

# **‘Save Allerton Priory’**

**Adrian Thompson MRTPI**

**Closing Statement**

**on behalf of**

**‘Save Allerton Priory’**

**Planning Appeal by Public Inquiry:  
APP/Z4310/W/16/3166010**

**Listed Building Appeal by Public Inquiry:  
APP/Z4310/Y/17/3171487**

**Land at Woolton Road, Allerton, Liverpool, L18 9UZ**

## **Introduction**

1. Save Allerton Priory is a campaign group representing the concerns of the local community. Some members of that community have been passionate in expressing their concerns and you have read and heard and seen some of that passion. That passion is a good thing. It is a good thing that people care about their environment.
2. When a community are prepared to engage with the archaic, complex and costly procedures of the planning system, those of us who work as professionals within that system should and I hope do welcome it. We know the local community will be motivated by a concern to safeguard and protect that which is best about their community and their environment. Why else would they expend so much personal time, energy and resources in seeking a fair hearing. Just as we know the appellant, whether as landowner or developer, have their interests and their motivation, which in turn shapes their perception of what they do.
3. Fortunately you are not tasked with weighing and judging one set of motivations against another. Like the Council, you must concern yourself only with the planning merits and to weigh and judge those dispassionately and objectively, in the public interest. SAP asks no more and expects no less.
4. It has been, and it is, SAP's case to you that Liverpool City Council was right to refuse planning permission and listed building consent. On the evidence presented to you through this Inquiry it remains SAP's view that when the planning merits are weighed and judged dispassionately and objectively the conclusion is clear: the benefits of the proposal are significantly and demonstrably outweighed by the harm it would cause.
5. Before addressing each of the main themes of the appeal I shall turn first to the the weight to be attributed to the planning permission for the equestrian centre.

## **The weight to be attributed to the planning permission for the equestrian centre**

6. It is accepted a material start has been made to implement the planning permission and listed building consent granted in 2011<sup>1</sup> for the equestrian centre. It is also accepted this is a material consideration. However, there is insufficient evidence to support the conclusion that, in the absence of planning permission for the appeal scheme, there is an actual intention<sup>2</sup> to implement the equestrian centre development in full.
7. The works pursuant to the planning permission and listed building consent were only undertaken at the eleventh hour and the bare minimum, or something close to it, was done to secure technical and legal implementation.
8. The company that was the original applicant for the equestrian centre is dormant.

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<sup>1</sup> Planning permission 11F/0590 and listed building consent 11L/0591

<sup>2</sup> See R. v Secretary of State for the Environment Ex p. Ahern [1998] Env. L.R. 189

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9. A letter from another company, which is neither the current owner of the appeal site nor the original applicant, reveals that an equestrian operator for the centre has yet to be found<sup>3</sup>. From this it is also appears that neither the original applicant, the landowner or this third business are looking to operate the equestrian centre themselves.
10. No evidence is provided on the number, form or content of the reported approaches from equestrian operators. In the absence of copies of the documents themselves it is not possible to make an independent assessment of the ability and readiness to proceed of the prospective operators. The content of those documents may lead an independent person to a different conclusion from that genuinely arrived at by the author of the letter.
11. The 2017 report by Savills concludes the proposed equestrian centre remains commercially attractive. The question that must be asked of course is whether the author of the report is right in the view they have reached. It seems the Appellant is inviting acceptance of the report's conclusion as the opinion of an expert witness, but the Inquiry has not had the opportunity to test that expert's evidence. The content of the 2017 report raises a number of questions<sup>4</sup> for which answers are unavailable. It is not possible therefore to attribute more than little weight to the opinion given in that 2017 report.
12. The overall weight to be attributed to the extant planning permission and listed building consent, as a material consideration, is a matter for the decision maker. On the basis of the above observations, SAP submit that no meaningful weight should be attached to the extant planning permission and listed building consent for the equestrian centre and they should not be used as a baseline against which to assess the prospective impacts of the appeal scheme.
13. However, if the conclusion were to be reached that there is sufficient information available to merit giving some weight to the extant permission for the equestrian centre then SAP submit that only very limited weight should be attributed to it because of the absence of clarity and certainty in what is said and because the information has not been available as evidence to be tested. More weight should be placed on the impacts of the appeal scheme compared to the site as it exists today than as it would be under the equestrian scheme.
14. It should also be noted with regard to the planning permission for the zero carbon house<sup>5</sup> that no evidence has been placed before this Inquiry to show it is extant.

### **Would the proposal preserve the setting of Allerton Priory**

15. The significance of Allerton Priory mansion as a piece of architecture is not in dispute and there would be no direct impacts on the fabric of the mansion itself. But as a listed building it is not the architecture alone which is of interest. The building, and by extension the property as a whole, is also of historic interest. It is SAPs submission to you that the appeal site makes a crucial contribution to the

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<sup>3</sup> See Sam Ryan Proof of Evidence Appendix SAR3

<sup>4</sup> Adrian Thompson, evidence in chief

<sup>5</sup> Planning permission 11F/0592

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understanding and appreciation of that historic interest, and in turn therefore to the significance of Allerton Priory as a Grade II\* listed building.

16. Mr Ives, like his former colleagues at Historic England, sees the significance of Allerton Priory as being contained primarily in the building itself and its architecture<sup>6</sup> and he does not credit the parkland with any significance of its own. For Mr Ives the association of the Estate with the 'suburbanisation of south Liverpool by the industrial and mercantile elite of the City'<sup>7</sup> is primarily expressed through the stone boundary walls. SAP submits this approach fails to appropriately read together the different elements of the site and consequently it presents a picture that is disjointed and incomplete.
17. Policy HD5 of the UDP sets out that planning permission will only be granted for development affecting the setting of a listed building, which preserves the setting and important views of the building. I shall deal first with the setting.
18. As Mr Hinchcliffe for the Council has set out<sup>8</sup>, there is a significance to the Estate as a whole, as well as in its constituent elements, including the parkland. That significance is found in the following
  - In the property as an evolved parkland estate which, despite some losses and interventions, retains a high degree of authenticity and integrity.
  - In the survival of the lodges, the stables, the original boundary wall and key elements of the basic landscape structure.
  - In the aesthetic value of the Estate as a piece of landscape design, including the retention and adaptation of the informal parkland as an integral part of the planning and management of the Estate, comprising large areas of open field allowing expansive panoramic views, defined and enclosed by bands of structured tree planting.
  - In the Estate as part of the fabric of evidence telling the story of Liverpool's economic success in the nineteenth century and of the aspirations of its merchant elite to create large show piece homes in large enclosed and landscaped grounds.
  - Of the association with Morris and Waterhouse, key figures from Liverpool who were prominent local figures of their time and in the case of Waterhouse also a national figure.
19. The evidence of Miss Gersten complements this<sup>9</sup>. She describes how significance is found in the following

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<sup>6</sup> Graeme Ives Proof of Evidence, paragraphs 4.25 to 4.31

<sup>7</sup> Graeme Ives Proof of Evidence, paragraph 4.43

<sup>8</sup> John Hinchcliffe Proof of Evidence, pages 39-40 and 44-45

<sup>9</sup> Florence Gersten Proof of Evidence, pages 16-20

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- In the association with one of the ‘Merchant Princes’ of Victorian Liverpool, John Grant Morris, also a mayor of the City.
  - In the association with one of Liverpool’s most renowned Victorian architects, Alfred Waterhouse.
  - In the Estate’s role as an exemplar of and the last known remaining substantially intact example left in Liverpool of a ‘Merchant Prince’s’ scaled down version of a great country estate.
  - In the Estate’s cultural significance, telling part of the story of social and economic change in Liverpool in the second half of the nineteenth century.
  - In the multiple functions of the wider Estate: as an emblem of the owner’s success and social standing, as a pleasing pastoral outlook and as a practical resource for the maintenance of his household; an intimate relationship that bound house and grounds together.
20. The crucial ingredients to the contribution the appeal site makes to the significance of the listed building are the survival of the open ground framed by the continuous line of mature trees and the stone wall along the boundaries to Allerton Road and Woolton Road.
21. To return now to Policy HD5, the second arm of the policy requires important views of the listed building to be preserved. There has also been much discussion about views from the building, which are relevant as one of the factors that establish the significance of the grounds within the appeal site, to the significance of the listed building. I shall deal with these together for a moment.
22. But first it is worth bearing in mind that it is not unusual when dealing with historic matters to find the picture presented by the information available is not as clear by comparison to that which could be presented on contemporary matters. On historic matters specific evidence that would put a matter beyond doubt is not always available to us. Instead we are often presented with circumstantial evidence which requires interpretation. If the people who undertake this interpretation are established authorities on the relevant subject matter, whether by qualification and or experience, then their opinions may well have to incorporate an element of ‘supposition’. You were invited to consider the weight to be given to such supposition relative to the weight to be given to other forms of evidence. That term ‘supposition’ is of course not pejorative. You can refer to a Concise Oxford English Dictionary to find the word ‘suppose’ includes, among other meanings, to ‘accept as probable’. We rely on those with specialist knowledge of certain matters to give us their insights, based on their interpretation of the information available, as to what is probable. Both Mr Hinchcliffe and Miss Gersten have provided their insights, based on their respective experience and drawing on the range of evidence available, including in Miss Gersten’s case the insight of fellow specialists Jane Furse and Joseph Sharples<sup>10</sup>.

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<sup>10</sup> Florence Gersten Proof of Evidence, Appendix SAP/FG02

23. SAP submits it is more likely than not the position and design of the house was intended, amongst other objectives, to provide the occupants with clear views over the principal extent of the parkland, which is the land falling within the appeal site. Given the position chosen by Morris and Waterhouse for the new house, commanding extensive and at the time almost uninterrupted views over the principal extent of the parkland, coupled with the layout and design of the house, which placed principal rooms with large bay windows on the south elevation overlooking that same area (while also affording other views both near and far), it seems inconceivable that they were acting without regard for the visual dialogue that would exist between house and parkland and between the house and the world beyond the grounds. And this in all likelihood did extend to the roof. The absence of a belvedere is not evidence the occupants did not appreciate the views attainable from the roof. It is correct that the roof could only be accessed through the servants' quarters on the top floor but this is also true of the access to the room in the tower<sup>11</sup>. It can reasonably be deduced that this route to the roof was not an impediment to the owner gaining access to the tower, so why would it be an impediment to providing others with the opportunity to admire the panorama the roof offered. It is considered therefore the vistas identified by Jane Furse are a legitimate interpretation of opportunities the original design was intended to realise<sup>12</sup>.
24. Return views toward the house are also possible from both within the parkland comprised within the appeal site and from ground beyond, including from Allerton Road, Woolton Road and the grounds of Allerton Hall (as they were when Allerton Priory was built; now Clarke Gardens); as illustrated in the study by Jane Furse<sup>13</sup> and in various photographs that have been submitted<sup>14</sup>, and as will have been observed on the site visits.
25. Over the last twenty years or so some of these views have become partially obscured by unmanaged tree and scrub growth. But for the greater part of the existence of the current mansion at Allerton Priory there was clear intervisibility between the mansion and most of the land comprising the appeal site and with land beyond. At present the unmanaged tree growth around the mansion partially visually separates the mansion from the wider parkland for much of the summer, and in winter filters the views that are available. Most of the trees that provide this screen are outside the appeal site. SAP does not seek to make a case that there is evidence of an immediate intention to manage these trees to the extent it would fully restore the historic levels of intervisibility between the house and its surroundings. But it is SAP's submission that the impact of this level of tree cover is reversible and substantial weight should be given to that. The potential to reverse this impact contrasts sharply with the harmful effects upon the heritage of the proposed housing development, which would be irreversible<sup>15</sup>.

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<sup>11</sup> Florence Gersten Proof of Evidence, Appendix SAP/FG01 (Dissertation by Martin Beattie), Figure 7 (follows page 42) and Figure 8 (follows page 45)

<sup>12</sup> Core Document 7.1, plan of 'Views and Vistas Designed for J G Morris 1870' (follows page 16)

<sup>13</sup> Core Document 7.1, *ibid*

<sup>14</sup> Florence Gersten Proof of Evidence, Appendix SAP/FG05 (images 2, 6, 12 & 12a, 13 & 13a and Chris Hulme Proof of Evidence, Appendix SAP/CH04 (image 014)

<sup>15</sup> Florence Gersten Proof of Evidence, paragraph 8.3

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26. These harmful effects, to the contribution the appeal site makes to the significance of the heritage asset (as part of the setting to it), are summarised by Miss Gersten

To fill the field with 160 houses would completely ruin this part of Allerton Priory's setting. The development proposed for the appeal site would obliterate the entire field destroying its associations and its relationship with the house it served.<sup>16</sup>

27. The weight to be attributed to the harm of this loss is accentuated by virtue of the fact that Allerton Priory is the last example of its type in Liverpool: the last Merchant Prince's Palace where both the house and its ground remains substantially complete and the relationship between the two can still be experienced almost as originally envisaged. Mr Ives sought to cast doubt on this in his rebuttal evidence<sup>17</sup> but Miss Gersten gave evidence to show that each of those other supposed examples were not in fact comparable examples at all

- Allerton Hall was a much larger estate, and most of the grounds have been sold off. What is left is managed in such a way that it bears little resemblance to its former state, plus the property was Georgian and is not therefore an example of a Victorian Merchant Prince's Palace
- At Allerton Golf Club little remains of the house following the fire damage and the grounds have been substantially remodelled as a golf course
- Springwood is Georgian, not Victorian, and in any event little remains of its grounds
- 'Woolton Manor' was built as an institution and was never a private residence, and
- Beechley is now subject to permission for new build development that would be extensive in proportion to its grounds.

28. Allerton Priory is therefore a unique survivor.

29. The loss of the grounds to the appeal scheme would sever the last link between the mansion and its original setting. Very considerable weight should be attached to this negative effect<sup>18</sup> because it would result in the extensive and final fragmentation of this last remaining substantially intact example of a Merchant Prince's Palace.

30. In addition, the construction of the houses and the increase in boundary planting, to seek to screen views of the houses from Woolton Road and Allerton Road, would interrupt and disrupt views of the mansion from within and from outside the site.

31. For this reason, SAP submits, the appeal scheme is contrary to Policy HD5 because in developing the open land it would fail, comprehensively, to preserve the setting to

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<sup>16</sup> Florence Gersten Proof of Evidence, paragraph 8.4

<sup>17</sup> Graeme Ives Rebuttal Proof of Evidence, paragraph 3.3

<sup>18</sup> Core Document 2.9, page 4, section 9 on 'cumulative change'

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and important views of the Grade II\* listed building Allerton Priory, and the harm it would cause to the significance of this designated heritage asset would be substantial.

32. In addition to the impact arising from the development of the open land, the appeal scheme would also give rise to damaging impacts associated with the creation of the three new points of access
- harm arising from the creation of gaps in the continuity of and or thinning of the mature tree line to the boundary of the parkland
  - harm arising from the loss of the existing sense of enclosure the wall provides
  - harm arising from the larger, wider and contextually incongruous scale of the proposed means of vehicular access, especially in relation to the modest scale of the existing points of access, and
  - harm by reason of the loss of fabric to a curtilage listed boundary wall.
33. The stone boundary wall was originally created to enclose the land with the first Allerton Priory<sup>19</sup>. It was retained intact, apart from the entrance to the new carriage drive, when the second house was built and remained unchanged up until a few years ago. SAP submits it is a curtilage listed structure<sup>20</sup> and the partial demolition the appeal scheme proposes would result in the significant loss of part of the listed fabric of the structure and significant harm to the overall integrity of the structure as a historic means of enclosure on the southern and western boundaries to Allerton Priory. As such it is considered the proposed points of access would cause substantial harm to the wall as a curtilage listed structure.
34. These harmful effects would contribute further to the other harm the appeal scheme would cause to the setting of the grade II\* listed Allerton Priory mansion, and to the conflict with Policy HD5.
35. In determining the two appeals there is also a statutory duty, under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the effect of the proposal on the special architectural and historic interest of the setting of the listed building. The statutory duty conveys the need to have special regard to the desirability of preserving the setting. The statutory duty extends to curtilage listed structures in addition to the principal structure.
36. One of the core principles of the Framework is that the planning system should conserve heritage assets, in a manner appropriate to their significance<sup>21</sup>. It recognises that significance can be harmed by development within the setting to a heritage asset<sup>22</sup>.

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<sup>19</sup> Florence Gersten Proof of Evidence, paragraph 3.3

<sup>20</sup> Adrian Thompson, evidence in chief speaking notes

<sup>21</sup> Core Document 2.1, paragraph 17, bullet point 10

<sup>22</sup> Core Document 2.1, paragraph 132



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37. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
38. Paragraph 133 states that where a proposed development would lead to substantial harm to the significance of a designated heritage asset, as SAP submit would be the case in this instance, consent should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of four criteria apply.
39. Taking the latter first, not all of the four criteria can be met. Indeed the first of the four cannot be met. The nature of the heritage asset does not prevent all reasonable use of the site, as is shown by the permission for the equestrian centre and absent that the site could be used again for agricultural, sporting or other recreational purposes. It is not necessary therefore to consider the other three criteria.
40. With regard to whether the substantial harm and loss is necessary to achieve substantial public benefits SAP makes the following submissions in respect of the benefits put forward by the Appellant.
41. Several matters put forward as benefits are not benefits at all<sup>23</sup> and are to be expected as part and parcel of any policy compliant scheme or are not material considerations<sup>24</sup>. Of the remainder, none carry significant weight either individually or collectively. Taking each of those in turn:
42. First, a commitment to the early delivery of the site by a major national house builder, and the resultant contribution it would make to the City's five year housing land supply<sup>25</sup>, offers little or no public benefit, for several reasons
  - a) planning permission of course runs with the land and not with the applicant / appellant and therefore absent any specific mechanism that secures early delivery no weight can be put on this simply because it is put forward by a major national house builder
  - b) no specific timescale is provided to define what 'early delivery' means, but it would need to allow time for reserved matters to be submitted and dealt with, for various conditions to be discharged, and no doubt for other practical matters to be dealt with (relating to site infrastructure and services), and;
  - c) the City is able to demonstrate a five year supply of land for housing. With regard to this last point, if it were concluded the City is unable to demonstrate there is a five year supply then in accordance with the Framework's support for housing delivery, weight should be attached to the benefit to be derived from the proposed supply from the appeal scheme, but it should be noted the scale of the undersupply would not be significant and therefore the weight to be attached should not be great.

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<sup>23</sup> Core Document 1.10, paragraph 7.8, bullet points 1, 3, 4, 5, 7 & 8 and Sam Ryan Proof of Evidence paragraph 6.113

<sup>24</sup> Sam Ryan Proof of Evidence, paragraph 6.110

<sup>25</sup> Core Document 1.10, paragraph 7.8, bullet point 2

43. The second suggested benefit is the delivery of houses with four or more bedrooms at a time when the particular need for this type of housing is high<sup>26</sup>. There is little public benefit arising from this because the number of units which would have four or more bedrooms is not specified, so the scale of contribution the appeal scheme would actually make to this supply is not known. Faced with this uncertainty it is not possible to afford this issue more than a little weight.
44. Third, that there are only a handful of locations where development of this type and mix could be delivered<sup>27</sup>. No meaningful weight as a public benefit should be attached to this because no evidence has been put forward to show this.
45. Fourth, provision of public access to the site<sup>28</sup>. There is little public benefit arising from this because some open land should be provided to meet the needs of new residential areas and otherwise the site is not in an area of open space deficiency.
46. Fifth, net gains in biodiversity<sup>29</sup>. This of course is contested by SAP, on which I will say more later.
47. Six, heritage benefits<sup>30</sup>. Sensitive maintenance of the wall would be of some public benefit but the benefit is not great because the safe upkeep of the wall is the responsibility of the owner and there is no public benefit in granting permission to help redress a backlog in maintenance work that is the result of neglect on the part of current and previous owners.
48. Seven, significant benefits to the Liverpool economy<sup>31</sup>. There is little public benefit arising from this because, notwithstanding how much weight it might attract as a material consideration, there is no evidence on the scale of the contribution. Faced with this uncertainty it is not possible to afford this issue more than little weight
49. Eight and last, increased Council Tax and New Homes Bonus<sup>32</sup>. There would be some public benefit from this and it attracts a little weight.
50. Overall therefore there are few public benefits to be derived from the proposed development and collectively they are not considered to amount to the substantial public benefit necessary to outweigh substantial harm to the significance of a heritage asset, under paragraph 133 of the Framework.
51. Paragraph 134 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Were the conclusion to be reached that there would be less than substantial harm, considerable importance and weight must still attach to that harm, in accordance

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<sup>26</sup> Sam Ryan Proof of Evidence, paragraphs 6.109 and 6.111

<sup>27</sup> Sam Ryan Proof of Evidence, paragraph 6.112

<sup>28</sup> Core Document 1.11, paragraph 6.6 and Core Document 1.10, paragraph 7.8, bullet point 6

<sup>29</sup> Sam Ryan Proof of Evidence, paragraph 6.115

<sup>30</sup> Sam Ryan Proof of Evidence, paragraph 6.118

<sup>31</sup> Sam Ryan Proof of Evidence, paragraph 6.116

<sup>32</sup> Core Document 1.10, paragraph 7.8, bullet point 9

with the statutory duty and paragraph 132 of the Framework. In that scenario SAP may maintain the public benefits collectively are still not sufficient to outweigh the harm the appeal scheme would cause.

52. The Inspector is therefore invited to find the appeal scheme is contrary to Policy HD5 of the UDP and that both the statutory duty to preserve the setting of listed buildings and the policies of the Framework support refusal of the applications.
53. To conclude SAPs submission on the heritage issues I refer you back to the closing paragraphs of Miss Gersten's proof of evidence, where as she so eloquently put it

A precious gem may be beautiful in itself, and its beauty enhanced by cutting and polishing, but it is generally agreed that a fine, carefully designed setting, enhances that beauty.

If a chunk of that setting is removed, and the gap filled with totally disparate material, the beauty of the entire jewel will be seriously diminished.<sup>33</sup>

### **The effect on ecology and trees**

54. It has been implied on behalf of the appellant that if the appeal is dismissed the landowner would continue to manage the grassland in a way that would diminish its ecological value; as has been seen in the mowing of the site this year. While we have not heard from the landowner on this matter, it was suggested they would continue mowing the land for three reasons
- they have an aspiration to develop the site
  - mowing prevents the grassland turning to scrub and then woodland, and
  - in light of the two fires (in spring 2016 and spring 2017) the mowing of the grass would be a responsible thing to do.
55. In fact the evidence does not suggest mowing of the land would continue. There is no evidence before this Inquiry that the land had been mown since the current owner purchased the site, until this year, when it was mown twice: once before the site was surveyed by the appellant's ecological consultants in connection with the preparation of their evidence for this Inquiry, and a second time shortly before this Inquiry opened. The current owner acquired the site in 2006 and during most of this time their aspiration to develop the land and the potential for the land to become scrub and then woodland did not lead them to undertake any mowing. Just as there has been minimal if any management of the trees, the woodland and the wall, so there has been little or no management of the grassland. Nor is the mowing a response to the fires. There is no correlation between the fires and the mowing. There was no mowing after the fire in 2016 and the second mowing this year occurred in the autumn, in late September, not in the height of summer, when one might expect there to be a greater risk of fire; though it is worth noting that mowing in August or September, with the right mower settings, could minimise risk from fires and would

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<sup>33</sup> Florence Gersten Proof of Evidence, paragraphs 11.6 & 11.7

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also be beneficial to wildlife conservation<sup>34</sup>. Notwithstanding this, two fires do not represent a persistent pattern. Taking all these matters together, it does not seem likely the mowing undertaken this year would continue if permission were refused.

56. It is the objective of Policy OE5 of the UDP to protect the nature conservation interest of open land<sup>35</sup>. The appeal scheme does not comply with this policy because
- it would destroy, fragment and adversely affect a site the ecological value of which meets the criteria for designation as a local wildlife site (a site of nature conservation value) and
  - it would have an adverse effect on legally protected wildlife species.
57. Furthermore, from the supporting text to policy OE5 it is worth noting the following.
58. People in Liverpool need wildlife not just in isolated nature reserves but as an accessible part of their everyday lives (paragraph 8.55). Wildspaces in the City can bring pleasure and inspiration at a personal level: they can be accessible to people without cars and those on low incomes; they contribute to emotional and psychological well being<sup>36</sup>, recreational value and are an invaluable resource for education (paragraph 8.57). It is the totality and variety of wildlife which adds to people's experience, as well as the individual plants and animals (paragraph 8.55).
59. As the countryside has been altered to accommodate modern agriculture, the relative value of sites with nature conservation value in urban areas has increased. Wildspaces in towns and cities are important to the quality of urban life (paragraph 8.57). Non-statutory sites are important in helping to form a network necessary to protect nature conservation interests (paragraph 8.54).
60. The retention of natural features can also help improve Liverpool's image. By creating a place in which people want to live and work, nature conservation can assist in attracting inward investment and contribute to Liverpool's regeneration. (paragraph 8.56).
61. To return to the policy itself, Policy OE5 is seeking to resist development which would harm Local Wildlife Sites because the designation of land as a Local Wildlife Site is a recognition of the existing and potential biodiversity value of that land. Therefore, even though a site may not yet be formally designated as a Local Wildlife Site, where a site meets the criteria for designation then Policy OE5 should apply, in order to ensure the biodiversity value it is intended to protect, is protected.
62. The appeal site is part of a wider area recognised for its potential to be designated as a Local Wildlife Site (as confirmed by Rachael Rhodes<sup>37</sup>) and in its own right the appeal site has been shown to meet the criteria for designation. Under the MEAS

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<sup>34</sup> Rachael Rhodes, given in evidence (response to question from Inspector)

<sup>35</sup> Core Document 3.1, page 145

<sup>36</sup> Third party statements by Liz Debuissou, Dr Jessica Grabham & Ursula Rigert

<sup>37</sup> Rachael Rhodes Proof of Evidence paragraph 2.2

guidelines the appeal site meets Guideline 'Bf2' on butterfly assemblages and Guideline B5 on bird assemblages.

63. The North Merseyside Local Wildlife Sites Selection Guidelines<sup>38</sup> are not intended to define and limit what is of nature conservation value to only features of interest, such as butterfly or bird assemblages. The Guidelines recognise it is the nature conservation value of the whole site which is important, not just those species of fauna which met specific designation criteria. Indeed, the guidelines are intended to identify the most important botanical sites<sup>39</sup>. Therefore, when trying to assess the ecological value of a site, the presence of a range of fauna is significant not just because specific species of fauna can and do have value in their own right, but because they also perform an important role as indicators of the broader biodiversity value of the site. And that of course must be the right approach because it is the botanical characteristics of a site that establish the range and number of fauna which can be associated with it. The site may have features of interest that relate solely to fauna, as is the case at the appeal site, but to focus only on those fauna and to not also recognise the wider biodiversity value of the habitat that hosts them is to take the value of the fauna out of context, to misapply the guidelines and to fail to correctly value the nature conservation interest of the site.
64. The value of the appeal site therefore is not limited to specific species of fauna in the way the Appellant has suggested (which, almost zoo-like, they seek to accommodate in the smallest area possible). The value lies in the nature and scale of the site as a botanical site and the overall biodiversity value it possesses. One of the aims of the MEAS Guidelines is to enable the identification of those sites which, together with statutory wildlife sites, make the most significant contribution to the conservation of biodiversity in North Merseyside<sup>40</sup>.
65. The significant contribution made by the appeal site to the conservation of biodiversity value is to be found in the nature and the scale of the habitat, comprising principally of broadleaf semi-natural woodland (a priority habitat under section 41 the Natural Environment and Rural Communities Act 2006<sup>41</sup>) and urban grassland (a locally important habitat under the North Merseyside Biodiversity Action Plan<sup>42</sup>), with an 'ecotone' between. These two habitat types do not of course exist in isolation of each other but create a mosaic and the value of such habitat mosaics is generally greater than the sum of its component habitats. It is the juxtaposition of the different habitats within this single site and the movement of wildlife that can therefore take place between them that makes the appeal site so valuable ecologically.
66. While the value of the woodland is not in dispute that of the grassland and of the two habitats in combination, is. The Appellant has in particular under-rated the biodiversity value of the grassland. This type of grassland is locally scarce<sup>43</sup>. The grassland habitat at the appeal site is one of the largest of its type in Liverpool<sup>44</sup> and

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<sup>38</sup> Core Document 8.2

<sup>39</sup> Core Document 8.2, paragraph 1.2

<sup>40</sup> Core Document 8.2, paragraph 2.1

<sup>41</sup> Carlee Graham Proof of Evidence, paragraph 5.11

<sup>42</sup> Carlee Graham Proof of Evidence, paragraph 5.3

<sup>43</sup> Carlee Graham Proof of Evidence, paragraph 5.5

<sup>44</sup> Carlee Graham Proof of Evidence, paragraph 5.10

the largest in the Calderstones / Woolton Green Wedge<sup>45</sup>. It is the overall size of this grassland which is important in sustaining the diversity of species and the size and health of the populations.

67. This is evidenced by the butterfly assemblage. A site will merit designation as a local wildlife site if there are more than nine species present. Between them the various surveys referred to by SAP, the Council and the Appellant record a total of 17 butterfly species (most of the 20 listed in the MEAS guidelines at 'Bf2'<sup>46</sup>). Some of these butterflies are dependent on just the kind of juxtaposition of habitats found at the appeal site to support their full life cycle.
68. Similarly, there is an important relationship for birds created by the juxtaposition of mature woodland and extensive grassland. The woodland and scrub provides nesting sites for bird species while the tall herb and grassland provides foraging areas for these birds, and others. Before the grassland was mown the breeding bird survey conducted by the Appellant recorded 33 species. The survey conducted after the mowing in April this year recorded 25 species<sup>47</sup>. The permanent loss of the expansive area of grassland as a result of the development of the site would be likely to lead to the further loss of breeding birds from the appeal site and potentially from the Green Wedge.
69. As well as the proposed loss of grassland, there would be some harm to the woodland habitat too. The proximity of the proposed development to the woodland and the resulting disturbance and other 'edge' effects likely to result as a consequence of the proposed development would diminish the biodiversity value of the woodland. And there would be some further harm from the interruptions to the continuity in woodland cover resulting from the creation of vehicular access to the site.<sup>48</sup>
70. This mosaic of habitats on site helps support a wide range of bird species in the area, including a number which are amber or red listed 'birds of conservation concern'<sup>49</sup>, and one of which, the barn owl, is a Schedule One, Part 1 bird species, under the Wildlife and Countryside Act 1981. The inclusion of the barn owl on this schedule is a recognition by the government that it is a species that requires protection by special penalties, that is, additional measures above and beyond those that apply to other birds not in part one to that schedule. As Miss Graham pointed out, there are thought to be less than 3,000 breeding pairs in the country<sup>50</sup>. As a species with protection under the Wildlife and Countryside Act, it is subject to Policy OE5 of the UDP, which sets out that development which would have an adverse effect on legally protected wildlife species will not be permitted.
71. The Inquiry has been provided with evidence that barn owls nested within the Green Wedge, near to the appeal site, in 2016<sup>51</sup>. Miss Graham gave evidence that barn

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<sup>45</sup> Rachael Rhodes Proof of Evidence, paragraph 6.9

<sup>46</sup> Core Document 8.2, table at paragraph 9.4

<sup>47</sup> Francis Hesketh Proof of Evidence, paragraph 4.5

<sup>48</sup> Rachael Rhodes Proof of Evidence, paragraph 6.17

<sup>49</sup> Rachael Rhodes Proof of Evidence, Table 1

<sup>50</sup> Carlee Graham Proof of Evidence, paragraph 5.2

<sup>51</sup> Records of barn owl breeding sites, note of agreement between TEP and MEAS, 22 Nov 2017

owls had bred at the appeal site, referring to sightings of two adults and one juvenile<sup>52</sup>, and she had said elsewhere that barn owls had been there for several years and had bred<sup>53</sup>. The combination of extensive rough grassland that suits the feeding pattern of the barn owl and mature trees that can suit the nesting requirements of the barn owl makes the site attractive to breeding pairs. But to sustain a breeding population in the area requires there to be sufficient food source available for them<sup>54</sup>. The rough grassland at the appeal site and the extent of that rough grassland means the site is critical to providing enough suitable habitat in the area to ensure there is sufficient food source available to sustain a breeding population<sup>55</sup>. Apart from part of Simpsons Ground, other sites in the area may include some rough grassland but only at their margins, if at all. It has not been shown that these other areas are either quantitatively or qualitatively enough (or would be with the open space the Appellant proposes to retain at the appeal site) to sustain a breeding population in the absence of the main food producing source provided by the current extent of grassland at the appeal site.

72. It is therefore highly probable the extent of the loss of rough grassland that would result from the appeal scheme would lead to the loss of the barn owl from the appeal site and from the Green Wedge, and probably from south Liverpool. This impact on the barn owl population would be an adverse effect on a legally protected species, contrary to the requirements of Policy OE5.
73. It is the loss of this extensive area of grassland that also puts the appeal scheme in conflict with the other requirement of Policy OE5 because it would destroy, fragment and adversely affect a site the nature conservation value of which is sufficient to merit its designation as a Local Wildlife Site.
74. The very much smaller area of grassland proposed to be retained in the Landscape Plan, put forward in Mr Hesketh's Proof of Evidence, simply does not offer something of equivalent scope and nature as mitigation to off-set the loss of the extensive existing grassland.
75. Nor would the impact on biodiversity value be addressed by the off-site compensation offered, (when considered in conjunction with the proposed on-site mitigation). No suitable alternative site has been found where it is possible with confidence to say the compensation would deliver the objectives being set for it by the Appellant. The Appellant expects the Council to revise the management of one or other of its sites to cater for the expenditure of the off-site compensation funds. There is no indication the Council would be ready, willing or able to do so. These are existing Council facilities with no doubt existing management plans intended to ensure each site is managed to respond to the demands and pressures placed upon it. There is no obligation on the Council to change the way it manages a public park just so as to accommodate a private developer. There is no mechanism by which to secure the co-operation of the Council and it is SAP's position that it cannot be assumed the Council would co-operate or would use the funds as intended (there being no obligation on them to do so). In short, the Appellant is unable to show there

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<sup>52</sup> Given in evidence by Carlee Graham

<sup>53</sup> Rachael Rhodes Proof of Evidence, Appendix 3, email from Carlee Graham (29 June 2016)

<sup>54</sup> Carlee Graham Proof of Evidence, Appendix CG17

<sup>55</sup> See Rachael Rhodes Proof of Evidence, Appendix 2, Figure 1

## **Land at Woolton Road, Allerton, Liverpool**

is a reasonable prospect of delivery of the off-site compensation because they cannot show they have a willing landowner with suitable land, nor that if the funds were handed over that they would deliver even the limited benefits intended.

76. Notwithstanding these concerns about the mitigation and off-site compensation, even if successful, in combination they could not address the impact on biodiversity value arising from the proposed loss of an existing area of grassland of such extent. This is because the combination of quantity and quality that could be provided by the small area proposed to be retained, together with the off-site compensation, could not adequately compensate for the combination of quantity and quality that is provided by the current extent of grassland, in a single location<sup>56</sup>.
77. The proposed on-site mitigation and off-site compensation would be insufficient to off-set the harm identified. Therefore, having taken full account of the proposed mitigation measures the appeal scheme remains contrary to Policy OE5.
78. With respect to Policy OE6, despite the Appellant commissioning further surveys this year, the findings are flawed because the surveys were undertaken after the site had been closely mown. SAP maintain those surveys would not therefore have provided a truly representative picture of the ecological value of the grassland and therefore of the appeal site as a whole. This has led the Appellant to under-state the ecological value of the site and consequently their proposals for the protection and management of the nature conservation interest of the site do not adequately engage with and respond appropriately to that interest. Minor adjustments to the appeal scheme could not resolve this. There is a fundamental conflict between the scale of development proposed and its impact on the scale of the grassland which is of significant biodiversity value. The on-site mitigation, which could be secured by planning condition, and the off-site compensation, which it is proposed could be secured by means of a planning obligation (in the form of a unilateral undertaking), would not and could not provide compensatory measures equal to or reasonably equivalent to the loss arising from the damage and destruction the development would cause to the nature conservation interest of the appeal site. The appeal scheme remains contrary to Policy OE6.
79. And with regard to Policy OE7, SAP maintain that far from the appeal scheme constituting a proposal that would enhance nature conservation interest, it is contrary to Policy OE7 because the net effect of the development would be to harm the nature conservation interest of open land in the City.
80. In addition to this conflict with the saved policies of the UDP, the appeal scheme also fails to comply with the requirements of the Framework
  - the net effect of the adverse effects on the natural environment would be to diminish and not to conserve and enhance the natural environment, contrary to paragraph 17, bullet point 7, paragraph 109 and paragraph 110
  - the harm cannot be adequately mitigated or compensated and even with the measures proposed by the Appellant would remain significant , resulting in the

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<sup>56</sup> Rachael Rhodes Proof of Evidence, paragraph 6.48 and given in evidence



loss of a locally irreplaceable habitat. This harm is not outweighed by the suggested benefits put forward by the Appellant and as such the scheme is contrary to paragraph 118

- the appeal scheme would accelerate rather than halt the overall decline in biodiversity, contrary to paragraph 109, bullet point 3, and
- the Appellant has not shown that no land of lesser environmental value is available and as such the appeal scheme is contrary to paragraph 17, bullet point 5.

81. An assessment against the Framework, a material consideration of significant weight, suggests planning permission should be refused.
82. And finally, the net harm the appeal scheme would cause to biodiversity puts it in conflict with the statutory duty to conserve biodiversity, under section 40(1) of the Natural Environment and Rural Communities Act.
83. The conflict with the Framework and with the statutory duty lends significant weight to the decision to refuse planning permission as a result of the conflict with the UDP.
84. The following quote from the MEAS guidelines sums up though why it is more than just a conflict with planning policy that makes it important to protect sites such as this.

“Any losses of these [Local Wildlife] sites would be regarded as significant beyond the immediate locality, and would be difficult or impossible to replace for all practical purposes. The survival and conservation of Local Wildlife Sites is a key indicator of sustainable development. Land use planning provides a major opportunity to protect these sites from development.”<sup>57</sup>

### **The effect on the character, appearance and recreational function of the Green Wedge**

85. The appeal site land is designated as green space and as Green Wedge. Before turning to those issues raised by the Green Wedge status consideration should be given to those raised by its green space status.
86. Policy OE11 seeks to protect areas of green space for their contribution to the character and environmental quality of the City, for their importance in maintaining an open feel in the built-up environment and for providing breaks in the urban fabric for the benefit of the City's residents. Attractive open areas along transport corridors also enhance the overall image of the City.<sup>58</sup>
87. The Policy therefore sets out that permission will not be granted unless the proposed development can be accommodated without material harm to a range of criteria that reflect the protection of those objectives.

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<sup>57</sup> Core Document 8.2, paragraph 2.2

<sup>58</sup> Core Document 3.1, paragraph 8.134.

88. The first of these criteria relates to the recreational function of the Green Space; and it is worth noting at this point Policy OE3 also has this as one of its functions. The Appellant disputes that the land serves any recreational function. However, from the evidence of Chris Hulme, and from third parties who have addressed the Inquiry, it is clear that members of the public do and have used the land for recreational purposes for some considerable time, albeit without the consent of the landowner. The policies are silent as to whether the recreational function must be with the consent of the landowner. SAP submits the absence of consent does not mean the use made of the site for recreational purposes should be set aside and disregarded. The law does not condemn peaceful trespass, as can be seen from its approach to the establishment of town green status, which can only be secured when land has been used by the public as of right, that is without the consent of the owner, for a period of time. If the law is prepared to accept that peaceful trespass can lead to the establishment of legitimate rights of access, there is nothing to prevent the conclusion being reached here that the recreational use being made of the appeal site by members of the general public brings the appeal site within the scope of those elements of Policy OE11, and also Policy OE3, that relate to sites used for recreational purposes.
89. And some of the use made of the site as described in the evidence before this Inquiry falls into the category of recreation: dog walking<sup>59</sup>, children's play<sup>60</sup>, flying and training captive birds of prey<sup>61</sup>, running<sup>62</sup>, walking<sup>63</sup> (particularly to enjoy the rural quality and the encounters with local wildlife that the site offers) and surveying the flora and fauna<sup>64</sup>. The site is clearly used for recreational purposes.
90. The second criteria set down in the policy relates to the visual amenity value of the green space. Again, the evidence of Chris Hulme and the numerous local residents who have spoken as third parties testifies to the value the local community place on the vistas into and across the site, the importance of the presence of the site to them and of the trees and open grassland in particular. The vistas available into and across the site from the surrounding area will have been seen on the site visits. They are extensive and in many cases far reaching and there can be no doubt the proposed development would remove completely the views currently available and replace them with views of the housing development and or the invasive screen planting proposed by the Appellant, which would cause nearly as much harm as the proposed built development.
91. The third criteria relates to the importance of the relationship to adjoining green spaces and in the vicinity of the appeal site you can see there are a number of other green spaces adjacent to the site<sup>65</sup>. The most significant relationships are with the

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<sup>59</sup> Chris Hulme Proof of Evidence, paragraph 2.5 and third party statements by Dr Jessica Grabham & Eunice Huthart

<sup>60</sup> Chris Hulme Proof of Evidence, paragraph 2.2 and third party statements by Sue Earl and Dr Jessica Grabham & Rachel McCormack

<sup>61</sup> Chris Hulme Proof of Evidence, paragraph 3.4

<sup>62</sup> Third party statement by Stephen Hopley

<sup>63</sup> Third party statements by Nick Bennett, Mark Philips, Sue Earl, Jane Clarke, Dr Jessica Grabham, Eunice Huthart, Ursula Rigert, Nancy Lindsay, Rachel McCormack

<sup>64</sup> Rachael Rhodes Proof of Evidence, Appendix 3, Email from Carlee Graham

<sup>65</sup> Core Document 3.1, Figure 8.8 on page 165

rest of the grounds of Allerton Priory and with Clarke Gardens to the south. With both of these areas there is a strong visual relationship based on mutual intervisibility, which creates a strong sense of the overall scale of green space in the area.

92. The fourth criteria relates to the nature conservation value of the land, the harm to which by the appeal scheme has already been established in relation to Policy OE5.
93. The appeal scheme does not comply with the requirement of Policy OE11, to protect green space, and nor therefore can it comply with Policy OE12, to enhance green space.
94. Paragraph 73 of the Framework supports access to high quality open spaces and opportunities for recreation for the contribution they make to the health and well-being of communities. The site presently clearly fulfils this purpose and its loss, or at least the significant diminishment of the scale, scope and quality of what it offers, would be contrary to this Framework objective. Paragraph 70 says the unnecessary loss of valued facilities should be avoided. The views expressed by the third parties to this Inquiry demonstrate the open space provided by the appeal site is a valued facility and its loss would therefore be contrary to paragraph 70.
95. While paragraph 74 of the Framework allows for the development of open space subject to certain criteria, those are not met in this instance<sup>66</sup>.

### Green Wedge

96. Finally, with respect to the relevant UDP policies, there is Policy OE3. I have already made submissions relating to the heritage interests and the ecological value of the site, and those apply equally to Policy OE3. I have also already made submissions relating to the recreational value of the site and to some aspects of its character and appearance, and those also apply equally to Policy OE3. Policy OE3 though raises some additional issues not already covered.
97. The first such issue is the protection of the predominantly open character of the Green Wedge. All the parties accept the appeal scheme would result in the loss of an area that is currently open<sup>67</sup>. The Appellant goes on to seek to dismiss it on the basis of what proportion the appeal site represents compared to the overall area of the Green Wedge<sup>68</sup>. This argument seeks to distract from the plain and simple objective of the policy which is to maintain the Green Wedge as predominantly open land, that is to say, devoid of built form. The policy does not set out that only a proportion of the Green Wedge needs to be kept open nor that some perception of openness is more important than actual openness. The policy is clear: it is actual openness that must be protected. The scale and character of the appeal scheme is fundamentally incompatible with that objective.
98. The other conflicts with Policy OE3 serve to reinforce the harm arising from this initial, fundamental conflict. The proposed development would reduce the physical

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<sup>66</sup> Adrian Thompson Proof of Evidence, paragraph 10.46

<sup>67</sup> Sam Ryan Proof of Evidence, paragraph 5.9

<sup>68</sup> Sam Ryan Proof of Evidence, paragraph 5.9, bullet point 2

separation between existing built up areas. Again, this is accepted by all sides, but the Appellant seeks to argue this does not matter because of the extent of the land remaining<sup>69</sup>, just over 500 metres by their estimate. But there is no support for such an approach in the Policy, which is clear that any reduction in physical separation should not secure planning permission. The appeal scheme is therefore clearly in conflict with this aspect of the Policy.

99. Notwithstanding the fundamental conflict with Policy OE3, the appeal scheme would also fail to comply with the criteria which new development in the Green Wedge, if it is to be permitted, must meet<sup>70</sup>.

100. The Policy says proposals which would enhance the recreational role of the Green Wedge would be supported. SAP submit the recreational value offered by the proposed development is unlikely to represent an enhancement compared to the existing recreational use made of the site<sup>71</sup>.

101. As well as providing a physical and visual break between major residential areas and helping to ensure the City can continue to offer high quality environments<sup>72</sup>, the supplementary text to the Policy identifies other important functions the Green Wedges provide<sup>73</sup>. The appeal site fulfils these other important functions<sup>74</sup>

- it affords a valuable amenity for a large number of people
- it provides diverse recreational opportunities
- it provides a mature ecological environment
- it is the setting to and part of the curtilage of a building of historic interest, and
- it contributes to the creation of the parkway approach to the City along Woolton Road.

102. The proposed development of the appeal site for housing puts the appeal scheme into direct conflict with these additional functions of the Green Wedge.

103. There is no aspect of Policy OE3 with which the appeal scheme is able to secure any appreciable compliance.

104. There is no specific mention in the Framework of 'green wedges' but this does not mean such local plan policies are not in accordance with the Framework. The objectives pursued by Policy OE3 are in accordance with various policies in the Framework

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<sup>69</sup> Sam Ryan Proof of Evidence, paragraph 5.14

<sup>70</sup> Adrian Thompson Proof of Evidence, paragraphs 11.14 to 11.22

<sup>71</sup> Adrian Thompson Proof of Evidence, paragraph 11.25

<sup>72</sup> Core Document 3.1, paragraph 8.24

<sup>73</sup> Core Document 3.1, paragraph 8.25

<sup>74</sup> Adrian Thompson Proof of Evidence, paragraphs 11.31 to 11.44

## Land at Woolton Road, Allerton, Liverpool

- Paragraph 17, bullet points 5 and 7, on taking account of the different roles and character of different areas and on conserving and enhancing the natural environment
- Paragraph 73, on promoting health and well-being
- Paragraph 74 on protecting open space
- Paragraph 114 on planning positively for biodiversity and green infrastructure
- Paragraph 117, bullet point 3, on promoting the preservation of priority habitats, ecological networks and priority species
- Paragraph 110, on steering development to land of lesser environmental value, and
- Paragraph 109, bullet point 1, on protecting and enhancing valued landscapes.

105. The latter merits some detailed consideration. According to the Table provided at Appendix 1 to Mr Grimshaw's Appendices (on 'Method for Valuing Landscape'<sup>75</sup>) the most appropriate classification for the appeal site should be as a landscape of local value; and not one of 'community value', as Mr Grimshaw has stated.<sup>76</sup> SAP has presented evidence<sup>77</sup> on the degree to which the appeal site meets the criteria given in the Landscape Institute's guidance on landscape and visual impact assessment on the identification of valued landscapes<sup>78</sup>. SAP submits the appeal site should be treated as a valued landscape, for the following reasons

- There is evidence before the Inquiry that the appeal site forms part of the parkland and part of the curtilage to a Grade II\* listed building, and is part of its setting. The structure of the landscape, a combination of walled outer boundary and tree belts that both reinforce the line of the perimeter and frame the extensive open grassland areas within, contributes to the overall value of and understanding of the heritage asset. The landscape therefore has a historic conservation interest.
- There is evidence before the Inquiry that the appeal site possesses sufficient type and variety of fauna that it meets the criteria for designation as a Local Wildlife Site. The structure of the landscape, a combination of woodland, broad open grassland and the transition zone between the two, provides a mosaic of environments that supports a rich variety of fauna and therefore contributes to the site's importance for wildlife. The landscape therefore has wildlife conservation interest.

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<sup>75</sup> Ian Grimshaw Proof of Evidence, Appendix 1

<sup>76</sup> Ian Grimshaw Proof of Evidence, paragraph 3.73

<sup>77</sup> Adrian Thompson Proof of Evidence, paragraphs 11.51 to 11.56

<sup>78</sup> Ian Grimshaw Proof of Evidence, Appendix 3

## Land at Woolton Road, Allerton, Liverpool

- Through the evidence of Mr Hulme and other accounts from third parties, it is clear the landscape is valued by residents.

106. Mr Grimshaw assessed the appeal site land against the criteria provided by the Landscape Institute for assessing the value of a landscape<sup>79</sup>. SAP disagree with that assessment because

- When setting out to describe landscape quality Mr Grimshaw actually described different management regimes<sup>80</sup>, not landscape quality.
- His conclusion the scenic quality is not more than fair rests on his opinion the scenic quality is diminished by not having views with focus or (more) views that are publicly accessible but it is not part of the Landscape Institute guidance that views need have focus or be publicly accessible to be important<sup>81</sup>.
- His evidence on rarity and representativeness compares the characteristics of the appeal site with other nearby parts of the Green Wedge<sup>82</sup>. It is SAP's submission the landscape of the appeal site is distinctively different to those other sites and indeed it has not been shown to be like any other site in Liverpool. It is also SAP's submission to you that the site is the only remaining example of a complete Merchant Prince's estate, linked to a grade II\* listed building, and is therefore a landscape that embodies a particular character and particular features which are especially important to maintaining the integrity of the site as an example of that period in Liverpool's social and economic history. The landscape therefore has importance as a representative landscape of that period.
- Mr Grimshaw's evidence on conservation interests relied on an assessment based on what he considered to be 'perceptual aspects', which he applied to the historic conservation aspect; he made no assessment of the wildlife conservation interest<sup>83</sup>. It is SAP's submission to you that the natural and cultural features of the site do make a contribution to the landscape, in particular: the mosaic of woodland, grassland and transitional zones that provide the valuable wildlife habitat, and; the woodland / grassland structure of a parkland that is two hundred years old and is linked to a grade II\* listed building.
- Mr Grimshaw asserts the site has no recreation value<sup>84</sup>. SAP submit it does have, as you have heard from Mr Hulme and from various third parties. It is SAP's submission to you that as of a matter of fact the land has been and continues to be used for recreational purposes by the public and the landscape is therefore valued for recreational activity and furthermore the experience of the landscape has been an important part of that.

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<sup>79</sup> Ian Grimshaw Proof of Evidence, paragraphs 3.65 to 3.72

<sup>80</sup> Ian Grimshaw Proof of Evidence, paragraph 3.65

<sup>81</sup> Ian Grimshaw Proof of Evidence, paragraph 3.66

<sup>82</sup> Ian Grimshaw Proof of Evidence, paragraphs 3.67 and 3.68

<sup>83</sup> Ian Grimshaw Proof of Evidence, paragraph 3.69

<sup>84</sup> Ian Grimshaw Proof of Evidence, paragraph 3.70

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- Mr Grimshaw asserts the site has no perceptual aspects or qualities of importance<sup>85</sup>. SAP submit this is again contradicted by Mr Hulme and from various third parties who have testified to the tranquillity and wildness of the site. It is SAP's submission to you that tranquillity is one of the most significant qualities the site possesses, made all the more valuable because the site lies wholly within the City. The wild quality the site has acquired in recent years has further added to its importance, again, especially because of the site's location wholly within the City.
- Mr Grimshaw considered the site to have no significant associations<sup>86</sup>. SAP submit this is contradicted by other witnesses who have testified to, in particular, the important association with nationally notable, Liverpool born architect Alfred Waterhouse, who positioned his architectural creation to take advantage of the relationship between house and parkland that the site offered, and with the Liverpool born Merchant Prince and City Mayor, John Grant Morris.

107. In summary, it is SAP's submission the landscape of the appeal site satisfies the criteria at Box 5.1 of 'GLVIA3' and at the second bullet point under paragraph 5.29<sup>87</sup> of the Guide, and that it is therefore a highly valued landscape and a valued landscape for the purposes of paragraph 109, bullet point 1 of the Framework.

108. The Landscape and Visual Impact Assessment submitted with the application concluded that landscape effects of moderate adverse significance only would be experienced on the site, the roads immediately adjacent and from the northern part of Clarke Gardens<sup>88</sup>. Mr Grimshaw agreed with this<sup>89</sup>. It is SAP's submission to you that this understates the magnitude of the effect. Having regard to Table 4 on 'significance of effects' on page 9 of Appendix A to the original Landscape and Visual Impact Assessment submitted with the application, SAP notes the proposed development would

- be at complete variance with the landform, scale and pattern of the landscape
- would variously permanently degrade, diminish or destroy the integrity of valued characteristic features and or their setting; and
- would substantially damage a high quality, highly valued landscape.

109. As such it is SAP's submission to you that the proposed development would in fact result in an effect of major adverse significance.

110. The same Landscape and Visual Impact Assessment submitted with the application concluded that effects on the landscape character of Allerton Priory would be of

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<sup>85</sup> Ian Grimshaw Proof of Evidence, paragraph 3.71

<sup>86</sup> Ian Grimshaw Proof of Evidence, paragraph 3.72

<sup>87</sup> Ian Grimshaw Proof of Evidence, Appendix 3

<sup>88</sup> Core Document 1.13, paragraph 10.1

<sup>89</sup> Ian Grimshaw Proof of Evidence, paragraph 5.6

minor adverse significance<sup>90</sup>. Mr Grimshaw agreed with this<sup>91</sup>. However, this was based on the assumption Allerton Priory would remain enclosed by the same level of tree cover it has today. This level of cover is relatively recent and it is not possible to say whether or for how long it would be retained in future. If the grounds were restored to be in keeping with the original vision for the house then the result of the effects of the development on Allerton Priory would be of major adverse significance.

111. The assessment of the original application and that provided by Mr Grimshaw to this appeal, consistently underrate the significance of the views and of the magnitude of the impact of the development on those views. As can be seen from the surrounding area, on site and from the numerous photographs of the site taken over the years and submitted by all the parties, there have been and there remain significant views into, across and out of the site.
112. Having regard to Table 7 on 'criteria for assessment of magnitude on effect on views' on page 16 of Appendix A to the original Landscape and Visual Impact Assessment submitted with the application, it is SAP's submission the evidence presented to the Inquiry demonstrates that as a result of the development of the site for housing there would be a major alteration to the existing views experienced by walkers using the northern part of Clarke Gardens, users of Allerton Road and users of Woolton Road. The residential development would introduce elements totally uncharacteristic in the current view. This would be obvious when in close proximity on Allerton Road and Woolton Road, and from further away, in Clarke Gardens. Visual effects of high adverse magnitude would be experienced by walkers using the northern part of Clarke Gardens, Allerton Road and Woolton Road; not moderate adverse, as stated by Mr Grimshaw<sup>92</sup>.
113. Views from Allerton Priory house itself would be similarly affected and would also experience high adverse effects, again not moderate adverse as stated by Mr Grimshaw<sup>93</sup>.
114. Having regard to paragraph A.59 to Appendix A to the Planning Application LVIA, the assessment underrates the sensitivity of travellers on Woolton Road who should be treated as of medium rather than low to medium susceptibility to change because of the level of traffic carried on Woolton Road, and because it is a recognised tourist route where awareness of views is likely to be higher ('The Beatles' related 'Magic Mystery Tour'<sup>94</sup>). The development would result in moderate adverse effects on their experience of the site.
115. The Appellant's solution to the impact of the housing development on landscape and on views is to screen the development behind more planting. This however would do nothing to mitigate the principal harm which is the loss of the open space and of views of that open space.

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<sup>90</sup> Core Document 1.13, paragraph 10.2

<sup>91</sup> Ian Grimshaw Proof of Evidence, paragraph 5.8

<sup>92</sup> Ian Grimshaw Proof of Evidence, paragraph 5.12

<sup>93</sup> Ian Grimshaw Proof of Evidence, paragraph 5.15

<sup>94</sup> Chris Hulme Proof of Evidence, paragraph 5.5



116. The categorisations of significance should each be one category higher than those set out by Mr Grimshaw<sup>95</sup>. SAP submits that

- the landscape in and around the application site is of more than local value
- is of more than medium susceptibility to change, and
- the local landscape is of more than medium sensitivity.

117. And also

- the landscape effects on site would be more than moderate adverse
- the effect on the landscape of Allerton Priory would be more than minor adverse, and
- after 15 years the local landscape would still experience more than minor adverse effects.

118. Views from the surrounding area comprise of more than sandstone walls and the associated boundary tree belt, important though those are. They also comprise views into and across the site, which we have shown still exist and until the land came under the control of the co-appellant were much more open. Seeking to screen the houses with trees and shrubs would not address the harm from the loss of the views of the open space.

119. The Landscape and Visual Impact Assessment and Mr Grimshaw's evidence have both very significantly understated the contribution the open space on the appeal site makes to the quality and character of the landscape, and therefore to the landscape's susceptibility to change. Notably, there is a failure to recognise the significance of the wider context to the site, namely that it exists within the urban context of south Liverpool. In this context landscape of this type and character has added value.

120. Open space like this in the City is a rare commodity, the supply is limited and once it is gone, it is gone forever. As the City does grow again more weight, not less, should be placed on the value sites such as this offer, sites that form part of and contribute to a network of multi-functional green space, capable of delivering a wide range of environmental and quality of life benefits for local communities.

### **Planning balance and conclusion**

121. The cases presented to you by the Council and SAP show how the proposed development conflicts with the Saved Policies of the UDP, with respect to heritage, ecology, green space and the Green Wedge. The appeal scheme therefore is not in accordance with the Development Plan and planning permission should be refused unless there are material considerations that indicate otherwise.

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<sup>95</sup> Ian Grimshaw Proof of Evidence, paragraphs 5.12 to 5.22

122. With respect to whether there are any material considerations that may indicate otherwise, there are essentially two propositions to consider. The first of these rests on whether there is a five year supply of land for housing and the second on the weight to be attached to a range of benefits the Appellant says arise from the scheme<sup>96</sup>.

*If there is no five year supply of land for housing.*

123. If it is concluded the Council cannot demonstrate a five-year supply of deliverable housing sites then in accordance with national planning policy at paragraph 49 of the Framework, relevant development plan policies for the supply of housing should not be considered up to date. Where relevant policies are out of date, the second bullet point under the section on decision taking in paragraph 14 of the Framework comes into effect. It effectively establishes a presumption in favour of granting permission, unless either

- any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
- specific policies in the Framework indicate development should be restricted (whereupon reference is then made to a footnote giving examples of the circumstances where this might apply).

124. Both of these two types of circumstance apply in this case.

125. First, the benefits the Appellant has put forward for the appeal scheme have already been commented on in relation to whether they outweigh the harm to heritage. Taking account of them again now and weighing them against the severity of the harm SAP say the appeal scheme would cause to heritage, ecology, green space and the Green Wedge, the adverse impacts of granting permission would significantly and demonstrably outweigh those benefits, when assessed against the policies in the Framework taken as a whole.

126. Second and furthermore, there is a specific policy in the Framework that indicates development should be restricted in this case. One of the examples given in the footnote to paragraph 14 is where there are policies that relate to designated heritage assets. The substantial harm the appeal scheme would cause to the significance of the Grade II\* listed building Allerton Priory (which harm is not outweighed by the public benefits the appeal scheme would provide) puts the appeal scheme in conflict with paragraph 133 of the Framework.

127. Therefore, the presumption under paragraph 14 of the Framework in favour of granting permission does not come into effect in this case.

128. There are two other scenarios where the presumption under paragraph 14 can come into effect: where the development plan is absent or silent. Neither of those is applicable to this case because a development plan is present in the form of the

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<sup>96</sup> Sam Ryan Proof of Evidence, paragraph 8.14

Saved Policies of the UDP, and that plan is not silent because there are policies in it that have been relevant to the issues raised by the appeal scheme, and indeed are the basis of the reasons for refusing planning permission.

### *If there is a five year supply of land for housing*

129. Turning now to the second proposition, under which it is concluded the Council can demonstrate a five-year supply of deliverable housing sites, the question is whether the benefits put forward by the Appellant constitute material considerations of sufficient weight to justify a decision other than in accordance with the development plan. This is weighing again the benefits against the harm to heritage, ecology, green space and the Green Wedge and again the conclusion is that the adverse impacts of granting permission would outweigh those benefits, and indeed would do so significantly and demonstrably.
130. The existence of the permission for the equestrian centre development is accepted to be a material consideration but no meaningful weight should be attached to it. If weight and even significant weight were to be attributed to it the appeal scheme by comparison would cause far greater harm and is in far greater conflict with the Development Plan, relevant statutory duties and the Framework. The equestrian centre therefore is not a material consideration that could justify a decision other than in accordance with the Development Plan.
131. Therefore, there are no material considerations of sufficient weight to indicate a decision should be made other than in accordance with the Development Plan.

### *The Listed Building appeal*

132. Turning to the Listed Building appeal, SAP has set out why it considers the boundary wall to be a curtilage listed structure for which Listed Building Consent is required for the alterations proposed in the appeal scheme<sup>97</sup>.
133. The proposed works would fail to preserve the fabric and integrity of the boundary wall. The proposed housing development does not provide clear and convincing justification for this harm, and absent planning permission for the housing development there would be no proposed justification for the works to the boundary wall.

### *To conclude*

134. There would be clear and specific harm to a number of matters of importance
- to the significance of heritage assets
  - to nature conservation and biodiversity
  - to the functions green space serves, and

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<sup>97</sup> Adrian Thompson, evidence in chief speaking notes

## **Land at Woolton Road, Allerton, Liverpool**

- to the purposes of the Green Wedge.

135. The avoidance of this harm and the associated conflict with the Development Plan should be paramount. Taken together the balance of other considerations, including the statutory duties and the policies of the Framework, support a decision in accordance with the Development Plan.
136. Accordingly the Inspector is respectfully requested to dismiss the appeals and to refuse planning permission and listed building consent.

Adrian Thompson MRTPI  
23 November 2017