed buildings until such time as the relevant land had been made available for use as an open space by the public, and instead relied on the NWDA's offer which, since it was unenforceable, was an immaterial consideration.
- 43 I find it convenient to deal with this ground at the outset.

#### Ground 2

- 44 Section 54A of the 1990 Act is in the following terms:
- "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."
- 45 Section 70 deals with the determination of applications for planning permission. Subsection (2) provides:
- "In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."
- 46 Since development plans contain numerous policies, the local planning authority must have regard to those policies (or "provisions") which are relevant to the application under consideration. The initial judgement as to which policies are relevant is for the local planning authority to make. Inevitably some policies will be more relevant than others, but section 70

envisages that the Council will have regard to all, and not merely to some of the relevant provisions of the development plan.

- 47 In my judgment, a similar approach should be applied under section 54A. The local planning authority should have regard to the provisions of the development plan as a whole, that is to say, to all of the provisions which are relevant to the application under consideration for the purpose of deciding whether a permission or refusal would be “in accordance with the plan”.

- 48 It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: “is this proposal in accordance with the plan?”. The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In *City of Edinburgh Council v. the Secretary of State for Scotland* [1997] 1 W.L.R. 1447, Lord Clyde (with whom the remainder of their Lordships agreed) said this as to the approach to be adopted under section 18A of the Town and Country Planning (Scotland) Act 1972 (to which section 54A is the English equivalent):

“In the practical application of section 18A, it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it.”

- 49 In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be “in accordance with the plan”. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive land escapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the

development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies.

50 For the purposes of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.

51 Mr Howell points to the fact that policy EC/6 requires criterion (d) to be “strictly applied”. He accepts that some policies may be expressed in somewhat less forthright terms. They may, for example, merely “encourage” certain kinds of development. Other policies may say that certain forms of development will “normally” be refused. In the green belt planning permission will not be given for most kinds of development save in “very special circumstances”. I accept that the terms of the policy—how firmly it favours or sets its face against—the proposed development is a relevant factor, so too are the relative importance of the policy to the overall objectives of the development plan and the extent of the breach. These are essentially matters for the judgement of the local planning authority. A legalistic approach to the interpretation of development plan policies is to be avoided: see *R. v. Secretary of State for the Environment, ex p. Webster* [1999] J.P.L. 1113 at 1118.

52 In the present case, policy EC/6 was the most, but not the only relevant policy in the UDP. The application was assessed against 23 separate policies in the UDP, one of which was EC/6. The introduction to EC/6 is as follows:

“Land is allocated between the A664 Kingsway, M62 motorway, B6194 Broad Lane and the Rochdale-Oldham Railway line for high quality general and light industry, offices, distribution and storage, research and development, and associated and complementary uses.

The Council will strictly apply the following criteria to the development of the site (to be known as the Kingsway Business Park).”

53 The criteria are then set out, including criterion (d):

“The creation of new, and extension of existing, public open space and informal recreation areas, including the extension and improvement of Stanney Brook Park.”

54 No complaint is made about the Council’s judgement that the proposal was in accordance with the remaining policies and with all of the criteria in EC/6 save for criterion (d). Mr Beckwith correctly advised the Council that the business park planning permission, subject to conditions 1.16 to 1.18 (above), would achieve all that was required by criterion (d) save for the creation of formal rights of public access. An extensive area of land along Stanney Brook Corridor, where Stanney Brook Park is located, would not merely be left open, it would be appropriately landscaped.



- 55 Pausing there, it could not sensibly be concluded that failure to achieve part of what was required by criterion (d) meant that the proposal was not “in accordance” with the UDP or was a departure from that plan. Indeed, such a conclusion by the Council would have been vulnerable to a challenge on the grounds of *Wednesbury* unreasonableness. Mr Beckwith was not required to draw the Council’s attention to the views of the UDP inspector, since that inspector’s recommendations had been incorporated into the text of the policy EC/6 as adopted, which was set out in full in Mr Beckwith’s report.
- 56 Dedication of the open land along Stanney Brook Corridor as a public open space could not have been achieved by the imposition of a condition. It is true that the Council could have considered whether dedication should be secured by the imposition of a negative condition, but it was not required to do so, because it was fully entitled to place reliance upon the assurance given by the NWDA, which is a non-departmental public body with a statutory responsibility to promote sustainable economic development and social and physical regeneration in the north-west of England under the Regional Development Agencies Act 1998. Planning conditions should not be imposed on a “belt and braces” basis, but only if they are required. There is no suggestion that the NWDA will fail to honour its undertaking. Mr Howell makes the point that a planning permission runs with the land. That is true, but the background to the NWDA’s undertaking was that the application site is in a number of ownerships and, as was foreshadowed in 1998, the Council has authorised the making of a compulsory purchase order to facilitate the carrying out of the business park development, see page 102G.
- 57 Of course, those compulsory purchase order proceedings might fail, in which case the business park would not be able to proceed, but if the development does proceed the Council will be in a position to dispose of the necessary land to the NWDA, which will then be in a position to honour its undertaking. For all of these reasons I reject ground 2.

#### Ground 1

- 58 Turning to ground 1, Mr Howell submits, correctly, that the conclusion at page 96C to D of *Tew* (which is set out above) was *obiter*, because in that decision I was dealing with a bare outline application where all matters had been reserved.
- 59 He referred to the directive. In addition to the provisions set out between pages 88D to 89 H, he referred to a number of the recitals, laying particular stress upon the 10th:
- “Whereas, for projects which are subject to assessment, a certain minimum amount of information must be supplied concerning the project and its effects.”

- 60 As mentioned on page 89C, Article 5.2 of the directive requires the developer of a project subject to assessment to provide “at least”:
- “a description of the project comprising information on the site, design and size of a project.”
- 61 It is this minimal amount of information which must, in all cases, subject to environmental assessment, be provided by the developer, according to Mr. Howell’s skeleton argument which, “the information specified in paragraph 2 of Schedule 3 to the assessment regulations is intended to specify”.
- 62 Mr Howell referred to regulations 2 and 3 of the applications regulations (page 80D to G)) emphasising that whereas a “full” application for planning permission must include the information “necessary to describe the development”, an outline application did not have to describe the development in respect of any matter reserved for subsequent approval. It cannot be said that reserved matters, that is to say siting, design, external appearance, means of access and landscaping, can have no significant effect on the environment.
- 63 The purpose of the directive is “to ensure that planning decisions which may affect the environment are made on the basis of full information”: see *per* Lord Hoffmann at page 404 of *R. v. North Yorkshire C.C., ex p. Brown* [2000] 1 A.C. 397, as amplified on page 430 of *Berkeley v. Secretary of State for the Environment* [2000] 3 W.L.R. 420.
- 64 Lord Hoffmann’s speech in the latter case stressed the importance, both of the public being able to participate in the environmental assessment process, and of the need for “a single and accessible compilation, produced by the applicant at the very start of the application process”, see pages 430H to 431E, and 432F.
- 65 A partial description of the development proposed, omitting a description of a reserved matter, does not enable that objective to be achieved. A description of the development proposed is also required to ensure that the project which is executed is the project which has been comprehensively assessed: see *Tew* at page 99D.
- 66 Mr Howell argued that one should not be influenced by the “commercial imperative” for there to be a measure of flexibility in applications for industrial estate developments, or urban development projects, even though he recognised that such projects might well be developed over a period of many years. He submitted, in effect, that all details of a project had to be described at the outset. If, subsequently, it was desired to change those details, then a fresh application for planning permission, accompanied by a fresh environmental statement, should be submitted. In this context he said that assistance could be derived from the decision of

the European Court in *World Wildlife Fund v. Bozen* [2000] 1 C.M.L.R. 149. The respondents in that case had contended that the project for the restructuring of Bolzano Airport (transforming it from a military to a commercial civil airport) had been authorised by “a specific act of national legislation” falling within Article 1(5) of the directive and did not therefore require environmental assessment. The extent to which modifications to projects could be excluded from environmental assessment was also in issue. Citing the *Dutch Dykes* case [1999] 3 C.M.L.R. 1, the European Court said this:

“[40] Thus observing that the scope of the Directive was wide and its purpose very broad, the Court held that the Directive covered ‘modifications to development projects’ even in relation to projects falling within Annex II, on the ground that its purpose would be undermined if ‘modifications to development projects’ were so construed as to enable certain works to escape the requirement of an impact assessment when, by reason of their nature, size or location, they were likely to have significant effects on the environment.

...

[49] In view of the foregoing considerations, the answer to the first and second questions must be that Articles 4(2) and 2(1) of the Directive are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2,100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.

...

[62] It follows that the details of a project cannot be considered to be adopted by a Law, for the purposes of Article 1(5) of the Directive, if the Law does not include the elements necessary to assess the environmental impact of the project but, on the contrary, requires a study to be carried out for that purpose, which must be drawn up subsequently, and if the adoption of other measures are needed in order for the developer to be entitled to proceed with the project.”

- 67 Mr Howell derives two propositions from *Bozen*:
- (1) Any development consent for the purposes of the Directive must be defined in detail, so as not to omit any element which could be capable of having a significant effect on the environment.
  - (2) Any later modification to a project must be subject to a further environmental assessment unless it is not likely to have a significant effect on the environment.
- 68 It follows, he says, that to comply with the requirements of paragraph 2(a) of Schedule 3 the development proposed must be described in such detail that nothing is omitted which may be capable of having a significant effect on the environment if comprehensively assessed.
- 69 Since it is impossible to say that the ultimate treatment of any of the reserved matters in an outline application is incapable of having a significant effect on the environment, the outline application procedure is inconsistent with the requirements of environmental assessment. Put shortly, the Directive's aim is that decisions should be taken "in full knowledge of the project's likely significant effects on the environment" (see the first recital of Directive 97/11 which is set out in full on page 89G of *Tew*). It is not aimed at permitting decisions to be taken "in principle" on relevant projects, but only after a comprehensive assessment of them.
- 70 Assessment on a "worst case" basis is no answer, because the assessment regulations require the "likely significant effects" to be assessed. The objective of environmental assessment is not to see whether the "worst case" is tolerable but to optimise effects on the environment: see the 11th recital of the Directive which refers to the contribution "of a better environment to the quality of life" and Article 174 of the Treaty which states that "community policy on the environment shall contribute to the pursuit of the following objectives ... preserving, protecting and improving the quality of the environment".
- 71 If the submission that an outline application is in principle incompatible with the requirements of paragraph 2(a) of Schedule 3 to the assessment regulations is not accepted, it is argued that this particular outline application did not provide a sufficient description of the development proposed, because notwithstanding the information supplied about size and scale, information on "the design ... of the development" was not provided. Mr Howell accepts that "design" in paragraph 2(a) of Schedule 3 may extend to more than the design of individual buildings within an industrial estate project. It may, for example, encompass such matters as the layout shown on the masterplan, but he submits that it includes their detailed design. In the case of all the plots details of design, external appearance and landscaping were reserved and in the case of the majority of plots, siting and means of access will also be reserved. Mr Howell

examined the implications of this under a number of headings: Design, Landscaping, effect on listed buildings, the larger building on plot T and the mitigation measures proposed.

- 72 Under "Urban Design Framework" the Development Framework mentions the need for "Landmark buildings" to be located at the locations which form "gateways" to the park. Important views are identified. For example, it is important to ensure that the development "becomes a landmark along the motorway". Under "Building Design" it is said that "A high quality of design of buildings will be required". Among the design and layout principles is a desire to encourage "innovative roof forms and profiles" where appropriate. One finds the following under "Materials":

"External materials should be of a high quality, commensurate with the use of each building. Consideration should be given to the use of masonry at low level and on principal elevations in combination with cladding and glazing.

The use of colours that blend with the surrounding landscape will be necessary and therefore dense dark or bright colours will be discouraged. Primary colours should be restricted to window and door frames and will not be allowed for major elevational treatment. A preferred colour range will be made available to ensure continuity within the overall development.

Particular attention should be paid to the design of the elevational treatment of larger scale buildings, which are required to be of high quality and design. The articulation of the facade through the use of contrasting tone, colour and texture is required to provide an attractive appearance."

- 73 In describing the developments proposed on the defined plots table 2.3 in the environmental statement relies on high quality design. Thus, for plot T we find:

"A single building for B8 use. The building is located on the flattest and least intrusive part of the development site and the layout incorporates large setbacks from the plot boundaries and the Stanney Brook Corridor. The elevational treatment of the building will be of high quality and design with articulation of the facade by use of a contrasting tone, colour and texture to provide an attractive appearance."

- 74 Under "Mitigation of impacts" the environmental statement acknowledged that "The phasing and external landscaping will be critical to reducing potential landscape and visual impacts and this is shown in figure 6.9. The principal mitigation measures which will be adopted are also listed in table 6.3". It is said that table 6.3 is far too general, thus under "Mitigation Description" we find such entries as:

"Create integrated structural, infrastructure and plot landscape throughout the site in accordance with the Development Framework."

- 75 Under "Building design and materials" we find in paragraph 6.59:
- "The visual impact, particularly of high sided warehouse buildings can be substantially reduced by appropriate detailed design choices. Each elevation needs to be considered in the context of both short, middle and long distance views. Dark coloured finishes should generally be used for those buildings (or parts of buildings) which will be seen against a landscape or urban backdrop, with light colours where the building will be seen against the sky. Potential nuisance from reflective materials must be avoided. White (as against pale) finishes are also generally unsatisfactory."
- 76 Both the impact on the setting of three listed buildings within the development site and the mitigation measures proposed are also dealt with in very general terms. That, says Mr Howell, is because design and landscaping on adjoining plots are reserved matters. Without detailed information about those reserved matters the public cannot make any meaningful representations about the effects of the project on the listed buildings. The B8 building proposed on plot T, at over 80,000 square metres, will be a very large building indeed and the environmental statement acknowledges that it will have "a significant impact" on certain views from within the development site, although the impact on views from outside the site is assessed as moderate. It is submitted that without details of the design and elevational treatment of this building one cannot sensibly assess its impact on the environment.
- 77 Finally, in respect of mitigation measures, Mr Howell points to the Outline Ecology Management Plan which formed part of the environmental statement. It contains a table which summarises, "Key management proposals" under three headings: "Objective", "Outline management prescription" and "Timetable". By way of example, the first objective is:
- "Ensure that all affected areas have been appropriately surveyed for protected species."
- 78 The prescription is:
- "Undertake further bat survey work in all buildings to be demolished and inspect all appropriate trees which are to be removed. The findings will be discussed with English Nature to determine the need for any specific mitigation measures.  
Re-survey the site for great crested newts. The findings to be discussed with English Nature to determine the need for mitigation measures."
- 79 Timescales are given for both surveys.
- 80 It is submitted that paragraph 2(d) of Schedule 3 to the assessment regulations requires a description of mitigation measures. The environ-

mental statement does not describe measures. It is said it merely sets out objectives.

- 81 I have set out the submissions made on behalf of the applicant in some detail. I find it unnecessary to rehearse the submissions made by Mr Straker Q.C. on behalf of the Council, the first respondent, and Mr Ash Q.C. on behalf of Wilson Bowden and the NWDA, the second respondents. No discourtesy is intended. It is unnecessary to rehearse their submissions, because, in substance, I accept them and their principal points are reflected in my own conclusions which I now set out.

### My conclusions

- 82 Although Mr Howell laid great stress on the Directive, the proper starting point is the assessment regulations themselves, since it is not suggested that they do not fully and accurately transpose the directive into our domestic law: see the decisions of the Court of Appeal in *R. v. London Borough of Hammersmith and Fulham, ex p. the Trustees of the London Branch of the CPRE* June 12, 2000 paragraphs 24 and 39 to 41 (unreported) and Jackson J. in *R. v. London Borough of Bromley, ex p. Barker* April 3, 2000 paragraph 105 (unreported).

- 83 I accept that the assessment regulations should be construed, so far as possible, to accord with the objectives of the directive. If one looks to see what the relevant objectives are, it was plainly not the objective of the Council in including "industrial estate development projects" or "urban development projects" in annex II to the directive, to frustrate the carrying out of such important projects. The intention was that the likely significant environmental effects of such projects should be comprehensively assessed before development consent was granted. The technique of environmental assessment is an important procedural tool whose underlying purpose is to help secure the Community's environmental policies. As Article 174 of the Treaty makes clear, in preparing its policy for the environment, which includes the objective of "preserving, protecting and improving the quality of the environment", the Community:

"Shall take account of ... the economic and social development of the Community as a whole and the balanced development of its regions", see Article 174.3.

- 84 The directive does not require environmental assessment of every industrial estate, or urban development project, only those "where Member States consider that their characteristics ... require" assessment. In general terms, it is likely that assessment will be required for substantial projects of this kind. The test adopted in the assessment regulations is

whether such a project “would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location”, see the definition of Schedule 2 application in regulation 2(1).

- 85 Save in an old style Soviet command economy, such as would not have been in the contemplation in the framers of the directive, a substantial industrial estate development project is bound to be demand-led to a greater or a lesser degree. The second respondent’s evidence explains in some detail why this is so in the case of Kingsway Business Park. Mr Ward, a Director of Wilson Bowden explains:

“For a scheme such as the Kingsway Development to succeed commercially, it is necessary to have an outline planning permission which establishes the principle of development on the whole site. Indeed, this is necessary to give the developer, the occupiers, the grant agencies and the investment institutions the certainty which they require to proceed. For some smaller sites it may be possible, in particular where end users have been identified, to submit a detailed planning application for the whole development. However with a scheme of the size of the Development this would not be possible as it is anticipated that the whole Development will not be completed for approximately 15–20 years. Within that forecast period, it is inevitable that a variety of end users will seek plots to suit their own business requirements and it is therefore necessary for the scheme to remain sufficiently flexible to cater for such users if it is to meet its planning objectives. If one were required to submit a detailed permission for the whole site it would simply be a paper exercise, for at this stage, it is quite impossible to anticipate what the matter can bring forward in future years.”

- 86 I have already mentioned the fact that it is not expected that the business park will be completely occupied until 2013. There is no challenge to this evidence and no reason has been advanced as to why the points made by the respondents should not hold good for other substantial projects of this kind.
- 87 At pages 96G to 97H of *Tew* I mentioned the contrast between projects such as this and most of the other descriptions of development that are listed in annex II to the directive and repeated in Schedule 2 to the assessment regulations. The other projects are either industrial projects for particular processes, or “one off” infrastructure projects, such as the construction of roads, tramways, dams or pipelines, which will, by their very nature, have to be defined in considerable engineering detail at the outset.
- 88 Article 2(2) of the directive allows Member States to integrate environmental impact assessment into their existing procedures for giving development consent, or to devise new procedures. Article 3 (which is set out on page 88H) states that the environmental impact assessment will



identify, describe and assess the environmental effects of projects “in an appropriate manner, in the light of each individual case”.

- 89 Since the “description of the project” required by Article 5(2) is a means to that end, in that it provides the starting point for the assessment process, there is no reason to believe that the directive was seeking to be unduly prescriptive as to what would amount to an appropriate description of a particular project. The requirement in Article 5(2) (see page 89C to E) to provide “information on the site, design and size of the project” is, and is intended to be, sufficiently flexible to accommodate the particular characteristics of the different types of project listed in annexes I and II (Schedules 1 and 2 to the assessment regulations). It may be possible to provide more or less information on site, design and size, depending on the nature of the project to be assessed.
- 90 If a particular kind of project, such as an industrial estate development project (or perhaps an urban development project) is, by its very nature, not fixed at the outset, but is expected to evolve over a number of years depending on market demand, there is no reason why “a description of the project” for the purposes of the directive should not recognise that reality. What is important is that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of flexibility. The assessment process may well be easier in the case of projects which are “fixed” in every detail from the outset, but the difficulty of assessing projects which do require a degree of flexibility is not a reason for frustrating their implementation. It is for the authority responsible for granting the development consent (in England the local planning authority or the Secretary of State) to decide whether the difficulties and uncertainties are such that the proposed degree of flexibility is not acceptable in terms of its potential effect on the environment.
- 91 In *Tew* I said at page 97C that projects such as industrial estate developments and urban development projects have been placed “in a legal straitjacket” by the assessment regulations, in transposing the requirements of the directive into domestic law. The directive did not envisage that the “straitjacket” would be drawn so tightly as to suffocate such projects.
- 92 It has to be recognised that even if it was practical (despite the commercial realities described by Mr Ward) to prepare detailed drawings showing siting, design, external appearance, means of access and landscaping for every building within the proposed business park, the resulting environmental statement would be an immensely detailed work of fiction, since it would not be assessing the effect on the environment of any project that was ever likely to be carried out. All concerned with the

process would have to recognise that in reality such details could not be known until individual occupiers came forward for particular plots.

- 93 In my judgment, integrating environmental assessment into the domestic procedure for seeking outline planning permission, which acknowledges this need for flexibility for some kinds of building projects, is not contrary to the objectives of the Directive. There is no analogy between the procedure for obtaining outline planning permission, with certain matters reserved for detailed approval, and the procedure which was in issue in *Bozen*. In that case, not only was there no environmental assessment, the legislative act which authorised the project was generalised in the extreme, amounting to little more than a proposed programme, which was subject to preliminary feasibility assessments, see paragraphs 5, 71 and 79 of the Advocate General’s opinion in that case. The European Court was also concerned with proposed “modifications to development projects”. If such modifications have not been subjected to environmental assessment, the Court’s conclusion that they should be “when by reason of their nature, size or location they were likely to have significant effects on the environment” (see paragraphs 40 and 49) is readily understandable. Provided the outline application has acknowledged the need for details of a project to evolve over a number of years, within clearly defined parameters, provided the environmental assessment has taken account of the need for evolution, within those parameters, and reflected the likely significant effects of such a flexible project in the environmental statement, and provided the local planning authority in granting outline planning permission imposes conditions to ensure that the process of evolution keeps within the parameters applied for and assessed, it is not accurate to equate the approval of reserved matters with “modifications” to the project. The project, as it evolves with the benefit of approvals of reserved matters, remains the same as the project which was assessed.

- 94 Much stress has been laid on the words: “In full knowledge of the project’s likely significant impact on the environment...” in Directive 97/11, see page 89H. These words should not be regarded as imposing some abstract state or threshold of knowledge which must be attained in respect of all projects, but should be applied to the particular project in question. For some projects it will be possible to obtain a much fuller knowledge than for others. The directive seeks to ensure that as much knowledge as can reasonably be obtained, given the nature of the project, about its likely significant effect on the environment is available to the decision taker. It is not intended to prevent the development of some projects because, by their very nature, “full knowledge” (in the sense of an abstract threshold level of detail) is not available at the outset.

- 95 This does not give developers an excuse to provide inadequate descriptions of their projects. It will be for the authority responsible for

issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has “full knowledge” of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent.

96 Having stated that the proper starting point was the assessment regulations, I am conscious of the fact that I have spent some time discussing the directive. I have done so to demonstrate that there is no basis for the submission that the application by a Member State of a procedure such as the United Kingdom’s procedure for obtaining outline planning permission for projects which require environmental assessment is in some way inimical to the objectives of the directive.

97 With that introduction, I turn to the assessment regulations.

98 The full text of the relevant paragraphs in Schedule 3 is set out on pages 87E to 88C. The flexibility inherent in the directive’s approach to “a description of the development proposed” is faithfully transposed into paragraph 2(a): the description must comprise “information about the site and design and size or scale of the development”.

99 On any sensible interpretation of those words, one may provide “information about” those matters without providing every available piece of information about them.

100 That the description of the proposed development which must be provided under paragraph 2(a) need not to be exhaustive in terms of the information supplied is reinforced by paragraph 3(a) which enables, but does not require, the developer to include by way of explanation or amplification of (*inter alia*) the description of the development further information in the environmental statement about “the physical characteristics of the proposed development and the land use requirements during the construction and operational phases”.

101 The role of the public in contributing to the “environmental information” which must be considered by the local planning authority (see regulation 2(1)) was emphasised in *Berkeley* above. Members of the public with local knowledge may well be able to add significantly to the information about the site, thus supplementing the “description of the development” provided by the developer in the environmental statement.

102 If the local planning authority or the Secretary of State is dissatisfied with the amount of information provided in the environmental statement about the site, design, size or scale of the project, they may under regulation 21 require such:

“Further information (as) is reasonably required to give proper consideration to the likely environmental effects of the proposed development.”

- 103 The fact that the developer then has to supply such further information does not mean that he will have failed to provide “a description of the development proposed” and thus failed to provide an environmental statement.
- 104 If one asks the question “how much information about the site, design, size or scale of the development is required to fall within ‘a description of the development proposed’ for the purposes of paragraph 2(a)?”, the answer must be: sufficient information to enable “the main”, or the “likely significant” effects on the environment to be assessed under paragraphs 2(b) and (c), and the mitigation measures to be described under paragraph 2(d).
- 105 In addition, the development which is described and assessed in the environmental statement must be the development which is proposed to be carried out and therefore the development which is the subject of the development consent and not some other development. An assessment of an illustrative masterplan, accompanying a “bare outline” application, which is not tied by condition to the resulting outline planning permission could not meet these requirements: see page 99C to E (cited above).
- 106 Whether the information provided about the site, design, size or scale of the development proposed is sufficient for these purposes is for the local planning authority, or on appeal or call in, the Secretary of State, to decide. I reject Mr Howell’s submission that the issue is one for the court to decide, as a question of primary fact. That would be contrary, not merely to the structure of the regulations, but to the statutory Town and Country Planning framework of which they are but a part. Under the regulations it is for the local planning authority, or the Secretary of State, to decide whether a proposed development falls within the descriptions of the development set out in schedules 1 and 2, and in the case of the latter whether it would be likely to have significant effects on the environment: see the speech of Lord Hoffmann at page 429H to 430A in *Berkeley*. The local planning authority’s or the Secretary of State’s decision is subject to review on *Wednesbury* grounds. Regulation 4(2) requires the local planning authority or the Secretary of State to take the environmental information (which includes the environmental statement) into consideration before granting planning permission. Against this background the regulations plainly envisage that the local planning authority or the Secretary of State will also consider the adequacy of the environmental information, including any document or documents which purport to be an environmental statement.
- 107 The assessment regulations are part of a statutory planning framework which requires the local planning authority in dealing with an application to have regard to all material considerations: see section 70(2) of the 1990 Act above.

- 108 It is for the local planning authority to decide whether it has sufficient information in respect of the material considerations. Its decision is subject to review by the courts, but the courts will defer to the local planning authority's judgment in that matter in all but the most extreme cases. Regulation 4(2) reinforces this general obligation to have regard to all material considerations in the case of a particularly material consideration; "environmental information" which has been provided pursuant to the assessment regulations.
- 109 There is no reason why the adequacy of this information, which includes the sufficiency of information about the site, design, size and scale of development should not be determined by the local planning authority: see paragraph 48 of circular 2/99 above.
- 110 The question whether such information does provide a sufficient "description of the development proposed" for the purposes of the assessment regulations is, in any event, not a question of primary fact, which the court would be well equipped to answer. It is pre-eminently a question of planning judgment, highly dependent on a detailed knowledge of the locality, of local planning policies and the essential characteristics of the various kinds of development project that have to be assessed.
- 111 I do not accept the applicant's argument based on regulations 2 and 3 of the applications regulations, see page 80D to G. Reserved matters as defined in those regulations are not "information necessary to describe the development" which may, as a matter of concession, be omitted from an outline application. Such details may be omitted precisely because they may not be necessary to describe some developments for the local planning authority's purposes. The local planning authority will need to be satisfied that the description of the proposed development in the outline planning permission is adequate, given that it will be able to impose conditions in respect of reserved matters so that matters of detail can be dealt with at a later stage.
- 112 It will be noted that an outline planning permission is defined as a planning permission for the erection of a building which contains "one or more reserved matters". Thus, a planning permission which simply reserves one matter, for example details of means of access or landscaping is still an outline planning permission. It is difficult to see why an application for outline planning permission that includes details of siting, design and external appearance, should not be able to provide the basis for an environmental statement containing "a description of the development proposed, comprising information about the site and design, size or scale of the development".
- 113 Mr Howell submits that reserved matters, details of the means of access or landscaping, are capable of having an effect on the environment, that is why they are reserved for subsequent approval. That ignores the fact that

the environmental statement does not have to describe every environmental effect, however minor, but only the “main effects” or “likely significant effects”. It is not difficult to see why this should be so. An environmental statement that attempted to describe every environmental effect of the kind of major projects where assessment is required would be so voluminous that there would be a real danger of the public during consultation, and the local planning authority in determining the application, “losing the wood for the trees”. What is “significant” has to be considered in the context of the kinds of development that are included in Schedules 1 and 2. Details of landscaping in an application for outline planning permission may be “significant” from the point of view of neighbouring householders, and thus subject to reserved matters approval, but they are not likely to have “a significant effect on the environment” in the context of the assessment regulations

114 The local planning authority are entitled to say, “We have sufficient information about the design of this project to enable us to assess its likely significant effects on the environment. We do not require details of the reserved matters because we are satisfied that such details, provided they are sufficiently controlled by condition, are not likely to have any significant effect”.

115 That is the conclusion which was reached by the local planning authority in the present case. Mr Beckwith says this in his witness statement:

“My judgment and that of the Council was that the information given enabled assessment of all the significant effects of the Kingsway Business Park development, and that it amounted to a description of the development comprising information on its site, design and size.

The design information given was adequate for the significant environmental effects to be considered. The information included size and mass of the buildings, and the location of the structural planning. In the case of a substantial business park, I consider that such information is key to an understanding of the significant visual impacts of the development. While the number and position of apertures and choice of construction materials are all liable to affect visual impact to some slight degree, they will not alter the appraisal of the significant impacts of development. The simple point is that one can clearly envisage the design and size of the development.”

116 ERM’s expertise in conducting environmental assessment is not challenged. Mr Gilder, its Technical Director and Head of Planning, has provided a detailed witness statement to explain why, in his professional opinion, the environmental statement:

“Considers a development proposal which was sufficiently well defined to enable a robust assessment of the potential significant impacts.”

- 117 He said this:
- “The environmental statement considers an almost fully defined development. Given the overall scale of the development, any significant visual impacts will arise from the overall massing of the buildings not from the details of their elevational treatments. With the nature of the development clearly defined in the applications, I could make sensible assumptions about the minor details of the elevations, the colour of the surface finishes and the likely growth of the landscaping and hence the residual visual impacts that might affect nearby residents . . .
- Across the whole proposed development, the level of detail defined was more than sufficient to identify the ‘likely significant effects’, both in relation to design and the worst case that could arise in relation to other environmental effects, for example, archaeology, ecology, traffic, noise, water and air pollution. In my view, only minor matters have been reserved for subsequent approval. The Council, when it considered the applications, was fully informed about the worst environmental impact that could arise and was able to make a decision in the knowledge that only minor matters of design and implementation were to be left as reserved matters.”
- 118 The approach of Mr Beckwith and Mr Gilder accords with the advice in paragraph 82 of circular 2/99 above. Whilst it is important that a “full factual description” of the development is provided, it is equally important that an environmental statement should be prepared “on a realistic basis and without unnecessary elaboration”.
- 119 It has to be remembered that the project which required assessment was an “industrial estate development”, in this case a business park. Plainly, there is a great deal of information about the design of the business park in the documents forming part of the application, see above. Whether information should also be provided about the detailed design of the individual buildings that are to comprise the park is a separate question. In some circumstances such details might be required because they could reasonably be expected to have a significant effect on the environment. The local planning authority concluded that this was not so in the present case. That is not a surprising conclusion. The extent of the information supplied about the site, size and scale of the project is not criticised. The local planning authority had as much information about “the design” of an industrial estate development project of this kind as could reasonably have been expected.
- 120 Acknowledging the uncertainties that are inherent in a project of this nature and scale Mr Gilder explained that the environmental statement had considered “the worst environmental impacts which would arise from the development, the so-called worst case”.
- 121 He explained that although the definition of the worst case might differ according to which environmental effect was being assessed:

“Where details were to be reserved for subsequent approval by the local planning authority, the worst case was defined as the minimum standards which a reasonable local planning authority might require, taking account of all other matters already fully defined in the applications.

In the case of construction impacts, such as noise and dust, the worst case was taken to be the minimum standards which would be required by the regulatory authorities under, for example, the Control of Pollution Act 1974 and/or the relevant British Standards.”

122 Mr Howell criticised this approach, even though, as Mr Gilder explained, it is regarded as a “proper professional approach”, which is regularly used by those engaged in the process of environmental assessment. Both the directive and the regulations recognise the uncertainties in assessing the likely significant effects, particularly of the major projects, which may take many years to come to fruition. The assessment may conclude that a particular effect may fall within a fairly wide range. In assessing the “likely” effects, it is entirely consistent with the objectives of the directive to adopt a cautious “worst case” approach. Such an approach will then feed through into the mitigation measures envisaged under paragraph 2(c). It is important that they should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment.

123 Mr Howell pointed to the passage at page 98A of *Tew*:

“If consideration of some of the environmental impacts and mitigation measures is effectively postponed until the reserved matters stage, the decision to grant planning permission would have been taken with only a partial rather than a ‘full’ knowledge of the likely significant effects of the project.”

124 He submitted that the environmental impact of the project could be significantly affected by detailed design at the reserved matters stage, for example, by the materials used—reflective glass, by the colours adopted, by a particularly “innovative” form of roof design, or a particularly striking “landmark” building.

125 The passage in *Tew* continues:

“That is not to suggest that full knowledge requires an environmental statement to contain every conceivable scrap of environmental information about a particular project. The directive and the assessment regulations require the likely significant effects to be assessed. It will be for the local planning authority to decide whether a particular effect is significant, but a decision to defer a description of a likely significant adverse effect and any measures to avoid, reduce or remedy it to a later stage would not be in accordance with the terms of Schedule 3, would conflict with the public’s right to make an impact into the environmental



information and would therefore conflict with the underlying purpose of the directive.”

- 126 Whilst the Council has deferred a decision on some matters of detail, which, as Mr Beckwith acknowledges, may have some environmental effect, it has not deferred a decision on any matter which is likely to have a significant effect, or on any mitigation measures in respect of such an effect.
- 127 It is true that at the reserved matters stage the council might theoretically approve a building in a particularly shocking colour, or with a particularly visually intrusive roof design, but that is not the test, since it can be satisfied that it is not likely to do so, hence the effect, for example, of a rainbow coloured building T, or a bizarre “landmark” building is not a “likely effect”, let alone a “likely significant effect” on the environment.
- 128 Any major development project will be subject to a number of detailed controls, not all of them included within the planning permission. Emissions to air, discharges into water, disposal of the waste produced by the project, will all be subject to controls under legislation dealing with environmental protection. In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority: see, for example, the assumptions made in respect of construction impacts, above. The same approach should be adopted to the local planning authority’s power to approve reserved matters. Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the “likely significant effects”, not every conceivable effect, however minor or unlikely, of a major project.
- 129 For all these reasons, I am satisfied that Mr Howell’s primary submission that an application for outline planning permission does not satisfy the requirement in paragraph 2(a) of Schedule 3 to the assessment regulations because it does not provide “a description of the development proposed” is not well-founded.
- 130 I can deal very shortly with the remaining argument that the 1999 application for outline planning permission did not contain sufficient information about the design of the development. As is explained above, a great deal of information was provided in the application documents about the design of the business park, even though details of the design and external appearance of individual buildings were not given. Taking building T as a convenient example, since it is the largest proposed building in the business park, its proposed use (B8), its siting, its size and scale are all known. In particular its principal dimensions, including its height to eaves from a defined plateau level are known. The plot size is known, together with the number of car parking spaces that are to be accommodated with the building on that plot. The position of the spine

and estate roads, from which it will obtain access, are fixed. The area that is left for landscaping within the plot once access, servicing and car parking requirements have been met, can be seen on the masterplan and other plans contained in the Development Framework. Those plans also identify areas for structural landscaping around the boundaries of the plot. The Development Framework describes in some detail how these areas are to be treated. It also describes the kinds of materials, colours and elevational treatments that are likely to be adopted, see above.

131 The Council has power to ensure that the details which come forward at the reserved matters stage are in “substantial accordance” with the Development Framework: see condition 1.7 above. It will be noted that the effect of condition 1.7 is that even where siting and means of access are reserved they will have to be substantially in accord with the Masterplan. Armed with all of this information about the proposed building on plot T, ERM were able to carry out a comprehensive assessment of its likely significant effects on the environment including, for example, its likely effect on the setting of listed buildings, and the public were able to make informed comments about the reliability of that assessment and to suggest further mitigation measures if they wished.

132 Mr Howell’s criticisms of the proposed mitigation measures illustrates the unreality of the applicant’s approach. It is said, that there is no “description of the measures proposed”, merely a statement of objectives. This criticism stems from an overliteral interpretation of the words in paragraph 2(d). In the case of the bats and the greater crested newts that may be on this site (see above), I do not see why the “measures envisaged to avoid, reduce or remedy” possible harm to them should not comprise the undertaking of further surveys, discussion of the findings of those surveys with English Nature and devising detailed mitigation in the light of those discussions. Where there are well established mitigation techniques for dealing with disturbance to the habitat of certain creatures, such a description will be perfectly adequate. Indeed, it is difficult to see what more could be done. As Mr Beckwith says:

“The areas where further survey work is required are areas in which survey work had already been carried out and the results published, for example for the presence of badgers, bats or voles. But nature is dynamic and the presence or population of such species could (and does) vary over time. Bats do not permit themselves to the spot where they happen to be seen at a particular point in time. It is entirely appropriate, responsible and reasonable to ensure that surveys are carried out prior to the commencement of work on each development plot. The involvement of expert bodies such as English Nature is a reasonable approach and one that I would have thought most reasonable members of the public would expect.”

- 133 It is to be noted that neither English Nature nor the Greater Manchester Ecology Unit objected to the application. They expressed certain detailed concerns. The Outline Ecology Management Plan was then prepared as a response to those concerns. Mr Beckwith's report explains that those bodies were satisfied with the response, together with the conditions that were imposed on the outline planning permission.
- 134 In short, there was "full knowledge", in the sense of there being available as much information as could reasonably be expected at this stage, about this kind of mitigation measure.
- 135 I repeat the view expressed in *Tew* that "full knowledge" does not mean "every conceivable scrap of information" about a project. Such an approach would not assist local planning authorities in identifying the likely significant environmental effects of major projects, and would merely serve to obstruct the development of such projects to no good purpose.
- 136 I therefore declare the respondents the victors in round 2 and dismiss this application for judicial review.
- 137 In conclusion I would like to pay tribute to the very able submissions of all leading counsel.
- H17 *Solicitors*—Fatema Patwa, Smethwick; Borough Council; Pinsent Curtis.

## Appendix 6

- 1.1 In the Officer's Report the LPA make the following comments to which I respond in turn:

*"The concerns that have been raised on the original application and at pre-application stage have not been overcome. These are in regards of the design and function of the layout of the site, how the dwellings and the street layout are to relate to each other to create a cohesive and safe community. The impact on the amenity of the neighbouring properties, in regards of overlooking with the site, the adequate provision of amenity space. The proposal does not meet the requirements of the NPPF, Rendlesham Neighbourhood Plan, the policies in the Core Strategy, Site Allocations and Area Specific Policies Document and the Building For Life 12 Guidance".*

- 1.2 The Appellant tried to explain to the LPA its fundamental misunderstanding of the proposed design and their misuse of Building for Life. The LPA did not listen. I contend the LPA did not want to listen. This matter will soon be satisfied in favour of the Appellant.

*"Another reason for refusal that is to be applied to this application is in regards of odour, because of the location of the Cordon Sanitaire and the Anglian Water Treatment Works to the north east of the site. There does not appear to be adequate provision for these facilities and how the site is going to be impacted upon. Furthermore the ability to deliver the layout and re-route the existing sewer has not been demonstrated, which is a policy requirement."*

- 1.3 Odour and sewer matters were never a sound reason for refusal. The LPA's recent retreat from these matters is poorly excused and well overdue.

*"As there are material planning concerns on the site as stated above there is a principle objection to the site in regards of the proposed housing numbers, the application is above the 50 dwellings as stated in Policy SSP12 and therefore should be reduced to overcome the material planning concerns and make it more in line with the number of dwellings stated in Policy SSP12."*

- 1.4 The 'material planning concerns' were either unfounded or based on a misguided approach to design and design-assessment. There was no need to reduce the

number of properties and this applies equally to the previous planning application 18/2374.

*“A draft S106 has been submitted for the proposal. However, due to the late submission of this document and the outstanding issues within it, it is not a signed or agreed s106 and is it therefore still to be refused on this basis.”*

- 1.5 The draft s106 was in the possession of the LPA 4 weeks before the application deadline. This is a poor excuse. In any event planning permission can be granted subject to the signing off of the s106.

*“The on-site HRA mitigation is not adequate and there is no sure detail of how the contributions are to be provided. This will therefore result in likely significant effects on European Sites.”*

- 1.6 The HRA mitigation was adequate. There was detail of how the contributions were to be provided. Because of the LPA’s (incorrect) conclusion of “likely significant effects” it broke its own constitution in rushing to refuse and bypass the Planning Committee.

*“Therefore the application is being recommended for refusal due to the overall harm that would be caused from this development, it is considered that there would be no benefit recommending the application for approval on the basis of new dwellings in this sustainable location versus the impact and harm that would be caused on the overall design and function of the site and harm to the amenity of the future residents of this site lack of affordable dwellings, HRA mitigation and no firm detail on the S106. These concerns and refusal reasons have been raised throughout the preapplications and previous application that has been recommended for refusal. Therefore this application cannot be supported and is being recommended for refusal.”*

- 1.7 The LPA’s balancing exercise was flawed. There was no ‘overall harm’. Therefore, the conclusion that “there would be no benefit in recommending the application for approval” was illogical and inconsistent with its own policy and thus the refusal has no policy basis.

## Appendix 7

### **When should a 'local finance consideration' be taken into account as a material planning consideration?**

[Section 70\(2\) of the Town and Country Planning Act 1990 \(as amended\)](#) provides that a local planning authority must have regard to a local finance consideration as far as it is material. [Section 70\(4\) of the 1990 Act \(as amended\)](#) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body.

In deciding an application for planning permission or appeal where a local financial consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development.


New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. Even where anticipated Bonus payments are not a material consideration in making planning decisions, they can be noted for information in committee reports on applications for housing. Where this is done, care will be required not to imply that Bonus payments are relevant to the decision before the committee.

Paragraph: 011 Reference ID: 21b-011-20140612

Revision date: 12 06 2014 See [previous version](#)

## Appendix 8

CIL Calculations based on the 75 dwelling scheme as submitted:



### Community Infrastructure Levy Calculator


This calculator allows you to calculate CIL liability for a single use or a mixed use development. Details about the development can be entered into the cream boxes. Once the details of the development have been inserted the total CIL liability is displayed below the table. Please note that this calculator is valid until 31st December 2019.

Existing sqm of in-use buildings to be demolished (E)	
Does the Development involve the creation of a new dwelling?	Yes

Development Type	Zone	Total Sqm	New Build Floorspace (sqm)	Converted Floorspace that qualifies under Kr* (sqm)	Converted Floorspace Sqm that does not qualify under Kr* (sqm)
Residential	Adastral Park	0			
	Low Value	0			
	Medium Value	5797.3	5797.3		
	High Value	0	0		
Convenience Retail	n/a	0			
Comparison Retail	n/a	0			
Other Development	n/a	0			

**Indicative CIL Charge: £692,824.87**

If your scheme includes social housing you will be eligible for a discount. Click on this button to find out how much: Calculate Social Housing Relief



### Community Infrastructure Levy Social Housing Relief Calculator

If you have social housing as part of the scheme you will be eligible for a discount according to the amount of floorspace used as affordable housing. Please complete the details below once you have completed the main CIL Calculator. Please note that this calculator is valid until 31st December 2019.

Development Type	Zone	New Build Floorspace to be used as social housing (sqm)	Floorspace that qualifies under Kqr* to be used as social housing (sqm)	Floorspace that does not qualify under Kqr* to be used as social housing (sqm)
Residential	Adastral Park			
	Low Value			
	Mid Value	1480		
	High Value			

**Total Social Housing Relief £176,872.13**

**Revised Total CIL Liability £515,952.74**

CIL Calculations based on an assumed 50 dwelling scheme where the floor space figures are approximately 2/3 of the figures for the 75 dwelling scheme:

## Community Infrastructure Levy Calculator

This calculator allows you to calculate CIL liability for a single use or a mixed use development. Details about the development can be entered into the cream boxes. Once the details of the development have been inserted the total CIL liability is displayed below the table. Please note that this calculator is valid until 31st December 2019.

Existing sqm of in-use buildings to be demolished (E)	
Does the Development involve the creation of a new dwelling?	Yes

Development Type	Zone	Total Sqm	New Build Floorspace (sqm)	Converted Floorspace that qualifies under Kr* (sqm)	Converted Floorspace Sqm that does not qualify under Kr* (sqm)
Residential	Adastral Park	0			
	Low Value	0			
	Medium Value	3865	3865		
	High Value	0	0		
Convenience Retail	n/a	0			
Comparison Retail	n/a	0			
Other Development	n/a	0			

**Indicative CIL Charge: £461,899.18**

If your scheme includes social housing you will be eligible for a discount. Click on this button to find out how much: Calculate Social Housing Relief

## Community Infrastructure Levy Social Housing Relief Calculator

If you have social housing as part of the scheme you will be eligible for a discount according to the amount of floorspace used as affordable housing. Please complete the details below once you have completed the main CIL Calculator. Please note that this calculator is valid until 31st December 2019.

Development Type	Zone	New Build Floorspace to be used as social housing (sqm)	Floorspace that qualifies under Kqr* to be used as social housing (sqm)	Floorspace that does not qualify under Kqr* to be used as social housing (sqm)
Residential	Adastral Park			
	Low Value			
	Mid Value	987		
	High Value			

**Total Social Housing Relief £117,954.59**

**Revised Total CIL Liability £343,944.59**

Back to Main Calculator
Back to Introduction

\*Kqr: see definition on introduction or in the regulations.

The difference between £515, 952 and £343,944 is £172,008 of CIL 'uplift'.



## Appendix 9 Timeline of Correspondence with the LPA

### Pre-app

1.8 In preparation for the pre-application meeting of 11<sup>th</sup> December 2018 I spoke to the Planning Officer and requested that as the applicant team needed clear advice on a number of potentially complex matters (habitats and tilted balance) that a Senior Officer attend alongside the Case Officer, but no senior officer attended. The pre-app meeting note included in Appendix 1c of the Planning Statement shows that the LPA advised clearly on the following important matters which, the LPA would later reverse in the refusal and officer's report:

- Other than RAMS there were no other significant ecology matters.
- The LPA acknowledged that SP2 was out of date and the tilted balance was relevant. The LPA advised on what the 'most important' policies were.
- The LPA advised that SSP12 was 'infected' by SP2 being out of date.

1.1 I acknowledge that as a rule pre-application advice comes with a caveat that the advice given does not bind the Council. But in this case the applicant specifically asked for a senior officer to be present so that the best advice could be given by the Council.

### Application submission

1.2 In the Habitats Statement of Common Ground and the Habitats Proof of Evidence facts advance the proposition that the LPA determined not to consult Natural England on the planning application within a few days of receiving it, despite this apparently having been 'standard practice' on a nearby site in Rendlesham. In the Appellant's Statement of Case it was alleged that the LPA had failed in its statutory duty to consult Natural England. In its Statement of Case (paragraph 5.51) the LPA take the view that "*It is not a necessary consultation when intending to refuse an application*". Accepting that the LPA consulted Natural England at the initial stage in relation to planning application 17/5380 we contend it is for the LPA to

demonstrate the material difference in behaviour between the two occurrences; either they ‘chose’ to consult Natural England on 17/5380 against the norm or they ‘chose’ not to consult Natural England on either 18/2374 or 19/1499. The Habitats Proof of Evidence raises a compelling reason for why the LPA took the course of action which they did, whilst claiming in the decision notice that harm would be caused.

## Consultation

- 1.3 According to the Council’s website the statutory consultation period for 19/1499 ran from 15<sup>th</sup> April 2019 to 9<sup>th</sup> May 2019.
- 1.4 15<sup>th</sup> April 2019 – Natural England not included in consultation of statutory consultees. The LPA state in their SoC: “5.51 The appellant has raised the issue a number of times that Council failed to consult Natural England under regulation 63(3) of the Habitats Regulations. It has been pointed out that the consultation is a part of carrying out an appropriate assessment when intending to permit a project. **It is not a necessary consultation when intending to refuse an application as an appropriate assessment is not applicable to a refusal.** The competent authority responsibility now lies with the Inspector and should the inspector be minded to allow the appeal, then an appropriate assessment and consultation would be necessary”.
- 1.5 According to the Officer’s Report and the LPA Statement of Case, key consultee responses were received during the statutory consultation period which were not passed to the applicant for comments, nor were they made publicly available on the Council’s website. These include the claimed comments from the Head of Housing (which the LPA use to support their Reason for Refusal no.2) and Anglian Water (which the LPA use to support their reason for refusal 4 on odour). These comments remain absent from the Council’s website.
- 1.6 Appellant emailed LPA on 1<sup>st</sup> May 2019 asking for “initial views” – see email 21 of SoC Appendix 3.
- 1.7 LPA emailed Appellant on 7<sup>th</sup> May 2019 saying no comments would be provided

before consultation period was up – see email 22 in SoC Appendix 3.

### **Post consultation**

- 1.8 Appellant emailed LPA on 14<sup>th</sup> May 2019 reminded of best practice of working together to reduce scope of issues and requesting a meeting – see email 23 in SoC Appendix 3.
- 1.9 Appellant emailed LPA on 21<sup>st</sup> May 2019 reiterating wish to meet – see email 24 in SoC Appendix 3.
- 1.10 LPA emailed Appellant on 21<sup>st</sup> May 2019 (12 days after the consultation period had ended and 7 weeks before the deadline of 8<sup>th</sup> July) stating intention to refuse application – see email 25 in SoC Appendix 3.
- 1.11 LPA emailed Appellant on 3<sup>rd</sup> June 2019 to say that the Ward Councillor wished to attend – see email 33 in SoC Appendix 3.
- 1.12 LPA emailed County Council on 6<sup>th</sup> June 2019 stating their intention to refuse the planning application – see email in Appendix A of the Appellant/LLFA Statement of Common Ground.
- 1.13 Appellant emailed LPA on 7<sup>th</sup> June 2019 at 16:39 to say Ward Councillor presence essential and to remind officer that applicants had taken legal advice and to “strongly suggest a senior member of planning staff attend” the forthcoming 12<sup>th</sup> June meeting – see email 35 in SoC Appendix 3.
- 1.14 LPA emailed Appellant on 7<sup>th</sup> June 2019 at 16:43 to advise Ward Council now not attending – see email 36 in SoC Appendix 3.
- 1.15 Appellant emailed LPA on 12<sup>th</sup> June 2019 at 21:32 after meeting to include legal note, remain about extensions of time etc. – see email 37 in SoC Appendix 3.
- 1.16 Appellant emailed LPA on 21<sup>st</sup> June 2019 chasing response to 12<sup>th</sup> June email – see email 38 in SoC Appendix 3.
- 1.17 Appellant emailed Head of Planning on 4<sup>th</sup> July raising concerns – see email 40 in SoC Appendix 3.
- 1.18 Appellant emailed LPA on 5<sup>th</sup> July 2019 chasing response to 12<sup>th</sup> June email – see

email 39 in SoC Appendix 3.

1.19 LPA emailed Appellant on 5<sup>th</sup> July 2019 11:45 stating that the report was being finalised and a decision would be issued – see email 41 in SoC Appendix 3.

1.20 Appellant email LPA on 5<sup>th</sup> July 12:54 pointing out that the matters raised could be resolved within the bounds the application, that the applicants remained willing to discuss, **the LPA had been silent since 12<sup>th</sup> June** and thus missing the opportunity to avoid an appeal. No response was received between this email and the decision being issued on 8<sup>th</sup> July.

### Pre-decision

1.21 In the lead up to the refusal of planning application 19/1499 the Appellant repeatedly pointed out to the LPA that at some of the matters with which they had concerns could be overcome, if necessary with clarification or additional information and via an extension of time which the Appellant was willing and eager to agree. It would appear that the Council has what I can only describe as, an ‘internal diktat’ against extensions of time. At a recent ‘Developer Forum’ hosted by East Suffolk on Thursday 30<sup>th</sup> January 2020 at High Lodge Leisure Ltd, Haw Wood, Hinton, Saxmundham, IP17 3QT the East Suffolk Development Manager was subjected to repeated questioning from delegates about the Council’s apparent and widespread resistance to extensions of time. The Development Manager repeatedly claimed no such approach was being taken. After a period of time the Council’s Head of Planning stood up and told the assembled audience of consultants, agents and developers that ‘extensions of time had become ubiquitous and that about a year ago he had instigated a **moratorium on extensions of time**. It is my professional opinion that the ability of a planning department to handle planning applications is primarily a resourcing matter and in any event Planning Practice Guidance is clear on extensions of time and the NPPF is clear on taking a positive approach at paragraph 38.

1.22 In preparation for the pre-decision meeting of 12<sup>th</sup> June 2019 I “strongly” requested (see email below) on behalf of the applicant that a senior member of staff attend

the meeting with the case officer, but no senior officer attended. The Council's junior<sup>1</sup> Design and Conservation Officer attended and produced a copy of Building for Life 2015 and this was the first time the Appellant was presented with it. The Case Officer was unable or to respond to some key matters (which included the matters raised in the legal note (discussed above) and which were previously discussed in the meeting of 12<sup>th</sup> June 2019.

1.23 In respect of design the Design proof will expand on the arguments made in the Appellant's Statement of Case and demonstrate the LPA's error in planning judgement. This includes the LPA's inappropriate use of Building for Life 2015 as a tool to justify its refusal. It is noteworthy that the matter of the 2018 edition of Building for Life was raised at the 12<sup>th</sup> June 2019, but to no effect: there was no reference to Building for Life 2018 in the subsequent officer's report.

## Decision

1.24 The LPA appears to have **breached its own Constitution**. Whilst this is not a planning policy matter, it is material because it is another indication that there was a "rush to judgment" and a repeated resistance or reluctance to put the application in front of the Council's planning committee. The Council's constitution states (my emphasis in bold):

*"All planning application decisions including decisions concerning Environmental Impact Assessment (EIA) decisions or considerations requiring Habitat Impact Assessments (HRA) are delegated to the Head of Planning and Coastal Management **UNLESS:***

*1. The Planning Application is, **in the opinion of the Head of Planning and Coastal Management** or the Chairman/Vice Chairman of the Planning Committee, of significant public interest; **would have a significant impact on the environment** ; or should otherwise be referred to Members due to its significance in some other respect;"*

1.25 The decision notice for 19/1499 is usually\* issued by and on behalf of the Head of

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<sup>1</sup> i.e. not the Senior or Principal Officer

Planning (\*the version available on the Council’s website is unsigned). Reason for Refusal 6 appears confident and clear in the assertion that (our emphasis):

*“**This application** is for more than 50 dwellings and is inside of the 13km Impact Risk Zone of Designated Sites. The current submitted Habitats Regulations Assessment of on site and off site mitigation measures is not adequate for the level of development that is being proposed. The level of development proposed, without adequate on site space to address recreational pressures on European Sites, the proposal **would lead to likely significant effects on European Sites**”*

1.26 I infer from comparing the Council’s constitution and the decision notice that the Heading of Planning did not have the delegated powers to refuse the planning application without first triggering the referral process. I know this did not happen because the Officer’s Report confirms as such:

“the referral process has not been triggered, so the application will be determined at officer level in accordance with the adopted scheme of delegation”.

1.27 In my experience this is not the first time the **officers have stood in the way of the application going to Planning Committee**. I know first-hand that in relation to 18/2374 the officer’s opinion and parish council’s opinion differed (see email below). The parish council emailed the planning officer requesting the matter be deferred to Planning Committee. Unfortunately, the parish council’s email was sent to the Ward Councillor and not the Planning Officer. The time period for referral passed before the administrative error had passed. The error was pointed out to Planning Officers, but the case officer told me that the Planning Manager would not exercise discretion on the matter and 18/2374 did not go to Planning Committee either.

## **Appeal**

1.28 The LPA has not behaved positively in relation to this planning application and ‘rushed to refuse’ as set out in the Appellant’s Statement of Case. This shows itself in the withdrawn reasons for refusal, which the Appellant warned the Council about multiple times.

1.29 It is my opinion that had senior officers attended either the 11<sup>th</sup> December 2019 meeting or the 12<sup>th</sup> June 2019 meeting, then a significant number of the apparently contentious **matters could have been addressed and either the scope of this appeal could have been reduced or avoided altogether.**

1.30 It was only when the LPA released its Statement of Case that the recurring arguments on housing numbers were withdrawn; albeit transposed into arguments about design.

1.31 It was only when the LPA released its Statement of Case that the odour and sewer matters were withdrawn by the LPA. This is despite repeated attempts to settle these matters ahead of the decision date.

1.32 In its Statement of Case at paragraph 5.27 the LPA persists in its claim that the “original submission **did not include draft heads of terms** for a s106 agreement and as a paper draft s106 was submitted to the Local Planning Authority in the later stages of the statutory determination period its full consideration **was not possible**”. This matter persists from the officer’s report and is false. Section 7 of the Planning Statement was headed ‘Heads of Terms (Advised by Birketts Solicitors LLP)’. This may well indicate a **lack of attention paid to the content of the original planning application**. The s106 was discussed in email correspondence with the Planning Officer from as early as 1<sup>st</sup> May 2019. In any event, a copy of the draft s106 was handed over to the Case Officer at the meeting of 12<sup>th</sup> June 2019 as the preceding email correspondence indicated that it would. There was ample time between 12<sup>th</sup> June and 8<sup>th</sup> July 2019 for the LPA to provide feedback if it was inclined to do so.

1.33 The record demonstrates that the LPA have utterly failed to follow the spirit of NPPF paragraph 38 and this has evidently ‘infected’ the proper exercise of its planning judgment and procedural discretion which in turn has led to wasted costs and the unreasonable refusal of planning permission.



# EASTSUFFOLK

## COUNCIL

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# CONSTITUTION

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*Version dated: 21 August 2019*



East Suffolk Council Constitution

Countryside and Rights of Way Act 2000

1	Access to the Countryside (Maps in Draft Form) (England) Regulations	Head of Communities
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The Local Authorities (Standing Orders) (England) Regulations 2001

All sections	Giving notice to Cabinet in respect of chief Officer appointments	HR Manager
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The Magistrates' Courts and Valuation Tribunals

To represent the Council in the Magistrates' Court in respect of Council Tax and Non Domestic rates matters	Joanna Andrews Thereza Lawson Paul Montgomery
To represent the Council in the Valuation Tribunals	Joanna Andrews

The Health and Safety at Work Act 1974

S19(1)	To carry out enforcement	Philip Gore Brenda Hammond V Johnston Mark Sims
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**ALL OTHER PROPER OFFICER FUNCTIONS**

The Chief Executive or such other officer as may from time to time be so designated by them.

**5. Powers of Officers**

- 5.1 Officers are appointed to undertake particular roles. Those roles may be established by the terms of their appointment, job or role description, their position in the organisation, or from a specific instruction or the allocation of specific responsibilities by their manager. Officers' roles may vary from time to time to reflect changes in Service delivery.
- 5.2 To ensure the smooth functioning of the Council and the efficient delivery of the Services that it is responsible for, the Council and the Cabinet delegate to Officers all of the powers that they need to do whatever their role requires of them from time to time.
- 5.3 All powers and functions not specifically reserved to Members in this Constitution or by statute stand delegated to Officers in accordance with the cascade principle set out below.

**6. Cascade of Powers**

- 6.1 Officers' powers have been delegated by means of a standing cascade. That means that there are no long lists in this constitution of specific powers and who they have been delegated and sub-delegated to, with the exception of the specific delegations in [Appendix 1](#) to this Scheme of Delegation to Officers.

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East Suffolk Council Constitution

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Section E - APPENDIX 1

**REGISTER OF SPECIFIC OFFICER FUNCTIONS**

**Head of Planning and Coastal Management**

All planning application decisions including decisions concerning Environmental Impact Assessment (EIA) decisions or considerations requiring Habitat Impact Assessments (HRA) are delegated to the Head of Planning and Coastal Management UNLESS:

1. The Planning Application is, in the opinion of the Head of Planning and Coastal Management or the Chairman/Vice Chairman of the Planning Committee, of significant public interest; would have a significant impact on the environment; or should otherwise be referred to Members due to its significance in some other respect; or
2. The applicant or landowner is East Suffolk Council; or
3. The applicant, or agent, is an East Suffolk Councillor or an East Suffolk Council employee, or the applicant, or agent, is a close relative of an East Suffolk Councillor or East Suffolk Council employee; or
4. The 'minded to' decision of the Planning Officer is contrary to either:
  - a. The comments received from the Town or Parish Council within the 21 day consultation period; or
  - b. The comments received from the Ward Member within the 21 day consultation period; or
  - c. The comments received from a statutory consultee within the 21 day consultation period.

In which case, if item 4 is invoked, the Planning Application will be referred to the Planning Referral Panel – the panel will discuss with the Head of Planning and Coastal Management (based on planning grounds) to either refer the application to Planning Committee for decision or remain delegated to the Head of Planning and Coastal Management.

**Planning Referral Panel**

The Planning Referral Panel is a consultative panel consisting of the Chairman and Vice Chairman of each area Planning Committee, convened by the Head of Planning and Coastal Management as necessary and established to advise on the delegated route of decision making for planning permission and other planning matters as part of the scheme of delegation.

Officers will use the Planning Referral Panel to consult with the Chairman and Vice Chairman of the committees as to whether the application or matter will be determined by the relevant Planning Committee or remain delegated to the Head of Planning and Coastal Management in accordance with the Scheme of Delegation. The final decision on whether the relevant Planning Committee or the Head of Planning and Coastal Management shall determine the application or matter shall be made by the Head of Planning and Coastal Management as part of the consultation with the Planning Referral Panel.

The Planning Referral Panel will also consider whether it is appropriate for the relevant Planning Committee to undertake a site visit before the case is presented to the Planning Committee.

All consultations with the Planning Referral Panel will be recorded.

**Appendices to the Proof of Evidence of Mr. Steven Bainbridge MRTPI**

APP/X3540/W/19/3242636 Land north of Gardenia Close and Garden Square, Rendlesham

From: Jane Rodens <[Jane.Rodens@eastssuffolk.gov.uk](mailto:Jane.Rodens@eastssuffolk.gov.uk)>  
Date: 20 August 2018 09:20:27 BST  
To: "Steven" <[Steven@evolution-planning.co.uk](mailto:Steven@evolution-planning.co.uk)>  
Subject: DC/18/2374/FUL

Hello,

As it currently stands the application is going to be recommended for refusal, I understand that there is still some discussion with Suffolk County Council Highways and Rights of Way at the moment and we are waiting for a plan showing the distribution of the affordable housing.

The application cannot be supported for the following reasons:

- Distribution and numbers of open market housing and affordable housing through out the site
- Function and design of the proposal site

During the consultation process the Parish Council supported the application and there where objections from the neighbouring properties, therefore the application is to be "triggered". An email has been sent to the Parish Council to decide if the application is to be taken to the referral panel or not, they have 5 whole working days to let myself know their decision.

If the application is to be taken to the referral panel, then it is up to the Chair and Vice Chair of Planning Committee to decide if the application is to go to Planning Committee or not.

I will keep you updated to let you know if it is to go to referral panel, and the decision.

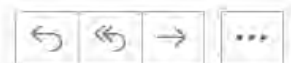
Regards

**Jane Rodens BA (Hons) MA MRTPI**  
Area Planning and Enforcement Officer  
Planning  
Suffolk Coastal and Waveney District Councils

RE: DC/19/1499/FUL



steven@parkerplanningservices.co.uk  
To: 'Jane Rodens'  
Cc: ray.herring@eastssuffolk.gov.uk  
Bcc: Ray Herring



07/06/2019

Good afternoon Jane,

Further to your email below, as you know we are meeting at the Council offices next week and Ward Councillor Herring has asked to attend, which we think is essential.

In an earlier email I referred you to the fact the applicants were taking Counsels advice – the email I got back indicates, I hope, that you simply missed that reference.

In any event, the applicants met today with Mr. Paul Shadarevian QC (you may not know he defended SCDC's Core Strategy in the High Court) and we can discuss the implications of this on Wednesday.

Suffice it to say though, and as we had suggested last time, we would again strongly suggest a senior member of planning staff attend that meeting with you.

So to confirm it is on Wednesday 12<sup>th</sup> June at 10am. Have a good weekend.

Regards

Steven Bainbridge  
Principal Planning Manager

