s.78 Appeal
PINS REF: APP/Z4310/W/16/3166010
LPA REF: 16O/1191

Listed Building Appeal
PINS REF: APP/Z4310/Y/17/3171487
LPA REF: 16L/2392

APPEAL BY REDROW HOMES NW & ALLERTON LLP
RE: LAND AT WOOLTON ROAD, LIVERPOOL

CLOSING SUBMISSIONS

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1. Introduction

1.1. In Opening it was anticipated that the Inquiry would hear passionate arguments about the importance of the Appeal Site as a parcel of land whose loss will have a detrimental impact upon the City. That anticipation came to pass and SAP and the other local people who have presented to this Inquiry are to be commended for the great strength of feeling they have about their local area. However, as we said in opening, in determining this appeal, it must be done through the prism of judging the land use merits of the proposal in the context of the relevant planning policies which needs to be done dispassionately weighing the positive and negative implications of the proposals. When that it done it is emphatically submitted that those passionately expressed arguments are misguided, and the appeal should be allowed.

1.2. The NPPF introduction states:

"In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities.
This National Planning Policy Framework changes that. By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we

are allowing people and communities back into planning."

It is through policy that residents' objections need to be considered, and strength of feeling no matter how genuinely held is not a material consideration.

1.3. In reality, the appeal scheme will demonstrably benefit the local planning area. In particular, the proposals will make an important contribution towards meeting the deliverable 5 YHLS and provide a much needed form of family housing that is required to help diversify the City's housing stock, an aim that has been long recognised by the City and its Councillors to be of great importance. Locally the scheme will enhance public recreation, open space provision and will provide existing residents with a view of the very top of Allerton Priory that isn't currently available since access to the Appeal Site is currently private. The grant of permission for the appeal scheme will mean it becomes public; it will also result in repairs to the boundary wall.

2. "Curtilage or not Curtilage" that is the question

2.1. Much Inquiry time has been dedicated to the topic of whether or not the boundary wall constitutes a listed structure, including the unexpected addition from Mr Thompson during his examination in chief. Thankfully the relevant law is agreed, as between the lawyers and to this end the Inspector is directed to GI's appendix 3.

2.2. Two potential mechanisms have been put forward by which the boundary wall could be argued to be a listed structure. The first is that it falls within the curtilage of Allerton Priory and is therefore listed in accordance with s.1(5)(b). The second is that as it is a structure fixed to Allerton Lodge it is listed by virtue of s.1(5)(a). The Council contends that pursuant to the first mechanism the entirety of the wall is listed, in the alternative they say that pursuant to the second mechanism the boundary wall is listed up to the corner Allerton Road and Woolton Road.

2.3. When one approaches this issue through the correct legal framework and in a rational manner it is clear that the Council and SAP's contentions are wrong. JH's assertion that as a result of the walls connection to the Lodge it is listed through to the corner

of Allerton Road and Woolton Road lacks logic or justification, he has simply chosen an arbitrary point to terminate the listing.

2.4. By contrast, GI explained that, whilst it is not easy to determine the precise extent of listing by reason of the wall being affixed to the Lodge and it is a matter of judgment, he was of the view that the extent of the listing was the designed features of the boundary wall up to the gate post. His judgment is well justified, this section of the wall is designed indicating that it is of a greater significance than the rest of the wall, the gate post represents a break between the designed and un-designed part of the wall. This distinction is plain to see when one looks at the boundary wall around the lodge. There is an interesting designed feature and then beyond the gate post there is a uniform boundary wall with no notable features. The designed feature is evidently associated with the lodge, the wall beyond it is not. Once the boundary wall reaches the corner of Allerton Road and Woolton Road there is no change in the nature or the structure of the boundary wall, it simply continues as before. There is no logical or other reason to suggest that the listing should terminate here. GI's judgment must be preferred on this point.

2.5. The Council's argument, latterly embraced by SAP, that the entirety of the boundary wall should be listed is similarly without justification. It appears to be built on the premise that the boundary wall can be seen as demarking the boundary of high profile estate/house, it embraces land functionally related to the house and as such it is therefore within the curtilage of Allerton Priory. Such an argument does not hold up to scrutiny. In XX DMQC drew GI's attention to *Lowe v First Secretary of State and another* [2003] 1 PLR 81. *Lowe* is the case in which the court concluded that the curtilage of the building in question "cannot possibly include the whole of the parkland setting in which Alresford Hall lies, nor the driveway along which the fence was erected.". The facts of that case contrary to DMQC's suggestion, in fact strongly support GI's contention that the curtilage of Allerton Priory does not include the boundary wall.

2.6. The appellant in *Lowe* owned the Grade II listed building Alresford Hall, near Colchester. The hall had a 650m drive along which the appellant erected a 1.8m high chain-link fence without obtaining an express grant of planning permission. The LPA

took enforcement action against this. At appeal the appellant argued the fence was permitted development as it was not within the curtilage of the hall, the Inspector determining the appeal disagreed. In allowing the appeal in the High Court, Sir Richard Tucker stated that the Inspector had placed undue weight on the fact that the hall and drive were in the same ownership. Whilst ownership could be a factor to take into account when considering the extent of curtilage, it was not a determinative factor. The nature of the building and land in question in *Lowe* has clear similarities to those in question here and as with the drive in *Lowe* the inescapable conclusion is that the boundary wall is not part of the curtilage.

2.7. Here, Allerton Priory and the appeal site are no longer in the same ownership, and haven't been for many years. This legal separation is reinforced by the physical separation that has occurred over the years with the development of the extensive tree belt surrounding Allerton Priory. There was once a functional relationship between the appeal site and the Priory but this is no longer the case, that has long since been eroded with the physical and ownership changes. Simply put, the distances between the Priory and the boundary wall are too great. This coupled with the lack of common ownership, functional relationship and limited physical relationship means that the boundary wall is not within the curtilage of Allerton Priory.

2.8. It should be noted that when considering this matter, the Inspector's duty is not to define, once and for all, the extent of Allerton Priory's curtilage but simply consider whether or not the boundary wall falls within it at this point in time. If the wall does not, then it is not listed (subject to the affixation point) and there is no need to determine the listed building consent application.

2.9. If contrary to the above arguments the Inspector is of the view that the boundary wall is listed then listed building consent should be granted. The introduction of the access points for which permission is sought does not affect the ability of individuals to understand the significance of the boundary wall as being the wall to a high profile estate/house. The gaps that would be introduced to the wall total a net change of 22.6m and represent only 4.8[1] % of the overall length of the wall. This is an

[1] Total wall length (as existing) 736.5m

inconsequential change, when the wall as a whole is considered. Furthermore that change has to be seen in the context of the potential to significantly improve the condition of the boundary wall by securing the proposed repair works to it (GI rebuttal appx 4). Such repair would result in a heritage gain, not least since it is clear that there is no obvious alternative means to secure such repairs in the event that the s.78 appeal is dismissed (see GI rebuttal appx 3).

2.10. When considering the boundary wall as a non-designated asset and whether or not there is any harm to it, the primary factors to be balanced are the physical harm caused by the creation of access points and the physical enhancements by the repair of the wall. Such a balance, overall, is either neutral or at the very worst a negligible harm[2]. Bizarrely in closing SAP seems to argue (§33) that the wall will suffer from "substantial harm", which has been identified by the Courts as being "tantamount to destruction of the asset". No explanation for such an extraordinary proposition is made. In any event it is to be noted that if the wall is not listed that §133 of NPPF would not be of relevance.

Existing / approved openings			
•	Existing sports pavilion opening		3.8m
•	Implemented equestrian centre opening		5.7m
•	Bridleway entrance (not implemented)		3m
	Total		12.5m
As a % of the total length of wall		1.7%	

Proposed openings			
•	Woolton Rd (north-eastern access)	14.23m	
•	Woolton Rd (south-western access)		13.52m
•	Allerton Rd		18.2m
	Total		45.95m
Wall re-instatements:			
•	Woolton Rd (north eastern kerb radii)		4.6m
•	Woolton Rd (north eastern access)	1.7m	
•	Woolton Rd (south western access)		4.6m
•	Allerton Rd (kerb radii)		11.7m
Total		22.6m	
Net loss		23.35m (45.95 - 22.6m)	
Total extent of gaps		35.85m (12.5 + 23.35)	
As a % of the total length of wall		4.8%	

[2] It is noted that in closing DMQC at Para 3 states that the boundary wall was an obvious enclosure at the time of listing and the house would have been visible over it. But this seems to ignore the historic map regression that shows there would have been a series of other forms of enclosure within the estate, not least the boundary to the formal gardens. It is perhaps telling that DMQC tabled Lowe on day one, but doesn't refer to it in closing.

3. Heritage issues

3.1. The Council's case on heritage was difficult to discern prior to the start of the Inquiry and at the conclusion of JH's evidence it was even more confused. His evidence lacked consistency, there was no cohesive argument running through it and ultimately it is very difficult to say what case he was actually advocating[3]. However, one point of clarity in his evidence that it is important to note was that at its highest he was saying that the level of harm that would be caused by the appeal proposal to Allerton Priory was at the lower half of less than substantial harm. If that contention is accepted at face value, then as SR explained this harm is outweighed by the public benefits of the proposal and as a result the test in §134 NPPF is satisfied and planning permission should not be withheld on heritage grounds.

3.2. Given the vagaries in JH's evidence it is useful to chart the progression of the Council's case. Firstly, it is necessary to remind the Inquiry of what the actual heritage reason for refusal was:

"The proposal would adversely affect the setting of the Grade II listed Allerton Priory and Grade II listed Priory Lodge and would fail to preserve the setting and important views of the buildings contrary to saved policy HD5 of the Liverpool Unitary Development Plan and paragraphs 128 and 132 of the NPPF."*

3.3. Thus, in refusing the application the Council's concerns were limited to two heritage assets; Allerton Priory and the Priory Lodge. The concerns about these two assets were limited to adverse impacts on their setting[4] and a failure to preserve important views of them. JH seemed unable to accept this and sought to argue in both EiC and

[3] It is therefore ironic that at Para 6 of his closing DMQC contends (wrongly) that GI considered that the estate is no longer legible and that this is not a credible position. In fact, GI has always said that key aspects of setting that contribute positively to significance are retained and would not be harmed by the proposals eg the drive, formal gardens and boundary wall. The house is less legible in its modern day context because it is so heavily screened. It will be no less legible as a result of the proposals.

[4] SAP fell into the same error as JH in closing (§16) by suggesting that harm to setting is harm to a heritage asset. With respect that is just wrong and change within setting is a matter of indifference unless it leads to an effect upon the assets significance. In this case GI considered each element of setting and how it may or may not contribute to significance, we also considered the urban morphology of the wider area.

XX that there were much broader heritage concerns at issue[5]. With respect he is entirely wrong. On the evidence, Allerton Priory and the Priory Lodge are the only heritage assets that warrant extensive consideration.

3.4. In addition to putting a different spin on the Council's reason for refusal, JH in his PoE also seemed to interpret the position of Historic England in a manner that was inconsistent with the terms of their representation. In considering the significance of the Appeal Site, Historic England advised:

"It is therefore necessary to define how important this land is to the significance of Allerton Priory as a whole. Having reviewed the supporting information in detail, we have concluded that the land in question does add to the significance through virtue of being a landscape through its association with a high status dwelling and as forming part of the quantity of land associated with such a building. However, the contribution is not so great as to be intrinsic to Allerton Priory's significance as an example of Waterhouse's work, with a high quality interior, and we would therefore place the land as being low to medium heritage interest."

Before then reaching the overall conclusion that, provided the parameter plan was secured by condition:

"…the application could be found to be broadly in line with paragraph 131 of the NPPF which states the desirability of sustaining and enhancing the significance of the heritage assets."

3.5. Historic England has raised no objection to the appeal scheme. That is not a matter of only modest significance. Whilst some might have one believe that the views of HE were informed by only a superficial analysis it is respectfully submitted that to the contrary, those views should carry great weight when assessing the robustness of the parties' respective positions on the impact upon heritage assets. Had the impact of

[5] It is regrettable that in closing SAP appears to have leapt upon JH's ill directed bandwagon and not argue (SAP closing §15) that the whole estate comprises a heritage asset – which is palpably wrong and also at odds with the RfR.

the proposals being the catastrophic impact contended for by SAP, it is inconceivable that HE might not have noticed

3.6. In order to assess level of harm the starting point is assessing the level of significance of the asset in question. As was accepted by JH in XX this was a step that the Council failed to undertake when assessing the appeal proposal, the only assessment of significance put forward on behalf of the Council is found in the evidence of JH. However, it is difficult to rely on the assessment of significance put forward by JH as he seemed to conflate the concept of 'setting' with the definition of the assets themselves and placed great weight on the notion of a setting that that extended way beyond the area immediately surround the appeal site even at one point in XX suggesting that much of the City, including the location of the Inquiry was within the setting of Allerton Priory.

3.7. Furthermore, JH's assessment is to a large extent informed by the ICOMOS guidance. This too was odd given that in XX he accepted: Historic England does not endorse the use of the ICOMOS guidance outside of WHSs; there is no deficiency in the Historic England guidance; the UDP does not endorse the use of ICOMOS; and that there is no endorsement anywhere within UK guidance or caselaw for the use of ICOMOS when considering non-world heritage sites.

3.8. The appropriate assessment is the methodology set out by Historic England and that is precisely what GI has followed. That alone makes his analysis stand out from Ms Gerston and JH. His full assessment is laid out in the Heritage Statement, the Heritage Audit and GI's PoE. The correctness of that approach and its outcome was not meaningfully challenged to any extent in the XX of GI.

3.9. As articulated by GI in EiC the primary significance of Allerton Priory lies in the building's special architectural interest, the quality of the interior craftsmanship, the historic association with a prominent Liverpool industrialist and it being an example of Waterhouse's domestic commissions. None of those three matters is even potentially affected by the appeal proposal.

3.10. In terms of the architectural interest of the building the evidence in advance of the inquiry has inevitably focused on the building's southern elevation, being the

façade most proximate to the appeal site. However, as witnessed on the site visit and explained by GI, it is actually the whole composition which matters with an especial contribution to the built form of the northern elevation which might reasonably be said to be of most interest. The design of the northern elevation was particularly important given the composition of the tower, and its approach, the tower is designed so that the only direction from which it doesn't have a view is to the south, the stone work of the tower being the architecturally strongest part of the building. Furthermore, the building was designed during the picturesque phase of Waterhouse and the design of the driveway, with its tree lining and the location of the tower is all about announcing arrival and the final reveal of that tower.

3.11. Whilst the appeal site is within the literal setting of Priory, it is nonetheless accepted by all parties that the setting of Allerton Priory has changed substantially since the construction of the present building; just as the immediate setting of the Priory has been radically altered by the enabling development and the building itself by its conversion into modern flats. In terms of the relationship of the building to the appeal site the growth of the tree belt to the south together with the change in the use of the land have fundamentally altered its relationship with the land to the south. Whilst those trees may in part lie outside of the ownership of the Appellants there is no evidence that there is any pressure to fell them, and DMQC made it clear that there was no intention on the part of the LPA to try to enforce that part of the enabling development s.106 obligation insofar as it could be enforced in respect of land retained within the Priory's control.

3.12. Despite these changes through time, the key designed feature of the northern elevation has remained largely unaltered and will again be unaltered by the appeal proposal. If the appreciation of the northern elevation has been harmed over time it is by the approval of the enabling development for the conversion of the priory. That development clearly has had a far more direct impact on the significance of the priory than the appeal proposal ever could.

3.13. It appears to be accepted by all parties there will be no direct harm to Allerton Priory and the issue in the case is what harm to the Priory's significance arises as a result of change to its setting. We say that it appears to be accepted because JH was

at times unable to distinguish between what constitutes Allerton Priory and what constitutes its setting. In XX he accepted that setting was a concept that allowed one to assess the significance of the asset but was then bizarrely unable to accept that the setting itself was not an asset, despite express EH guidance to that effect. He was simply wrong not to do so.

3.14. What setting is and what its importance is, is explained in the advice note[6] at and unlike his witness DMQC expressly accepted the principles set out within it. The NPPF glossary could not be more clear about what setting is:

"Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

Setting is not an asset in its own right.

3.15. Thus, the only proper consideration of what the setting of Allerton Priory is and in particular what contribution the Appeal Site makes to the significance of Allerton Priory[7] is the evidence of GI. GI's assessment acknowledges, as the NPPF requires, that setting is not fixed and *"may change as the asset and its surroundings evolve."*. Acknowledgement of this principal is key to the assessment to be undertaken here, for as already observed in this closing, there has been significant change in the area surrounding Allerton Priory since its original construction:

3.15.1. As to that most obvious change is the radical increase in the degree of screening between the appeal site and Allerton Priory, since the time of its conversion and the separation of the land ownership. This screening is by dense

[6] English Heritage Conservation Principles CD2.11

[7] Notably SAP accepts in terms that the architectural interest of the Priory will not be affected, but then goes on to refer to the association of the building with Waterhouse and Morris, which by extension will not be affected either (SAP closing §19).

trees[8] and vegetation and is highly unlikely to change given that many of the trees that create the screen are protected by TPO, and there is no pressure to fell the remainder. Realistically if anything this degree of screening is likely to increase with time as the trees and vegetation continue to grow.

3.15.2. The screening by trees and vegetation along the line of the boundary wall has also increased becoming a denser layer of vegetation. This acts to not only restrict views of Allerton Priory from beyond the appeal site and of the appeal site itself, but also, as witnessed on the site visit, restricts views of the appeal site from the roof of the Priory.

3.15.3. The agricultural character of the Appeal Site, adopted and retained when the existing Priory was constructed, has long since been removed, as have the internal field boundaries and even the intervening use as school playing fields has long been lost, leaving only a derelict pavilion. The Home Farm has been demolished, the cottage garden and even the Priory's green houses have been replaced by the extensive built form of the Leonard Cheshire care homes. The removal of all of the farm structures, including internal roads and field boundaries means that the land is functionally unrelated to its former link with the Priory other than simply being "open" – a facet whose contribution to significance has been repeatedly and mistakenly overplayed by Third Parties.

3.16. The upshot of this is that it is evident that there has been extensive change to the setting of Allerton Priory over the last century, such that the contribution that that appeal site makes to the Building's significance is now very different and much diminished when compared even to 50 years ago in the 1960s. That change must be recognised and accepted as the baseline when assessing the contribution the appeal site makes to the setting of Allerton Priory. Planning policy simply does not allow for the decision maker to hark back to an earlier time and assess the appeal proposals

[8] It does not credit to any parties case when they obviously understate points. At §25 SAP alleges that 20years of growth have "partly obscured" views. This is a gross understatement which is at odds with the experience of the site visit. Tree planting has taken place around the site over the last century and the change has been obvious and dramatic since Home Farm was closed and demolished.

against an imagined past baseline, especially when there is no prospect of that imagined baseline ever recurring.

3.17. It is against that context that the claim that the appeal site is part of an "intact curtilage" of a nineteenth century Merchant Prince's Palace have to be judged[9]. The Priory building certainly exists (as do other grand homes from the wealthy classes of Victorian Liverpool), but it is fantasy to contend that the appeal site, the Priory or even its immediate setting remains unaltered.

3.18. Importantly, in terms of what the appeal site itself once was, there is no evidence, as accepted in XX by JH, that the appeal site was, or contained a designed feature. Any such suggestion is unevidenced speculation by JH. That assumption is based solely on the proposition that the appeal site was retained rather than re-designed when Morris rebuilt the Priory. That is a paltry basis from which to make such an assumption. It was a functioning farm associated with a big house with a wall around it, and it was plainly convenient to keep it in that use whilst the Priory was a family home.

3.19. Assumption was a regular feature of JH's consideration of the history of the appeal site. His evidence attempted to argue that the appeal site functioned as "informal parkland"[10]. Informal parkland has a particular historical meaning and when JH's argument was interrogated it rapidly became apparent that that meaning was not what he was ascribing to the appeal site. Really all JH was saying was that the residents of the priory might have walked round the appeal site. But again, that is in itself an assumption based on the premise that as the appeal site was there Morris and his family would have walked around it. The simple reality is that the appeal site was originally a series of agricultural fields. It was a farm next to a big house which probably provided fodder for the table, not a feast for the eyes. This was no Capability Brown landscape. Those field boundaries have now been lost, as has the farm house that stood on the site and as has the agricultural use of the appeal site.

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9 A point reiterated by SAP at §27 of its closing

10 Also picked up by SAP at §18, which surprisingly does not draw attention to the extensive evidence that the site was used for agriculture for most of its recorded history NOT parkland, and that supposed use by the family is unevidenced speculation

3.20. The appeal site is now physically, visually and functionally separate from Allerton Priory. The significance of Allerton Priory lies primarily in its special architectural interest, its interior design and its historic associations. The appeal site has little association with those important features and it makes a low contribution to the significance of the priory.

3.21. The appeal proposal will change the setting of Allerton Priory. However, what it will not do is affect the special architectural interest or historic associations of the Priory. Further, the functional relationship that once existed between appeal site and the Priory is no more and as such cannot be affected by the appeal proposals. The boundary wall around the appeal site is remaining largely unchanged, and so does the appreciation that beyond it remains a high status house. The only way that Allerton Priory can therefore be impacted is in the visual sense[11].

3.22. Views across the appeal site will change by the introduction of residential development and so to will views of the Allerton Priory. These views are already limited by the heavy vegetation screening and the only views that exist are glimpsed when one travels along the roads and pavement around the perimeter of the appeal. There are no views of the Priory in its entirety, the only views from the appeal site that exist are of the top part of the tower.

3.23. The high point of the Council's case is that the "public" view from the raised central reservation of Allerton road is significantly affected, a viewpoint which is not recommended as a public viewpoint. If that is the high point of the case then there are no serious grounds for concern in heritage terms, that is an incredibly limited view that, in reality, is barely experienced by anyone.

3.24. As to the views from what was plainly designed as a functional roof[12], and not a viewing platform. It was emphatically not a designed view, and the access to the

[11] The Noise Addendum confirmed that the proposed development would not be perceptible to the human ear above other urban background noise.

[12] Whilst, it is physically possible to walk out on to it and look at the river, north Wales etc, and access the room in the tower, the flat roof area contains two large lanterns to form a light-well into the central landings and hallways below, it is in proximity to a series of large chimneys that hinder views, and is not protected by a

Tower doesn't even had a window pointing in that direction. The Inspector has extensively walked and travelled round the perimeter of the appeal site and upon the roof and is more than capable of forming her own view on the authenticity of the Council's concerns about the existing visibility of the tower and the degree to which that will change. The roof is no viewing platform, and there are no eye catchers within or beyond the appeal site. The clear inference (urged by GI) is not that this is a building which was designed to facilitate views over farmland to the Mersey, but rather that the southern façade had more intimate views from the windows of the ground floor over the manicured gardens which lie to the buildings immediate south. That farmland that once lay beyond is of no more consequence than the fact that woodland now does so, creating a different, but enclosed context for such views. In future beyond that woodland will lie a large area of publicly accessible open space and then beyond that low density housing. The effect upon views from and of the house are at the bottom end of the spectrum of effects on any fair view.

3.25. JH accepted in XX that he had no criticisms of the parameters plan, that being the plan that English Heritage requested was conditioned and on that basis they had no objection to the appeal proposal. The parameters plan is designed so that it protects views of the Priory as best as possible by creating a viewing corridor across the appeal site. This designed view, frames the tower of the Priory allowing it to be appreciated by anyone who experiences this view, or rather that limited part of the building that remains visible from within the appeal site. Furthermore, as noted above no development will take place on a large part of the appeal site immediately south of the Priory. This portion of land will be reserved as open space, ensuring that not only will the new housing have little if any visual impact upon significance, but providing a stand-off so as to minimise other sensory effects. This open space, and the appeal site generally, will become accessible to the public, which the appeal site currently is

balustrade etc – this roof is plainly not designed specifically for the enjoyment of a view – that is a by-product. Further, as GI explained in evidence – in terms of the layout of the house and potential relationship with the views – the most important communal space in the house is the entrance hall at ground floor. This was originally 'L' shaped on plan, it was a place in which the family gathered, it allowed a direct view out through the loggia and across the tennis lawn to the west (the tennis lawn that is enclosed by woodland). It was not designed to take advantage of or allow distant views to the south over the appeal site. The 'L' shape was apparently truncated with a modern glazed screen in 2000, seemingly when the house was converted into apartments.

not, and creates a new way for the public to experience views of the Priory, from within the hitherto inaccessible private land that was once a farm. This is an obvious benefit of the appeal proposal and mitigates/weighs against any harm caused by the appeal proposals. Indeed it is perhaps notable that there is evidence that (now unlawful) access to the appeal site is welcomed locally, there is no reason why that will not continue to be the case, albeit for a smaller (but still extensive) area.

3.26. Prior to the inquiry, in addition to their central reservation concern, the Council's other key focus was the impact the appeal proposals would have on views out from the Priory (seemingly from the roof[13]). The site visit revealed that those concerns are not borne out. The appeal site cannot be seen from the first storey windows of the Priory[14] and so there is no impact there. When considering impacts on views from the roof, the first point to consider is that there is no designed view to the south from the roof. In fact the opposite is true. The northern tower has viewing windows built into it facing North, East and West but nothing to the South, once again highlighting that it is the northern elevation that is the central design feature of the Priory. From the roof views towards the appeal site are heavily filtered by the presence of chimneys further reinforcing the fact that there is no designed view to the south from the roof. The only point at which the views are not filtered are from the edge of the roof and from here there is very limited visibility of the appeal site, it is hidden within the trees of the southern boundary of Allerton Priory and the tree belt within and around the appeal site. What the eye is directed to from here is the broader landscape, the views towards the Mersey and Wales and the appeal proposals will not change this.

3.27. As with the Priory the significance of the Lodge stems from its special architectural interest and historic association with Waterhouse and Grant Morris. The difference in their listing indicates that they are recognised to be of differing importance to the Priory. As GI explained the Lodge maintains a strong visual relationship with the entrance to the drive and this is a fundamental aspect of its significance, and is thereby divorced from such a close relationship with the appeal

[13] It is notable that GI wasn't permitted access to this view until day one of the inquiry which, when seen, confirmed his conclusions.

[14] Stepping out on to a balcony created by the roof of the bay window which was never originally a balcony does not comprise a view of significance.

site. It is (and will be) still appreciated as the Lodge to a high-status residence despite the unrelated occupancy. The curved brick walls of the entrance complement the materiality of the Lodge and afford a degree of group value. The architecture of the principal elevation is also best appreciated from the driveway. This relationship and identification of being an entrance to a high status house is not dependent on the appeal site, it is the association with the drive way that is the key feature of the setting of the Lodge.

3.28. Historically an element of the setting of the Lodge would have been agricultural. When the appeal site was in use as farm land that would have been visible from the Lodge and the Lodge would have been visible in that context from the road. However, that historic agricultural setting of the Lodge has been removed, following the loss of the home farm and field boundaries and the appeal site now makes little contribution to its setting.

3.29. The uncriticised parameters plan has been designed to protect that central feature of significance of the Lodge – it being the entrance to a high status house. This is achieved by the housing development on Parcel A of the appeal site being well set back from the Lodge. There would then be landscape planting between the residential development and the Lodge. The combined effect of this being that in any views of the Lodge the views of the residential development beyond would be highly filtered and would not compete visually with the view of the Lodge itself. The visual association of the Lodge would remain with the boundary wall and the drive way thereby preserving the significance of the Lodge as the entrance to the Priory.

3.30. The issues identified above are those that the relevant guidance tells us should be considered. However, JH tried to make various additional contentions which had no real bearing in guidance or reality and so it is necessary to deal with these, albeit briefly.

3.31. JH's tertiary setting point was difficult to follow. Its origins, as with a number of points, seems to lie in his misunderstanding of the distinction between the definitions of heritage setting and heritage asset. He sought to argue that the appeal site was itself an asset in that formed part of a patchwork of heritage assets through South Liverpool. This argument did not stand up to XX. As GI explains in his

rebuttal evidence at §2.8: "Heritage assets include designated heritage assets and non-designated assets identified by the local planning authority as having a significance justifying consideration in a planning decision. … Non-designated heritage assets include those that have been identified in a Historic Environment Record, in a local plan, through local listing or during the process of considering the application." JH accepted in XX that the appeal site is not identified in any of these records. The only document he could point to that gives the Appeal Site any recognition of historic value was the Open Spaces Study (CD5.4). Yet, that doesn't actually do what JH says it does. On p3 the study states "1.13 The inclusion of a site within the sample should not be regarded as an indication of historic value." The Open Space Study is not concerned with identifying assets of historical value and in any event is now out of date.

3.32. Not only is the tertiary setting argument without any policy/documentary support it is without conceptual or logical support. JH himself didn't himself even seem to understand the point he was trying to make. On his own evidence he couldn't define the extent of the South Liverpool heritage asset area, it was seemingly without geographic limit, an asset that once you've experienced you continue to experience indefinitely. This is an argument that the Council themselves have never expressed before themselves and was clearly not considered when the application was assessed. It forms no part of the RfR, and appears to be a non-credible attempt to bolster the strength of his case. It will be remembered that JH did not seek to defend the approach of the report to committee, in this regard his approach is equally misguided.

3.33. JH also drew attention to the physical drive itself and the boulders along it as heritage assets in their own right that need to be considered. Even if any such consideration is due, it can be short circuited as there is no possible direct impact on these features or indirect impact on their significance, even if rocks can be heritage assets.

3.34. Sadly the heritage debate is one that has become highly confused as well as understandably impassioned by those who oppose change and it is necessary to separate the relevant points from the irrelevant. In summary the points to note are:

3.34.1. That the Council's case at its highest is that there is less than substantial harm to heritage assets and the policy test is that in §134 of the NPPF;

3.34.2. The Council's case at its highest is that the level of harm is in the lower half of less than substantial harm;

3.34.3. The Council's case cannot be taken at its highest as it is not informed by the appropriate policy guidance;

3.34.4. The evidence and approach of GI must be preferred;

3.34.5. Based upon the secured schedule of repairs whether it is a curtilage structure or a non-designated asset – the overall effect upon the wall would be as close to negligible as makes no odds.

3.34.6. The only designated assets with which the Inquiry need be concerned are Allerton Priory and Allerton Lodge;

3.34.7. There is no direct impact on these assets and the only impact arises as a result of change to their setting;

3.34.8. The contribution the setting makes to their significance must be made on the basis of how the setting exists now;

3.34.9. The setting does not contribute to the architectural significance, interior design or historical association with Morris and Waterhouse of these assets;

3.34.10. The appeal site makes a low contribution to significance; and

3.34.11. The appeal proposals would not harm the significance of these assets.

4. Heritage Law & Policy

4.1. It is considered useful to address the consequences of the above in its legal and policy context at this juncture.

4.2. If the Inspector is of the view that there is less than substantial harm to Allerton Priory and/or Allerton Lodge then under the NPPF the test to apply is that at §134. This requires that the harm to the heritage assets is to be weighed against the public benefits of the scheme. The weight to be attached to the harm must be informed by the statutory requirement to have special regard to the desirability of preserving listed buildings (see *E Northants DC v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137).

4.3. The relationship between the test in §134 and §14 has been considered in two recent cases; *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin) *and R (on the application of Leckhampton Green Land Action Group Ltd) v Tewkesbury Borough Council* [2017] EWHC 198 (Admin). Both cases agree that the correct approach where there is less than substantial harm to a designated heritage asset the first stage is to consider the §134 test and that test is an unweighted test of harm against public benefit (recognising still the statutory requirement in favour of preserving heritage assets). If that test is passed, then if the second bullet point of §14 is engaged the applicant is entitled to the benefit of that weighted decision making test when considering the overall balancing exercise. As per *Leckhampton* at [47]:

"…if the decision-maker considers that the application of paragraph 134 does not tell against the proposed development, then the developer is entitled to the benefit of the tilted balance contained in the first indent when the overall balance weighing all factors comes to be struck."

4.4. That is an approach which is to be preferred to the cruder Forest of Dean case, and in this case the §134 test is readily passed. For reasons I set out below there are substantial benefits in this case which unequivocally outweigh the land use harm which arises.

4.5. The test when considering the impact upon the boundary wall as a non-designated heritage asset is that in §135. Non-designated heritage assets do not benefit from the statutory protection under the Planning (Listed Buildings and Conservation Areas) Act 1990.

4.6. As to the UDP policy implications, in this regard Mr Thompson on behalf of SAP, as well as SC on behalf of LCC concurred in XX with the view of SAR in writing that the UDP does not reflect the balanced policy approach of NPPF, and necessarily therefore is to be viewed as being inconsistent with it. On that basis, pursuant to §215 of NPPF, any breach of HD5 must be substantially tempered by the fact that it is policy which is agreed to be out of step with national guidance. If §134/135 are passed then the first RfR is simply not made out.

5. Ecological concerns

5.1. As with heritage matters, it was before the inquiry and now at its close entirely unclear what the Council's case on ecology actually is. As with JH's evidence, RR's evidence lacked consistency, there was no cohesive argument running through it and ultimately it is very difficult to say what case she was actually advocating. At its highest the main contention seemed to be that there was ecological harm that could not be properly offset by an offsite contribution. It will of course be noted that this is seriously at odds with the RfR which was a contention that there was insufficient information before the inquiry – a point that RR disavowed.

5.2. That "high point" of the Council's case can be dealt with succinctly – it is simply implausible that the Council will not be able to find a suitable site where the offsite contribution put forward through the s.106 can be spent. When pushed on this point RR accepted that she could not see any reason why the Council would not be able to spend the money on an appropriate site, a point that SC did not seek to take further in his evidence.

5.3. Yes of course there will be impacts, but it is important to note that the site is not managed for ecological purposes now and its maintenance regime is in the hands of the land owner subject only to the obligations in law. Thus, for all of the criticisms of a landowner cropping a large area of grass and therefore impacting upon the ruderal grasslands at the field's margins – there is simply no lawful reason why that could have been prevented in the past or in the future. In contrast, the appeal proposals will bring to the fore a substantial area of land which will in future be subject to an enforceable management regime to achieve precisely that.

5.4. All of the focus of the third parties and RR has been upon what will be lost – ie half the site will become residential in character. However the remainder will not, and the woodland will in future be actively managed. FH's unpopular, but compelling proposition is that a smaller area of managed land can be at least as good as a larger area of unmanaged land. On FH's assessment there is no need for offsite mitigation because the resultant nature of the site will be such that the overall ecological effect will be no net harm. Unprotected land used by butterflies and birds is not necessarily

as beneficial in the long term as managed and protected land used by the same fauna even if there is less of it. The extent of retained land is such that the scope for a qualitative improvement in it is obvious and substantial. Most importantly FH demonstrates that there is no basis to conclude that there will be any net species loss from the Site.

5.5. RR's case was not this a scheme which causes such great ecological harm that it is incapable of being mitigated. The essential difference between her and FH was that he didn't think that there was a need for off-site mitigation to secure no net detriment. RR considered that mitigation was required. But she invited the inquiry to assume that it won't be provided, because there is a current lack of specificity about where the offsite contribution will be spent and therefore they cannot be sure the harm will be mitigated. As explained in the preceding paragraph that is wrong and consequently in reality that is the end of the ecological case when the Council's case is taken at its highest. The UDP itself contains clear and repeated commitments to manage LCC owned land for ecological purposes, and the Green Web documentation, for all of its deficiencies proves that LCC owns a lot of land in the south City thereby providing the opportunity for mitigation *as has happened on other sites* (as RR readily accepted – e.g. New Heys). Importantly, the Unilateral Undertaking contains a plan which provides a range of sites that are geographically and functionally related to the appeal site and where enhancements can be delivered.

5.6. In any event the Council's case is not taken at its highest and nor is SAP's case accepted. Instead the Appellant's case is that there is no ecological harm arising from the appeal site that requires off site mitigation.

5.7. Returning to the RfR, the Council's ecological concern stemmed from an alleged lack of information. In XX RR appeared to accept that sufficient information has been provided but SAP seem to continue to suggest it has not. Sufficient information has patently been provided and is found within FH's evidence and the raft of surveys he relies upon.

5.8. In terms of the policies that are alleged to be breached in the RfR it is accepted by DMQC that there is no breach of Policy OE5 and accordingly there is no breach of

Policy OE6. Policy OE7 is not directly engaged by the appeal proposal but it was accepted by RR in XX that there is no reason why, if a contribution was deemed necessary, the Council could not meet its objective under OE7(1)(iii). Accordingly, the only UDP policy identified in the ecological RfR that needs to be given any further consideration is that of OE3. That policy is primarily concerned with the Green Wedge rather than ecological concerns and the question of compliance with is dealt with in the planning policy section of these closings. In any event, on the evidence the ecological component of that policy is simply not breached.

5.9. RR accepted in XX that the RfR encapsulated all of the Council's concerns yet also verged towards suggesting that approving the appeal scheme would breach the statutory duties under the NERC. These are contradictory positions as there is no mention of a breach of statutory duty in the RfR. Nor was a breach of NERC raised when MEAS were consulted by the Council on the application, it was not referred to in RR's subsequent letters or in any of her correspondence with the Appellant. Despite attempting to raise this as an issue it is entirely unclear on what basis RR is alleging there would be a breach of statutory duty. Again this appears to be another clumsy attempt to bolster an otherwise unconvincing case which does not warrant the withholding of consent within the terms of the RfR.

5.10. At Appendix C of his evidence FH provides an "Analysis of habitat requirements of relevant species", no equivalent exercise has been carried out by any other witness. This piece of work systematically identifies: the species on the appeal site; their Current Status on Site; Habitat Preferences; the Change that will be experienced; and the Likely Effects of this change. No significant effects on any relevant species are found to be likely, which are not capable of being addressed. This includes the barn owls which were the subject of much discussion, but were agreed between FH and RR as nesting 600m from the appeal site – ie too far to be realistically disturbed by the proposals, and yet this point appears to have assumed excessive and misplaced prominence in SAPs closing submissions. There is no alternative evidence put forward to undermine these conclusions and they must therefore be accepted.

5.11. RR has not conducted any species by species assessment and has instead considered the impact on overall assemblages. Her main concern orally related to butterflies and how a quantitative loss of open space will impact upon their abundance; especially once the bird survey data was properly considered. As she accepted in XX, however, this is not simply a quantitative game. RR accepted in XX that there will be a qualitative improvement to the remaining open space on the appeal site. Where there are qualitative improvements this can result in an overall neutral impact or betterment even when there is a quantitative loss of open space. Her concern was that this qualitative improvement was not sufficient to outweigh the quantitative loss. However, it was entirely unclear why she was of this view. This is a topic that is explored in detail by FH. Of particular note, as he explained in his EiC, the mitigation package that is to be brought forward through the landscaping plan can be developed in such a way so that it is not only concerned with butterflies as a totality but on a species by species basis. Given that this can be done, and that it can be secured by condition there is no reason to suppose that it will not be done. The inquiry is obliged to work upon the assumption that LCC will discharge its duty properly in considering the conditions to which any permission will be subject.

5.12. RR argued that the appeal site on basis of its butterfly assemblage qualified as a local wildlife site. It is not so recognised at the moment and it has a long way to travel before it could conceivably become recognised in this regard. As things stand, the open grassland of the appeal site does not benefit from any specific policy status and the woodlands of the appeal site will positively benefit therefore. On FH's case there is no reason why the appeal site's interest will be diminished, for all of the scepticism of third parties who have effected a stance of opposition for a variety of motives.

5.13. On the question of birds' use of the appeal site there was some debate about the extent of bird use of the different habitats on the site. The Inspector has the raw data from the 2017 surveys and can form her own view on this. It is the appellant's contention that there is tolerably limited use within the open areas of the appeal site which will actually be developed. The significant usage is that which takes place in the margins, those areas on the edge of the woodland. Those being the areas which will not only be retained but enhanced by the appeal proposals.

5.14. Whilst there will be a decrease in open Grassland there will be an increase in broad leaved woodland and hedgerows. This increase will not only be quantitative but also qualitative. The active management of these habitats is not something that currently takes place on the appeal site and is a key benefit of the appeal scheme. The quantitative and qualitative increase in these habitats can only be to the advantage of the species that make use of them and represents an improvement on the baseline ecological conditions on the site.

5.15. Again, no criticism of the parameters plan is raised by RR. She accepts that the precise details of the landscaping plan will be assessed at reserved matters/discharge of conditions and that there is no reason to suppose that LCC won't do their job properly in considering the landscape plan. Given this it is very difficult to see what the Council is actually concerned about. There are multiple safeguards built in to the planning process that would follow approval of this scheme to ensure that adequate mitigation is delivered.

5.16. In summary, the RfR is not made out, and there is no proper basis upon which consent should be withheld on ecological grounds.

5.17. In relation to tree losses, it appears accepted by all parties that the extent of tree loss required to form the two entrances is only that which is strictly necessary and that there are no protected species present in the trees that would be felled. Conditions can be attached to ensure arboricultural method statements are agreed and implemented to avoid damage to retained trees.

5.18. It is FH and IG's view that the extent of tree loss is acceptable, but the Inspector will be able to form her view during the final site visit. The appellant's UU provides a sum to enable replanting by LCC of 14 large standard trees to replace the 3 lost in the Woolton Road central reservation. This replacement ratio is calculated in accordance with the LCC standard formula.

6. Landscape and Visual Impacts

6.1. The Council do not maintain a freestanding reason for refusal on landscape and visual impact grounds, and called no evidence upon this issue. Instead they are concerned with impact upon "openness" in the context of the Green Wedge Policy. The only LVIA that is before the Inquiry is that produced on behalf of the Appellants and it has been produced in accordance with the GLVIA. Against this backdrop the evidence of IG was largely unchallenged and so can be dealt with swiftly.

6.2. The receptors that have the potential to experience significant change are limited to the following:

Public Views

- Users of Allerton Road and Woolton Road;
- Users of the grassland in the northern part of Clarke Gardens;
- Users of the bridleway to the north of the site;

Private Views

- Residents in properties along Allerton Road;
- Residents in flats in Allerton Priory and ancillary buildings;
- Residents in Priory Lodge at the entrance to Allerton Priory; and
- Residents in The Orchard residential care home.

6.3. There would be minor adverse effects on landscape character. This would arise as a result of the construction of houses on what is currently open land within. However, the impact would only be minor as the development will take place within the existing well-vegetated boundaries. These boundaries would be reinforced by additional planting and management and designed open space would be a feature of the appeal scheme.

6.4. On completion of the appeal proposals, there would be adverse effects of moderate adverse significance on public views from the northernmost part of Clarke Gardens, from where presently there are some views across the appeal site. Significance of effects on other public views would range from negligible to minor adverse.

6.5. Some private views would experience adverse effects of moderate significance although most would have effects of minor to negligible significance. Most views comprise the walls and vegetation around the boundaries of the appeal site and these will be retained and enhanced. There will be views of the development available from the entrances although these will be perpendicular to the existing roads.

6.6. Given the lack of contention over landscape and visual impacts, IG's evidence is perhaps of greatest utility in supporting GI's assessment of the heritage impacts of the scheme. IG in EiC explained the significance of the view from the central reservation (which was the peak of the Council's heritage impact case together with views from the roof). As a professional he would put little weight on these views because he wouldn't anticipate that many people would walk on there. There are no defined lines on there and its use is not encouraged for walking. It's a matter of fact that one has to take care when doing it because of traffic.

6.7. IG echoed GI's assessment that the repair work that would be carried out to the boundary wall would be very important because the current tree damage that is being caused to the wall is having an adverse impact on the tree scene. IG was keen to stress that the benefit is not simply an immediate one but a perpetual one as proper management of the trees can prevent future damage to the boundary wall from arousing.

6.8. This perpetual benefit would not simply be limited to preventing damage to the boundary wall but would also accrue by enhancing the attractiveness of the boundary vegetation. Proper management of the boundary vegetation would improve the quality of the street scene and also provide a more attractive view through which the tower of the Priory is experienced.

6.9. What is important to note is that the baseline against which the site is to be judged is not how it was once (even 25 years ago) but how it is now, and from where it can be lawfully experienced. What is evident is that the site is subject to extensive trespass, however none of the professionals who have provided evidence upon this issue have contended that significant weight should be afforded to the changed experiences of trespassers.

6.10. Finally, SAP appear to disagree with all of IG's judgements including those on the value of the landscape. However IG explains clearly his judgement including that the absence of lawful access to the appeal site, the very limited views into it and that its main features are very characteristic of the locale reinforce that the appeal site is of community value[15].

7. Other Matters

7.1. Air Quality

7.1.1. Concerns have been raised by local residents about the impact the Appeal proposals would have on Air Quality. As part of the application the Appellants produced a detailed Air Quality Assessment (CD 1.23). At p32 it concludes:

"The dispersion modelling results indicated that pollutant levels across the site were below the relevant AQOs. The location is therefore considered suitable for residential use without the inclusion of mitigation methods to protect future users from poor air quality. Predicted impacts on NO2 and PM10 concentrations as a result of operational phase exhaust emissions were predicted to be negligible at all sensitive receptor locations within the vicinity of the site. The overall significance of potential impacts was determined to be negligible, in accordance with the EPUK and IAQM guidance."

7.1.2. This report was reviewed and accepted by the Council and they have raised no objection on Air Quality grounds. The Officer Report (CD1.33) when considering this issue concluded:

"The Head of Environmental Health is satisfied both with the approach taken and the conclusions reached within the later report, concluding that during both the construction phase and once operational, the development won't present a problem with regards to air quality."

[15] IG paragraphs 3.58 – 3.77

7.2. **Road Safety**

7.3. Residents have raised concerns about the road safety impact the appeal proposals could have. The initial Transport Assessment considered accident data in proximity to the site during a three year period between 1st January 2011 – 31st December 2013. There were 11 accidents during this period all of which were of "slight severity". Over this same period, there was a reduction in the number of accidents year to year with only two accidents reported in the final year of study.

7.4. After the submission of the TA the Council requested the Appellants to investigate a number of Transport queries. These were responded to in the Highways Technical Note (CD1.19). One of the specific requests that was made of the Appellants was that "Accident data should be refreshed to include the latest available STATS 19 data". This was done and showed there had been no accidents within close proximity to the site boundary over the 5 year study period of January 2011 – December 2015. The closest accident to the site was recorded in March 2016, approximately 250m to the east of the eastern boundary.

7.5. While all collisions are unfortunate, there is no evidence here to suggest that there is an existing safety problem in the nearby highway network or that the appeal proposals would have an unacceptable highway impact.

8. Alternative development of the Appeal Site and its surroundings

8.1. **Improvements to the appeal site**

8.1.1. In relation to various evidential topics reference has been made by witnesses opposing the scheme and by local residents to how the appeal site could be improved and preserved. There is no legal mechanism by which the appellant or land owner could be compelled to bring forward any improvement works on the appeal site. The only plausible mechanism that has been put forward is that of the s.106 for the enabling development. That s.106 Agreement referred only to the drive, formal gardens immediately adjoining the Priory and the adjoining

land upon which the enabling development was to be constructed, it does not refer to the current Appeal Site. DMQC accepts on behalf of the Council that it cannot be enforced against the appeal site.

8.2. **The Fall Back position**

8.2.1. The appellant's case in the first instance is that when assessed against the current situation no harm arises that warrants refusal of the appeal proposals. However, it is also necessary to consider the fall back position which significantly alters the baseline position. The fall back is of an equestrian centre and 'eco-home' which have been consented by the LPA and been lawfully implemented. The lawful implementation of the fall back is not disputed by the LPA but they do seek to challenge the realism of this proposal being built out.

8.2.2. In XX both SC and AT accepted that there was uncontested market evidence from a national commercial agent of repute to substantiate the letter submitted by SAR (appx 3) that there is a realistic prospect that Allerton Priory LLP will bring forward the consented and implemented permission for an equestrian centre if this appeal is dismissed. That means that the legal threshold for the materiality of that issue is passed, and the weight to be afforded to it then depends upon the likelihood of such an eventuality taking place. SC and AT both expressed scepticism about the evidence of Savills, but neither SAP nor LCC have provided agency evidence of their own to challenge that of the owners. Moreover it is not a meaningful criticism that the out-come of a marketing exercise hasn't been provided, when (self-evidently) there has been no marketing evidence since this appeal is ongoing. The Fall back is a material consideration, and there is no reason to disbelieve the position of the landowner that it will look to take advantage of it nor Savills' judgment that there would be both a market for such a use and that it would be viable. Thus a comparison with the land use consequences of the fall back needs to be undertaken.

8.2.3. Ironically AT, on behalf of SAP made it clear in his evidence that whilst in GW terms the fall back would be better than the appeal proposals (in his view) he did not consider that there would be any difference in ecological terms (proof

§9.13, 10.53 & 11.61). Whilst RR took a different view, the contrary view is logical and compelling for all of the reasons propounded by FH.

8.2.4. Indeed FH describes that the fall back scheme would potentially have a bigger detrimental impact on the ecology of the appeal site than the appeal proposals. A large proportion of the appeal site would become grazing land for horses which would reduce the biodiversity of the appeal site, and the extent of management would be less. RR accepted in XX that the fall back scheme does not bring forward any improvement works to local ecology and biodiversity. This is in stark contrast to the appeal proposal. In ecological terms the appeal proposal is an improvement on the fall back position. The other important feature to note from this is that MEAS did not object to the fall back scheme. It is therefore somewhat odd that they now maintain an ecological objection to the appeal proposal.

8.2.5. SAR made it clear that the existence of the fall back makes a difference and is important, but that the appeal remains a strong case irrespective of the existence of the fall back in her view. She afforded not "especially significant weight" to it in relying upon it as part of her assessment. Ironically that places it close to the views of both AT and SC, both of whom (albeit reluctantly) accepted that there was an extant PP and there was a realistic prospect that it would be brought forward if the appeal is dismissed[16]. Whilst both AT and SC considered that

[16] **PF Ahern (London) Limited -v- The Secretary of State for the Environment and Havering Borough Council [1998] Env. LR 189** a challenge was made to an Inspector's decision that she had not considered or given weight to the fallback position at all. Christopher Lockhart-Mummery QC sitting as a deputy High Court Judge observed:
"I have before me evidence that at the inquiry there was challenge, by way of cross-examination from the Council, as to these propositions. There was challenge as to whether the haulage use would actually be carried on. There was challenge as to whether the recycling operations were realistic, and there was challenge whether such uses would be more valuable than the alternative provision of housing. Upon the basis of these challenges it was submitted, on behalf of the Council, in closing submissions at the inquiry, that there was a "mere possibility" of these alternative uses being undertaken.
There have been many decisions of this Court over the last two decades on this topic. The cases are assembled in Mr George's skeleton argument. The principal cases are …Snowden v the Secretary of State for the Environment [1980] JPL 749, Burge v the Secretary of State for the Environment [1988] JPL 497, …
From these cases Mr George drew three propositions for tests which it is necessary, in his submission, for the decision-maker to apply:
- *first, whether there is a fall-back use, that is to say whether there is a lawful ability to undertake such a use;*

limited weight should be afforded to the fall back neither considered that it was irrelevant.

8.2.6. In XX, DMQC sought to draw attention to the fact that the 2017 Savills report was based upon a 2011 report which itself did not comprise a development appraisal. That was a report produced in support of the original application and evidences that an equestrian business would be viable. Whilst DMQC had a sideswipe at the content of the report, with respect there is simply nothing to go behind the conclusion that a commercial agent with expertise in the field considers that the PP is both viable and commercially attractive to the market. Nor is there any evidence to take issue with the professed view of Mr Hanlon at SAR appx 3 that the site will be brought forward[17].

9. Housing Need & Other Benefits

9.0.1 There are two elements to the issue of housing need of crucial relevance in this case:

(i) the absence of a 5YS; and

(ii) the need for the City to substantially "up its game" in the delivery of larger family housing.

9.0.2 There are also additional benefits set out by Mrs Ryan which weigh strongly in favour of the appeal proposals, which she sets out in summary at §7.3 namely:

- Opening the site up to the public for recreational use – Approximately 6.5 hectares of publicly available open space will be provided for use by future

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- *second, whether there is a likelihood or real prospect of such use occurring.*
- *Third, if the answer to the second question is "yes" a comparison must be made between the proposed development and the fall-back use.*

….

The requirement to have regard to the consideration imports a requirement on the decision-maker to have before it sufficient material so that the consideration can be assessed. In the context of fall-back cases this all reduces to the need to ask and answer the question: is the proposed development in its implications for impact on the environment, or other relevant planning factors, likely to have implications worse than, or broadly similar to, any use to which the site would or might be put if the proposed development were refused? ***By "might" I do not mean a mere theoretical possibility which could hardly feature in the balance (see, especially, the Brentwood case). For a fall-back suggestion to be relevant there must be a finding of an actually intended use as opposed to a mere legal or theoretical entitlement.".*** *(emphasis added)*

[17] In XX DMQC sought to draw a distinction between Mr Hanlon acting through the letter head of Green Circle rather than Allerton Priority LLP. Given that Mr Hanlon has fulfilled the role of pantomime villain in this inquiry – it is not credible to contend that he was somehow not writing as the guiding mind of the landowner in writing the letter at SAR3.

and existing residents for informal recreational activities and a children's play area.

- the creation of footpath and cycle links throughout the site, offering physical and functional connections to adjacent green spaces.
- development within a sustainable location – The development is within easy reach of a range of local shops and services which will reduce reliance on the private car.
- Managing the woodlands and open space for ecological benefits
- Increased Council Tax revenue and receipt of New Homes Bonus payments to further invest back into the City and assist in achieving economic growth objectives.

9.1 Five Year Supply

9.1.1 The starting point is the 2016 SHLAA. There is agreement as to:

(i) the annualised requirement as set out in the SHELMA (1739pa);

(ii) the base date of 1/4/16

(iii) the completions 2012 to the base date (1/4/16) – ie 5430

(iv) the extent of the shortfall to the base date (-1520) comprising 88%[18] of one years requirement in the first 4 years of the new plan period;

(v) the 5 year requirement including 5% buffer (10,732) and 20% (12,265)

(vi) the shortfall should be discharged within 5 years – ie the use of the Sedgfield methodology

9.1.2 After XX of RB there is also agreement as to:

(i) by reason of footnote 11 of NPPF, if a site has PP at the base date then it can be assumed to be deliverable unless there is evidence to the contrary;

(ii) by reason of footnote 11 of NPPF, if a site does not have PP at the base date then can only be assumed to be deliverable if there is clear evidence as to delivery;

(iii) once a site has been identified as "deliverable" a judgment is required as to how much the site is likely to contribute (ie yield) during the 5 year period;

[18] Ie (1520 ÷1739 x100)%

(iv) there is an onus upon the LPA to provide transparent, up to date and robust evidence as to the above[19];

(v) the LPA has not set about providing robust and systematic evidence from landowners, promoters or developers as to likely delivery rates of any of the sites;

(vi) a windfall allowance may only be included if there is compelling evidence to do so.

(vii) despite the policy mandate to produce a trajectory (§47 of NPPF) the LPA has not done so, thereby adding to the opacity of its assumptions.

(viii) a significant number of deductions should now be made when compared to RB's starting point of the 2016 SHLAA supply figure[20].

9.1.3 At the start of the inquiry the LPA, after being pressed to do so by SAR provided table C1which provided the details which informed RB's table 11. Upon careful scrutiny of its content SAR and her team sent a "coloured" version of that table back to RB asking for greater clarity in a number of regards. As the inquiry has progressed it has become clear that she was right to do so, and, regrettably the LPA's 5YS contention has proven to be founded on a bed of straw. Thus from the starting point of 14,854 units which were claimed in the 2016 SHLAA to be likely to be delivered in the plan period the following deductions must be made on the evidence:

(i) Sites whose PP had expired at the base date of 1/4/16

(sites coloured orange)

- these units should never have been included in the supply. They comprise sites without PP and which would only be 'deliverable' (and therefore counted) if there was some positive evidence to support their deliverability in the plan period. However RB readily accepted that no such evidence was being presented by the LPA.
- a **deduction of 100** units from the supply is now **agreed**

(ii) Sites whose PP has subsequently expired

[19] PPG § 031 Reference ID: 3-031-20140306

[20] SOCG on Housing §3.21

(sites coloured blue)

- these sites are rightly included as having PP at the base date. However the fact that it is now known that the PPs have expired without being implemented means that the yield from such sites should now be discounted to zero.
- a **deduction of 283** units from the supply is inevitable, and is seemingly conceded[21];

(iii) Princes Dock

- This site has the benefit of OPP at the base date. However it is agreed that it will not all come forward within 5 years of the base date.
- Accordingly, it is **agreed** that **407** units[22] should be deleted from the likely yield from this site

(iv) Student Housing Discount

- RB contends that the schedule only includes clusters of individual student flats as single units even if there are multiple bedrooms in each cluster. Accordingly he contends that no deductions are necessary. However, he told that inquiry that he had assumed that each cluster was 5 flats so that each cluster would free up one non-student house. That does not however appear to be borne out by his own table since in all cases the number of rooms specified for each permission appears to equate to the same number of clusters. Moreover, when the cluster column is added up it is substantially less than the 1120 that RB contends for. Rather the figure is actually 805
- thus it is **agreed** that **315** units should be removed from this element of supply.
- More importantly RB contends that an 80% deduction should be made to student studio flats to reflect the relationship to the release of market housing
- it is therefore **agreed** that a deduction of **1345** should be made in accordance with RB table 10 (RB proof p10)

(v) Stalled Sites

[21] Housing SOCG §3.12

[22] the original Housing SOCG wrongly stated that the figure should be 476 units, this has now been corrected in the updated version.

- in the email of 31st October 2017 SAR drew attention to three sites where there was incontrovertible evidence that three[23] sites were "stalled" and there is no evidence as to when they might progress further. In EIC RB conceded that were he to redo the SHLAA then he would take a conservative view and not include the three sites.
- the schedule shows that collectively those units total 626. However, the two smaller schemes include studio student flats and therefore a discount has to be made applying RB's table 10[24].
- a deduction of 559 units from the supply is an inescapable deduction in the light of RB's concession in EIC

(vi) Norris Green

- the schedule of sites shows supposedly 632 units being delivered from three HDP sites in Norris Green[25]. When the LPA was pressed to explain how that fit with the somewhat aged permissions SAR was told it was complicated (a point RB reiterated in evidence). However SAR was directed to the HDP proposed delivery reported to Cabinet just before the base date which seems to show only 200 units being delivered via the HDP in NG. The position in footnote 11 terms is therefore that in principle the sites should be included, being sites with extant PP at the base date and which have delivered in the past. However, there is absolutely no meaningful evidence worthy of the name to the effect that 632 units will be delivered from HDP sites in NG. Thus, whilst SAR has not included a discount for NG sites in her appraisal submitted at the outset of evidence that does not mean that this point is conceded. To the contrary the evidence on yield is as clear as mud and, with respect conceding that 200 units will be delivered in the 5 year period is generous.

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[23] "The **Former Sarah Mcard Nursery site** (LF_Ref – 3761) and The **Former Odeon Picture House site** (LF_Ref – 5384) – Pinnacle Student Developments Limited / Urban Student Life were responsible for delivering these schemes. However, development on these sites has been halted due to Pinnacle and Urban Student Life being reprimanded and suspended for 12 months for malpractice.
Warehouses on Pall Mall (LF_Ref – 2661) - North Point Global was responsible for bringing forward this development. However, following legal action earlier in the year from Liverpool City Council, they are looking to dispose of their projects within Liverpool including the Pall Mall site which currently stands as a steel skeleton."

[24] Pall Mall deduction should be 426 units (ie in full), Odeon contains 83 cluster flats and McCard contains 33 cluster flats which should also be deducted in full. However the latter two also contain 48 and 36 studio flats which in accordance RB's table 10 methodology would only contribute 20% of their total to the overall supply ie 17 units. The total supply that has been wrongly included is therefore 559 units to the 5YS from these three units.

[25] NG Boot Estate, Phases 1, 2 & 3 The Boot and Site for Former Queen Mary.

- It is respectfully submitted that a deduction should also be made in respect of these sites, albeit that it is not altogether clear what it should be. Having initially resisted any reduction RB now concedes that 258 units should be deleted from this component of supply[26]. However, whilst this concession is welcomed, his reasoning is wholly opaque, and SAR's reasoning has the considerable merit of being based upon LCC's documentation as reported to the Mayor in March 2016! Accordingly a deduction of the figure of 432 (ie 632 minus 200) rather than 258 should be made.

(vii) SHLAA Sites

- It is accepted that the identification of sites within an emerging plan can provide some evidence of deliverability. However in this instance the emerging plan is at a very early stage and the pre-submission version is not yet even in the public domain let alone consulted upon. Many of the sites so far identified are subject of robust objection, and even SC accepted that only "very limited weight" can be afforded to the content of the emerging LP.
- it follows that the 1052 units from "SHLAA sites" on the schedule fall well and truly into the second category of the footnote. Ie sites without PP which can only be included if there is some evidence to justify their inclusion within the 5YS as 'deliverable'. To that end RB accepted that he had no evidence to support either the deliverability of the sites and still less their likely yield within the plan period.
- Instead he has simply applied the SHLAA methodology which in ReX was difficult to follow but seemed to be little more than that the LPA had identified the sites as draft allocations.
- that is, with respect "some evidence" but falls woefully short of the requirements of PPG for "up to date, robust" and "transparent" evidence. Indeed SAR made it clear that LCC's approach is (surprisingly) not to engage with landowners and the market to determine likely yields from sites.
- It follows that on any reasonable view the 1052 units which fall into this category are properly described as being unevidenced, both as to their deliverability and their likely yield. To do other than to make a deduction of 1052 units from the supply would fly in the face of PPG and caselaw[27].

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[26] SOCG §3.20(e)

[27] Wainhomes v SOS & Wilts [2013] EWHC 597 (Admin)

9.1.4 Having made the above deductions from the 14,854 figure of the 2016 SHLAA, it is also important to note that many of those sites did not benefit from PP as at the base date which are agreed to comprise 1266[28].

9.1.5 From the figure of 14,854 SAR has deducted the agreed deductions, together with her additional deductions (as explained in the SOCG) to comprise a higher deduction for Norris Green, the removal of "stalled sites" and those sites where consent has lapsed. It is respectfully submitted that SAR is correct to apply a 10% discount to what remains (ie 10,054[29] @ 90% = 9049) in order to take account of slippage, which equates both with her experience, standard practice elsewhere and importantly the express wording of the emerging local plan[30].

9.1.5 Hitherto she had also applied a higher degree of slippage of 25% for the schemes that only benefitted from an application at the base date, but have subsequently been consented (numbering 1266 units) to reflect their earlier stage in the planning process. However in order to make her approach as robust as possible she has instead adopted a "blanket" 10% rate.

9.1.6 The resultant supply would be 9049 units, which equates to a 3.69 year supply if a 20% buffer is used (ie ÷ by 2452) and a 4.27 year supply if a 5% buffer is applied (ie ÷ by 2146). Dealing then with the last two issues:

(i) Buffer 5% or 20%

9.1.7 The basis upon which the Inspector is invited to form a judgment is agreed. Table 6.2 of SAR's evidence (p64) matches the graphic information in RB's figure 1 (p11). Over that 9 year period the LPA's record of delivery against its requirement has been woeful. Yes in 2008/9 there was a spike in an otherwise desert of under-delivery against RSS, which more usually was around 50% of LCCs requirement and which plummeted to just over 10% of its requirement in 2010/11. From 2012/3, judged against the more recent agreed figure from the SHMA of 1739 the delivery was little

[28] Housing SOCG §3.12
[29] This makes no deduction for Norris Green
[30] Draft Local Plan, paragraph 8.19

better until the year before the base date when delivery just poked its head above the line. When faced with the reality of the graphic expression of under-delivery (and serious under-delivery at that) in figure 1 RB was prepared to say only that there was "significant under-delivery" over "a period of time".

9.1.8 With respect such a contention flies in the face of logic. Moreover his excuses for not concluding that delivery was "persistent under-delivery" were unconvincing. The existence of a recessionary period is true, but that afflicted the whole of the UK economy and patently cannot be a reason not to conclude that under-supply was persistent. The observation that the RSS figure was policy on is also nothing to the point – this is not a 5YS exercise, the RSS target was the development plan target against which delivery should be judged. And finally the claimed recent upturn in delivery is very recent indeed, and it is far too early to conclude that LCC has turned a delivery corner. The excess over requirement was in one year before the base date, and the more recent years delivery figures may have been reported to DCLG, but they have not been presented to the inquiry to enable scrutiny of them. A point of some force given the past discrepancy between DCLG reported delivery (RB table 1 and actual delivery (RB fig 1)).

9.1.9 In short this is about as obvious a case for concluding persistent under-delivery has occurred as one might wish to encounter.

(ii) Should a windfall allowance be included?

9.1.10 Paragraph 48 of NPPF provides:

"*Local planning authorities may make an allowance for windfall sites in the five-year supply if they have* ***compelling evidence*** *that such sites have* ***consistently*** *become available in the local area* ***and will continue*** *to provide* ***a reliable source of supply****."* (emphasis added).

9.1.11 LCC has not had a non-time expired development plan in place since 2001. Accordingly for the last several years all of its supply has come from windfalls in the truest sense (ie sites not identified in an up to date LP). LCC have therefore come up with what might be charitably described as a "cunning plan", or perhaps having its cake and eating it. What it proposes is a SHLAA that condescends down to

consideration of the smallest possible plots (ie 1 unit) and then seeks to add in an allowance for "windfall" sites, by which it means sites which have not been previously identified in a SHLAA. That allowance is no more than an identification of how many such sites there have been since the last SHLAA in 2013 and then rolling them forwards.

9.1.12 There are numerous problems with that approach. Firstly, it presupposes that the rigour of the last SHLAA matches the rigour of the present SHLAA. If the current SHLAA is less rigorous in its identification of sites then the likely future emergence of unidentified sites is going to be less than it has been in the past. Yet there is no evidence of comparative rigour as between the SHLAAs. Secondly the current SHLAA is plainly a thorough document which does not suggest that many sites have been missed. Thus, RB accepted the logic of that position but speculated that unidentified sites might be made up of conversions, yet conceded that he had no idea of how many past conversions might have been included in the past unidentified sites figure. Thirdly, on the LPA's own evidence "windfall" sites have not come forward in a consistent manner. In the last SHLAA (see 2012 SHLAA appended at appx B to 2016 SHLAA at §7.8) the previous SHLAA assumed less than half of the numbers now contended for. Fourthly, the robustness of the exercise is seriously undermined by the fact that past rates are simply uncritically rolled forward, rather than any intervening judgment being formed as to the likelihood of such an eventually. And finally, allied to the latter, ME told the inquiry that by the end of 2018 there will be an adopted LP in place in LCC, whilst one may be sceptical about that prediction, it still means that there is a radical change to the planning landscape in LCC for the first time since the millennium, and yet that is not in any way factored in by RB.

9.1.13 Thus there is literally no proper basis to conclude that the rigorous test of §48 of NPPF is met, and windfalls should not be included as part of the 5YS.

9.1.14 **Overall Submissions on 5YS**

(i) The scenarios

- Six scenarios have been submitted in the Housing SOCG to seek to reflect the parties respective positions and what are thought to be various potential permutations

dependent upon the Inspector's conclusions. Of those the LPA's position is that scenario 1 with a 5% is its position (5.74 years supply) whereas the Appellant considers that scenario 6 with a 20% buffer is appropriate (3.69 years supply).

(ii) Changed positions

- the most obvious submission to make is that whilst both parties positions have altered since the start of this inquiry the direction of change is downwards in both instances. As this session of the inquiry proceeded and figures became understood the fragility of many of the LPA's components of supply became readily apparent, as a result of which its supply began to crumble.

(iii) the LPA's position

- For reasons explained above the correct buffer to apply in Liverpool is 20% and thus the difference between the parties becomes 5.02 years supply versus 3.69. At 5.02 years the LPAs position is the epitome of a marginal supply with a headroom of supply over requirement of a mere 62 units[31], or a mere 13 days supply. That includes the totality of the LPAs position on the inclusion of SHLAA sites, all of its "dodgy" windfall allowance as well as its opaque discounting as well as its position on discounting. In other words to arrive at that tiny headroom would require the LPA to win on every point, which is simply not plausible.
- even if it was right (and its concessions during this inquiry show just how wrong it had been up to this point) then the supply is so fragile that it would be inappropriate to other than to work on the assumption that it has not demonstrated a deliverable 5YS and that the tilted balance is to be applied.

(iv) the Appellant's position

- by contrast SAR's approach has been robust and justified, and the events of the inquiry have demonstrated that in a number of respects her position has been vindicated by the LPAs concessions.
- it follows that the supply is significantly below 5 years, and that it has worsened as it has been subject to the intense scrutiny of the inquiry. It is only if the Inspector chose to disregard NPPF and include an implausible windfall allowance and to defy caselaw

[31] scenario 1 table 12258 requirement versus 12320 supply

and include unevidenced, non-consented SHLAA sites that SAR's position could be concluded to have fallen into error. It is doubtful that the Inspector would wish to do either.

(v) Overall

- Overall therefore it is firmly submitted that LCC fall substantially below 5YS, and it only on the basis of heroic or flawed conclusions that the contrary conclusion can be arrived at. On the basis of the above (even making no allowance for NG) then the supply is a meagre 3.69 years, and substantial weight should be attributed to contributing to meet that deficit.

9.2 Large Family Housing

9.2.1 Whilst Cllr Kemp may disbelieve the detailed evidence of SAR in appx 10 (albeit it was not clear that he was aware of any of it), both AT and SC expressly told the inquiry that they did not take issue with it content. Indeed the only half-hearted challenge to any part of the appx by any of the professional planners was that AT accepted that the SHMA showed a requirement for a year on year requirement of 222 units, but if one attributed the "unknown" units in the SHLAA (SAR appx 10 table 6.1 p.241) that it would result a delivery of 194 units in the 5 year period. However, on the evidence the likely supply is much much lower as SAR describes – ie 70% of supply is apartments and only 16% are known to be houses (table 6.1 (supra))

9.2.2 Moreover the recognition that there is a need for LCC to provide for more family homes is a long standing one. It was recognised back at the time of the UDP. On SAR's evidence it has increased substantially over the last decade and a half and is now recognised in a raft of policy statements quoted by SAR (SAR appx 10 section 5 & page 254), and was recognised in terms by RB in XX.

9.2.3 As for geographic distribution figure 2.1 of SAR appx 4 (p29) shows that most allocations and commitments are not in the South of the City. Figure 5.4 of appx 10 (SAR appx 10 p239) shows that the South of the City within which the appeal site lies is within the hotspot for house prices and therefore geographically well placed to accommodate development of the type proposed. However figure 6.1 (SAR appx 10 p245 shows the pitifully low level of pipeline supply of such housing in the City,

especially when compared to the extent of apartment development concentrated in the City Centre.

9.2.4 The reality is that the appeal proposals help to meet a clear and longstanding need for higher end housing within the City, in the right place, which is being promoted by national housebuilder with a proven track record of delivery. It is submitted that substantial weight should be afforded to meeting this need.

9.2.5 As to the suggestion by AT that there is no mechanism to ensure that the housing will be higher end housing. With respect that is both inconsistent with the parameters plan which proposes low density housing within very generous landscaping, and logic.

10. Green Wedge

10.1 In XX of SAR DMQC fairly conceded that the primary policy consideration in relation to green space/GW relates to policy OE11, which he conceded was parasitic upon compliance with OE3. Rightly he indicated that it was inconceivable that the proposal would fail for breach of OE11[32] but not OE3.

10.2 It follows that the central question relates to the extent to which there is a breach of OE 3 and if so what weight should be afforded to it.

10.3 In XX SC accepted that:

(i) there is no warrant with NPPF for a local policy that seeks to preserve openness for its own sake and seeks to preclude coalescence, other than GB;

(ii) there was never an expectation that GW would persist beyond the end of the plan period without being reviewed;

(iv) such a review would have long ago balanced the needs of the City against the policy objectives that underpin GW;

(v) that balance might have been struck by the UDP Inspector back in 1999 but has not been struck at any point since;

[32] OE11 is plainly inconsistent with NPPF. §74 of NPPF addresses the value in protecting "open spaces" which is defined in the glossary as meaning land which has "public value" in terms of its recreational or visual value. By contrast §8.137 of the UDP makes it clear that all undeveloped land in excess 0.5Ha in size is covered by the policy, irrespective of any assessment of public value as required by NPPF.

(vi) the boundaries of GW would necessarily therefore have met the development needs of the City up to the end of the plan period in 2001, but not beyond;

(vii) the geographic extent of OE3 is necessarily out of date. The boundaries of the policy are grossly out of date;

(viii) the terms of policy OE3 are inflexible and do not import the flexibility and balanced approach of NPPF into development management decisions.

(ix) in any event the terms of the policy require a judgment to be formed as to the impact upon the GW taken as a whole (an approach endorsed in the Harthill report to committee (SAR appx 5);

(x) even if there is a breach of OE3, there is also compliance with the objective of furthering recreational opportunities (§8.25 of the UDP).

(xi) there is no evidential basis underpinning the emerging plan which justifies the retention of the appeal site as GW. Indeed the Strategic Open Spaces Review Report (CD5.5) doesn't even include the appeal site as part of the "green-web" network[33].

10.4 On the evidence the appeal site was included within the GW primarily as a result of the value of the appeal site to the amenity of the area by virtue of the woodland planting along its boundary, not as a result of the glimpsed views of the interior (which have become lessened over the last 18 years since the UDP Inspector reported upon the appeal site). That structural planting along the edge of the appeal site will be strengthened and the perception of two tree lined roadways between Allerton and Woolton will be strengthened and preserved by the appeal proposals. From the air there will be a narrowing of the gap, but in reality the primary function that the appeal site fulfils in GW terms is along the two road frontages and that will be largely unaffected.

10.5 It follows that if there is a breach of the policy it is limited and tempered by the fact that the appeal proposals will in part fulfil the recreational objectives of the policy. Thereby fulfilling an objective which the land presently does not.

[33] SC initially sought to argue that was because it only included land maintained by LCC, which was demonstrably incorrect. In the end SC's somewhat lame point was that the report had not yet been endorsed by Cabinet, but he could not identify any other evidence base to judge the up to datedness of OE3 against.

10.6 What will not be preserved will be the opportunity to trespass across private land, however much that may have been valued by the residents of Allerton Priory and others who live alongside the appeal site and have taken the trouble to provide their views and express their objections. Neither policy OE3 nor OE11 is intended to protect the recreational value of land to trespassers. What appears to go unrecognised by the same objectors is that in future there will be a large area of land immediately adjacent to the Priory which will be publicly available, as well as routes through the woodland and pedestrian / cycle links to the wider green network. That is a substantial net gain to the area whether compared to the fall back or to the existing baseline. Similarly, the fact that the site will be managed for wildlife purposes in future will self-evidently be a benefit compared to its presently unmanaged state. Whilst allegations of arson, deliberate damage to ruderal grassland as well as the even more unsavoury allegations levied at the landowner are emphatically rejected, nonetheless they underscore the fact that even if the site met the criteria for a local wildlife site, in its present state it is unmanaged, whereas in future an enforceable wildlife management regime will be in place. With respect the benefits of the appeal proposals weighed against objectives of §8.25 are obvious.

10.7 Thus, even if terms of policy OE3 were consistent with the policy approach of NPPF the impact upon openness would have to be balanced against the limited impact on the GW as a whole, the reason why the site was endorsed as GW by the UDP Inspector AND the benefits to the objectives of the policy which arise.

10.8 As it is the policy is emphatically not up to date either in its substance or its geographical extent and any breach of the policy ought to be afforded limited weight. To the contrary the appeal proposals otherwise comply with the up to date policies of the UDP, and some of the policies hitherto claimed to be breached plainly aren't (e.g. OE12, OE7, HD18[34]).

[34] Accepted by SC in XX

11. Conclusions

11.1 Taken overall, DM rightly conceded that if there was no 5YS then the tilted balance of §14 of NPPF was triggered[35]. Furthermore relevant policies of the development plan are out of date – e.g. OE3 both in substance and in its geographic extent[36], and that is sufficient to trigger the tilted balance. Moreover even if there were a 5YS, it is marginal and there is clear evidence that the LPA is not meeting its obligations to provide the appropriate range of housing to fulfil the City's social and economic roles (and thereby those aspects of sustainability). Even if that was not of itself sufficient to trigger the tilted balance, nonetheless the weight to be afforded to it should be substantial. It will be recalled that the UDP Inspector thought that other sites might come forward to address that need (when the housing position of the City was very very different as explained by SAR)[37], but that has proven not to be the case, and the longstanding need has worsened over the intervening 18 years.

11.2 In an ideal world the LP would be just around the corner and the Inspector could take comfort in the prospect that the plan would address those matters imminently. However the lesson of the last 2 decades is that plan preparation in the City is not smooth and the recent intervention by the SOS heightens rather than reduces the concern that the adoption of the LP is not an imminent eventuality.

11.3 Overall then, the viewed dispassionately[38] the land use merits of the proposals[39] strongly favour the grant of permission and the appeals ought to be robustly allowed.

Kings Chambers
Birmingham
Manchester
Leeds

Paul G Tucker QC
Freddie Humphreys
7th December 2017

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35 Consistent with the approach of Lord Carnwarth in Suffolk Coastal @§59

36 Again recognised in Suffolk Coastal that out of datedness can relate to the geographic coverage of policy @§63

37 Chapter 9 of the UDP is replete with references to a declining population e.g. §9.3

38 The High Court has repeatedly urged decision makers to make determinations of this type dispassionately e.g. Ardagh Glass §98.

39 NB this closing submission does not address each and every point raised in evidence. For example reliance is placed upon SAR's evidence as to AQ, school capacity etc.