Report to the Secretary of State for Communities and Local Government

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an Inspector appointed by the Secretary of State for Communities and Local Government

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Date: 8 October 2009

TOWN AND COUNTRY PLANNING ACT 1990

CRAWLEY BOROUGH COUNCIL

APPEAL BY

TAYLOR WIMPEY UK LTD AND BEAZER HOMES (REIGATE) LTD

Inquiry held on 2-26 June 2009

Land at North East Sector, Crawley

File Ref: APP/Q3820/A/08/2092933

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File Ref: APP/Q3820/A/08/2092933
Land at North East Sector, Crawley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Taylor Wimpey UK Limited and Beazer Homes (Reigate) Limited against Crawley Borough Council.
- The application Ref: CR/98/0039/OUT is dated 19 January 1998.
- The development proposed is up to 1,900 dwellings, 5,000 sq m of use class B1, B2 and B8 employment floorspace, 2,500 sq m of net retail floorspace, a local centre/ community centre (including a community hall), a new primary school, recreational open space, landscaping, the relocation of the 132kv overhead power line adjacent to the M23, infrastructure and means of access.
- This report supersedes that issued on 22 January 2007. The Secretary of State's decision on the appeal dated 14 May 2007 was quashed by order of the High Court.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

INTRODUCTION AND PROCEDURAL MATTERS

The application and appeal

1.1 The first inquiry into this appeal was held in October/November 2006. Following the quashing in the High Court of the decision dated 14 May 2007, the Secretary of State decided to re-open the inquiry to allow for full and proper reconsideration of the appeal proposals, including examination of any new matters or changes of circumstance. The re-opened inquiry sat for 14 days between 2 and 26 June 2009. I made a visit to the site accompanied by a representative of the appellant and the Council on 24 June. I also made unaccompanied visits during the course of the inquiry to many of the sites and areas referred to in evidence.

1.2 I held a pre-inquiry meeting to discuss administrative and procedural matters relating to the re-opened inquiry on 15 April 2009. That meeting was attended by representatives of the appellants, Crawley Borough Council, Gatwick Airport Limited (who had been granted Rule 6 status), West Sussex County Council and the Highways Agency. The latter two parties indicated that they would only need to give evidence at the inquiry if agreement could not be reached on infrastructure provision. West Sussex County Council subsequently submitted a written statement to the inquiry and took part in some of the conditions sessions. The Highways Agency did not appear at the inquiry or submit written evidence, though it was a signatory to the Addendum to the Statement of Common Ground on Transport Matters[1] prepared in May 2009.

1.3 The application (CD45) was submitted in January 1998. In March 1999 the Secretary of State issued a direction under Article 14 of the Town and Country Planning (General Development Procedure) Order 1995 which

[1] R/CD179

prevented the Council from granting planning permission without special authorisation (CD67). This direction remains in force.

1.4 The application was submitted in outline with all matters reserved for subsequent approval. It originally proposed up to 2,200 dwellings, rather than 1,900, and included a first and middle school, a fire station and a park and ride facility as part of the community provision. The application was amended on 19 June 2006 to the current description (apart from the dwelling number then being described as "approximately 1,900" rather than, as is now agreed by the parties, "up to 1,900"). At the same time an amended 'red-line' application site plan (Plan B1) was submitted.

1.5 The application plans are the same as before the 2006 inquiry. Although the latest version of the Masterplan (drawing CSA/667/020 Revision F) is dated April 2009, this is an up-date which incorporates amendments that were made in October 2006 to the layout of the local centre and school site (as shown on Plan D4). Thus it is a more accurate version of the Masterplan, and there was no objection to its inclusion from the parties at the re-opened inquiry. Similar revisions have been made to the May 2009 update of the Design Statement.[2] The current plans are listed at the end of the report.

Environmental Statement

1.6 An Environmental Statement (ES) was submitted in June 2006. Its adequacy was addressed in detail at the last inquiry. The Secretary of State concluded that the ES complied with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and that there was sufficient information to assess the environmental impact of the application. At the re-opened inquiry all parties were content that, apart from the up-dating undertaken in preparing the new evidence, the information remained adequate. Nothing arose during the re-opened inquiry to cause me to question that view.

1.7 In arriving at my recommendation I have taken into account the environmental information contained in the ES and presented at the two inquiries. As required by Regulation 21(2) of the Regulations, a description of the main mitigation measures proposed to avoid, reduce and offset the major adverse effects of the development is included in my conclusions. This is based partly on a document prepared by the parties which sets out these measures in greater detail.

Secretary of State matters

1.8 The then Secretary of State indicated in December 2008 that she particularly wished to be informed about the following matters for the purposes of her further consideration of the planning appeal:

(i) the extent to which the proposed development conforms to the Development Plan, comprising the Regional Spatial Strategy for the South East (RPG9); the saved policies of the West Sussex Structure Plan (2001-2016); the saved policies of the Crawley Borough Local Plan 2000; and Crawley Borough Council's Core Strategy Development Plan Document, adopted in November 2007;

[2] R/TWB/5/2G

(ii) the extent to which the proposed development conforms to the emerging South East Plan;

(iii) the extent to which the proposed development would, if granted permission, accord with the Future of Air Transport White Paper 2003 and the Future of Air Transport Progress Report 2006;

(iv) the extent to which the proposed development would, if granted permission, secure a high quality of design, having regard to Planning Policy Statement 1 (PPS1): Delivering Sustainable Development and its supplement Planning and Climate Change;

(v) the extent to which the proposed development is consistent with Planning Policy Statement 3 (PPS3): Housing;

(vi) the extent to which the proposed development is consistent with Planning Policy Guidance note 13 (PPG13): Transport;

(vii) the extent to which the proposed development is consistent with Planning Policy Guidance note 24 (PPG24): Planning and Noise;

(viii) whether any permission should be subject to conditions and, if so, the form they should take; and

(ix) any other planning considerations the Inspector considers relevant, including planning obligations.

Propriety of evidence of a Council witness

Appellants' allegation

1.9 A noise consultant, Mr Turner, gave expert evidence on noise matters for the Council. The appellants contend that, as a matter of fairness, the Secretary of State should disregard Mr Turner's evidence. This is because his firm (Bureau Veritas) were involved in advising DEFRA (apparently on behalf of CLG or the Treasury Solicitor on CLG's behalf) on a point of interpretation of PPG24 which arose in the context of the appellants' successful S288 challenge to the 14 May 2007 Decision Letter. Mr Turner's explanation is confirmed in Bureau Veritas' letter of 22 June 2009.[3] Accordingly there is a conflict of interest.

1.10 The appellants submit that it would be wholly improper for the Secretary of State to rely on disputed evidence presented by a member of a firm of consultants in circumstances where the Government has already taken advice from the relevant firm as part of its resistance to a challenge to the Secretary of State's May 2007 Decision Letter. If the Secretary of State were to have regard to the disputed evidence, it is argued that this would give rise at the very least to the appearance of bias, or more likely, to actual bias by the Secretary of State as decision-maker in this case.

Council's response

1.11 The Council resists these allegations. Mr Turner explained that Bureau Veritas does not have a contractual relationship with CLG. DEFRA are clients of Bureau Veritas and take advice from them. Advice is sometimes sought from DEFRA by CLG and that advice is procured by DEFRA from Bureau Veritas. Mr Turner confirmed that his firm had provided advice to DEFRA in

[3] R/CD177, R/CD182

response to a query about ambiguities in PPG24 that related to the S288 appeal in this case.

1.12 The Council submits that the question of whether or not Bureau Veritas had a conflict of interest has no bearing on the Secretary of State's decision. It is, in essence, a matter between Bureau Veritas and its clients. As far as the appearance of bias is concerned, the relevant principles are to be found in the decision of the House of Lords in *Magill v Porter* [2002] 1 All ER 465:[4]

> *"The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."*

1.13 Even if it is assumed (1) that CLG has taken advice from Bureau Veritas, (2) that the advice is material to a matter which remains to be determined by the Secretary of State, and (3) that Mr Turner's evidence is taken into account, in the Council's opinion there would be no appearance of bias when the *Magill v Porter* test is applied. This is because Mr Turner, although a director at Bureau Veritas, provided the inquiry with his own independent expert evidence, which was tested in the ordinary way. Whatever other advice his firm has provided has no bearing on that evidence.

Inspector's comments

1.14 From Mr Turner's account of events I am satisfied that there was no actual or apparent bias in his role as an expert witness. This is because he made clear that it was other persons in his firm, not him, that gave the advice to DEFRA, and he was careful not to discuss the evidence he was preparing to give to this appeal (or the case in general) with those other persons. Mr Turner was a credible witness and I have no reason to doubt the accuracy of his account of events. I have attached weight to Mr Turner's evidence in reaching my conclusions.

THE SITE AND SURROUNDINGS

2.1 The appeal site lies on the north-eastern edge of Crawley urban area and extends to about 119ha. It comprises most of the land between the M23 motorway on the eastern boundary, Crawley Avenue (A2011) to the south and the London-Brighton railway to the west; it extends northwards to parts of Radford Road, Steers Lane and Balcombe Road. The scatter of dwellings and commercial properties fronting these roads are excluded from the site, as are the Surrey and Sussex Crematorium and a prominent gas holder. The site is divided into two areas by Balcombe Road and is crossed by two public footpaths.

2.2 The land is generally flat, sloping very gently down from the east to Gatwick Stream which flows through the site close to the western boundary. The area to the east of Balcombe Road is in active agricultural use, supporting arable

[4] R/CD193 - see the judgment of Lord Hope at paragraphs 102-103

crops and pasture. The larger area to the west has more of a parkland character and comprises former pasture, now used in part for horse grazing, and substantial areas of woodland. It includes the site of an abattoir, now demolished, and a large pond used by a local fishing club. A 132kv overhead power line crosses the site close to the southern and eastern boundaries. Prominent lines of mature trees and hedgerows divide many of the fields and extend along the road frontages; together with the woodland these create an enclosed landscape, with limited views into the site.

2.3 South of the appeal site, across Crawley Avenue, is the Pound Hill residential neighbourhood, with Crawley town centre some 3km to the south-west. Across the railway to the west is an extensive area of industrial estates which forms a major employment location for Crawley; beyond this to the north-west of the site is Gatwick airport. To the north the ribbon of houses along Radford Road constitutes the small settlement of Tinsley Green, beyond which are blocks of woodland, farmland and airport-related facilities such as car parks. Across the M23 to the east is an extensive area of countryside and a scatter of dormitory villages.

2.4 A more detailed account (with photographs) of the site, its setting and the landscape context are given in the evidence and appendices of Mr Self (Documents R/TWB/5/1, R/TWB/5/2) and in the Design Statement (Document R/TWB/5/2G).

THE PROPOSALS

Inspector's note. Apart from the implementation timetable, the details of the proposal have not changed in any material way since the 2006 inquiry. Inspector Phillipson provided a full account of the nature of the development and its phasing in section 3 of his Report,[5] which was commended to me by the parties. This section repeats most of that section, updated as necessary to reflect the current programme of implementation.

3.1 The 1,900 houses would comprise a mix of house types and sizes on a net site area of about 47ha, giving an average density of 41 dwellings per hectare. 40% of the total number of dwellings within each phase would be affordable housing, of which no less than 70% would be social rented accommodation. Underlying the strategic objective of creating a uniform and coherent neighbourhood is the identification of specific character areas which would reflect the particular attributes or role of an area in the overall scheme.

3.2 The main employment area would be located alongside the railway in the western part of the site. A near continuous building form is envisaged to mitigate the effects of railway noise. A smaller area would be located within Blackcorner Wood. A range of uses comprising Use Classes B1, B2 and B8 is proposed, with the mix to be determined.

3.3 The main neighbourhood centre would be in the western part of the site, to the east of the parkland alongside the Gatwick Stream. It would contain shops, a health centre, a public library, a youth centre and play centre together with central civic amenity space, car parking and ancillary

[5] R/CD108

development.[6] A new primary school would be provided alongside the neighbourhood centre. A smaller community centre, including a community hall would also be provided to the east of Balcombe Road, alongside the playing fields.

3.4 The area to either side of the Gatwick Stream would be landscaped for use as parkland and would contain a neighbourhood equipped area of play. Smaller equipped and non-equipped play areas would be provided in the housing areas to either side of Balcombe Road. Two areas of playing fields would be provided with changing facilities; one in the eastern part of the site adjacent to the community centre and one in the south west corner of the site to the south of Ballast Hole Lake, which would be retained as a recreational fishing lake. Further sports pitches would also be provided within the school site.

3.5 A network of footpaths and cycleways would be provided within the site to connect the housing areas to the neighbourhood centre and community centre and to link into off-site routes to Pound Hill, Three Bridges, Manor Royal and Crawley town centre. Toucan crossings would be provided on Balcombe Road. Cycleways within the site would include a route alongside the Gatwick Stream in the western part of the site, which would form a part of the Sustrans National Cycle Network. The existing footpath through the eastern part of the site would be maintained on its present alignment.

3.6 Vehicular access to the eastern section of the development would be via two new signal controlled junctions on Balcombe Road. The western side of the development would be served via a new access from Steers Lane, and an access onto a new link road in the south that is proposed to connect Balcombe Road to a new all turning movements traffic signal controlled junction on Crawley Avenue. Off site, the existing west pointing slip roads that connect Crawley Avenue with Balcombe Road would be closed. The existing priority junctions between Steers Lane and Balcombe Road, between Radford Road and Balcombe Road, and between Steers Lane and Radford Road would be improved and signals installed. Street lighting would be installed along Balcombe Road.

3.7 Further from the site, highway improvements would be carried out to increase the capacity of the nearby motorway junction (M23, Junction 10) including widening the approach slip roads and parts of the circulatory carriageway. Signals would be installed at the Hazelwick Roundabout at the intersection of Crawley Avenue, Gatwick Road and Hazelwick Road. Other off-site highway works designed to offset the impact of the development would include improvements to the Gatwick Road/Radford Road/James Watt Way roundabout and replacement of the Balcombe Road/Antlands Lane roundabout with a signalised junction. The Radford Road railway bridge would be reconfigured to accommodate a widened footway/cycleway, with signal controlled shuttle working for motorised traffic.

3.8 The footpaths and cycleways on the site would be linked to an expanded off-site network to provide continuous links to existing off-site routes and local facilities. The main routes would comprise:

[6] R/CD148

A link along Radford Road to the existing route along Gatwick Road, leading to the employment areas and Gatwick airport.

Links under Crawley Avenue (via the existing subway and Grattons Park) and along Balcombe Road to Pound Hill, the Hazelwick School and the adjoining superstore, and Three Bridges Station.

A new link along the northern verge of Crawley Avenue to Tinsley Lane and the existing footbridge over Crawley Avenue (including toucan crossings at the Hazelwick roundabout and a link along the eastern side of Hazelwick Avenue to the superstore and secondary school).

3.9 A new bus service would be provided linking the site to Three Bridges Railway Station, Crawley town centre, the Manor Royal employment area, and Gatwick Airport North and South Terminals. Within the development, the bus would follow a circular route with bus stops located to limit the walking distance from the housing to the nearest stop to a maximum of 400m. Each bus stop would be equipped with a high quality shelter, with seats and real time passenger information. Initially during the first phase of the development buses would be timetabled to run at 30 minute intervals during the day. Thereafter the interval would be shortened to one every 20 minutes. The first bus in the morning would leave the development at around 04.30 in order to allow workers at Gatwick to arrive in time for the early shift. The last bus would be at approximately 23.00.

3.10 It is anticipated that the development would take around eight years to complete, with construction in four phases. The first phase would be in the northern part of the site and would contain around 280 dwellings. It would include the parkland adjoining the Gatwick Stream, the main community centre and the primary school (but see paragraphs 3.13 and 3.14 below). Access would be from Steers Lane.

3.11 Phase 2 would contain around 520 dwellings. Most would be located on the southern half of the site, to the east of Balcombe Road, with a smaller number on the western side of the site between the Phase 1 housing and the new link road between Crawley Avenue and Balcombe Road. The playing fields and pavilion on the eastern part of the site would be included in the Phase 2 works. In order to mitigate the effects of noise generated by traffic on the M23 motorway, the dwellings on the eastern part of the site within Phase 2 would be protected by a 2m to 3m high bund and 2m high acoustic fence in a landscape corridor alongside the motorway.

3.12 Phase 3 would contain some 700 dwellings and would complete the development to the west of Balcombe Road. It would include the playing fields in the south west corner of the site and the employment buildings alongside the railway. Phase 4 would comprise some 400 dwellings and would complete the development. As with Phase 2, a landscape buffer with bunding and an acoustic fence would be provided to mitigate motorway noise.

3.13 A series of agreed conditions specify “trigger points” by which time key elements of the on-site infrastructure would have to be completed. These include:

Trigger (dwellings)	Requirement	Condition[7]
200	Playing fields within the school site	25
280	Neighbourhood equipped area of play	26
500	Central parkland and associated open space	11
500	Playing fields and part of (Phase 2) community centre	29
800	Remainder of (Phase 2) community centre	29
1,000	Local centre, including shops (first 1,250 sq m), health centre, library and youth centre and play centre	28
1,250	Playing fields (in Phase 4)	27
1,500	Remaining shops (up to 2,500 sq m total)	28

3.14 The agreed conditions do not specify a trigger point for the completion of the primary school or for the landscape management and biodiversity management works. However, the conditions governing these matters (Conditions 12, 14 and 32) each contain clauses requiring programmes to be submitted for approval alongside the further details of the works proposed.

3.15 Condition 63 requires that no more than 75% of the open market dwellings within any one phase shall be constructed until all social rented housing within that phase has been completed and handed over to the Registered Social Landlord (RSL) or other approved affordable housing provider. Similarly, the condition requires that no more than 80% of the open market housing in any phase may be occupied until such time as all affordable housing (i.e. social rented housing and intermediate affordable housing) within that phase has been completed.

3.16 Similar trigger points to those applied to the on-site infrastructure would apply to the provision of the off-site highway, footway and cycleway improvements required to serve the development. In summary, these require the highway improvements along the Radford Road/Steers Lane corridor to be completed prior to occupation of more than 50 dwellings, and improvements to the Balcombe Road corridors and Crawley Avenue corridors (including M23 Junction 10) to be completed prior to occupation of 300 dwellings (Conditions 45 to 47). Conditions 52 to 56 similarly specify the latest times by which the various improvements to off-site footways and cycleways are required to be delivered.

PLANNING POLICY

4.1 The development plan includes the South East Plan - Regional Spatial Strategy for the South East of England, published in May 2009 (SEP – document R/CD137), the Crawley Borough Local Development Framework

[7] The condition numbers refer to the Conditions in Annex A of this report.

Core Strategy, adopted in October 2008 (CBCS – document R/CD10), and the saved policies of the Crawley Borough Local Plan, adopted in 2000 (CBLP – document CD44). A full list of policies relevant to the appeal is given in the Planning Policy Statement of Common Ground (document R/CD139). The policies most pertinent to the main issues in this case are summarised below.

South East Plan

4.2 An extensive area around Gatwick is one of the 9 sub-regions identified under policy SP1 as the focus for growth and regeneration. The policy seeks co-ordinated effort and cross boundary working to better align economic and housing growth, deliver adequate infrastructure and plan for more sustainable forms of development. The Crawley-Gatwick urban area is a regional hub which policy SP2 aims to support by, amongst other matters, focusing higher density, mixed use development in locations which reduce the need to travel and are accessible by public transport. A more general focus on urban areas throughout the South East is the objective of policy SP3; this also seeks at least 60% of all new development on previously-developed land and requires urban extensions to be well designed and consistent with the principles of sustainable development.

4.3 Wide-ranging cross-cutting policies identify sustainable development priorities for the region (policy CC1), require mitigation of, and adaptation to, the effects of climate change (policy CC2), seek the use of sustainable construction standards and techniques (policy CC3), and promote the creation of sustainable and distinctive communities (policy CC6). Policy CC7 recognises that infrastructure capacity will be needed to meet the scale and pace of development, with contributions being required from development itself. Policy CC8 seeks networks of accessible multi-functional green space designed to support biodiversity and the wider quality of life.

4.4 The provision of 1,800 dwellings per annum (dpa) is proposed for the Gatwick sub-region under policy H1, with local planning authorities urged to work collaboratively to mange the supply of land. Crawley District is expected to provide 375 dpa, equivalent to 7,500 dwellings over the 20 year (2006-2026) plan period. The breakdown for the remainder of the sub-area is given in policy GAT3, with 460 dpa sought from part of Horsham District, 840 dpa from part of Mid Sussex, and 125 dpa from part of Reigate & Banstead. Policy H2 re-iterates the need for local planning authorities to work in partnership to allocate and mange the land supply required to deliver the housing provision. Among the considerations also to be taken into account in planning for the delivery of housing is the need to address any backlog of unmet housing needs in the first 10 years of the Plan (policy H2 (viii)). Policy H3 seeks a substantial increase in the amount of affordable housing in the region; policy GAT3 sets a target of 40%.

4.5 Policy T9 requires policies and proposals to support the development of Gatwick and Heathrow airports, and to safeguard land at Gatwick for a possible new runway after 2019, as set out in the 2003 Air Transport White Paper (ATWP). Account should also be taken of airport operator masterplans produced in accordance with the ATWP. Measures to address and reduce noise pollution are sought by policy NRM10; these include locating new residential and other sensitive development away from existing or planned new sources of noise. Policy NRM11 promotes greater use of decentralised

and renewable or low-carbon energy in new development, with at least 10% of energy coming from such sources unless this is not feasible. Combined heat and power schemes are encouraged by policy NRM12.

Crawley Borough Core Strategy

4.6 CBCS policy H1 makes provision for 4,040 dwellings in the 2001-2016 period, made up of about 1,460 completions and commitments to 2006, 2,265 from strategic housing opportunity sites, and the remainder from small sites and windfalls. The policy acknowledges that the level of provision is insufficient to meet either the housing requirement of the West Sussex Structure Plan to 2016 or the more substantial requirement of the (then draft) South East Plan. It therefore states that an early review of the Core Strategy will be undertaken to identify land to meet future needs to 2026, to be released in defined phases if the North East Sector is not available for development.

4.7 The 8 strategic housing opportunity sites are listed in policy H2. This policy also identifies the North East Sector as an appropriate site for a new neighbourhood, with no policy bar to immediate commencement, if the current preclusion relating to the possible expansion of Gatwick is lifted. Policy NES1 identifies and safeguards the North East Sector for a new neighbourhood to accommodate up to 2,700 dwellings and other uses. Further detail is provided in policy NES2: this seeks a sustainable and comprehensively master-planned neighbourhood with a mix of dwelling size and type, 40% affordable housing, a new neighbourhood centre, park and ride facilities and 5,000 sq m of employment provision.

4.8 Policy G2 and the Proposals Map identify land to be safeguarded from development which would be incompatible with the expansion of Gatwick airport to accommodate the construction of an additional wide-spaced runway (if required by national policy) and the associated increase in facilities. The safeguarded land includes a small part of the proposed North East Sector, though none of the appeal site is within the safeguarded area. Policy ICS2 seeks development contributions or on-site provision for the infrastructure provision required to meet the justifiable needs created by new development.

Crawley Borough Local Plan

4.9 Saved policies GD1 – GD4 are typical development control policies which relate to all development. They seek a satisfactory standard of design and layout which is appropriate to its site and setting, which does not cause unreasonable harm to the amenities and the environment, which safeguards important natural or built features of the site, which provides safe and proper access, and which is not prejudicial to the proper planning of the wider area. Policy GD17 states that regard will be had to the latest published guidance on development and noise, notably the latest agreed predictions/calculations of aircraft and other noise. It seeks adequate protection from noise where residential or other noise sensitive development falls within NEC zones B or C, and will not normally permit such development within NEC zone D.[8] Policy GD17 further states that, notwithstanding the possibility of installing noise insulation measures, major noise sensitive development will not be permitted

[8] NEC relates to the Noise Exposure Categories set out in Annex 1 to PPG24.

in areas subject to aircraft noise exceeding 60 dB(A) unless there are exceptionally compelling reasons.

National planning policy

4.10 The national planning policy statements (PPS) or guidance (PPG) most relevant to the main issues in this appeal are PPS1: *Delivering Sustainable Development* and its recent supplement *Planning and Climate Change*; PPS3: *Housing*; PPG13: *Transport* and PPG24: *Planning and Noise*. Other material considerations include the 2003 ATWP *The Future of Air Transport*, the 2009 statement *Adding Capacity at Heathrow: Decisions Following Consultation*, Circular 11/95: *The use of conditions in planning permissions* and Circular 05/2005: *Planning Obligations*.

MATTERS AGREED BETWEEN THE PARTIES

5.1 Statements of Common Ground covering Housing Land Supply (R/CD138), Planning policy (R/CD139) and Noise (R/CD160) were agreed between the appellants and Crawley BC. A separate Statement of Common Ground on Noise was agreed between the appellants and Gatwick Airport Limited (GAL) (R/CD147). An addendum to the 2006 Transport Statement of Common Ground was agreed between the appellants, the Highways Agency and West Sussex County Council (R/CD179). The main matters set out in these statements that are not addressed elsewhere in this report are summarised below.

Noise

5.2 The appeal site is presently exposed to noise from road traffic on the M23 and A2011 Crawley Avenue, noise from rail traffic on the London-Brighton main line to the west of the site, and is in the vicinity of Gatwick airport. There is also some incidence of industrial noise from the industrial areas beyond the railway further to the west. To reduce the noise exposure on the site, it is proposed to provide noise barriers near to both the M23 and the London-Brighton railway line, together with other noise mitigation measures.

5.3 Taking account of the proposed conditions, the appeal proposal limits noise sensitive development to those areas which fall within PPG 24 Noise Exposure Categories (NEC) A or B for all existing road and rail noise sources. There is no objection to the appeal proposal as a result of noise from road traffic, rail traffic, or mixed sources (arising from the contribution of industrial noise to the rail traffic noise).

5.4 With respect to aircraft noise, it is agreed with the Council that the operation of a single runway at the airport (irrespective of the number of aircraft movements) does not give rise to any noise constraint on the appeal site. Therefore the only noise issue relates to the increase in noise resulting from a wide spaced second runway at the airport. GAL agreed that there is no objection to the appeal proposal so far as predicted aircraft noise in respect of the operation of a single runway to 2015 is concerned (irrespective of the number of aircraft movements).

5.5 The latest available information on future aircraft noise in 2015 for a single runway at the airport is that prepared by the Civil Aviation Authority's

Environmental Research and Consultancy Department (ERCD) and copied into the Gatwick Airport Interim Master Plan as Drawing No 5. [9] This drawing indicates that the 57 $L_{Aeq,16h}$ contour for 2015 does not impinge on the appeal site.

5.6 The appeal proposal would not infringe on the land that would be required should a second wide spaced runway be constructed at the airport. It is agreed, as concluded by the Secretary of State in paragraph 55 of the original decision letter,[10] that the option of a second runway at the airport would not be frustrated by the existence of the proposed development on the appeal site.

5.7 The most recently published information on the effect of noise from a second runway at Gatwick is to be found in the Gatwick Airport Interim Master Plan at Drawing No 9. This shows the 57, 60, 63, 66 dB(A) ($L_{Aeq,16h}$) contours on the appeal site. Drawing 9 is agreed by all parties to be a reasonable representation of the aircraft noise attributable to the mixed mode use[11] of the existing Gatwick runway and a runway 1,035 metres to its south. It is agreed that the further set of mixed mode contours commissioned by the appellants should be regarded as a sensitivity test, and that the change in impact on the appeal site would be small.

5.8 The table in R/CD147 is a compilation of the agreed population information used in the evidence of GAL and the appellants, without prejudice to the parties' views as to the relevance of the various assumptions made. All population and household numbers used are based on the contours shown on Drawing 9.

5.9 It is agreed with the Council that with appropriate noise insulation and ventilation, the good internal standard for living rooms and bedrooms as described in BS 8233:1999 would be achieved within the proposed dwellings. In some situations the standard would only be achieved with windows closed. It is also agreed that with appropriate noise insulation and ventilation, a satisfactory internal teaching environment could be achieved within the proposed primary school building. Again, in some situations a satisfactory internal teaching environment would only be achieved with windows closed.

5.10 DfES Building Bulletin 93: *Acoustic Design of Schools* (BB93) requires the design of the sound attenuation provided by the building envelope of the school to take account of the highest external noise level likely to occur during a 30 minute period during normal teaching hours ($L_{Aeq,30min}$). The main noise data available are expressed in terms of the $L_{Aeq,16h}$ noise indicator, assuming mixed mode operation. At the school building, the $L_{Aeq,16h}$ values are agreed to be 61.5 dB(A) for mixed mode operation, 57.0 dB(A) for segregated mode A (arrivals only on new runway), and 63.0 dB(A) for segregated mode B (departures only on new runway). These figures are based on the sensitivity test contours: the corresponding value for the mixed

[9] CD128
[10] R/CD109
[11] 'Mixed mode' runway operation involves both landings and departures taking place on the same runway; 'segregated mode' involves all landings on one runway and all departures from a second runway.

mode contours in Drawing 9 is 62.0 dB(A). The worst case $L_{Aeq,30min}$ external noise level at the school, which occurs with departures from a new runway (based on mixed mode operation), is 68 dB(A).

Housing land supply

5.11 The Districts wholly or partly within the Gatwick Sub-region comprise as follows:

Crawley (all of the Borough)
Horsham (north eastern part)
Mid Sussex (majority of the District, excluding a small part to the south)
Reigate & Banstead (southern part)

5.12 The most up to date published assessment of housing land supply is set out in the Annual Monitoring Reports (AMRs) for the Districts/Boroughs. These cover the period 1 April 2007 to 31 March 2008 and were published in December 2008. However, for Reigate & Banstead Borough the Submission Core Strategy is the most up to date assessment of housing land supply.

5.13 The agreed components of the five year housing land supply for each District are:

Crawley

RSS requirement 2006 to 2026	7,500
Completions 2006 to 2007	468
Completions 2007 to 2008	679
Total completions 2006 to 2008	1,147
Residual requirement 2008 to 2026	6,353
Supply	
Sites of 6+ dwellings with full planning permission	1,091
Sites of 5 dwellings or less with full planning permission	33
Anticipated net losses	-51

Horsham *(whole District)*

RSS requirement 2006 to 2026	13,000
Completions 2006 to 2007	393
Completions 2007 to 2008	221
Total completions 2006 to 2008	614
Residual requirement 2008 to 2026	12,386
Supply	
Local Plan allocations	843
Completions on non-allocated sites	247
Anticipated net losses	-112

Mid Sussex *(whole District)*

RSS requirement 2006 to 2026	17,100
Completions 2006 to 2007	337
Completions 2007 to 2008	502
Total completions 2006 to 2008	839
Residual requirement 2008 to 2026	16,261
Supply	
Local Plan allocations	915
Small scale housing allocations	1,186

Sites with planning permission	966
Strategic location west of E Grinstead	0
Reigate & Banstead *(Gatwick sub-region part)*	
RSS requirement 2006 to 2026	2,500
Completions 2006 to 2007	84
Completions 2007 to 2008	24
Total completions 2006 to 2008	108
Residual requirement 2008 to 2026	2,392
Supply	
Sites of 10+ dwellings with planning permission	36
Sites of 9 dwellings or less with planning permission	61
Allocated sites	400
Total supply	497

Transport

5.14 The November 2006 Statement of Common Ground (CD134) provided information relating to the existing transport infrastructure in the vicinity of the appeal site. The Statement then explained how the increased transport demands of the development were proposed to be mitigated. The May 2009 Addendum sets out the changes that have taken place to the transport infrastructure since November 2006 and describes the changes to the transport measures required to mitigate the impact of the development.

5.15 The changes to the transport infrastructure are limited to (a) four minor variations to local bus networks, two involving slight improvements to services and the others relating to operational matters, and (b) two improvements to the local cycle network.

5.16 It is agreed that the results of the Saturn traffic model that was developed in 2006 to predict the traffic impact of the North East Sector allocation (for up to 2,700 dwellings) continue to be sound and appropriate to use for the design of the off-site highway mitigation measures. An outline of the modelling process is given in paragraphs 4.20 – 4.22 of Inspector Phillipson's report, R/CD108.

5.17 There are no changes to the proposed bus service provision set out in Working Paper 1C (CD135), or to the pedestrian and cycling measures described in Working Paper 2 (CD136). There are also no changes to the proposed traffic mitigation measures, though the drawings that show the agreed off-site highway works have been revised to provide a clearer indication of the scope of the works at the respective junctions. The revised drawings are included as Appendices A to K of R/CD179.

Other agreed matters

5.18 At the 2006 inquiry a Statement of Common Ground on air quality was produced (CD116). This remains an up-to-date assessment, for there was no significant discussion on this topic at the re-opened inquiry.

THE CASE FOR THE APPELLANTS

6.1 The appellants' case is predominantly taken from closing submissions. The material points are:

NOISE AND A SECOND WIDE-SPACED MIXED MODE RUNWAY AT GATWICK

6.2 The sole issue between the parties in respect of noise matters remains the possibility of a second runway at Gatwick.

The effect on the living conditions of North East Sector residents of a second wide-spaced runway at Gatwick operated in mixed mode

6.3 With a second runway at Gatwick, the appeal scheme would be in NEC A and B for aircraft noise (Annex 1 to PPG24). There is nothing in the definitions of these categories which suggests that those living on the appeal site would (given the noise insulation in the new dwellings) be subjected to unacceptable noise levels or thereby no longer enjoy satisfactory living conditions. PPG24 itself implies that the 72 dB(A) contour is the limit of acceptability because this is the start of NEC D, where "planning permission should normally be refused". Thus the reference in paragraph 12 of PPG24 to "unacceptably high levels of noise" has to be taken as a reference to NEC D.

6.4 The ATWP[12] suggests that this figure may now have reduced to the 69 dB(A) contour because this is the point at which airport operators are to offer to purchase properties. Notably, however, the ATWP contemplates the offer of acoustic insulation for properties between the 63 dB(A) and 69 dB(A) contours, confirming that (with appropriate sound insulation) satisfactory living conditions continue to exist in these areas. Therefore, both PPG24 and the ATWP indicate clearly that the residents of the North East Sector would continue to enjoy satisfactory living conditions, even with the operation in independent mixed mode of a new wide-spaced runway at Gatwick. Further, the March 2009 guidance[13] published by DEFRA on the production of noise action plans used the 69 dB(A) contour as the benchmark of acceptable noise levels.

6.5 At the 2006 Inquiry, Mr Lockwood for GAL conceded that the North East Sector and a second runway could co-exist, his preference being that the runway should come forward first.[14] At this inquiry he attempted to adopt a different position, on the basis that last time he was not referring to a wide-spaced runway operated in independent mixed mode. But there was no suggestion that his previous evidence referred to anything other than a wide-spaced runway operated in independent mixed mode, particularly as this is the option referred to in the ATWP and GAL's Interim Master Plan. Moreover, it would be surprising if GAL was seriously suggesting that a wide-spaced runway operated in independent mixed mode would create unsatisfactory living conditions on the appeal site given that the external noise environment would be no different from that which would apply to the many others (in, for

[12] CD37 paragraph 3.24
[13] R/CD61 paragraph 3.11
[14] See paragraph 47(2) of his proof on that occasion (R/CD105), and paragraph 5(4) of the Appellants' Closing Submissions (R/CD81 - recorded by Inspector Phillipson at IR 6.8)

example, Langley Green and Ifield West) who would be brought within the relevant contours for the first time.

6.6 It should be noted that it is no part of the Council's case that unsatisfactory living conditions would be created, or that noise issues present an insuperable bar to development of the North East Sector. The thrust of Mr Turner's evidence[15] is that the appeal should be allowed if housing requirements would not otherwise be met. He agreed that if it would be "exceptionally challenging" to meet housing requirements, this would justify the grant of planning permission. The words "exceptionally challenging" are the precise words used by the Council to describe its predicament in seeking to meet housing requirements without the North East Sector. [16]

6.7 PPG24 and other relevant guidance on noise seek to apply objective standards even though, at an individual level, reactions to noise are subjective and vary from person to person. It is reasonable to assume that future residents of the North East Sector would have been well aware of the existence of the airport, and its possible expansion, prior to purchasing or renting a property on the appeal site. Those who were particularly sensitive to aircraft noise issues would have looked elsewhere. Furthermore, the highly sustainable nature of the appeal site arises, inter alia, from its close proximity to major employers in the area, including Gatwick airport. Thus it is likely that a considerable proportion of North East Sector residents will derive their employment from the airport's activities, whether directly or indirectly. Such people are hardly likely to be vociferous objectors to any proposals that materialise for airport expansion.

Average mode contours and directional split of Gatwick's operations

6.8 The Government's policy approach to the assessment of aircraft noise is based on "average mode" contours.[17] This is because surveys suggested that community reactions over a longer period, rather than a single day, were more meaningful. Average mode contours are used even though every airport in the country (and Gatwick is no exception) will vary the direction of its operations depending on the wind. Such contours are shown on Drawing 9 to the Gatwick Interim Master Plan,[18] and the similar (though slightly more tightly drawn) contours in the revised calculations attached to Mr Charles' rebuttal.[19] They are agreed to be reasonable representations of independent mixed mode use of a second wide-spaced runway, though the Master Plan itself notes that Drawing 9 is an "approximate worst case". Thus there is a reasonable likelihood that the noise contours in 2030 will in fact be smaller.

6.9 However, the reality of the situation is highly material. Gatwick has a 73:27 directional split, based on a 20 year average. During westerly operations (which occur 73% of the time ie 5 days a week on average), the Council accepted that a second runway would have no material effect on those living on the appeal site and that aircraft noise, although audible, would not be

[15] R/CBC/01 paragraph 6.1
[16] See R/CD116, the recently published Housing Topic Paper 5 for the Core Strategy Review
[17] See the conclusions of Inspector Phillipson at IR 12.35-6 (R/CD108) with which the Secretary of State agreed (R/CD109 paragraph 23)
[18] CD128
[19] R/TWB2/2A

intrusive. Whilst segregated alternate mode with easterly departures from the southern runway would be a worst case, it is inconceivable that such a mode of operation would be contemplated. Accordingly, for 5 days a week no possible issue arises, even on the Council's and GAL's case. This point does not feature in the reasoning and/or analysis of the Inspector and Secretary of State in the 2006 decision.

Internal and external living conditions

6.10 With appropriate noise insulation and ventilation, the good internal standard for living rooms and bedrooms as described in British Standard (BS) 8233:1999 would be achieved within the proposed dwellings, albeit in some situations this would only be achieved with windows closed. A passive system of continuous background ventilation would ensure that it is only necessary to open the windows to achieve rapid ventilation.

6.11 Dealing with the Council's point about the "choice" as to whether to open a window and thereby reduce the noise insulation, the sound insulation achieved in a room with open windows is dependent on the area of opening, which is under the control of the occupier. Moreover, there is nothing in Government advice which suggests that this results in an unacceptable situation, or creates unsatisfactory living conditions. Indeed, Annex 6 of PPG24 expressly contemplates that such noise attenuation measures will be used. Exactly the same issue arises in respect of windows to residential developments which front roads or railways. No-one suggests that this makes such developments unacceptable in NECs B or C, whether or not they are small or large scale.

6.12 Further, to a significant degree it will be possible to design dwellings such that "rapid ventilation" (if desired) can be achieved by the opening of windows on facades of buildings other than those which face the departing aircraft. Detailed design would seek to maximise the number of habitable rooms located on the southern (quieter) facades, thereby minimising the degree to which sound attenuation is reduced. Designing and orientating dwellings with the majority of habitable rooms facing south has other significant benefits. It would provide dwellings with the inherently more desirable southerly aspect for residents, and would maximise the opportunities for measures addressing climate change issues.

6.13 Accordingly, the noise implications of a second runway at Gatwick boil down to a consideration of the effect on external areas (gardens and amenity spaces) on the 2 days a week on average when the airport is operating in an easterly direction. Once again, detailed design will assist in mitigation. It will, to a significant degree, be possible to incorporate private amenity spaces which are shielded from the departing aircraft by the dwellings to which they are associated. This will conveniently accord with the design objective of orientating the preponderance of the development to face in a southerly direction.

6.14 It is accepted that the scope for mitigation measures in respect of the areas of public open space within the appeal site will be more limited. However, neither PPG24 nor any other relevant guidance contains different standards for the assessment of noise levels in gardens or other external environments. It is fundamental to appreciate that expectations differ as between an

acceptable internal and external noise environment. It remains the position that the areas in question all fall within NEC A or B if noise from a second wide-spaced runway at Gatwick operated in independent mixed mode is factored in, and therefore well within the parameters of acceptability.

Sustainable development in the UK

6.15 The Council accepted that sustainable urban locations would be inherently noisier than most countryside locations, and that the focus for development (whether derived from the South East Plan, or central Government guidance such as PPS3 and PPS6) is the former. Thus in general terms, refusal of this appeal on noise grounds, notwithstanding that the site falls within NECs A and B, would have highly restrictive implications for sustainable development within the UK's urban areas.

6.16 The appellants drew attention to a number of residential schemes which have recently been approved around airports. Examples include: (a) a scheme for 235 units at about the 61 dB(A) contour around Heathrow; (b) Styal Road, a 149 unit scheme in NEC C (at the 69 dB(A) contour) on the basis of Manchester's predicted two-runway contours; (c) Apple Tree Farm, a 176 unit scheme approved in 2006 by the Council (without objection from Gatwick Airport), notwithstanding that it would fall within the 65 dB(A) – 69 dB(A) contours on Drawing 9; and (d) a 400 unit scheme in NEC C which has very recently been granted planning permission by Luton Borough Council.[20]

6.17 It is accepted that none of these schemes, individually, is of the same order of magnitude as the appeal scheme. They are all major schemes, however, and it is submitted that no fundamentally different approach should apply to the appeal scheme. Furthermore, a review of other planning authorities' practices[21] demonstrates that many have development plan policies permitting residential development up to the 66 dB(A) contour. Indeed, it is not without relevance that, in the period October 2004 – 6 May 2009 (during the currency of the West Sussex Structure Plan), the effect of policy NE19 (with which the appeal scheme complied)[22] was to endorse noise-sensitive development, irrespective of its extent, up to the 66 dB(A) contour.

The 57 dB(A) contour

6.18 The Council points to the fact that the substantial majority of the appeal scheme would locate noise-sensitive development within the 57 dB(A) contour (for aircraft noise), and seeks to rely on Inspector Phillipson's conclusions in relation to that contour.[23] This is a benchmark of limited significance for determination of the present appeal, for a number of reasons.

6.19 Firstly, PPG24 makes clear that 57 dB(A) is (for aircraft noise) the boundary between NEC A and B, and thus the threshold level above which "noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise". It is thus not a sufficient level to justify refusal of

[20] See Mr Charles' Appendices (R/TWB/2/2)
[21] See R/TWB2/1, paragraphs 6.9ff of Mr Charles' main proof and Appendix C
[22] See IR12.39 (R/CD108) and paragraph 24 of the May 2007 Decision Letter (R/CD109).
[23] See R/CD108 paragraph 12.48 (and paragraph 25 of the Decision Letter)

planning permission. If it was, with 24% of the UK population currently exposed to noise of 57 dB(A) or more, little noise sensitive development would take place in the United Kingdom.

6.20 Secondly, although PPG24 Annex 2, paragraph 4, states that "57 dB(A) Leq relates to the onset of annoyance as established by noise measurements and social surveys", it is highly questionable that this is of any relevance to the appeal scheme. This is because the sentence in PPG24 derives from the United Kingdom Aircraft Noise Index Study: Final Report (ANIS) in the early 1980s, which Mr Turner acknowledged was wholly out of date, hence the request for the Attitudes to Noise from Aviation Sources in England (ANASE) study in 2007. Further, it is unknown whether or not the ANIS study related to those who benefited from sound insulation. Clearly this is a fundamental issue in assessing whether, and to what extent, the results of the ANIS study have any bearing on residents at the North East Sector, whose properties would all enjoy sound insulation sufficient to guarantee satisfactory internal environments.

6.21 Thirdly, the ANASE study[24] provides no basis either for endorsing use of the 57 dB(A) contour for present purposes, or for using some lower figure. Mr Turner admitted that he had given the ANASE study a "damning" review, and agreed that, if the ANASE study were used as the basis for reformulating Government policy, the evidence base would be flawed.

6.22 Fourthly, the Council made reference to paragraph 68 of the January 2009 decisions regarding Heathrow.[25] This paragraph asks the operator of Heathrow "to consider extending its noise insulation schemes to all community buildings and households in the new 57 dB(A) contour who will experience an increase in noise of 3 dB(A) or more". But there is no requirement to provide insulation to all those newly within the 57 dB(A) contour, only to "consider" doing so. It is hard to see how this has a material bearing on the assessment of a scheme which will provide at its outset commensurate levels of sound insulation to ensure satisfactory internal environments.

6.23 It is too early to say whether the 57 dB(A) contour is the "direction of travel", not least because two months later in March 2009 the Government (through DEFRA) published guidance on the production by airport operators of noise action plans[26] which used 69 dB(A) as the benchmark of acceptability. The use of the 57 dB(A) contour at Heathrow must be seen in the context of the ATWP, which proposes that any further development there could only be considered on the basis that it resulted in no net increase in the total area of the 57 dB(A) noise contour compared with summer 2002.[27] The South East and East of England Regional Air Services Study (SERAS) indicates that the third runway at Heathrow would bring a further 54,000 people into the 57 dB(A) contour.[28] Few of these people are likely to live in properties which enjoy sufficient sound insulation to ensure satisfactory internal environments

[24] R/CD144
[25] R/CD32
[26] R/CD61
[27] CD37 paragraph 11.53
[28] As stated in the South East consultation document, RCD/51 table 7.3; See also R/CD146

in the event of a third runway, and the ATWP did not contemplate a requirement for sound insulation other than for those in the 63 dB(A) contour. Accordingly, it is hard to see how the condition imposed in the ATWP for the expansion of Heathrow has any meaningful bearing on the consideration of a development which will provide sound insulation at the North East Sector whatever expansion occurs at Gatwick.

Night noise

6.24 There was no issue regarding night noise at the 2006 Inquiry. At this inquiry, night noise is raised by GAL, but only in the context of diminishing the opportunity to change the existing operating regime based on the existing runway. There is no suggestion of any unacceptable noise impact on the North East Sector from night flights with a second wide-spaced runway.

6.25 Night-time operations can, even in a second runway world, reasonably be expected to continue on the existing runway. The Council agreed that a requirement to continue to use the existing runway for night operations would not constrain Gatwick because of the capacity of the northern runway; GAL did not dissent from this proposition. Indeed, retention of night operations on the existing runway is what was required of Manchester Airport when a second runway was consented there. Further, there is no policy requirement for an airport operator to provide "betterment" when developing a new runway. Finally, Gatwick Airport's Interim Master Plan[29] does not contain any night-time contours for a two runway world, which is the strongest indication that it recognises that night operations will remain on the existing runway.

The weight to be attached to the possibility of a second wide-spaced runway at Gatwick

6.26 While it is accepted that considerations affecting a possible second wide-spaced runway at Gatwick operated in independent mixed mode are of relevance to this inquiry, the appellants contend that little weight should be afforded to such considerations. Not only is this because at the present time there is no "policy support" for a second runway at Gatwick (no matter its form), but in light of the Secretary of State's 15th January 2009 announcement,[30] a second runway at Gatwick is distinctly unlikely.

6.27 It should be noted that the principle that the weight to be accorded to "second runway issues" reduces depending on the likelihood or otherwise of a second runway materialising was accepted both by Inspector Phillipson and by the Secretary of State.[31] As explained below, the present circumstances regarding development of new runways at Stansted and Heathrow diminish very substantially the possibility of a second runway at Gatwick. That possibility is, at the current time, no greater than remote. This represents a significant material change in circumstances since the last inquiry.

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[29] CD128
[30] R/CD37
[31] See IR (R/CD108) paragraph 12.57 and DL (R/CD109) paragraph 30

Air Transport White Paper

6.28 The policy set out in the ATWP is clear. Two (not three) new runways are supported in the South East in the period to 2030. A second wide-spaced runway at Gatwick was included as a reserve in case the environmental pre-requisites for a third runway at Heathrow could not be met. This is made abundantly apparent in paragraph 11.11 of the ATWP, which refers to "support[ing] the provision of two new runways in the South East in the thirty year period to 2030", and to "the policies set out above provid[ing] for the two new runways which are needed".

6.29 Further, paragraph 11.11 includes the conclusion *"we believe that there is a strong case on its merits for a wide-spaced second runway at Gatwick after 2019 and that land should be safeguarded for such a runway, in case it becomes clear in due course that the conditions that we wish to attach to our support for the construction of a third Heathrow runway cannot be met"*. This does not state that the Gatwick option is to be safeguarded on its own merits, or in respect of the period beyond 2030. It states that Gatwick has sufficient merit to be safeguarded as the second new runway in the South East in the period to 2030, in case Heathrow (or, implicitly, Stansted) is unable to come forward. Indeed, that strong case on its own merits is itself based on the SERAS assessment of population affected by noise above the 57 dB(A) contour.

6.30 Equally, paragraph 11.80 of the ATWP refers to Gatwick as a "suitable alternative option, should this prove necessary". Despite the reference in this paragraph to the uncertainties of longer-term demand forecasts, Gatwick is identified as a potential "alternative option", not a potential "additional option". The key point is that Gatwick is only safeguarded in case one of those other two runways does not come forward. Nothing in paragraph 11.80 cuts across the clear policy in paragraph 11.11 that there are to be two (not three) new runways in the South East in the period to 2030.

The present position at Stansted and Heathrow

<u>Stansted</u>

6.31 Stansted continues to enjoy clear policy support through the ATWP for a new runway. An application for planning permission to construct and operate a second runway at Stansted (described as G2) has now been made and called in by the Secretary of State. While there may be some uncertainty as to when the inquiry will be rescheduled (having regard to the Competition Commission's findings and the Secretary of State's recent announcement), [32] there is no logical reason as to why the G2 proposals will not be taken forward (whether in their current, or a materially similar, form). So long as the application for planning permission is progressed competently (as it no doubt will be), there is no good reason why planning permission should be withheld. Indeed, it was generally accepted by the relevant witnesses that, if a particular proposal for airport development enjoys policy support through the ATWP, there is no reason for thinking (or proceeding on the basis) that decisions will be taken otherwise than in accordance with that policy.

[32] R/CD181

6.32 GAL confirmed that at the present time BAA wants to see planning permission granted for a second runway at Stansted, that BAA was pursuing vigorously that objective by way of the G2 proposals, and that it was Government policy that such a development be pursued vigorously. Indeed, there can be no doubt that BAA will be negotiating the sale of Stansted for a price which fully reflects the Government's strong policy support for a second runway there. Likewise, any purchaser of Stansted would wish to maximise the value of the asset they were purchasing.

Heathrow

6.33 The position has moved on from the ATWP (and indeed from the 2006 Inquiry). The ATWP recognised the "economic strength of Heathrow and the direct and wider benefits to the national economy" that a third runway would bring.[33] Indeed, the assessments of national economic benefit which were prepared at the time of the wide-ranging consultations that led to the ATWP revealed that, by a significant margin, it was a third runway at Heathrow which produced the greatest net benefits to the national economy. However, the ATWP also recognised that Heathrow was affected by issues relating to surface access, noise and air quality. The Government's support for a third runway was thus made contingent on being "confident" that the relevant environmental conditions stated in the ATWP would be met.

6.34 On 15th January 2009, the Government announced that "the Secretary of State is satisfied that the conditions set out in the ATWP can be met and therefore confirms the Government's policy support for a third runway".[34] The Council accepted that the Government's now unqualified support for a third runway at Heathrow was a very important material consideration because it meant that the uncertainty about Heathrow is clearly reduced. The authority also agreed that the January 2009 announcement was a "material" change of circumstances from the 2006 Inquiry.

6.35 Nothing GAL said suggested that it holds a different view. Heathrow is the jewel in BAA's crown, as well as the major London airport which the Competition Commission has allowed it to retain. The obligation on BAA to sell Gatwick and Stansted would make BAA keen to pursue vigorously a third runway at Heathrow, to which it remains committed. GAL confirmed that the policy set out in the ATWP (as clarified by the January 2009 announcement) was robust, and that there would be no reason to take any planning decision relating to a third runway at Heathrow other than one based on the robust ATWP policy. Indeed, BAA has commenced the detailed planning of a third runway at Heathrow.

6.36 The Council referred to the statement in the January 2009 announcement about the imposition of a restriction in air transport movements (ATMs) at Heathrow until it is clear that the size of the 57 dB(A) contour will not extend beyond the area identified in the ATWP. But this does not raise anything material for the purposes of this inquiry. The policy in the ATWP is for two new runways in the South East, not three. Even if the restriction in question operated to constrain the capacity of a third runway at Heathrow, this would

[33] CD37 paragraph 11.61
[34] R/CD32 paragraph 60

not create or result in policy support for a new runway at Gatwick. In any event, the latest Government forecasts show that, while the 57 dB(A) contour condition is only just met in 2020 with 605,000 ATMs, by 2030 (due to the predicted performance of new, significantly quieter aircraft) the condition is met by a substantial margin even with Heathrow at its full capacity of 702,000 ATMs.[35]

GAL's position

6.37 Mr Lockwood agreed with the contention that planning applications for airport development will be decided in accordance with the Government's airport policy so far as it applied to the G2 proposals at Stansted and BAA's inevitable third runway proposals at Heathrow. However, he did not apply the same logic when it came to Gatwick. It is necessary to address a number of the irrelevant factors and uncertainties to which he referred.

6.38 The first matter is progress on airport capacity provision in the South East. Mr Lockwood considers the latest estimates of capacity at 2030 in order to make the case that, to the extent that less capacity is provided than contemplated by the ATWP, there may be an opportunity for Gatwick to come forward in any event. This argument faces two insuperable difficulties. Firstly, to the extent that it leads to a contention that there should be three new runways in the South East, it clearly flies in the face of the ATWP, which is unambiguous in supporting two new runways only. Secondly, it fails to give any consideration to the latest demand forecasts. Mr Lockwood's table[36] gives what is termed total "current prospects" for Heathrow, Stansted and Luton at between 193-220 million passengers per annum (mppa). The range is in fact 213-220 mppa if Heathrow's capacity is taken as 135 mppa, which is the appropriate assumption to make because it accords (see above) with the Government's position that, while the noise contour issue may result in restrictions on ATMs as at 2020, by 2030 this issue will have fallen away. By contrast, the Department for Transport's demand forecasts for 2030 show demand for only 205 mppa at Heathrow, Stansted and Luton.[37]

6.39 The second matter is the Government's intention to prepare a National Policy Statement (NPS) on airports. Mr Lockwood argues that it cannot presently be known what the final NPS will say about future airport development in the South East. Yet there is no policy to keep open the option of a second runway at Gatwick in case national aviation policy changes. The reason for the Gatwick option is clearly stated in the ATWP; it does not embrace this type of speculation. In any event, there is every reason to proceed on the basis that, rather than containing fundamental changes in Government policy, the NPS will broadly reflect the policy contained in the ATWP and January 2009 announcement. This, indeed, is apparent from the Minister's statement that the NPS will be "based on the Air Transport White Paper"[38]. Further, in effect this matter amounts to a contention of prematurity. As PPS3 makes clear, this is no basis for refusing an application for residential development.

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[35] R/CD52, page (iii) of ERCD Report 0705
[36] R/GAL/1, page 22
[37] R/CD38: page 57 of the January 2009 UK Air Passenger Demand and CO_2 forecasts.
[38] R/CD42

6.40 The third matter is the Competition Commission decision. However, the Competition Commission has no status or standing in the formulation or application of planning policy. Further, the Competition Commission acknowledges that it is "not questioning the Government's broad policy objectives or the approach taken to the development of that policy, ie balancing the environmental impact and economic benefits, or the proposals under consideration for a second runway at Stansted". [39] Accordingly it does not recommend that Government policy should be reviewed. Mr Lockwood accepted that this matter amounted to speculation that the Competition Commission's observations may or may not contribute to a reconsideration about a new runway at Gatwick. Again, though, this argument suffers from the flaw that the present ATWP policy is not to keep the Gatwick option open to cater for the speculative possibility that policy might change in the future. The ATWP policy retains the Gatwick option as a reserve against specified contingencies (new runways at Heathrow or Stansted failing), and not at large (ie for all time and/or for all purposes).

6.41 The final matter is economic regulation. As this is based on a DfT consultation document on the framework of economic regulation, it has no material weight. Furthermore, this is not a spatial planning issue. It is not credible to hypothesise that the economic regulation of airports will have any material bearing on the manner in which new runways are (in accordance with Government policy) brought forward.

6.42 In summary, GAL's conclusion that "the prospect of a runway being needed at Gatwick is, if anything, somewhat greater now than was the case in 2003" is wrong. Such a conclusion is derived from (a) ignoring the evident materiality of the January 2009 announcements regarding Heathrow, (b) a series of purported uncertainties which are wholly unlikely and which have no material bearing on spatial planning or present airports policy, and (c) Mr Lockwood's clear recognition that talking up the chances of a second runway at Gatwick may enhance the proceeds secured from its sale. The appellants contend that nothing in GAL's case undermines their contention that the possibility of a second runway being required at Gatwick is at best remote.

Whether the implementation of the appeal scheme would prejudice the securing of planning permission to construct and operate in mixed mode a second wide-spaced runway at Gatwick

Alleged prejudice to independent mixed mode operations

6.43 Fundamentally, the existence of additional residents at the appeal site does not take matters beyond the parameters considered when the ATWP policy was formulated. This is because the Gatwick option was included in the ATWP in circumstances where it was assumed that a second wide-spaced runway operated in independent mixed mode would increase those within the 57 dB(A) contour by 15,000 (from 6,000 to 21,000).[40] Revised calculations based on more recently generated contours (making more up to date assumptions) indicate that the increase in existing population that would

[39] R/CD41 paragraph 10.374(a)
[40] ATWP paragraph 11.74, derived from R/CD51 (SERAS consultation) table 8.5

come within the 57 dB(A) contour is between 6,050 and 7,300. [41] With the addition of 4,190 or so residents in the North East Sector within the 57 dB(A) contour,[42] the combined total would fall comfortably short of the 15,000 figure on which the policy was formulated.

6.44 Moreover, the number of people who would be brought within the relevant contours of a second wide-spaced Gatwick runway operated in independent mixed mode is substantially less than would occur at other airports around the country (Heathrow and Birmingham in particular), on the basis of developments supported in the ATWP. An examination of the assumptions for 2030 which were considered as part of the formulation of the policies set out in the ATWP reveals: [43]

(a) above the 63 dB(A) contour, the population increase at Gatwick would be 2,000 together with the 1,520 from the appeal site. This can be contrasted with an increase of 11,000 as a consequence of development supported at Heathrow and 8,500 at Birmingham;

(b) above the 60 dB(A) contour, the population increase at Gatwick would be 8,800 (6,000 plus 2,800 from the appeal site). The equivalent increase at Heathrow, as a consequence of development supported in the ATWP, is nearly four times this figure, at 32,000;

(c) above the 57 dB(A) contour, the population increase at Gatwick would be 15,000 (based on the ATWP figure), together with 4,190 from the North East Sector. This is substantially less than the comparable increases envisaged at Heathrow (54,000) and Birmingham (almost 30,000).

6.45 The most recent (November 2007) predicted contours for Heathrow[44] reveal that in 2030 a third runway would cause an additional 63,500 people to fall within the 57 dB(A) contour (an increase from the figures set out above). There would also be substantial numbers within the 60 and 63 dB(A) contours on account of the third runway (20,300 and 6,700 respectively) which, although less than the figures assumed at the time of the ATWP, are still substantially in excess of the position at Gatwick. It is particularly pertinent to consider the position at Heathrow given that the ATWP specifically identifies the Gatwick option as a reserve in case Heathrow is unable to bring forward a third runway.

6.46 The proposed residential development on the appeal site would lie within PPG24's NECs A and B as regards aircraft noise. Accordingly, with the imposition of appropriate conditions requiring the provision of an adequate level of sound insulation for the new homes, Government advice contained in PPG24 is to the effect that the noise environment produced by a second wide-spaced runway operated in independent mixed mode would be no obstacle to the grant of planning permission. Further, the fact that the properties will already have been sound insulated means that there will be no need for the Airport to fund the installation of such measures.

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[41] R/CD147 SoCG between the Appellants and the Airport - see table, rows 4 and 5
[42] R/CD147: 4,190 according to Appellants, 4,300 according to GAL – see table, rows 6 and 7
[43] R/CD146
[44] R/CD33 table 8 page 71

6.47 Moreover, the circumstance of a second runway at Gatwick enjoying policy support only arises if the policy for two other runways in the South East fails. In such a situation, the case for the construction of a wide-spaced second runway and its operation in independent mixed mode would, in terms of the economic benefits (especially if it is Heathrow that has failed) and the need for additional runway capacity, be overwhelming. This gives further reassurance that there is no good reason why any planning application for a second runway at Gatwick would be determined other than in accordance with the policy in the ATWP.

6.48 In the light of this reasoning, Mr Turner agreed in cross examination that a proposal for a second wide-spaced runway at Gatwick operated in independent mixed mode would, on the assumption that the ATWP policy failed and this option were required, "be acceptable in terms of the number of people affected (with or without the North East Sector), especially if it takes the place of a third runway at Heathrow". Mr Turner also accepted that granting permission for such a second runway would, in these circumstances (and assuming the appeal site is built out), "adhere to Government policy". This led him to concede that there was "no good reason in policy terms to reject" a second wide-spaced mixed mode runway at Gatwick, even with the appeal scheme having been implemented.

6.49 Mr Lockwood appeared to endorse the views expressed by Mr Turner, confirming that there was no reason to take decisions on planning applications other than on the basis of the robust policies set out in the ATWP. It was therefore a surprise when Mr Lockwood suggested firstly that planning permission for a second wide-spaced runway operated in independent mixed mode was unlikely to be granted if this appeal succeeds, and secondly that granting the appeal would almost certainly be a "showstopper" for such a proposal. It is very telling that this suggestion has not made its way into Mr King's closing submissions for GAL, who no doubt rightly recognised that such an allegation was untenable and could not be reconciled with the rest of Mr Lockwood's evidence. Indeed, the highest it is now put by Mr King is that it will "complicate the process of option evaluation".[45]

6.50 GAL's argument that there would be a barrage of objection to a second runway at Gatwick fails to recognise that GAL would submit, strongly and rightly, that they were without substance. As already dealt with above, there would be strong policy support for a wide spaced runway given that the assessment of it in the SERAS study assumed greater numbers of residents affected by noise.

6.51 Inspector Phillipson noted certain of the points made above, but concluded that objections from residents of the North East Sector "could" add to the strength of opposition to a new runway, and "might" affect the configuration or operating regime in a manner impacting on capacity. [46] The Secretary of State agreed.[47] With all due respect, though, their analysis failed to accord any material weight to the vital considerations that (a) in the assumed

[45] GAL closing submissions (R/GAL/7), paragraph 72
[46] R/CD108 IR paragraphs 12.61-63
[47] R/CD109 DL paragraphs 31-2

circumstances, a second runway operated in independent mixed mode would enjoy very strong Government policy backing, (b) the material noise effects (including, in effect, the North East Sector) have already been assessed and found acceptable, and (c) the proper approach is to proceed on the basis that the ATWP policy will be applied, there being no material consideration which has arisen outside the ambit of the issues already addressed. Further, an application for a second runway at Gatwick will not require a new balancing between economic benefit and impact; this exercise has already been carried out, and the results are encapsulated within the ATWP.

6.52 Both the Council and GAL suggested in closing submissions that the safeguarding of land for a second runway was a matter of national importance. While the ATWP represents the national policy on airport development, it is broken down into sub-regions, and the policy in respect of the South-East is that there should be two (not three) new runways, and Gatwick is not identified as one of the two. Thus, if it is truly in the national interest to safeguard land for a second runway, even greater weight should be given to the provision of the housing requirements in the South East Plan, being housing to support the economy generally and Gatwick airport in particular in this sub-region, which are not "reserve" requirements but actual requirements. Further, if the safeguarding of land for a possible second runway is a matter of national importance, that will make the weight to be given to the provision of the second runway even more important when balancing the considerations of its provision against its impact in noise terms on the North East Sector.

6.53 For all these reasons, the appellants submit that there is no reasonable prospect that the appeal scheme would prejudice the coming forward of a second runway at Gatwick operated in independent mixed mode, should circumstances arise in which that option enjoyed Government policy support.

Capacity of Gatwick with two runways operated in segregated mode

6.54 The appellants contend that the "ultimate maximum" potential size of Gatwick (a throughput of about 80 mppa, as in the airport's Interim Master Plan) can be achieved by use of wide-spaced runways in segregated mode. Despite GAL's questioning of Mr Titterington's assumptions, it fails to put forward any detailed assessment of its own. Mr Titterington's work is supported in large measure by figures deriving from GAL. The basis for achieving 80 mppa in segregated mode is as follows:

(a) The assumption of an average of 78 hourly movements is robust. It is a combination of a maximum of 40 arrivals an hour and 38 departures an hour on average. If, however, arrivals were only 36 per hour, departures could (because of reduced crossings of the northern runway) rise to, say, 42. This compares favourably with the comment in the Interim Master Plan[48] that a runway separation of 940m (not 1035m) would result in 75 movements per hour. Moreover it is a worst case assessment given Mr Titterington's assumption that 60% of arriving aircraft would need to cross the existing runway to reach the northern terminals; Mr Lockwood's proof for the 2006 Inquiry assumed a 50%-

[48] CD128 paragraph 9.44

50% split. In addition, actual runway incursion time from crossing movements was calculated at 41.2 seconds, but 60 seconds was used.

(b) The figure of 78 hourly movements results in annual capacity of about 512,000 air transport movements (ATMs), as calculated by Mr Lockwood.[49] The 15%-20% reduction then applied by Mr Lockwood is not appropriate because (1) the airport is not yet at full capacity, and (2) no reduction should be assumed for cargo or general aviation. It is a matter for Gatwick Airport to arrange its affairs as it wishes, but if the issue really is the capacity of the airport for passenger movements, it should be recognised that (subject to passenger demand) there is no reason why the slots allocated to other purposes are not capable of being used for passenger air transport movements (PATMs).

(c) By way of illustration, if the reduction were of the order of 8%, this would result in annual PATMs of 471,040. This results in a throughput of about 77.7 mppa if a passenger load of 165 is assumed. If the passenger loads used in the ATWP are applied, the throughput rises to 80.45 mppa (using 170.8)[50] and to 83.845 mppa (using 178).[51]

6.55 The bottom line is that, if the passenger demand is there, Mr Titterington has shown that segregated mode operation of the two runways is capable of resulting in throughput in the region of that which the Airport assumes to be its "maximum potential". However, if Mr Titterington is wrong and segregated mode operation would only result in throughput in the range of 67.7-71.8 mppa,[52] this would itself be a cogent justification for Gatwick to maintain that permission for independent mixed mode (the option contemplated in the ATWP) was essential. The logic of this was entirely accepted by Mr Lockwood, when he agreed that if this was the position there would be an "overriding need" for independent mixed mode to be consented.

6.56 Operation of two runways at Gatwick in segregated mode with departures off the northern runway and arrivals onto the southern runway would mean that the population within the 57dB(A) noise contour was 8,200,[53] as opposed to 6,000 for a single runway. The appeal site would, for the most part, fall outside the 57 dB(A) contour.[54] Further, the segregated mode contours which Mr Charles put before the inquiry were calculated on the basis of 486,000 PATMs, whereas segregated mode would result in a smaller number of PATMs. Accordingly the noise contours would in fact be reduced from those before the inquiry.

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[49] Mr Lockwood's rebuttal (R/GAL/3) paragraph 5.14.
[50] This is derived from the ATWP's assumption that 486,000 PATMs will result in throughput of 83mppa.
[51] This is derived from the SERAS consultation paper's assumption of single runway capacity of 46.5mppa from 262,000 PATMs.
[52] Mr Lockwood's rebuttal (R/GAL/3) paragraph 5.14
[53] Mr Charles' rebuttal to Mr Lockwood (R/TWB/2/2B), table 1 of the letter attached to Appendix A.
[54] See paragraph 9.46 of Mr Charles' main proof (R/TWB/2/1) referring to reductions of 5-6dB on the appeal site

The effect on the proposed primary school

6.57 It is common ground (as it was at the 2006 Inquiry) that, with appropriate noise insulation and ventilation, a satisfactory internal teaching environment can be achieved within the proposed primary school building. This is the only relevant mandatory requirement in Building Bulletin 93.[55]

6.58 Other parts of BB93 suggest aspirational (not mandatory) levels for certain external areas. An external teaching area with noise levels at the aspirational level can be achieved (even with the airport operating on easterlies) by means of a suitably designed glazed canopy. The applicable aspirational level for playing fields cannot be achieved for 100% of the time. But it would be achieved for 73% of the time; as to the remaining 27% of the time, noise levels would be comparable to the noise levels on the playing fields of three newly built schools in Crawley (Ifield Community College, Manor Green School and Thomas Bennett Community College) which adjoin Crawley Avenue (a very busy dual carriageway).

6.59 While the ATWP recommends that airport operators offer acoustic insulation to schools exposed by new developments to 63dB(A) or more, it does not require any treatment to external teaching areas (or any other compensatory provision). Furthermore, at no time during this inquiry or the last has the education provider (the County Council) objected in any way to the location of the school, whether its specific location within the Masterplan, or as a matter of principle.

Noise and compliance with the development plan

The Regional Spatial Strategy (South East Plan)

Policy NRM10

6.60 There is no conceivable objection to the appeal scheme arising from existing noise sources. Further, there can be no dispute that the appeal scheme complies with the encouragement in NRM10(iii) for the provision of "high levels of sound-proofing and screening as part of sustainable housing design and construction".

6.61 Noise from a possible second runway at Gatwick is excluded from policy NRM10 because it is neither an "existing" noise source nor a "planned new source of noise". At the present time there is at no policy support for a second runway at Gatwick, whether deriving from the ATWP or the South East Plan. Therefore a second runway is not "planned". Quite the contrary - what is "planned" is that there be new runways at Heathrow and Stansted such that the "alternative option" at Gatwick falls away. Further, this interpretation of NRM10 would make it consistent with PPG24, which (as dealt with below) equally does not require consideration of noise from a second runway at Gatwick given that it is not "likely" or "reasonably ... expected in the foreseeable future".

6.62 Mr Turner conceded that this was the case, given that a second runway is no more than a possibility. Mr Fairham agreed, stating that the possibility of a

[55] CD121

second runway at Gatwick was a material consideration to be weighed in the balance. Even if this argument is rejected, the text of the RSS at paragraph 9.55 refers to PPG24. This indicates that it is to PPG24 that one is to turn in order to assess the words "significant noise" in policy NRM10(i).

Policy T9

6.63 Equally, the appeal scheme is not in conflict with RSS policy T9. This requires that (inter alia) local development documents include policies to "safeguard land at Gatwick for a possible new runway after 2019". The safeguarding requirement applies to land "for" the possible new runway. There is no sensible basis on which this can be understood as applying to the indirect implications of noise on (say) the appeal scheme.

6.64 The safeguarding exercise required by policy T9 has already been performed, in a manner entirely consistent with the interpretation set out above, as part of the Core Strategy. The matter was exhaustively addressed by the Core Strategy Inspector,[56] and resulted in his redrafting of policy G2 and the text at paragraphs 8.6-8.8. Core Strategy policy G2 provides (so far as material) that: "The Proposals Map identifies land which will be safeguarded from development which would be incompatible with expansion of the airport to accommodate the construction of an additional wide-spaced runway (if required by national policy) together with a commensurate increase in facilities contributing to the safe and efficient operation of the expanded airport". The appeal scheme does not conflict with this policy, and the red-line area of the appeal site does not impinge at all on the safeguarded area set out on the Proposals Map.

Crawley Borough Core Strategy

6.65 The safeguarding policy (G2) has been addressed above. The Core Strategy contains no noise policy applicable to the appeal site following the quashing by Wilkie J[57] of the unlawful "objective" for development of the North East Sector set out in paragraph 11.5. Paragraphs 79-86 of Wilkie J's judgment make clear that the quashing order was issued for substantive reasons, namely the failure to take into account the relevant Structure Plan policy and guidance to that effect in PPS12, the absence of an evidence base to justify the "key objective", and the absence of reasons as to why a more exacting standard than that set out in policy NE19 or PPG24 had been adopted.

6.66 CBCS Policy H2 includes the words "development [at the North East Sector] is currently precluded for reasons related to possible expansion of Gatwick". These words were written when the May 2007 Decision Letter was extant, and no doubt the text in question was based on that decision. It is self-evident that the quashing of the May 2007 Decision Letter fundamentally alters the position, and these words cannot have any application to this redetermination. Mr Fairham conceded in cross examination that the appeal scheme did not conflict with Core Strategy policy H2.

6.67 In any event, the May 2007 Decision Letter was framed as an "on balance" decision in circumstances where (a) unlike now, there was a reasonable level

[56] R/CD114 - see paragraphs 16, 25 and 118 of his Report
[57] R/CD111

of uncertainty affecting a third runway at Heathrow, and (b) it was erroneously and unlawfully determined that there was no immediate need for housing. The Decision Letter did not decide that the release of the North East Sector was precluded unless or until a final decision was taken in relation to the possibility of a second runway at Gatwick.

6.68 Wilkie J's recognition of the "on balance" nature of the Decision Letter is now reflected in the RSS. Paragraph 24.8 of the RSS now provides that "where possible" housing should be brought forward (inter alia) at the North East Sector. The text of the Proposed Changes[58] (which had stated that delivery of the North East Sector was "subject to resolution of expansion needs at Gatwick Airport") was amended, reflecting Wilkie J's decision. The removal of this text is highly significant. The RSS no longer seeks to establish a restriction on the release of the North East Sector based on the timing and content of a decision as to a second runway at Gatwick.

6.69 One further matter requiring comment is the reference by the Council to the Core Strategy's "key objective" to avoid development within the 60 dB(A) contour in relation to land west and north-west of Crawley. This "key objective" is in similar language to the unlawful "objective" in respect of the North East Sector which was quashed. Apart from the fact that the vast bulk of the land west and north west of Crawley in fact lies in the neighbouring borough of Horsham, any planning authority considering land in this location will need to consider the judgment of Wilkie J, and will need to make an assessment as to the weight which should be properly applied to this "key objective". Because there is no evidence that the legal flaws which caused the striking through of a similar "key objective" for the North East Sector do not also apply to this land, the weight to be attached will be extremely limited.

Crawley Borough Local Plan

6.70 The Council seeks to resurrect Local Plan policy GD17. In fact, this policy does not apply to the appeal scheme. It only applies to "areas subject to aircraft noise exceeding 60 dB(A)". The text of the Local Plan refers to Annex 1, which shows noise contours from the single runway at Gatwick. It is common ground that no noise objection arises from the noise contours of a single runway. Accordingly, the appeal site is not an area "subject to aircraft noise exceeding 60 dB(A)". Policy GD17 does not embrace noise from a possible second runway, for it is written in the present tense. It is not written (as it could have been) to cover noise from either "planned" or "possible" airport expansion.

6.71 If, though, policy GD17 were engaged in this case, there are "exceptionally compelling circumstances" such that there is no conflict with the policy. These are considered below when the issue of housing need is addressed. Contrary to the notion that "exceptionally compelling circumstances" do not embrace housing need, nothing in policy GD17 or the accompanying text limits the concept of what is "exceptionally compelling" in this artificial way. Nor is there any logical justification for such an arbitrary limitation.

[58] R/CD113

6.72 Even if these submissions are not accepted, there are many reasons why Local Plan policy GD17 should be accorded no weight at all in the determination of this appeal. Firstly, it is in conflict with RSS policy NRM10 and so falls to be disregarded pursuant to S38(5) of the 2004 Planning and Compulsory Purchase Act. The text to policy NRM10 at paragraph 9.55 provides that "Planned new residential development must take [noise] factors into account, in accordance with the guidance in PPG24". GD17 is in conflict with this approach because neither NRM10, nor PPG24, contain a test of "exceptionally compelling circumstances" in respect of residential development between (say) the 60 and 66 dB(A) contours. Accordingly, there could be circumstances in which a scheme was compliant with all strands of NRM10 and PPG24, but in the absence of "exceptionally compelling circumstances" it would not accord with GD17. Furthermore, no consideration is given in policy GD17 to the range of sound insulation measures suggested in policy NRM10 which would mitigate the effects of noise.

6.73 Secondly, policy GD17 was found to be in conflict with WSSP policy NE19, which had been adopted in October 2004 and remained extant until publication of the RSS in May 2009. Given that policy GD17 had, for more than four years, ceased to be the determinative development plan policy so far as aircraft noise was concerned, it would be bizarre if it could somehow be resuscitated in the circumstances of this case. Indeed, the inconsistency of this approach can be judged from the fact that had this appeal been determined prior to May 2009 (publication of the RSS), the decision would have been taken according to NE19 (with which the appeal scheme was in complete accordance). Reliance on GD17 for the purpose of decision-making is all the more extraordinary in the circumstances where (a) policy GD17 itself has a limited future (see below), and (b) there is nothing in the RSS which is an endorsement of policy GD17.

6.74 Thirdly, the Council attempted to introduce into the Core Strategy an objective that the North East Sector not be developed beyond the 60 dB(A) contour. The relevant objective was, however, quashed in the High Court by order of Wilkie J.[59] Affording any weight to policy GD17 in these circumstances would be in conflict with this decision. It would be tantamount to re-introducing a policy requirement which has been expressly deleted by the High Court from the recently adopted Core Strategy.

6.75 Fourthly, policy GD17 is "saved" until a replacement policy is adopted. But the terms of the Secretary of State's direction[60] "saving" (inter alia) policy GD17 record that:

"The extension of saved policies listed in this Direction does not indicate that the Secretary of State would endorse these policies if presented to her as new policy. It is intended to ensure continuity in the plan-led system and a stable planning framework locally, and in particular, a continual supply of land for development. … Where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded

[59] R/CD111
[60] R/CD125

considerable weight in decisions. In particular, we would draw your attention to the importance of reflecting policy in [PPS3] and the Housing Green Paper in relevant decisions."

Compliance with PPG24

6.76 PPG24 does not require the appeal scheme to be assessed against noise from a possible second runway. It is only noise sources which are in existence or which are more likely than not to arise which fall to be considered. This is clear from paragraph 12 of PPG24 ("areas which are – or are expected to become – subject to unacceptably high levels of noise") and Annex 3, para 9 ("where land is, or is likely to become, subject to significant levels of aircraft noise"). On this basis, there is full compliance with PPG24. Mr Turner rightly accepted in cross examination that the foregoing was the correct approach, and that, accordingly, there was no warrant for a PPG24 assessment taking into account a second runway.

6.77 Even if PPG24 required an assessment against the noise from a possible second runway, the appeal scheme complies. The Scheme falls within Annex 1's NECs A and B so far as aircraft noise is concerned. On this basis, subject to the imposition of appropriate conditions, there is no basis for withholding planning permission.

6.78 The Council and GAL refer to the aspiration set out in Annex 3, paragraph 8 that 60 dB(A) should be "regarded as a desirable upper limit for major new noise sensitive development". As to this advice:

(a) The words cannot fairly be interpreted as imposing a presumption against development, because if this had been intended, it would have been a simple matter to draft paragraph 8 so as to align with the advice applicable to NEC C. Annexes 1 and 3 must be read compatibly, and not so as to point in opposite directions. If PPG24 had intended that 60 dB(A) be treated as the upper limit of NEC B in particular cases, it would no doubt have said this.

(b) The words "desirable upper limit" reflect no more than an aspirational preference. It is pertinent that the word "desirable" appears in two other places in PPG24, namely (a) the definition of NEC A, and (b) paragraph 4 of Annex 2. These other passages do not suggest that the word was intended to have the radical consequence which the Council and GAL contend for paragraph 8 of Annex 3.

(c) The issue of "desirability" has to be considered in the round. As against the appeal scheme exceeding the "desirable upper limit" in a second runway world must be set the massive housing shortfalls which Crawley and the Gatwick sub-region will suffer in the short and long terms if the appeal site does not come forward. The appeal site is the only credible option for redressing this situation. Even if the test in NEC C applied, it is plain that "there are no alternative quieter sites available" sufficient to meet the housing needs. The other major planning advantages of the appeal scheme must also be weighed in the balance - the highly sustainable nature of the location, redressing in-commuting to Crawley, and provision of much needed affordable housing.

6.79 The appellants' primary submission is that PPG24 does not require these residential proposals to be assessed against noise from a possible second runway. Notwithstanding, it is accepted that PPG24 is one of the appropriate tools for assessing whether or not the appeal scheme could prejudice a second runway at Gatwick. It is vital, however, that this assessment proceeds on the basis that the appeal scheme is in place, and then considers how its existence might (if at all) affect proposals for a second runway at Gatwick. Two points emerge from this analysis. First, the second runway would result in the homes being in NECs A and B, in circumstances where commensurate noise insulation measures have already been put in place. Thus the existence of the North East Sector will not create an incompatibility issue for a second runway. Second, paragraph 8 of Annex 3 falls away. The appeal scheme is not the relevant "new" development in this scenario, so paragraph 8 of Annex 3 has no bearing on the assessment.

6.80 The case advanced by the Council and GAL reduces to reliance on one sentence in paragraph 8 of Annex 3, and ignores the other relevant provisions of PPG 24. Nevertheless, paragraph 8 of Annex 3 identifies a "desirable" upper level of noise. It is similarly desirable that "everyone has the opportunity of living in a decent home, which they can afford, in a community where they want to live".[61] There is any number of desiderata to be found in planning policy, but there must be a recognition that not all can be attained without some form of compromise. The case advanced by the Council and GAL is the antithesis of a balanced approach, for they seek to cast aside a very serious housing need to protect the remote possibility of a second runway which would not, in any event, have unacceptable noise consequences.

HOUSING NEED

Introduction

6.81 The North East Sector is an identified part of the housing supply. It is *"identified as an appropriate site for the development of a new neighbourhood for Crawley"* in Core Strategy policy H2. Policy NES1 of the Core Strategy adds that: *"The North East Sector is identified and safeguarded for the development of a new neighbourhood to accommodate up to 2,700 dwellings and other uses"*. Equally, paragraph 24.8 of the RSS provides that "where possible" the North East Sector "should be brought forward". Its release would also accord with a raft of strategic development plan policies, including RSS policies SP1, SP2, SP3, H1, H2, H3, H4, GAT1 and GAT3.

6.82 In striking the planning balance with noise/second runway issues, Collins J determined that "the question of need is fundamental".[62] Similarly, Wilkie J recognised that the "important, perhaps the decisive, factor was the assessment of immediate need".[63]

6.83 At the 2006 inquiry, Mr Dennington conceded that a sub-regional deficit of 1,597 (to 2012) would justify the grant of planning permission even in

[61] PPS 3 paragraph 9
[62] R/CD110 paragraphs 20, 26
[63] R/CD111 paragraphs 91-4

circumstances where there was a surplus of 713 in Crawley.[64] At this inquiry Mr Dennington stated that he stood by the concessions he had made in 2006, but claimed that circumstances had materially changed since then. Accordingly, he refused at this inquiry to make like concessions either (a) on the basis of his own case, ie that notwithstanding a small surplus in Crawley there would be a sub-regional shortfall of 3,390 at the end of the five-year period to 2013; or (b) assuming a deficit of 692 in Crawley and a sub-regional shortfall of 4,198. The appellants submit that this new stance is inconsistent, not believable and contrary to common sense.

6.84 The essence of the change in circumstances on which Mr Dennington relies is his faith in the plan-led system and in the collaborative working between the sub-regional authorities. But even he projects that at the end of the five year period there will be a sub-regional shortfall of 3,390, and a local deficit (as explained below) after 10 years of 1,117. Moreover, there is no attempt to establish a case along the lines that "notwithstanding huge sub-regional shortfalls in 2013, the position will right itself shortly thereafter." Unsurprisingly, there is no evidence that this would be the case. Thus, in the face of huge deficits, the faith that houses will somehow appear in Crawley and the Gatwick sub-region at the requisite rates is wholly untenable.

6.85 Mr Turner accepted that if it would be "exceptionally challenging" for Crawley to meet its housing requirements, planning permission should be granted. The Council admits that this is the position: the Core Strategy Review Housing Topic Paper states "*in the absence of the North East Sector it will be exceptionally challenging for the [RSS] requirement to be met within the Borough boundary".* [65] More generally, this Topic Paper exposes the Council's faith that the plan led system will ensure that everything turns out right. The Council's preferred strategy, in the event that its "preferred approach" of releasing the North East Sector were frustrated, is to seek to reduce its RSS requirements by 2,700.[66]

6.86 This is a clear case where paragraph 71 of PPS3 is engaged. This urges local planning authorities unable to demonstrate a five year supply of deliverable sites to *"consider favourably planning applications for housing."* Self-evidently, consideration should be all the more favourable where the extent of the shortfall is as substantial as in this case. Furthermore, a failure to deliver housing requirements is not in any sense "acceptable" or "forgivable" in light of current economic circumstances. Recent DCLG advice makes clear that the continued delivery of housing land is vital to the speedy recovery of the housing market.[67] Indeed, the Council accepted that the economic downturn does not in any way invalidate the housing requirements set out in the RSS and Core Strategy, but that the downturn will inevitably have implications for the deliverability of particular sites.

[64] R/CD81 Appellants' closing submissions in 2006, paragraph 27.2.6
[65] R/CD116 Topic Paper 5 page 2
[66] R/CD116 Topic Paper 5 pages 2-3
[67] R/CD149 Letter from CLG Chief Planner to Chief Planning Officers, 12 May 2009

Crawley Borough Council's housing requirements and supply

6.87 Paragraph 1.14 of the Housing Statement of Common Ground[68] sets out the parties' positions for Crawley. As against the five year requirement for 2008-2013 (ignoring the accrued shortfall for 2001-6), the Council asserts a surplus of 116 and the appellants a shortfall of 692. If the accrued shortfall for 2001-6 of 944 is included, the Council's figure would be translated into a shortfall of 828 and the appellants' into a shortfall of 1,636. The areas of dispute are as follows:

a) the calculation of the RSS requirement figure for 2008-2013;

b) whether the accrued shortfall for 2001-6 should be included or disregarded;

c) whether an allowance should be made for windfalls;

d) the deliverability of specific sites - Thomas Bennett, Telford Place/ Haslett Avenue, and Ifield College.

Calculation of the RSS requirement figure

6.88 The appellants' approach is derived by deducting completions for 2006-8 from the total RSS requirement for Crawley in the period 2006-2026 and then producing an annualised residual calculation for the remaining 18 year plan period which is then applied to the five year period. This results in an annual RSS requirement of 353. The Council takes a 7 year view, calculating the requirement based on the period 2006-2013 and using the surplus accrued between 2006-2008 to reduce the requirement. The consequence is that the high completion rates achieved in 2006 and 2007 reduce the annualised requirement to about 295pa in the period 2008-2013, a total of 1,478. The difference in requirement figures between the parties is 287 dwellings.

6.89 The appellants' approach accords with the "Liverpool" example set out in DCLG's Land Supply Assessment Checks.[69] By contrast, the Council argues that its approach accords with the "Sedgefield" analysis in that document.[70] However, the "Sedgefield" example is based on annual provisions which rise or fall over the plan period, reflecting other objectives (such as directing development in particular times to Newcastle). That is not the case here, where the RSS sets an annual average of 375 for each of the years 2006-2026. The appellants' approach enables monitoring against the Plan period as a whole, which is likely to have the significant advantage of avoiding peaks and troughs. Under the Council's approach, once the relevant period of provision at 295pa has passed, the requirement goes back up to 375pa.

6.90 It appears that the Council has elected to adopt the inappropriate "Sedgefield" model with a view to artificially creating a surplus within Crawley in the period to 2013. But it does not make sense that, as a consequence of the publication of the RSS, Crawley's requirement in the relevant five year period should be reduced to a level below the Structure Plan requirement of 300pa, particularly in circumstances where (a) there is a 944 shortfall

[68] R/CD138
[69] R/CD158 page 22
[70] R/CD158 page 21

outstanding from the period 2001-6, and (b) where the RSS has materially increased the housing targets.

6.91 The irony of the Council's approach is that it significantly increases total RSS requirements for the sub-region to 2013. While Crawley's figure reduces by 287, the figures for the three other districts increase (Horsham by 496; Mid Sussex by 631; and Reigate & Banstead by 103), giving a net increase for the sub-region of 943.[71] Thus, because RSS policies H1, H2 and GAT3 require a sub-regional approach to meeting housing need, this manipulation of the figures by the Council makes their policy justification for resisting this appeal even worse.

Crawley's accrued shortfall for 2001-6

6.92 The Core Strategy imposes a clear requirement to make up the 2001-6 backlog. A key objective is stated as: "To deliver sufficient housing to make up the current accumulated backlog and meet the requirements of the West Sussex Structure Plan to 2011/12….". [72] This key objective derives from the Core Strategy Inspector's Report, which stressed the importance of providing a firm statutory foundation for quickly recovering the current backlog. [73] At paragraph 45 the Inspector stated:

Completions in the first 5 years to 2006 total only 556 (111pa) a main reason for this being the delay of the long planned North East Sector because of the Article 14 direction imposed by the Secretary of State. Because of this a backlog of 944 had accumulated by 2006, to the extent that the residual requirement for 2006-18 is now 4,544, the equivalent of 413pa during that period. I support the view that the aim should be to recover the current backlog as soon as possible rather than over the whole period of the Core Strategy, especially as annual rates will anyway need to increase in the future if the higher provision in the Draft RSS is adopted. I therefore consider that the housing trajectory should make up the backlog in WSSP provision during the 5 year period 2007/8-2011/12".

6.93 The only potential justification for ignoring the shortfall would be if the Core Strategy's requirements were inconsistent with the subsequently published RSS so as to engage S38(5) of the 2004 Act. But there is no inconsistency between the RSS and the Core Strategy's free-standing requirement to make up the 944 backlog by 2011/12. The RSS contains no stated requirement that accrued shortfalls should be disregarded, nor is there any implicit requirement to this effect because the figures in RSS policy H1 are not expressed as ceilings or maxima. Moreover, the RSS provides specific encouragement for the adoption of such an approach. Policy H2(viii) requires that planning authorities "also" (ie, in addition to the requirements set out in policy H1) take into account *"the need to address any backlog of unmet housing needs within the housing market areas they relate to, in the first 10 years of the Plan".*

6.94 The Council argues that policy H2(viii) only applies to backlogs in the first 10 years of the RSS. This makes no sense, for such a construction would mean

[71] R/CD138 paragraph 1.38
[72] R/CD10
[73] R/CD114 paragraph 25

that shortfalls in the second 10 years of the Plan are not to be made up. Further, no specific policy is required to impose a requirement to make up shortfalls from the extant plan, because that is self-evident from the imposition of an annual average in the first place.

6.95 The appellants' reasoning is supported by an analysis of the manner in which policy H2(viii) arose. The Panel's Report[74] confirms that the pre-2006 backlog was not part of the figures in emerging policy H1. This is also evident from the Secretary of State's Proposed Changes[75] where it is recognised that the requirements in emerging policy H1 are well below what would be required to make up relevant backlogs, and where language in the submission draft limiting the "backlog of unmet housing needs" to affordable units was deliberately removed. Thus the final published version of the RSS has set out requirements in policy H1 which exclude 2001-6 backlogs, but has included in policy H2(viii) the expectation that planning authorities would also do what was necessary to address their shortfalls from this period. Accordingly, there is every reason to interpret policy H2(viii) as embracing shortfalls which a recently adopted Core Strategy has specifically stated should be made up in short order.

Windfall allowance

6.96 Paragraph 59 of PPS3 states that *"Allowances for windfalls should not be included in the first 10 years of land supply unless Local Planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified…."*. Mr Dennington conceded that, in Crawley, such genuine local circumstances do not exist. Clearly, therefore, the Council's purported windfall allowance should be excluded. Furthermore, the Secretary of State has accepted that windfalls should be excluded in the circumstances of this case, as the judgement of Collins J records.[76]

6.97 There is nothing in Core Strategy policy H1 or of the Core Strategy Inspector's Report[77] which supports the Council's present position. That Report reveals that the so-called "windfall allowance" referred to in policy H1 is not a true windfall allowance, but derives from a number of specific sites for which planning permissions had been granted in the period April – November 2006 and where there was no reason to suppose that they would not be implemented. Because all these sites are already included in the supply figures shown at Table 2 of the Statement of Common Ground,[78] either as completions or as sites with planning permission, it would be double counting to include a further contribution from them.

6.98 The Core Strategy does not provide the basis for a further generalised windfall allowance. This was specifically rejected by the Core Strategy Inspector as "contrary to the climate of certainty that PPS3 seeks to introduce".[79] Even if there had been doubt on this point, the matter is beyond question following the Secretary of State's concession before Collins J

[74] R/CD112 paragraph 7.30
[75] R/CD113 - see pages 106, 107 and 134 in particular
[76] R/CD110 paragraph 32
[77] R/CD114 paragraphs 56-7
[78] R/CD138
[79] R/CD114 paragraph 57

that there is no justification for a windfall allowance in Crawley. In any event, having conceded that the windfall allowance of 200 amounted to double counting, Mr Dennington did not offer any alternative figure.

Deliverability of Thomas Bennett

6.99 PPS3 paragraph 54 states that, to be considered "deliverable", a site must be "available now", "suitable", and "achievable" in the sense that there is a reasonable prospect that housing will be delivered on the site within five years. This requires a "realistic" (see PPS1, paragraph 26(iv)) assessment as to what is probable.[80] Further, it is also appropriate to apply paragraph 34 of the SHLAA Guidance which provides: "Where it is unknown when a site could be developed, then it should be regarded as not currently developable".[81]

6.100 On a proper application of these tests, Thomas Bennett cannot sensibly be described as "deliverable" so as to justify the Council seeking to count 60 completions in the year 2012/13. The site is owned by West Sussex County Council, which has no present intention of marketing it. The County Council does not anticipate submitting a planning application until September 2010, which will be in outline. The site will then need to be marketed to a developer who will need to obtain planning permission for a detailed scheme. On this basis, it is highly unlikely that development could commence before 2012, so completions before March 2013 are not deliverable.

6.101 The Council's case appeared to be that there was no insuperable reason why the site might not come forward at some stage beyond the five year period. Mr Dennington conceded that it was wholly unknown when, in light of current market conditions, the site would start delivering completions. On this basis alone it is evident that 60 completions are not "deliverable" in the period to 2013 within the meaning of PPS3 or the SHLAA guidance. At its highest, completions at this site in the period to 2013 are "possible", but they are not "probable", which is the essential test.

6.102 At the 2006 inquiry, the Council's position (accepted by Inspector Phillipson) was that this site would deliver 200 dwellings by 2012.[82] The Council now predicts no dwellings at all by 2012: its history of over-prediction counts significantly against it in respect of this site.

Deliverability of Telford Place/ Haslett Avenue

6.103 Telford Place/ Haslett Avenue has outline planning permission for the erection of a mixed use building comprising new retail space, a gym and 312 dwellings. However, it would provide exclusively flats and the whole scheme would have to be built out before any residential units could be occupied. No reserved matters applications have been submitted. The issue of viability is the principal obstacle in the path of including the Council's contribution of 181 completions from this site in the five year period. In the current market conditions, and given the availability of the Fairview flatted scheme on the

[80] This was accepted on the last occasion by Inspector Phillipson: see IR (R/CD108) 12.79. The Secretary of State agreed: see DL (R/CD109) 3, 37.
[81] R/CD129
[82] See IR 12.96, IR 12.103

former leisure centre site which is only approximately 300m away, there is no short to medium term prospect of implementing the proposal.

6.104 The appellants' evidence on the economics of housing provision in the current downturn demonstrates that many schemes for flats are deeply unviable at the present time. Prices have generally fallen further than for houses, the investment and buy-to-let markets have contracted, and mortgages and development finance have dried up. This was confirmed in work undertaken in preparing the Strategic Housing Market Assessment for local authorities including Crawley, which notes "new builds, particularly flats on big projects, are not selling", and that "demand for 1-2 bed small properties/new build is very slow". In these circumstances, a robust plan for housing delivery requires a diverse portfolio of sites suitable to different forms of housing development, notably houses as well as flats.

6.105 The situation at the nearby Fairview development illustrates the problem. This scheme is currently proposed to continue delivering completions through to mid-2011. Only 117 of the 621 private units have been sold to date; this means that 504 remain to be sold, 290 of which have been completed. It is precisely this sort of competition in the near vicinity which will deter commencement of any scheme at Telford Place/ Haslett Avenue. It is not possible to guess with any degree of reassurance when that position might change.

6.106 The Council's case rested on the fact that there is new developer interest in Telford Place/ Haslett Avenue. They are said to be reviewing the position and have not indicated that they do not intend to implement the existing planning permission. But this is far removed from the realistic assessment as to what is probable that PPS1, PPS3 and the SHLAA guidance require. In cross examination Mr Dennington conceded that, in light of market conditions, it was unknown when this scheme would come forward, a concession which is fatal to inclusion of a contribution from this site. On a proper application of the relevant tests, this site is not deliverable.

Deliverability of Ifield College

6.107 The site is owned by West Sussex County Council; it was marketed in 2008 but no satisfactory offers were made (the sole offer considered was only 10% of the expected value of the site). This is likely to be a reflection of both the current market conditions and the fact that the outline permission is for a high proportion of flats, which developers are not currently bringing forward. Moreover, there are high on- and off-site infrastructure requirements associated with the scheme which further deters market interest. Indeed, quite apart from current market conditions, the substantial highway costs and the issue of upgrading the sewer mains in this part of Crawley create a huge question-mark over its financial viability (and hence deliverability) at any time, let alone in the period to 2013.

6.108 The Council's evidence acknowledged that development is unlikely to occur prior to 2012. On this basis alone there can be no reasonable confidence in, or basis for, the prediction of 80 completions in the following year. It is a hope, not a reasonable expectation. Mr Dennington accepted in cross examination that it was not known when there would be completions from

Ifield College. This is a sufficient basis for ignoring this site for present purposes.

The longer term in Crawley

6.109 It is appropriate to take a longer term view in respect of Crawley given the size of the appeal site and the period over which it will deliver housing. Support for this comes from paragraph 7.8 of the RSS which states that "*Decisions should be taken on their merit and local circumstances – including longer term housing needs and affordability in an area".* The appellants' evidence[83] shows that, without the North East Sector, there would be a shortfall of 1,117 dwellings as against RSS requirements in the period to 2018/19 even if it is assumed that all identified sources of supply come forward. This shortfall would increase to 2,061 if the 2001-6 shortfall of 944 were included.

6.110 The shortfall would increase further to the extent that sites such as the Town Centre North redevelopment and Dorsten Square, which had viability issues even when the housing market was buoyant, do not come forward. The Town Centre North scheme has stalled completely due to current market conditions. The Council acknowledges that no progress is being made at present, and it is not clear whether the scheme will emerge at all or with what amendments. The significant issues of viability, feasibility and timeframe which existed in 2006[84] all remain unresolved. Turning to Dorsten Square, the Council does not suggest that this site should be included in the five year trajectory, notwithstanding the grant of outline planning permission. As for the long-term, there is no evidence to this inquiry that satisfactorily establishes the viability of a scheme at Dorsten Square, which is located in one of the more run-down parts of Crawley and will require sewer upgrades.

6.111 The May 2009 interim SHLAA[85] for Crawley gives no confidence at all that there is any meaningful prospect of the long-term position being redressed. This document concludes that there is *"a minimum 2,957 shortfall against the 7,500 home requirement for the 2006-2026 period. This figure should be treated with caution as it represents the maximum supply position for sites within the planning process and an estimated completions figure."* Although the SHLAA identifies a large number of sites, most are regarded as unsuitable or unavailable, or require detailed assessment including on feasibility and viability. The best that can be said from the Council's perspective is that a few sites are described as "developable".

6.112 The Council introduced three speculative and embryonic possibilities which would not be exposed to noise greater than 60 dB(A). They are, however, wholly unsuitable for innumerable reasons. The Council conceded that (a) they are neither deliverable nor developable in PPS3 terms, and that (b) they should be afforded no more than limited (or little) weight. There can be no reasonable confidence in the delivery of completions from any of the three locations, for the following reasons:

[83] Mr Woolf's appendices (R/TWB/1/2), Table 1
[84] R/CD81 paragraph 19
[85] R/CD117

(a) Pease Pottage. The land to the south of the M23 (located in Mid Sussex District) is within the AONB, which creates a very strong presumption against residential development. As for the land to the north of the M23, this was considered by the Core Strategy Inspector, and rejected on the grounds that it is a somewhat isolated area which is not large enough to successfully continue the neighbourhood principle on which Crawley has traditionally grown. The Council does not put forward any further evidence or assessment in respect of this location, nor is it known how access issues would be resolved. It should be disregarded for present purposes.

(b) Crabbett Park. The area is part of a Strategic Gap identified by saved policy C2 of the Mid Sussex Local Plan.[86] There is no evidence that Mid Sussex DC will be amenable to a relaxation of this policy so as to accommodate development at this location. Further, the site is remote from Crawley's employment and other existing facilities, and is divorced from Crawley by the M23. In addition, there are land ownership issues. In these circumstances, the Council accepted that conclusions cannot be drawn about the deliverability of this location at this stage.

(c) West of Ifield. The area is within Horsham District and in an identified Strategic Gap (policy DC3 of the Horsham Development Control DPD). There is no evidence that Horsham will be amenable to a relaxation of this policy so as to accommodate development at this location. The area in question encompasses a golf course, the loss of which would result in a very substantial number of objections. In addition, there are accessibility problems with the site given its location and poor existing linkages into Crawley. Again, the Council accepted that conclusions cannot be drawn about the deliverability of this location at this stage.

6.113 The Council acknowledges the seriousness of its land supply position in the recently published Housing Topic Paper 5, which contains a revealing analysis of the current position in Crawley. This document records:

- *"the Council's preferred approach would be the comprehensive development of the North East Sector in tandem with other large sites within the Borough boundary …*
- *In the absence of the North East Sector it will be exceptionally challenging for the requirement to be met within the Borough boundary, which would require the employment of contingency, including exploring strategic development opportunities beyond the Borough boundary*"

Thus Topic Paper 5 reveals that the Council has no realistic chance of meeting its RSS requirements in the long term without the release of the North East Sector. Indeed, if the appeal site does not come forward, the option which the Council favours is to reduce its South East Plan requirement by 2,700.

6.114 There is nothing particularly new about the recognition that the North East Sector is crucial if Crawley is to meet its RSS requirements. At the 2006 inquiry, Mr Fairham conceded that "if there is a need for the release of a further site, it has got to be [the North East Sector] – there is no sensible alternative".[87] Whether the matter is considered from a Crawley perspective

[86] R/CD14
[87] R/CD81 see paragraph 12.4 of Appellants' Closing Submissions

or a Gatwick sub-regional perspective, this remains the position almost 3 years later. If anything, the absence of any meaningful alternative coming forward in the intervening period merely serves to underline the compelling case for releasing the appeal site at this time.

The Gatwick sub-region's housing requirements and supply

The relevance of the housing land supply position in the Gatwick sub-region

6.115 It is entirely consistent with the RSS to assess the housing supply position within the Gatwick sub-region. A sub-regional focus is evident from RSS policies SP1 and SP2. It is specifically mandated by the key housing policies, H1 and H2. Policy H1 provides that *"local planning authorities should work collaboratively to facilitate the delivery of …. dwellings in the sub-regions and in the rest of the sub-regional areas"*. Policy H2 states *"Local planning authorities will work in partnership to allocate and manage a land supply to deliver both the district housing provision and the sub-regional and the rest of the sub-regional area housing provision…."* and *"…. local planning authorities should plan for an increase in housing completions to help meet anticipated need and demand, and seek to achieve both the district distribution and the relevant sub-regional and rest of the County area provisions."*

6.116 The strategy for the Gatwick sub-region is consistent with this approach. In particular, policy GAT1 seeks to maximise the potential for sustainable economic growth in the sub-region. The provision of 1,900 new houses would assist in maximising that potential. In addition, policy GAT3 provides: *"Local planning authorities will allocate sufficient land and facilitate the delivery of 36,000 net additional dwellings in the Gatwick sub-region between 2006 and 2026. In managing the supply of land for housing and in determining planning applications, local planning authorities should work collaboratively to facilitate the delivery of the following level of net additional dwellings in the sub-region…."*.

6.117 Paragraph 24.7 of the RSS includes the statement that: *"Local planning authorities will provide for the level of housing development within this sub-region in accordance with the distribution in this policy. In exceptional circumstances, [they] will provide for the balance for their sub-regional requirement in the remainder of their area provided the objectives of the sub-regional strategy can be met".*

6.118 The Council interprets paragraph 24.7 as meaning that a shortfall in the Gatwick sub-region part of Horsham, Mid Sussex or Reigate & Banstead may be made up in the non-Gatwick sub-region parts of those districts. This construction is artificial and does not make sense. The final phrase in the sentence requires conformity with the "objectives of the sub-regional strategy". It is hard to see how, for example, Mid Sussex putting part of its Gatwick sub-region requirement in its rural area outside the Gatwick sub-region could conceivably be in conformity with the overarching sub-regional strategy. Nevertheless, if it were acceptable to meet part of the sub-regional requirement outside the sub-region, then there is even greater reason for it to be acceptable to meet that requirement elsewhere within the sub-region itself. This would necessarily comply with the "objectives of the sub-regional strategy", and must be assumed to be the preferred approach.

6.119 Furthermore, as Crawley is entirely within the Gatwick sub-region, on the Council's interpretation there will be no circumstances where a shortfall in Crawley can be met in another part of the sub-region or in any non-sub-region part of the other districts. It is impossible to see why this should be the case for a shortfall in Crawley (the regional hub), but not for (say) a shortfall in the Horsham part of the Gatwick sub-region. This would be entirely at odds with the Council's own recognition in Housing Topic Paper 5 that it could seek to meet some of the deficit outside the Borough. Thus the sensible interpretation of the phrase "the remainder of their area" is that an exceptional shortfall within one or more component parts of the Gatwick sub-region is envisaged to be made up elsewhere within the Gatwick sub-region, so long as the proposed solution is consistent with the "objectives of the sub-regional strategy"

Horsham District

6.120 The Statement of Common Ground records (Table 5) that the appellants consider that there will be a district-wide shortfall of 2,462 in the period to 2013, compared to the Council's shortfall of 1,133. Mr Dennington conceded in cross examination that the site west of Horsham would only yield 500 dwellings in the five year period rather than the 800 previously assumed; this brings the shortfall agreed by the Council to 1,433. The appellants' shortfall figure would increase by 496 to 2,958 if the RSS requirement figure were to be worked out using only the period 2006-2013 (the methodology used by the Council). The differences between the parties in terms of supply arise in three areas: (i) West of Horsham (now 500 dwellings), (ii) West of Crawley (500 dwellings), and (iii) windfalls (525 units).

<u>West of Horsham (500 units)</u>

6.121 Two sites comprise the West of Horsham strategic location, one to the west of the A24 (Countryside Properties), and the other to the east of the A24 (Berkeley Homes). They are linked by the need to construct a new all-purpose grade-separated junction onto the A24 required by Core Strategy policy CP7[88] and the Land West of Horsham Masterplan SPD.[89] The grade-separated junction was a key element of the proposal, and was intended to ensure that delays along the A24 strategic road network corridor do not increase as a result of the development.

6.122 Berkeley Homes have recently stated that provision of the grade-separated junction will render its scheme unviable; instead they now propose a "left in, left out" junction only. This will constitute fundamental non-compliance with the Horsham Core Strategy and the Masterplan SPD. The lack of a grade-separated junction means that there will be mixing of traffic on the A24, which is precisely what it was intended to avoid. Further, it means that there cannot be comprehensive development involving the land to the west as well. Currently the County Council (as highway authority) has seen no technical justification for any highway proposals for an independent scheme from Berkeley Homes.

[88] R/CD27
[89] R/CD28 Statement 2, page 33

6.123 Further, there is an ongoing dispute as to what level of affordable housing and s106 contributions Berkeley Homes will propose, or the Council will accept, in view of the viability issues which have arisen and the developer's refusal to countenance "overage" arrangements. At this time, it is unclear whether or when such issues will be resolved. Equally, it is not known whether any agreement between Berkeley Homes and officers of the Council will comply with the Masterplan SPD and development plan policies, or whether it will be acceptable to the decision-maker.

6.124 Even setting these points to one side, the timescale at West of Horsham cannot reasonably anticipate completions in the period to 2013. The steps that will be required before completions can be delivered are as follows: (a) submission of new (inevitably ES) planning applications, which are not envisaged before the autumn at the earliest, (b) determination of those applications and negotiation of s106 agreements, (c) the securing of detailed consents by way of reserved matters applications, (d) negotiation of agreements between the two developers and others, and (e) construction of the new access junction and/or other infrastructure requirements necessary to start delivering housing completions. It is not conceivable that these steps will be taken in time to facilitate even the revised trajectory which the Council puts forward. The appellants' consider that (even assuming no major slippages from the likely rate of addressing the foregoing steps) there will be no completions in the period to 2012/13.

6.125 There is no justifiable basis for relying on "early completions" in advance of the substantial infrastructure requirements set out in the Masterplan SPD. Although Countryside Properties have an ambition to bring forward an unspecified number of new homes on the site to the west of the A24 prior to a new A24 junction, the Highway Authority's agreement to such a scheme is dependent on the outcome of the detailed technical work, including the traffic modelling work. At this time it is not known what (if any) limited delivery there can be in advance of a new A24 junction, having regard to highways and viability issues. In respect of the Berkeley Homes site to the east of the A24, the Masterplan SPD[90] allows for the possibility of a 'limited' early phase in the northern development area, via a temporary access onto Hills Farm Lane, prior to completion of the new A24 junction. But there is no evidence as to how extensive this phase could be. Moreover, there is a flooding issue in respect of this access route, and no evidence before the inquiry as to the viability or otherwise of a scheme to bridge the floodplain so as to allow this limited phase to use the suggested temporary access.

West of Crawley (500 units)

6.126 The Council predicts 150 completions in 2011/12 and a further 350 in 2012/13, together comprising the bulk of Phase One. The appellants consider that there is no reasonable prospect of completions before 2013, or in all probability for a number of years thereafter, for a number of reasons.

6.127 The first is that West of Crawley is unlikely to commence unless and until the developer is in a position to complete the whole scheme. This is because Phase One is only marginally viable, Phase Two is inherently unviable, and it

[90] R/CD28

is only Phase Three which offers meaningful returns.[91] There are many technical and environmental infrastructure matters to be resolved before the developer can be reasonably certain that it will be able to secure the profits from Phase Three. These include, in particular, negotiating an acceptable arrangement with Network Rail to cross the railway line. Negotiations with Network Rail may take some time as they would appear to have a very substantial ransom, given that their consent to a number of railway crossings is critical to the delivery of the envisaged scheme. Moreover, the £5m set aside by the developers as a contingency for a possible Network Rail ransom is likely to understate the amount which is required to be paid by a very significant margin.

6.128 A second fundamental constraint affecting the delivery of West of Crawley in the timescales envisaged by the Council is the question of foul sewage. There is a need either to build a new treatment facility, or to upgrade the sewers (or lay new sewers) between the site and the Crawley treatment facility. Thames Water's preference is a new treatment facility to serve the West of Crawley scheme; this could take 10 years to come on stream. The alternative option, upgraded or new sewers, is a very substantial undertaking given the 7km distance to the existing works. The exercise of considering the route and designing the scheme will not commence in earnest until outline planning permission for West of Crawley is granted. It is likely to be 3 years following the grant of planning permission before the requisite sewers would be in place. By itself, this is a factor which is likely to prevent any completions in the next five years at least.

6.129 Thirdly, as yet there is no planning application - let alone a planning consent – for any part of the development. The necessary steps to secure housing completions include (a) submission and determination of an outline planning application for the scheme as a whole (necessarily involving an ES) and detailed applications in respect of Phase One and the relevant infrastructure works, (b) negotiation of a Section 106 obligation, and (c) provision of the relevant infrastructure to service the new housing and comply with the Joint Area Action Plan (JAAP) requirements. The infrastructure requirements in Phase One include commencement of the primary A264 junction, pedestrian access across Spruce Hill Brook, commencement of the eastern railway crossing and delivery of the combined heat and power facility.

6.130 The Council's evidence is that no application is anticipated before Spring 2010. The viability study submitted by the developers[92] suggests a period of no less than 2 years between the grant of permission and first completions. This is entirely consistent with the appellants' general approach and no explanation has been advanced as to why it is not reasonable to assume that such a time period will ensue. The Council can derive no comfort in this respect from the JAAP Inspector's Report,[93] for this does not explain how the completions rate set out in the trajectory attached to the submission JAAP[94] is to be achieved. The Inspector noted that it would be for Core Strategy

[91] Mr Woolf's appendix JW1 (R/TWB/1/2), tables on page 33 and paragraph 119
[92] Mr Woolf's appendix JW1 (R/TWB/1/2), paragraph 35
[93] R/CD128
[94] R/CD13

reviews to deal with any shortfall if the development did not come forward at the anticipated rate.

Windfall allowance (525 units)

6.131 There is no evidence justifying a windfall allowance in Horsham in terms of the test at paragraph 59 of PPS3. That allowance appears to derive from the Horsham Core Strategy,[95] or more particularly from the Inspector's Report into the same.[96] But although this document was published shortly after PPS3, it states that PPS3 was not taken into account. The Council also refers to the conclusions of the Inspectors' Report into the Horsham Site Specific Allocations of Land DPD.[97] Again, however, paragraph 3.5 of this Report makes clear that the inclusion of windfalls was for reasons of expediency rather than on a proper application of PPS3. Accordingly, there is no basis for including windfalls in a PPS3-compliant assessment of the five year land supply within Horsham District.

Mid Sussex District

6.132 The Statement of Common Ground records (Table 7) that the appellants consider that there will be a district-wide shortfall of 1,448 in the period to 2013, compared to the Council's shortfall of 998. In its closing submissions the Council conceded that there was no justification for the windfall allowance of 276 dwellings; this increases the Council's shortfall to 1,274. The appellants' shortfall figure would increase by 631 to 2,079 if the RSS requirement figure were to be worked out using only the period 2006-2013 (the methodology used by the Council). The differences between the parties in terms of supply previously arose in respect of Haywards Heath (405 dwellings) and various town centre redevelopments (400 dwellings).

6.133 These differences disappeared when in cross examination Mr Dennington withdrew his former reliance on them. Consequently, on the Council's figures the shortfall should rise to 2,079. During cross-examination Mr Dennington also agreed to revise the Statement of Common Ground in order to take account of those concessions. However, such revisions were not forthcoming, seemingly on the basis that Ms Cook elicited in re-examination the answer that those sites would not come forward because of "market conditions", and the Statement of Common Ground should take account of what was said in re-examination. The argument is that because Mr Dennington holds the view that market conditions will improve in 2010/11, then he considers that the sites are in fact deliverable within five years.

6.134 The plain fact is that Mr Dennington did agree to add those sites to his deficit and to amend his Statement of Common Ground because he agreed that they would not come forward within five years. He would not have agreed to amend the Statement of Common Ground otherwise.

6.135 On a separate matter, it is necessary to comment on the strategic allocation of west of East Grinstead (mentioned at RSS, paragraph 24.8(iii), as an identified location for 2,500 homes). In advance of the inquiry, it was agreed

[95] R/CD27
[96] R/CD126
[97] R/CBC/04/02 Dennington Rebuttal appendix E

between the appellants, Crawley BC and Mid Sussex DC that there will be no completions in the period to 2013 at this strategic location. Matters have subsequently moved on, in the sense that the recent Update[98] reveals that there are insuperable objections to a substantial scheme at this location, and that it will be progressed through the Mid Sussex Core Strategy for about 570 dwellings. This removes any possibility of this location accommodating the additional 2,000 or so homes previously considered, and creates yet further difficulties for meeting the long-term housing requirements of Mid Sussex and the Gatwick sub-region.

Haywards Heath

6.136 405 dwellings (185 at South West Haywards Heath and 220 at South East Haywards Heath) cannot come forward without completion of stages 5 and 6 of the Haywards Heath Relief Road. The developer, Crest Nicholson, has stated that it will not be able to deliver the remaining parts of the Relief Road (the cost of which is £14.5m) until 2013, and that additional land will need to be allocated for residential development to fully fund the road. There is no other funding solution available. In the absence of a current or readily apparent solution to the funding issues for the relief road, there is no reasonable basis for thinking that these 405 dwellings will be completed in the period to March 2013.

6.137 Mr Dennington's rebuttal acknowledged (paragraph 6.22) that there are viability constraints to the delivery of the relief road, but sought to argue that the 405 units in question were nonetheless reasonably likely as there was nothing to suggest that further negotiations with Crest Nicholson would not be fruitful in terms of delivering a revised programme. However, in cross-examination Mr Dennington conceded that there was no reasonable prospect of delivery by 2013.

Town Centre redevelopments

6.138 There has been no identification as to where these sites are, no planning permissions exist, and there is no knowledge of land ownership and other constraints. Therefore it is simply impossible to say when the total of 400 units will be delivered. Further, the fact that SPDs[99] were adopted between June 2006 and June 2007 in respect of the three town centres in question (Haywards Heath, Burgess Hill and East Grinstead), and that 2-3 years later it is still not possible to identify a single site which is likely to deliver housing completions in the period to 2012/13, is itself extremely telling.

6.139 Manifestly there are no deliverable sites within the meaning of PPS3 paragraph 54. Mr Dennington rightly conceded that no contribution from this source can be included for present purposes.

Reigate and Banstead District

6.140 As set out in table 9 of the Statement of Common Ground, the appellants consider that there will be a shortfall in the Gatwick sub-region part of this district of 167 in the period to 2013, compared to the Council's shortfall of

[98] R/CD156
[99] R/CD20-22

270. The sole difference relates to the manner in which the requirement figure is calculated. The appellants' shortfall figure would increase by 103 to 270 if the RSS requirement figure were to be worked out using only the period 2006-2013. There are no differences between the parties in terms of supply.

Conclusion on Gatwick sub-region

6.141 The Housing Land Supply Statement of Common Ground (paragraph 1.38) reveals agreement that there will be massive shortfalls in sub-regional housing delivery in the period to 2013. The Council's analysis was originally of a shortfall of 2,285 (a supply of 9,042 against an RSS requirement of 11,327), but in consequence of concessions made this increases to 3,666 (its supply reducing to 7,661). The appellants assess an RSS shortfall of 4,769 (a supply of 5,615 against an RSS requirement of 10,384). Both shortfalls increase by 944 (to 4,610 for the Council and 5,713 for the appellants) if Crawley's 944 shortfall from 2001-6 is included.

Affordable Housing

6.142 Inspector Phillipson concluded that *"there is no dispute that the ability of the appeal scheme to deliver 760 additional affordable homes … is a matter to which significant weight should be attached in favour of granting planning permission".*[100] This remains the position. The offer of a full 40% affordable housing still stands and, notwithstanding that it is merely complying with the development plan, it should be given appreciable weight because so many other schemes are failing to deliver at 40%.

6.143 The SHMA[101] assesses a current need of 2,565 affordable dwellings in Crawley alone (of which 854 are required for those in "dire need"). Those current needs translate into annual "net needs" of 250 and 103 respectively, which are over and above the Council's predicted contribution from commitments and allocations. In other words, the figures of 250 and 103 represent the annual need which the Council presently has no idea how to meet. The Council's 2008 Annual Monitoring Report is broadly consistent with the SHMA; this states that: *"there are still significant numbers of people on the housing needs register with a total of 2,972 individuals/families requiring accommodation, 1,396 who require one bed accommodation and 1,241 requiring two and three bed (family) accommodation"*.[102]

6.144 The position in neighbouring districts (in particular Horsham and Mid Sussex) appears to be equally poor. Figures 9.20 and 9.21 of the SHMA disclose the following:

(a) In Mid Sussex, there is a current need for 2,176 affordable units, of which 863 represent those in "dire need". These translate into annual "net" requirements of 477 and 357 respectively.

(b) In Horsham, there is a current need for 1,072 affordable units, of which 322 represent those in "dire need". These translate into annual "net" requirements of 327 and 260 respectively.

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[100] R/CD108 paragraph 12.148
[101] R/CD118 figures 9.20 and 9.21
[102] R/CD11 paragraph 4.37

6.145 Taken together with the Crawley figures set out above, there is a sub-regional "net need" in the three districts combined of 5,813 affordable units, of which 2,039 represent those in "dire need". These translate into combined annual "net" requirements of 1,054 and 720 respectively.

Housing Mix

6.146 The ability of the appeal scheme to deliver the mix of dwelling types and sizes proposed, including market and affordable family accommodation in the form of houses as opposed to flats, is a further factor weighing in favour of granting planning permission. Indeed, provision of a mix of dwelling types and sizes accords with RSS policy H4 and Core Strategy policy H6. This contrasts with the current supply position: analysis of the Council's identified sites of 6+ units with planning permission shows a very heavy preponderance in the supply of flats as opposed to housing (83% to 17%). It is all the more pertinent since Crawley's housing stock is heavily biased towards smaller units. Indeed, the need for a mix, including larger family sized properties, is recognised in the SHMA report[103], which recommends that 30% of new homes in urban extensions should contain 4+ bedrooms.

Conclusion on Housing Need

6.147 In summary, on the appellants' analysis the position is as follows:

(i) The shortfall in Crawley at the end of the five-year period to 2013 will be 692 as against RSS requirements, and 1,636 as against total requirements (once the 944 backlog which the Core Strategy requires to be addressed by 2011/12 is factored in).

(ii) The longer term position in Crawley is even more unsatisfactory. The shortfall is likely to increase to 2,061 by 2018, and this figure will further increase to the extent that sites such as the Town Centre North redevelopment and Dorsten Square do not come forward. It is common ground that it is "exceptionally challenging" for Crawley to meet its RSS requirements.

(iii) Sub-regionally, the position is at least as bleak as in Crawley. The shortfall as against RSS requirements will be 4,769, which increases to 5,713 if the 944 Crawley backlog is included. It would increase further (by 943) to 6,656 if the Council's methodology for calculating the five year RSS requirement were adopted.

(iv) In percentage terms, for Crawley there is a five year supply of 1,073 as against a total requirement of 2,709,[104] in other words only about 39.6% of requirements will be achieved. In the Gatwick sub-region there is a five year supply of 5,615 as against a total requirement (RSS and Crawley Core Strategy) of 11,328, in other words only about 49.6% of requirements will be met.

(v) The position in respect of provision of affordable housing (whether in Crawley, or sub-regionally) is equally disappointing.

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[103] R/CD118 page 250
[104] 1,765 (the residual RSS requirement) + 944 shortfall for 2001-6

6.148 The appeal scheme offers the opportunity for redressing some of these shortfalls, as well as facilitating all the other advantages in planning terms described above. The trajectory envisages that 400 dwellings can be completed within the 2008-13 period, with the remainder of the scheme being built out by 2018/19. Inspector Phillipson endorsed the materially similar trajectory before him in 2006. Further, the Secretary of State concluded on the last occasion that: *"there is no reason to suppose that, if planning permission were granted, development would be materially delayed by the landowners involved failing to reach agreement, or for any other reason".*[105] There has been no material change in circumstances in this respect since the 2006 inquiry. Mr Fairham again confirmed in his evidence that the Council would not be "awkward" in respect of necessary negotiations.

6.149 Despite the Council's belated and misconceived point on the viability of the appeal scheme, again no serious issue arises. The matter has been considered by the appellants, who are satisfied that the scheme remains viable. Indeed, the scheme is advanced without any attempt having been made to reduce the "package" of associated measures on viability grounds. It is being progressed voluntarily by the appellants through expensive appeals and legal challenges, and not because of some contractual obligation to do so.

6.150 There is ample evidence before the inquiry confirming viability. The Beazer/ Persimmon land has been owned outright since 1998, and some of the Taylor Wimpey land is also owned (the rest being under option).[106] The phasing plan shows that the Beazer land can be developed without the involvement of any other landowner, so there will be no difficulty in starting the development. Further, the appeal scheme does not have anything like the magnitude of abnormal costs as the West of Crawley scheme (which has at least £35m abnormals), for the extra cost of noise insulation is £1.9m. If (as is not disputed) West of Crawley is viable, it is not possible to understand on what basis the appeal scheme would not be.

OTHER MATTERS

Identity of objectors

6.151 It is important to take into account that (as in 2006) there is virtually no public opposition to the appeal. Certainly, no member of the public felt sufficiently exercised about matters to appear at the inquiry. It is highly unlikely that there would be any other comparably significant greenfield release in the South East where this would be the case. This alone demonstrates that a decision to release of the North East Sector will command public support and respect.

6.152 The Council's stance is clearly contrary to the preference in Housing Topic Paper 5 that the North East Sector be released. Moreover, the credibility of its objection is undermined by the fact that the issue has not been taken back to the Council's Planning Committee (or Full Council), notwithstanding the host of material changes of circumstances since the 2006 inquiry.

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[105] R/CD109 paragraph 44
[106] R/CD189

6.153 GAL has advanced a commercial objection, no doubt partly influenced by the sale of Gatwick which it is presently required to conduct. The credibility of GAL's objection is fundamentally undermined by (a) the fact that a second runway at Gatwick is now no more than a remote possibility, having regard to the Government's January 2009 announcement, and (b) the recognition that, in view of the population numbers considered at the time of the ATWP, independent mixed mode would fully accord with Government policy even in a world where the North East Sector had been built out.

Sustainability of the North East Sector

6.154 Inspector Phillipson concluded that the appeal site is well placed to meet the housing needs of the Crawley/Gatwick sub-region,[107] and his assessment has not been challenged by the Council. The Secretary of State agreed that the North East Sector is a "highly sustainable" location.[108] Further, the appeal scheme would materially contribute to the aims of sustainable development (and addressing climate change) by reducing the present high rates of in-commuting. This significant benefit was also acknowledged last time by the Inspector and the Secretary of State. Indeed, Crawley has the worst record (as compared with other towns in the South East identified for growth in the RSS) in terms of "in-commuting" by private motor car. The current unsustainable pattern has arisen from the fact that growth in jobs has not been matched by growth in the population.

6.155 Refusal of this appeal would risk stifling the economic development of Crawley and the sub-region in accordance with the spatial strategy set out in the RSS. If, however, economic growth is maintained at forecast levels, the failure to deliver the requisite levels of housing would exacerbate the already unsustainable "in-commuting" pattern.

Other Development Control issues

6.156 There is agreement with the relevant authorities in respect of transport and infrastructure matters. Further, there is no reason to revisit conclusions previously reached which approve the Masterplan, nor is there any basis for suggesting that the appeal should be refused because of its landscape or visual impact. The Environment Agency's January 2009 consultation response confirms that the conclusions of the Flood Risk Assessment set out in the ES remain valid, subject to the imposition of appropriate conditions. For these reasons, there is no other development control issue capable of justifying refusal of the appeal, nor does any party at the inquiry argue that there is.

Conditions

6.157 As regards the appropriateness of any "scheme" conditions which are found to involve unavoidably the payment of money, the submissions are set out in the Joint Opinion of 14 May 2009.[109] This challenges the advice given to Inspectors, based on a decision by the Secretary of State in October 2007 relating to five appeals by Arnold White Estates Ltd and CC Trading Ltd, that

[107] R/CD108 paragraph 12.169
[108] R/CD109 paragraph 54
[109] R/CD170

negatively worded “scheme” conditions should not be used where it is likely that payments would be made. The main points in the Joint Opinion are as follows:

(i) The Secretary of State's reasoning in the October 2007 decision accepts that the approach taken would not apply to a "scheme" condition which was unlikely to involve payments. Accordingly, negatively worded "scheme" conditions where it is realistic to regard the "scheme" as capable of discharge without pecuniary contributions being made are outside the scope of the Secretary of State's reasoning.

(ii) This is significant because numerous such "scheme" conditions which do not contemplate direct financial contributions (for example, to address drainage or landscaping matters or to provide ecological mitigation) will involve substantial expenditure for developers. As a matter of principle and approach it is hard to see what logical distinction there is between a "scheme" condition likely to involve financial payments, and those which will merely involve substantial expenditure in money or money's worth by developers in order to achieve certain stated results. The effect of the Secretary of State's reasoning is, however, that the former category of condition is impermissible while the latter is permissible.

(iii) The question is, therefore, whether the Secretary of State was correct to go further and reject a negatively worded "scheme" condition addressing the needs of the development in accordance with the development plan where it was all but inevitable that the "scheme" later submitted would involve financial contributions.

(iv) Two passages in Circular 11/95 are pertinent. Paragraph 39 provides that, although it would be *ultra vires* to require works which a developer has no power to carry out, or would need the consent of a third party, a similar result may be achieved by a condition worded in a negative form, prohibiting development until a specified action has been taken. Second, paragraph 83 states that no payment of money or other consideration can be required when granting a permission or any other consent required by a statute, except where there is specific statutory authority. Thus conditions requiring, for instance, the cessation of land for road improvements or for open space, or requiring the developer to contribute money towards the provision of public car parking facilities, should not be used.

(v) The legality of a negatively framed condition was tested in *Grampian Regional Council v City of Aberdeen District Council* [1983] 47 P&CR 633. Lord Keith said:

> *"It was maintained that there was no practical distinction between a condition requiring a result which it was not within the power of the applicant alone to bring about and a condition prescribing that no development should begin until that result had been achieved, because in either case the practical effect was to require the applicant to bring about something which was not within his power. ...*

> *"My Lords, in my opinion there is no substance in the appellants' contentions. In the first place, there is a crucial difference between the positive and negative type of condition in this context, namely that the latter is enforceable while the former is not."*

(vi) Thus, the argument that a negative condition was no more than a facade behind which a positive requirement was being hidden has long been comprehensively rejected at the highest level. There was, said Lord Keith, a "crucial difference", this being that a condition in Grampian form imposes no requirement on the developer (whatever the subject matter of the condition). It effectively sets up a timing provision, by identifying a specified event or state of affairs which must occur or come into existence before an entitlement to commence development (or use the development in a certain way) crystallises.

(vii) Fundamentally, there is no distinction in principle between the situation at issue in *Grampian* (where adoption of a negative form overcame an objection that would otherwise have failed the 'reasonable' test) and that which affects the "scheme" conditions in this case. This is supported by judicial dicta in *City of Bradford Metropolitan Council v Secretary of State for the Environment* [1986] 53 P&CR 55 and subsequently in *Orchard (Development) Holdings Ltd v First Secretary of State* [2005] EWHC 1665.

(viii) In the *Orchard* case, the Court was concerned with the legality of a Grampian "scheme" condition which was intended to prevent development on a particular site (an important recreational facility within Boston) until alternative recreational facilities of at least comparable standard had been provided. The Court's decision was that the Inspector had been entitled to reject the proposed condition on the ground of lack of precision. However, at paragraphs 13-14, the Judge said:

> *"I accept, both as consistent with law and as consistent with extensive experience in practice, that it is open to an applicant to put forward a lawful Grampian condition which does hold up Development A until Development B has been completed or, in some cases, approved. It is clear that the Inspector had power in this case to impose a condition which prevented development occurring until suitable replacement facilities had been provided: both power in law and he had the backing of policy if he chose to use it."*

(ix) It is submitted that it is not possible to provide a rational explanation as to why a sufficiently precise *Orchard* condition (holding up development until an appropriate compensatory recreational facility had been made available elsewhere) would have been lawful, but a condition of the type considered in this case would not be.

(x) The category of negatively worded "scheme" conditions with which the Joint Opinion is concerned does not infringe any extant principle that planning conditions cannot require financial contributions to be

made, because the House of Lords in *Grampian* has made clear that there is a "crucial difference" between positively and negatively worded conditions, the latter being lawful in circumstances where the former would not be. Such negatively worded conditions accordingly fall within the scope of s72(1) of the 1990 Act as conditions "regulating the development or use of any land under the control of the applicant" because they affect the timing of the development (or elements thereof) or the use of the land until particular events have occurred or particular states of affairs have come about.

6.158 The Joint Opinion concludes that the advice given to Inspectors proceeds under a fundamental misconception of the lawful scope of negatively worded "scheme" conditions. No one has suggested that the Opinion does not set out the correct position in law.

6.159 GAL promotes three new conditions.[110] None of these, as the Council agrees, pass the tests set out in Circular 11/95, nor were they raised or otherwise said to be “necessary” at the 2006 inquiry. The aerodrome safeguarding condition is not required because this matter is covered by other legislation and controls.

6.160 As to the proposed conditions entitled “statutory notice” and “Gatwick Airport information packs”, these cannot be regarded as “necessary” for purposes of paragraph 15 of Circular 11/95. Further, these conditions have no relevance to planning (paragraph 20 of the Circular), being instead designed to advance GAL’s interests. Planning permission could not conceivably be refused if these conditions were not imposed, which is the test imposed by the Circular. In any event, potential purchasers can reasonably be assumed to be sufficiently on notice of the existence of Gatwick Airport to make their own inquiries as to possible expansion of the airport and its implications for them. In addition, the information which is sought to be included in the proposed statutory notices and information packs is partial and potentially misleading.

SECTION 38(6), THE PLANNING BALANCE AND CONCLUSION

6.161 The grant of planning permission would accord with the development plan. Release of the appeal scheme would accord with a host of key spatial and strategic policies, notably RSS policies SP1, SP2, SP3, H1, H2, GAT1 and GAT3, as well as the material policies in the Core Strategy, namely H1, H2, NES1 and NES2. The appeal scheme is not in conflict with any policy on noise or safeguarding of land for a possible second runway at Gatwick, whether in the development plan or in PPG24. Thus the S38(6) presumption in favour of granting planning permission arises. As to whether there are “material considerations” indicating otherwise, there are not.

6.162 If, contrary to this contention, it were concluded that the development does conflict with the development plan, then its ability to make a substantial contribution to the housing land supply deficit locally and sub-regionally is a very weighty consideration which is capable of overcoming even a serious conflict. In striking the planning balance in this case, in the words of Collins J “the question of [housing] need is fundamental”. [111] To the same effect is

[110] R/GAL/1A, Appendix 4
[111] R/CD110

the judgment of Wilkie J that the "important, perhaps the decisive, factor was the assessment of immediate need".[112] The appeal scheme is urgently needed to contribute towards the requirements of both Crawley and the Gatwick sub-region, in accordance with the spatial strategy articulated in the RSS. In accordance with PPS3 paragraph 71, the appeal should be "consider[ed] favourably". The further advantages of the appeal scheme include addressing the inadequate provision of affordable housing, the provision of houses not flats, and the development of a highly sustainable location.

6.163 There is little of substance to set in the scales against these weighty considerations. The possibility of a second runway at Gatwick (following the Government's January 2009 announcement) is remote, and thus a matter of very limited weight. Even were a second runway to materialise, the noise environment at the appeal site would be within the limits of acceptability set out in RSS policy NRM10 and PPG24. The noise environment would be above the desirable level set out in PPG 24 but still within NEC B, and it is accepted by all parties that a satisfactory internal noise environment can be achieved for all properties, including the school. The issue reduces to the effect on the external environment for an average of two days a week (on the basis that departing aircraft would only affect residents of the North East Sector for 27% of the time).

6.164 There is no reasonable prospect of the additional population at the appeal site adversely impacting on securing permission for independent mixed mode operation of a second wide-spaced runway. This is principally because such a proposal would (in the event that, say, the third runway at Heathrow does not come forward) fully accord with ATWP policy and would not introduce more people into the relevant noise contours than was taken into account when that policy was adopted. On the assumption that ATWP policy will be rigorously applied, the appeal scheme would not prejudice GAL in any way.

6.165 Further, it is highly significant that the May 2007 Decision Letter was an "on balance" decision, and not one whereby release of the North East Sector was precluded until a final resolution of the Gatwick option. This was confirmed by Wilkie J in paragraphs 91-4 of his judgment.[113] Thus, the Secretary of State recognised that issues of housing need and the other substantial planning advantages of the development are potentially determinative considerations in favour of the grant of permission. If the Secretary of State had intended that housing need was incapable of resulting in a different outcome, no doubt this would have been stated. Given that two Judges have considered housing need to be the "fundamental" and "decisive" issue, the very high shortfalls in housing delivery which the evidence demonstrates must justify the grant of planning permission.

6.166 For all these reasons, the Secretary of State is invited to grant planning permission for the appeal scheme.

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[112] R/CD111
[113] R/CD111

THE CASE FOR CRAWLEY BOROUGH COUNCIL

7.1 The Council's case is predominantly taken from closing submissions. The material points are:

ISSUES ARISING FROM A SECOND RUNWAY AT GATWICK AIRPORT

'The Future of Air Transport' White Paper

ATWP Strategy

7.2 The Government's decision to adopt a "balanced strategy"[114] took into account a number of conclusions including:

(a) the importance of air travel to national and regional economic prosperity;

(b) seeking to reduce and minimise the impact of airports on those who live nearby;

(c) minimising the need for airport development in new locations by making best use of existing airports where possible; and

(d) respecting the rights and interests of those affected by airport development.

The Government decided to provide greater certainty, but at the same time retain sufficient flexibility to recognise and adapt to the uncertainties inherent in long term planning.

7.3 As Chapter 2 makes plain, Britain's economy is increasingly dependent on air travel. A third of the UK's visible exports go by air. Of the 25m foreign visitors to the UK, two thirds come by air. Businesses coming to Britain are attracted by its good air links. The aviation industry itself makes an important contribution to the economy and, in an increasingly competitive global marketplace, the country's continuing success as a place in which to invest and do business depends crucially on the strength of its international transport links. The then current forecasts suggested that demand for air travel in 2030 will be between two and three times what it is today.[115]

7.4 With respect to noise, the stated basic aim is "to limit and, where possible, reduce the number of people in the UK significantly affected by aircraft noise".[116] It is made clear that the Government has used the 57 dB(A) Leq as the level of daytime noise marking the onset of, "significant community annoyance". Airport operators are expected to:

(i) offer to purchase those properties suffering from both a high level of noise (69 dB(A) Leq or more) and a large increase in noise (3 dB(A) Leq or more); and

(ii) offer acoustic insulation to any residential property which suffers from both a medium to high level of noise (63 dB(A) Leq or more) and a large increase in noise (3 dB(A) Leq or more).

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[114] CD37 paragraphs 2.17-2.18

[115] In 2003, 200 million passengers, rising to between 400 and 600 million passengers, see paragraph 2.8 of the ATWP – those figures represent "unconstrained" demand, ie what demand would be if sufficient capacity were provided.

[116] CD37 paragraph 3.11

Capacity in the South East

7.5 The airport expansion supported in the ATWP was anticipated to bring the capacity of the four main South East Airports to 275.5 mppa. The option of a second runway at Stansted would add capacity of up to 46 mppa, bringing capacity there to what was set out in the SERAS consultation as a potential capacity of 82m overall.[117] A third runway at Heathrow, it was suggested, would bring the airport's capacity to 116 mppa. At that time, development at Luton was also supported (bringing capacity there to 31 mppa).

7.6 Since then, the owners of Luton airport have indicated that they wish only to "focus future development proposals on making the most of the existing site".[118] The Stansted G2 planning application would bring the capacity of the airport to 68 mppa, rather than the 82 mppa contemplated in the ATWP. At Heathrow, the January 2009 announcement indicates that all three of the Government's conditions for supporting a third runway at Heathrow can be met.[119] However, there is considerable uncertainty about just what constraint to capacity those stringent environmental limits will pose. Certainly, the assumed full capacity with three runways of around 702,000 ATMs will not be able to be reached in 2020 and the projection that it may be reached in 2030 is dependent upon necessarily uncertain assumptions about quieter aircraft operating then.

7.7 Overall, without a second runway at Gatwick, even aside from the uncertainty over Heathrow, and assuming (i) the Stansted proposal is pursued and permission granted and (ii) the owners of Luton maintain their current position, capacity provided at the four main airports would be between 28 and 35 mppa less than envisaged in the ATWP.[120]

7.8 The overall aim is to secure additional capacity, rather than necessarily to secure additional runways at Heathrow or Stansted. There would only be a policy failure if additional capacity is not provided. It would not be a policy failure for Gatwick to come forward rather than Heathrow or Stansted, or indeed on its own merits, pursuant to the policy of having safeguarded that option. On the contrary, that would satisfy the aim of the ATWP to provide additional capacity in the South East, in the national interest.

International Civil Aviation Organisation balanced approach to noise

7.9 The International Civil Aviation Organisation (ICAO) balanced approach to controlling noise at airports is endorsed in the ATWP. Two of the four elements of the ICAO balanced approach are particularly pertinent: reducing noise at source, and land use planning and management.[121] Where noise can be reduced at source, plainly that should benefit existing residents, airport operators, airlines and their customers.

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[117] See R/CD51
[118] See Mr Lockwood's proof of evidence (R/GAL/1) paragraph 3.16.3
[119] R/CD37 Britain's Transport Infrastructure: Ministerial Statement, p3
[120] The reason for the range depends upon whether an additional 7 mppa capacity at Luton can be assumed to be provided to 2030
[121] CD37 page 33

7.10 It needs to be remembered that the capacity assumed at Heathrow in 2030 relies upon new technology aircraft, which, it is hoped, will be quieter. Improvements also need to be achieved in terms of emissions, yet often there is a tension between these two objectives. It is central to Government policy to seek to maximise capacity whilst respecting the rights of residents. To suggest that the appellants can take the benefits of any improvements the aircraft industry might achieve is entirely contrary to this fundamental aim.

Crawley Borough Council's stance

7.11 Crawley BC currently does not support the growth of Gatwick airport beyond its one runway, two terminal capacity. The Council considered the arguments for and against a close parallel runway as put forward in the Government's consultation document to be "more finely balanced" than a two runway wide spaced option.[122] Nevertheless, both options were rejected given their environmental impacts and the urbanisation which would arise. It is also noteworthy that the Council considered that the land designated for a new neighbourhood in the North East Sector could be released for development if the options chosen for Gatwick were either making maximum use of one runway, or a close parallel runway. It seems that the Council judged then that a wide spaced runway would rule out a new neighbourhood on the North East Sector. Despite this, the Secretary of State for Transport kept open a wide spaced second runway option, in the national interest.

Airports Policy

7.12 In the ATWP, the Government decided that the first priority in relation to the additional capacity needed in the South East would be to make best use of existing runways. Next, two additional runways should be provided by 2030. The first should be at Stansted, the second at Heathrow, together with additional terminal capacity. It was decided that the 1979 planning agreement preventing the construction of a second runway at Gatwick before 2019 should not be overturned. However, land was to be safeguarded to keep open the option of a second, wide-spaced runway at Gatwick after 2019.

7.13 When considering Gatwick airport, the options open to Government were (in the order of the additional capacity they would provide): no change; maximising the use of the existing runway; a new close-parallel runway; a wide-spaced runway used in segregated mode; a wide-spaced runway used in mixed mode; or two additional runways. It is clear that the ATWP sought to retain the option which would maximise potential additional capacity at Gatwick, without supporting two new runways. The potential total capacity of the airport in 2030 with a new wide-spaced second runway, used in mixed-mode, was identified as 83 mppa.

7.14 The Airport Interim Master Plan[123] states that the airport's annual passenger capacity would be increased in a number of phases, from perhaps 45 million to an ultimate maximum of around 80 million. A footnote explains that whilst the 83 mppa capacity identified by Government is a possibility, GAL preferred 80 mppa as a 'ball park' indicator of Gatwick's maximum potential size. The

[122] R/CD165
[123] CD128 paragraph 9.26

airport operator is yet to decide whether mixed or segregated mode operations would be the right form of new runway at Gatwick, but it would be inappropriate and inconsistent with the ATWP to safeguard just for segregated mode, given its inherently lower capacity than mixed mode.

7.15 Mr Titterington sought to demonstrate that "about" 80 mppa could be achieved at Gatwick airport with two runways operated in segregated mode. That mode offers the potential for all departures to be from the northern of the two runways, rendering the noise environment for the North East Sector acceptable. The clear implication is that the North East Sector does not prejudice achieving what the appellants argue is the "target" capacity in the ATWP. This approach is wrong because:

(i) it disregards the fact that the 83 mppa figure in the ATWP was only the then identified capacity of a two runway airport, rather than a "target" figure reached having balanced environmental and other matters. Nowhere in the ATWP does it say that that 83 mppa is either a maximum or minimum figure;

(ii) it is wrong to suggest that there is no policy support for a greater throughput at the airport – the ATWP plainly seeks to achieve maximum flexibility and leaves detailed work in relation to the selection of mode of operation as a matter for operators in the future;

(iii) once built, there is clear in principle policy support in the ATWP for making "best use" of that capacity; and

(iv) there is no denying that the wide-spaced mixed mode option delivers greater flexibility and capacity than the segregated mode, as Mr Titterington accepted in cross examination.

January 2009 Heathrow statement

7.16 Mr Charles' contention that there is no further need to safeguard land at Gatwick is manifestly wrong. It was based on his understanding that the Government had "dropped the option". This understanding was founded entirely upon the January 2009 announcement in relation to Heathrow. As a matter of fact, as he accepted, that announcement said nothing about Gatwick. He also agreed that his view that there is no need to safeguard for a second runway at Gatwick is contrary to policy T9 of the RSS.

7.17 To infer that the Government's announcement relating to Heathrow removes the need to safeguard the wide-spaced option at Gatwick seems to reveal a fundamental lack of understanding of what the ATWP is seeking to achieve: the guarantee of capacity overall. One step forward at one airport plainly does not achieve that aim. To say that because the Government considers that the conditions it attached to its support for a third runway at Heathrow can be met renders a second runway at Gatwick unnecessary, is wrong. It remains to be seen whether a second runway at Stansted will be delivered, and it is not known what capacity could be delivered at Heathrow, or when.

7.18 If the overall objective is certainty regarding capacity in the South East, it is far from certain at present that a second runway at Gatwick will not be needed. Furthermore, although the policy to keep the option open must be regarded as in part a fall-back, in case either Stansted or Heathrow does not come forward (or if they do, not at the envisaged capacity), there was judged

to be a strong economic case on its own merits for additional capacity at Gatwick.

Gatwick Airport Master Plan

7.19 The Master Plan explains that it is right to assume that a two runway airport in 2030 would operate in mixed mode.[124] It also recognises that segregated mode, particularly if accompanied by a programme of runway alternation, can offer periods of respite from high noise levels for people living near to an airport. It acknowledges that, when the outline Master Plan was consulted upon in 2005, there was already some pressure from existing residents for segregated mode with 'alternation' operation. There can be little doubt that the residents of the North East Sector would argue vociferously in favour of a segregated mode, with all departures from the existing runway. This would add substantially to the pressure on the airport operator in the first instance and, depending on the content of any application, on the eventual decision maker.

7.20 Mr Charles' own evidence was that, in segregated mode operation with all aircraft landing on the southern runway, noise levels on the North East Sector would be approximately 6 dB(A) lower than with mixed mode operations. Contrary to his view that residents of the North East Sector would not wish to secure a change in the operation of the airport, it is inconceivable that they would not seek to gain this advantage.

7.21 The Master Plan relies upon the ERCD 0308 2030 noise forecast contours. Those contours relate to a two runway wide-spaced, mixed mode operation. South East Plan policy T9(iv) requires that account be taken of the airport Master Plan in the formulation of policy and proposals, which of course includes those forecast noise contours.

7.22 Mr Charles produced "sensitivity test" contours commissioned by him, described as a re-run of the Gatwick 2030 contours shown in figure 3.4 of ERCD report 0308.[125] Little if any weight can be given to these privately commissioned contours, given that it is not clear on what basis they were produced, nor precisely what assumptions were made. In any event, the change in impact between the 0308 contours and the sensitivity test contours is small. As all parties agreed, the published information in 0308 represents a "reasonable representation" of air noise attributable to the mixed mode use of a wide-spaced two runway airport in 2030.[126]

57 dB(A) noise contour

7.23 The ATWP makes plain that the Government has used 57 dB(A) Leq as the onset of significant community annoyance. That is based on research studies conducted in the 1980s, looking at the extent to which people were annoyed by noise and correlating that with the noise to which they were exposed. This is reinforced by paragraph 4 of annex 2 of PPG24, which says: "In respect of air traffic noise a considerable amount of research has been carried

[124] CD128 paragraph 9.74
[125] Charles rebuttal evidence (R/TWB/2/2A)
[126] SoCG Appellants and CBC (R/CD160) paragraph 10; SoCG Appellants and GAL (R/CD147) paragraph 2.4

out. 57 dB(A) Leq (previously 35 NNI) relates to the onset of annoyance as established by noise measurements and social surveys."

7.24 Mr Turner's evidence provides the rationale behind the Government's recognition in the ATWP that 57 dB(A) Leq marks the onset of significant community annoyance. [127] The appellants' attempt to undermine the survey evidence focused on the fact that (as Mr Turner agreed), it is not known whether those surveyed lived in appropriately insulated homes. There is no evidence before the inquiry to suggest that if those surveys were undertaken now, the result would be that people living in insulated homes would be appreciably less annoyed. In fact, Mr Turner's evidence was that people seem to be less tolerant now of aircraft noise than they were even in the 1980s. That much was acknowledged in the statement from the Aviation Minister Mr Fitzpatrick, when he said: "The Government accepts that noise from aircraft is a growing concern."[128]

7.25 There is no warrant for the suggestion that the 57 dB(A) marking the approximate onset of significant community annoyance is based on a misunderstanding of social surveys. The ANIS study underpinning 57 dB(A) is not to be confused with the ANASE study. That latter study was not regarded as sufficiently reliable to warrant the reduction of the 57 dB(A) benchmark still further.

7.26 Turning to the number of people that would be affected, 13,200 would live within the 57 dB(A) contour without the North East Sector and 17,500 with that development. Thus, 4,300 additional people (representing a 32.5% increase) would be subjected to noise at a level marking the onset of significant community annoyance. The Council considers this to be a significant disadvantage arising from the appellants' proposals. Moreover, these figures should be considered as minima: the North East Sector is envisaged to provide 2,700 dwellings, and the vast majority of the additional 800 dwellings would also lie within the 57 dB(A) contour.

7.27 The attempt by Mr Charles to characterise the numbers of people affected as "minor" by reference to a consultation document on the ATWP that the Department of Transport produced for the South West was wholly misplaced. That guidance is not directly relevant to the South East. However, when adding the population of the North East Sector neighbourhood to the existing population in a second runway world (ie the correct approach rather than looking at the North East Sector alone), the impact of a second runway would be "major".

7.28 In these circumstances, it is not surprising that the 2006 appeal Inspector said that it seemed to him to run counter to the principles of good planning enshrined in PPG24, to build a major new noise sensitive development in an area in which it was accepted that noise levels for virtually all properties

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[127] Mr Turner's main proof (R/CBC/01) page 29 table 1 – at the mid point between 54 and 57 (55.5), 6.6% of people will be highly annoyed by aircraft noise. At the mid point of 57 dB(A) and 60 dB(A) (58.5), 11.1% of people will be highly annoyed. At the mid point of 60 to 63 dB(A) (61.5), 18% of people will be highly annoyed. At the mid point of 63 to 66 dB(A) (64.5) 28% of people will be highly annoyed. At the mid point of 66 to 69 (67.5), 40.7% of people will be highly annoyed

[128] R/CD145 - In the press release accompanying the ANASE study

would be such as to cause community annoyance. Nor is it surprising that the Secretary of State agreed with the Inspector and considered this a significant material consideration weighing against the proposal.[129] The appellants offer no good reason to conclude otherwise. Indeed, the Secretary of State's request in the January 2009 'Decision following Consultation at Heathrow' that the airport operator at Heathrow consider extending its noise insulation scheme to all community buildings and households in the new 57 dB(A) contour who will experience an increase in noise of 3 dB(A) or more[130] reinforces the significance that the Government attaches to those newly affected by aircraft noise at this level.

Prejudice to the Gatwick second runway option

7.29 Crawley BC relies largely on the airport operator in terms of operational issues. From what has been said already, though, it is clear that the previous Inspector and Secretary of State were correct to conclude as they did on this issue.

Safeguarding

7.30 There are three "tiers" of safeguarding. First, there is the area which is physically safeguarded for the expansion of the airport.[131] Secondly, there is a wider area within which BAA must be consulted on specified applications for planning permission.[132] Thirdly, there is an area which is not defined, but where proposals must be assessed on a case by case basis. The purpose of that third tier of safeguarding is to ensure that development is not permitted which would be incompatible with a second runway and thus compromise the objective of keeping the option open as required by the ATWP. Mr Charles had to agree that "safeguarding" is not limited to the land required for the second runway. On any view, the Government's statement in the ATWP that they look to the airport operator to take steps to safeguard the land needed for the wide-spaced option at Gatwick must include the second tier. Given this requirement, in a world where the option must be kept open, there wouldn't be much point in failing to safeguard in the widest sense, and permit incompatible development.

Conclusion on the ATWP

7.31 The grant of planning permission in this case would be prejudicial to the safeguarded option and potentially prejudices the delivery of airport capacity. As such, the grant of planning permission now for the North East Sector is contrary to the national interest. There is a 32.5% increase in the population exposed to levels above 57 dB(A) which is likely to cause significant community annoyance. This is contrary to the basic aim in the ATWP to limit and, where possible, reduce the number of people significantly affected by aircraft noise.

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[129] See R/CD108 IR paragraph 12.48 and 12.198; and R/CD109 DL at paragraph 25
[130] R/CD32 paragraph 68
[131] As shown on the Core Strategy proposals map R/CD10
[132] R/CD152 - BAA letter of 30 November 2006 to CBC re safeguarding plus attachments

PPG24: Noise

Main objectives

7.32 PPG24 provides advice on how the planning system can be used to minimise the adverse impact of noise, without placing unreasonable restrictions on development. Wherever practical, the objective is to ensure that noise sensitive development is separated from major sources of noise, including noise from air transport. Paragraph 6 of PPG24 spells out that housing, hospitals and schools should generally be regarded as noise sensitive development. Paragraph 12 urges local planning authorities to consider carefully whether proposals for new noise sensitive development would be incompatible with existing activities. It exhorts authorities to consider likely noise levels at the time of the application and any increases that may reasonably be expected. Given the ATWP policy stance of keeping the second runway option open, it would defy common sense and the explicit guidance in paragraph 12 if the likely noise levels of a wide-spaced two runway airport were to be disregarded. Indeed, Mr Charles does not suggest otherwise.

Annex 1

7.33 There are three distinct noise sources identified in Annex 1: road, rail and air. Each has different boundary values, as described in the second table in Annex 1. As a result of the elevated nature of aircraft noise, noise barriers which can afford protection from land based sources offer no such protection against aircraft noise. For this reason, consideration in this case must not be confined to Annex 1, but must also have regard to the advice in annex 3 paragraph 8.

7.34 While the location of the new dwellings would be confined to land within NEC B, (between the 57-66 dB(A) contour), this new neighbourhood necessarily includes much more than simply dwellings. Large swathes of open space, including parkland and playing fields, lie within this contour band, as does the proposed primary school and its associated playground and playing field. The neighbourhood centre, shops and workplaces are all within the 57 dB(A) contour.

7.35 The dwellings can, in principle, be insulated appropriately. However, achieving a satisfactory internal noise environment depends upon the windows and doors remaining shut. That requires an unreasonable compromise – people should be able to open their windows and doors without enduring highly annoying levels of aircraft noise. Residents should also be entitled to enjoy their gardens without being subjected to very high levels of aircraft noise, yet sound insulation offers no protection outside. The unpredictability of the prevailing winds seems likely to exacerbate how annoying the aircraft noise would be. Given the propensity for consecutive days of winds from one direction, the average of 73:27 does not mean that there would only ever be 2 days per week when the site would be affected.

7.36 The appellants suggest that this is a choice residents are free to make. But it is hardly a choice if there is no or little alternative to meet housing land supply requirements. Nor is it much of a choice for 40% of the occupants of the new neighbourhood who would be nominated to occupy the affordable housing. Moreover any choice made now, as Mr Charles agreed, would not realistically be made on an informed basis. All these matters demonstrate

the limited utility of the NEC approach, which is directed solely to dwellings rather than neighbourhoods with their extensive facilities and open spaces.

Annex 3 paragraph 8

7.37 For this reason provision is made within PPG24 Annex 3 to deal with major new noise sensitive development affected by aircraft noise. The specific advice in paragraph 8 acknowledges the recommended NECs for new dwellings exposed to aircraft noise given in Annex 1, but advises that 60 Leq dB(A) should be regarded as a desirable upper limit for major new noise-sensitive development. Thus the new neighbourhood would be in exactly the kind of location the advice in PPG24 seeks to avoid.

7.38 The development of the North East Sector would expose 2,700 new residents to aircraft noise above the desirable upper limit of 60 dB(A) set out in paragraph 8 of Annex 3. That is a 59% increase on the 4,600 people that would be affected by noise above 60 dB(A) as a result of a second runway at Gatwick airport. In the context of a total population of 4,500 people on the appeal site, just under 60% of them would live beyond the desirable upper limit. The extent of this exceedence renders the failure to meet the terms of PPG24 highly significant.

7.39 The Council's decision to grant planning permission for 176 dwellings at Apple Tree Farm[133] was rightly not seen by the previous Inspector and Secretary of State as comprising a precedent for a new neighbourhood extending beyond the existing built up area of Crawley. As to claimed absence of policies in other development plans along the lines of Annex 3 paragraph 8, the examples in Mr Charles' Appendix C do not deal with major new noise sensitive development. As the previous Inspector observed, major housing sites would not normally come forward other than in response to an allocation, so there would be little need for a policy along these lines.

7.40 To locate a new neighbourhood in a location where the majority of homes, gardens, parkland, playing fields, shops and workplaces would all be subjected to undesirable levels of noise is absolutely contrary to the principles of good planning. This conflict with PPG24 militates against the grant of planning permission. The Council submits that very significant weight should be given to this factor. To grant planning permission now would be to inflict unacceptable, inescapable and permanent harm on future residents if the safeguarded second runway is later developed in the national interest.

The relationship between Annex 1 and Annex 3

7.41 In the Council's submission, it is plain that regard must be had to the guidance in paragraph 8 of Annex 3, which must be read alongside Annex 1. Paragraph 12 of the main body of the PPG directs one to Annex 3, which gives guidance on the assessment of noise from different sources. Annex 3 deals with noise from aircraft in paragraphs 6 to 12. Properly understood, in cases where major new residential development is promoted, the 60 dB(A) desirable upper limit overrides the advice in Annex 1. To interpret the PPG otherwise would deprive Annex 3 of meaning or purpose.

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[133] R/TWB/2/2 Mr Charles Appendix B

7.42 The appellants' suggestion that Annex 3 paragraph 8 does not overrule Annex 1 completely ignores the PPG24 scale distinction between 'residential development' and 'major new residential development'. This was a distinction accepted by the last Inspector[134] and the Secretary of State.[135] Those findings have not been challenged successfully.[136]

The primary school

7.43 PPG24 Annex 3 paragraph 8 explicitly advises that in considering applications for schools, regard should be had to the likely pattern of aircraft movements, which could cause noise exposure during normal school hours and days to be significantly higher or lower than shown in average noise contours. This advice is also reflected in Building Bulletin 93 – Acoustic Design of Schools, which requires noise surveys to reflect "worst case runway usage in the case of airports".[137] This necessitates the use of the 30min L_{Aeq} so as to identify the worst case within a school day.

7.44 Good practice for providing "good acoustic conditions outside school buildings" advises that 60 $dBL_{Aeq, 30min}$ should be regarded as an upper limit for external noise at the boundary of external premises used for formal and informal outdoor teaching and recreational areas. Whilst it is recognised that specified indoor ambient noise levels may be achieved where external noise levels are as high as 70 $dBL_{Aeq, 30 min}$, this requires considerable sound insulation, screening or barriers. Noise levels in playgrounds, playing fields and other outdoor areas should not exceed 55 $dBL_{Aeq, 30min}$ and there should be at least one area suitable for outdoor teaching where noise levels are below 50 $dBL_{Aeq, 30min}$. Ideally, noise levels on playing fields used for teaching sport should not exceed 50 $dBL_{Aeq, 30min}$.

7.45 In mixed mode, it is agreed that the worst case $L_{Aeq, 30 min}$ external noise level is 68 dB(A).[138] In segregated mode, assuming that there would be only departures from the southern runway, the worst case $L_{Aeq, 30min}$ would be 71dB(A).[139] It is not presently known what the mode of operation would be in a second runway world, though the safeguarded option is mixed mode. However, good practice requires that schools are designed to meet the worst noise case, which would be experienced with all departures from the southern runway: 71$L_{Aeq, 30min}$.

7.46 It is agreed that with appropriate noise insulation and ventilation, a satisfactory internal teaching environment could be achieved within the proposed primary school building. In some situations, the satisfactory internal teaching environment would only be achieved with windows closed. However, adequate ventilation does not address "rapid cooling", or the perfectly ordinary desire to have windows open in a classroom on a hot day, which would be impossible in north facing classrooms without sacrificing the acceptable teaching environment. On the playing fields, there would be noise

[134] R/CD108 p141 paragraph 12.46 to 12.53 – see also IR 12.188.
[135] R/CD109 paragraph 27
[136] R/CD115 – costs decision of Collins J paragraph 5
[137] CD121 page 22 paragraph 2.3 right hand column
[138] R/CD160 SoCG between the Appellants and CBC, paragraph 27. NB this assumes both departures and arrivals on the southern runway, on an easterly day.
[139] See paragraph A8 in the Annex to the SoCG between the Appellants and CBC

in excess of 50dB $L_{Aeq, 30min}$, which is a breach of good practice. Mr Charles agreed that, on certain days, that exceedence would be significant. This is a further real disadvantage. As far as the provision of an outdoor teaching area is concerned, it is clear that screening would be needed, but it has never been demonstrated that screening could bring such an area within the good practice limit of 50$L_{Aeq, 30min}$.

7.47 The appellants produce the same noise surveys of other Crawley schools as were before the previous inquiry. Given that the surveyed noise levels related to parts of the site closest to the road, the previous Inspector had little difficulty in concluding that there were suitable areas for outdoor teaching at each.[140] The examples of other Crawley schools, which are based on road noise only, cannot provide any precedent for the proposed primary school on the North East Sector.

Overall conclusion on PPG24

7.48 These proposals comprise major new noise sensitive development. The neighbourhood principle quite rightly seeks to encourage people to live, work, play and attend school all within the same area. The proposals condemn the majority of people to living beyond the desirable upper limit, with little respite as they go about their daily lives.

Development Plan Policy

South East Plan

7.49 Policy T9 and the reasons why the development is in conflict with it has already been addressed. Turning to policy NRM10, the first measure identified as a means to address and reduce noise pollution is that of locating new residential development and other sensitive development away from existing sources of significant noise and planned new sources of noise. The Council acknowledges that the existing sources of significant noise (railway noise, road noise, airport with a single runway) can satisfactorily be mitigated by the appeal proposal.

7.50 However, Policy NRM 10 also requires development to be located away from 'planned new sources of noise'. It is plainly wrong to suggest, as does Mr Charles, that the safeguarded second runway is not a planned new source of noise. The second runway option is planned for at national level in the ATWP; at regional level in the RSS (T9); and at local level, in the Core Strategy (G2). It is has also been the subject of the operator Master Plan. To leave it out of account for the purpose of NRM10, with its underlying objective to separate noise from noise sensitive development in order to reduce noise pollution, defies common sense and the principles of good planning.

Crawley Borough Local Plan policy GD17

7.51 The saving of policy GD17 was a positive act, and GD17 is now saved until it is replaced by a subsequent policy. It is accepted that the then Secretary of State made clear that "the extension of saved policies ….. does not indicate

[140] R/CD108 Footnote no 2 to paragraph 12.55

that the Secretary of State would endorse these policies if presented to her as new policy". Nevertheless, the assessment of whether saved policies should be extended was based on the criteria set out in PPS12 (2004) and the DCLG protocol on saving policies. The then applicable part of PPS12[141] sets out criteria which include there being 'effective policies for any parts of the authority's area where significant change ….. is envisaged', and 'the policies are necessary and do not merely repeat national or regional policy'. The fact that the Secretary of State took a positive step to save policy GD17 after the North East Sector decision of 17 May 2007 reinforces the materiality of the policy.

7.52 At the previous inquiry, the appellants argued that there was conflict between GD17 and Structure Plan policy NE19; this was accepted by the Inspector and Secretary of State. By operation of S.38(5) of the Planning and Compulsory Purchase Act 2004, that conflict was resolved in favour of the policy which was contained in the last document to be adopted, ie NE19. Nevertheless, it is clear that the Structure Plan recognised that the noise implications of a second runway could delay or prevent the development of the North East Sector, in whole or in part. The publication of the final version of the RSS means that the saved policies of the Structure Plan are no longer in force.

Relationship between policy GD17 and Core Strategy

7.53 The appellants argue that policy GD17 is in conflict with the Core Strategy. They submit that because the Council's attempt to include a noise-limiting condition (by reference to the 60dB(A) contour, similar to GD17) into the Core Strategy was deleted by the High Court, GD17 is in conflict with the Core Strategy which expressly deleted such a requirement. This analysis is wrong.

7.54 Firstly, it fails to differentiate between the Core Strategy objective and GD17. The Core Strategy sets out a number of key objectives for development of the North East Sector, including the one relating to the 60 dB(A) aircraft noise contour. Policy GD17 relates to more than aircraft noise alone, for that matter only appears in the last paragraph. Moreover, it was a reasonable response to local circumstances when adopted in 2000, it was not challenged at the time, and it has recently been saved by the Secretary of State.

7.55 Even if the Core Strategy objective and GD17 were identical in form, content and timing, the quashing of the objective would still not have the effect of rendering GD17 in conflict with the Core Strategy. The Core Strategy objective was neither suggested to be, nor found to be, impermissible in terms of its content. What was challenged was the decision making process; the success of the challenge says nothing about the content of the objective itself. As such, even if GD17 were identical, the decision of Wilkie J would not render it either in conflict with the Core Strategy or otherwise cause it to be given little weight in the decision making process.

7.56 Secondly, there is nothing inherently impermissible about the Council's Core Strategy objective. If the Council and the Core Strategy examination Inspector had taken the decision to include that objective reasonably, and

[141] CD27 paragraphs 5.15-5.20

having provided an adequate explanation of their reasons for its inclusion, the inclusion of such an objective would have been unimpeachable. This is because a challenge to the adoption of a development plan document operates under the principles of administrative law – it is a review of the legality of the decision, rather than an interrogation of the merits of the decision itself. Indeed, the basis of the appellants' challenge made explicit reference to a failure to take a relevant consideration into account, and a failure to give reasons. It is clear from paragraphs 86 and 87 of Wilkie J's judgement[142] that the illegality he found was confined to these matters.

7.57 Consequently the judgment does not tell the decision maker now anything about the merits of the objective itself. Therefore, even when considering the aspect of similarity between the Core Strategy objective and GD17, ie the benchmark of 60dB, the deletion of the objective from the Core Strategy does not have any bearing on the weight to be given to GD17.

Relationship between policy GD17 and PPG24

7.58 Mr Charles suggests that policy GD17 does not reflect the advice in Annex 1 of PPG24, nor does it reflect Annex 3, which does not contain a test of 'exceptionally compelling circumstances'. Wilkie J considered that "on the face of it", an objective which was to ensure that development avoids existing or possible future aircraft noise contours of 60 dB(A) Leq or more, was more prescriptive and more exacting than Annex 3 of PPG24.[143] The appellants seem to suggest that this reasoning also applies to GD17. But given that the objective and GD17 differ, Wilkie J's observation cannot be directly applied. In any event, Wilkie J's remark was directed to the need for reasons to be given, rather than a concluded view on the relationship between the objective and PPG24 (which was not a ground of challenge before him).

7.59 Just as PPG24 does not impose an absolute bar on major new noise sensitive development above 60 dB(A) Leq, nor does GD17. It is of course correct that PPG24 does not contain the exceptionally compelling reasons test – but the inclusion of that test fills in a gap left by PPG24, ie, it sets out the local circumstances in which major noise sensitive development should be permitted in areas where noise is beyond the desirable upper limit. The Council decided that in its area, exceptionally compelling reasons should be shown. Understood in that way, there is no conflict between GD17 and Annex 3 of PPG24.

Relationship between policy GD17 and RSS policy NRM10

7.60 Mr Woolf is wrong to allege that policy GD17 is in clear conflict with NRM10. The first measure in policy NRM10 seeks to address and reduce noise pollution ("locating residential development away from existing sources of significant noise or away from planned new sources of noise"). The last paragraph in GD17 is entirely consistent with this first measure (and both are consistent with the central principle of PPG24, to ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise). GD17 identifies a benchmark so as to achieve that separation. As it is a local level policy, addressing aircraft noise directly as well as noise

[142] R/CD111
[143] R/CD111 paragraph 86

more generally, it is perfectly proper that it is more specific than the regional policy.

7.61 It is also inaccurate of Mr Woolf to suggest that no consideration is given in policy GD17 to the range of measures suggested in NRM10 (including high levels of sound-proofing and screening) which would mitigate the effects of noise. Though GD17 pre-dates NRM10, GD17(i) and (ii) expressly require "adequate or commensurate levels of protection from noise", which must logically include sound proofing/screening.

Exceptionally compelling reasons

7.62 The final paragraph of GD17 is directed to the consideration of major noise sensitive development, and therefore is contemplating residential development. This rather begs the question of whether the need for housing development itself could constitute "exceptionally compelling reasons". Whatever its correct interpretation, the onus is on the appellants to meet the test. The greater the harm (ie the greater the exceedence, or the greater the number of people beyond the 60dB(A) noise level), the more weighty the circumstances must be in order to be sufficiently compelling that they meet the policy test.

7.63 The Council submits that a demonstrated need for housing development, whether inside or outside the Crawley BC administrative area, is not an exceptionally compelling reason in the circumstances of this case, given the fundamental requirement to keep the second runway option open in the national interest. In addition, the policy requirement to safeguard the second runway option and the adverse environmental consequences for the North East Sector should that option be taken up, carry more weight than the claimed need for housing.

7.64 PPS3 insists that sites must be suitable. The North East Sector is not suitable as a result of the second runway issues. Housing need, of whatever scale, cannot render an unsuitable site suitable. RSS policy calls simply for collaboration: to grant consent now on appeal would be to deny the authorities that very opportunity.

Relationship between NRM10 and PPG24

7.65 Paragraph 9.55 of the supporting text to policy NRM10 states that: "Noise can have a significant effect on the quiet enjoyment of property and places, reducing quality of life. Ambient noise and neighbour noise can have significant impacts on quality of life. Planned new residential development must take these factors into account, in accordance with the guidance in PPG24." Thus the RSS expressly directs planning authorities to take their decisions in relation to planned new residential development in accordance with PPG24. This means that the RSS cannot be read as having incorporated PPG24 such that the PPG itself is irrelevant in subsequent decision making. PPG24 remains another material consideration in this decision and must be taken into account.

Context for decision making

7.66 As in all redetermination appeals, it is important to differentiate between the rationale for what the High Court actually decided, based on the points

disputed by the parties, and other observations which are made in the course of the judgment. In their challenge to the appeal decision, the appellants relied upon four grounds which are set out in paragraph 25 of the judgment.[144] Of those grounds, Collins J decided he needed to determine only one. That is clear, if not from the judgment, then from his decision on costs. In the judgment itself, he stated that the question of housing need was fundamental. The remainder of the judgment then focused on whether the Inspector and Secretary of State had correctly taken into account all relevant factors in relation to the appellants' housing case.

7.67 The policy context for the consideration of the appeal has changed since the 2007 decision. Since the inquiry in 2006, there is a Core Strategy which safeguards land needed for a second runway at Gatwick and identifies the North East Sector for development subject to the implications of that safeguarded option. The Structure Plan has fallen away. The regional context too has changed fundamentally. RSS policy T9 and its supporting text at 8.28 effectively mean that national policy requiring the option of a second runway at Gatwick to be safeguarded, in all senses, is embedded in regional and local policy. The evidence too is new, requiring a fresh consideration of the planning balance.

7.68 Given that the option of a second runway at Gatwick after 2019 is safeguarded in the national interest, as a fall-back in case capacity does not come forward at the other London airports and on its own merits, it cannot sensibly be suggested now that the problems of noise and the second runway could not by themselves justify the refusal of planning permission.

HOUSING ISSUES

Housing policy

Identification of the North East Sector

7.69 Core Strategy policy H1 makes provision for 4,040 net dwellings in the Borough in the period 2001 to 2016 and lists the provision from five separate sources, including 2,265 net strategic housing opportunity sites identified in policy H2. Self evidently the figure of 2,265 excludes the North East Sector. Thus the appellants are not correct to suggest that the North East Sector is included as one of the "strategic housing opportunity sites". That suggestion was in any event inconsistent with the language of policy H2, which describes the North East Sector as "identified as an appropriate site for development" subject to the second runway issues. Policy NES1 identifies and safeguards the North East Sector for the development of a new neighbourhood. Policy NES2 opens with the words, "if it is able to proceed..." and thus, like H2, is a policy which is subject to runway considerations.

7.70 The North East Sector is listed in RSS paragraph 24.8 as one of six locations previously identified for development in the Gatwick sub-region. The text then recognises that they might not all come forward ("where possible"). Paragraph 24.9 says that if the listed developments cannot be delivered, it will be for the relevant local planning authority to plan for alternative locations and strategies to deliver the scale of development required by policy

[144] R/CD110

GAT3. Mr Woolf claimed in cross examination that the North East Sector was allocated in the RSS as a consequence of paragraph 24.8. When taken to PPS11, which states that an RSS "must not identify specific sites as suitable for development", Mr Woolf conceded that the North East Sector is not allocated in the local plan sense, thus conceding that it is not allocated at all.

7.71 The Council's conclusion is that the site is identified in the Core Strategy, subject to the runway issues. The RSS does not alter the position.

PPS3 and the five year supply

7.72 Dealing firstly with the appropriate period for assessing housing need, PPS3 paragraphs 70 and 71 (under the heading "determining planning applications") both refer to a five year time period in assessing the supply of deliverable sites. Accordingly, there is no warrant in PPS3 for considering anything other than a five year period given the context of this inquiry. Longer periods are relevant only in the plan making context. It is in that context that local planning authorities have to identify a further supply of specific, developable sites for years 6 – 10 and where possible, years 11-15 (paragraph 55). But there is no obligation on a local planning authority to demonstrate a ten or fifteen year supply in a S78 inquiry. The Council's failure to do so cannot be regarded as a material consideration weighing in favour of the development.

7.73 It is also necessary to consider the relevant administrative area for assessing the housing land supply. The requirement in PPS3 to identify a continuous five year supply of specific, deliverable sites plainly refers to a local planning authority's administrative area. There is no commensurate requirement for one administrative area to identify specific sites to provide housing land for another administrative area. Thus the Council does not consider that paragraph 71 of PPS3 gives support to a proposal where a sub-regional shortfall of housing land supply is demonstrated, rather than a shortfall in the relevant administrative area.

7.74 RSS policy H1 includes that *"Local planning authorities will prepare plans, strategies and programmes to ensure the delivery of the annual average net additional dwelling requirement as set out in table H1b."* For Crawley, table H1b gives figures of 375 dwellings annually and a total of 7,500. The Council appreciates that table H1a of policy H1 provides both an average annual provision of 1,800 and a total provision of 36,000 for the Gatwick sub-region. However, this table is followed by a note which states that the specific housing delivery requirements for districts and/or parts of districts are set out in the relevant sub-regional chapters. The relevant Gatwick sub-regional policy (GAT3) does not alter the distribution strategy set out in H1.

7.75 In managing the supply and in determining planning applications, the Council acknowledges the policy H1 imperative that local planning authorities should *"work collaboratively to facilitate delivery in the sub-regions"*. But there is a world of difference between that call for collaboration and the appellants' case that a housing shortfall arising largely from the Horsham and Mid Sussex part of the Gatwick sub-region should be foisted upon Crawley before either Horsham or Mid Sussex have been able to complete their development plan documents to give effect to policy H1. Furthermore, to grant consent for the appeal proposal now in order to meet a housing need in Horsham or Mid

Sussex would be contrary to Core Strategy policy NES2, which seeks to safeguard the North East Sector for residential development to meet Crawley's housing needs.

7.76 The supporting text to RSS policy GAT3 includes at paragraph 24.7 the words: *"Local planning authorities will provide for the level of housing development within the sub-region in accordance with the distribution in this policy. In exceptional circumstances [they] will provide for the balance of their sub-regional requirement in the remainder of their area, provided the objectives of the sub-regional strategy can be met."* This means that a district's shortfall against its sub-regional requirement can be met by delivering housing outside the sub-region, but within its own administrative area, provided doing so is consistent with the objectives of the sub-region.

Housing backlog

7.77 There is no doubt that the reference in the Core Strategy to the "current accumulated backlog"[145] of 944 dwellings relates to the backlog of housing provision required by the WSSP to 2006. But that is not to suggest that the Core Strategy is seeking the WSSP requirement to be met in addition to RSS final figures. The objective is simply to meet the requirements of the WSSP pending the early review of the Core Strategy. The appellants do not suggest that the five year housing land supply calculation should be undertaken by reference to the WSSP figures following the final publication of the RSS.

7.78 Policy H1 of the submission draft RSS[146] states that the total level of housing provision to be planned for includes an allowance to address the backlog of unmet housing need that existed in the South East in 2001. Although there is no reference in the final published policy H1 to the inclusion of an allowance to address the 2001 backlog, given that the final total level of housing provision is more than was then suggested, it is implicit that the 2001 backlog is included in the final numbers. As the Panel Report specifically advises,[147] the proposed housing provision for the Gatwick sub-region includes, "a generous notional allowance to meet a backlog of unmet need". This seems to indicate that the overall housing provision for the sub-region addresses the 2001 backlog.

7.79 A question has arisen as to the proper interpretation of "any backlog of unmet housing needs" in RSS policy H2(viii). Policy H2 is directed towards managing the delivery of the housing provision identified in policy H1; it is not seeking to import into the H1 figures unspecified additional housing land supply requirements. There is certainly no evidential basis to suggest that the reference to a backlog relates to pre-2006 structure plan requirements. Moreover, Mr Woolf is obviously aware of the Uckfield appeals in which he sought to argue that the unmet structure plan requirement should be added to the then emerging RSS requirement. That approach was contested by the District Council and rejected by both the Inspector and Secretary of State.[148]

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[145] R/CD10 paragraph 2.4
[146] CD65 page 82
[147] R/CD112 page 105 paragraph 7.94
[148] R/CBC/02/04 Mr Dennington's rebuttal appendix B (IR paragraph 653) and appendix C (Secretary of State DL paragraph 18).

7.80 The Council believes that the reference to the backlog is a monitoring tool to ensure that when a district seeks to make provision for the final RSS figures in their LDFs they do not spread any backlog from 2006 over the period to 2026; rather they plan to deliver any such backlog in the first 10 years of the plan. Thus any backlog which might accumulate in the period 2006-2010 for example in Mid Sussex must be delivered by 2016. It was suggested to him that there would be no need for a specific policy to make up the backlog, since the whole purpose of the plan led system is to identify deficits (monitor) and address them (manage) at an early stage. This is to deny the policy imperative to deliver any backlog by 2016.

Calculation of five year requirement

7.81 The issue is whether the five year requirement should be calculated over the immediate five year period, as the Council submits, or as suggested by the appellants, spread over the remaining period of the RSS. Firstly, it is instructive to consider the consequences of each approach in a world where a deficit rather than a surplus exists in the first few years of the RSS plan period. On the appellants' approach, the deficit would be spread over the remaining eighteen years of the plan period, whereas under the Council's, a deficit is addressed within five years. Secondly, the Council's approach is more apt given that we are in a S78 appeal context, focusing on a five year housing land supply, rather than a plan making ten or fifteen year period. Thirdly, the appellants' approach is contrary to RSS policy H2(viii), which advocates a ten year period within which any backlog should be met. Finally, Mr Woolf's approach is inconsistent with the approach he and the other parties adopted in the recent Uckfield appeals.

7.82 For these reasons, the Council maintains that the proper approach to the five year requirement is reflected in Mr Dennington's 1,478 requirement, rather than the 1,765 suggested by Mr Woolf.

Housing land supply

Deliverability of appeal site and contribution in five years

7.83 If weight is to be given to the appellants' housing land supply case, logically it must be demonstrated that if planning permission is granted now, the North East Sector can be built out so as to contribute meaningfully to housing land supply in the five year period (ie to address the housing land supply shortfalls they identify). The burden of proof lies on the appellants. The tests to be applied cannot be other than the PPS3 paragraph 54 tests of suitability, availability and achievability – the recognised means of assessing deliverability within the five year period.

7.84 The matter of suitability goes to the noise issue, which has already been addressed. Turning to availability, the site is in multiple ownerships. The appellants have no control or ownership over the totality of the appeal site. There is no agreement as to equalisation of the burdens or benefits of the development. Two of the owners are public bodies, obligated to ensure best value is obtained from their assets (which constrains the way in which they may deal with their land). As matters stand, Crawley BC as landowner has not signalled its 'in principle' agreement to dispose of its land interest. Even if it had, the Council would not wish to expose itself to substantial liabilities, which are unquantified, without a satisfactory equalisation agreement

between all landowners. That process, which has not even begun, has the potential to be protracted.

7.85 As to achievability, the inquiry has not heard any direct evidence of the viability of the development. The appellants have suggested that since this is a S78 inquiry, it is not incumbent upon them to undertake a viability appraisal. But given the current economic climate, and the difficulties of other developers locally, delivery cannot be assured without some form of viability testing. Reliance on a viability appraisal for another site does not provide a satisfactory answer, particularly where another greenfield site considered during the inquiry is not viable without concessions such as a reduction in affordable housing provision.

7.86 Given the complete lack of cogent evidence on this point, considerable doubt must remain about the viability of the development site. This is a most unsatisfactory position to be in, as the information is within the appellants' gift (and is apparently available as they were able to confirm to Mr Woolf that the development is viable), but they have chosen not to reveal it. In the Council's submission, the appeal site is not deliverable in the five year period. All that said, and taking the appellants' trajectory at face value, it is clear that the North East Sector development would make very little contribution to housing land supply in the five year period: 400 dwellings to 2012/2013, or only 21% of the 1,900.

Crawley BC supply

Windfalls

7.87 There remains a question as to whether the Secretary of State's concession, recorded in the judgment of Collins J on the S288 challenge that: "...it was not appropriate to take account of windfalls in the circumstances of this case",[149] was based on the erroneous admission that the Inspector had failed to consider paragraph 59 of PPS3.[150] In any event, the appellants' case is based on policy considerations rather than any suggestion that, as a matter of law, regard should not be had to windfalls.

7.88 Core Strategy policy H1 includes a windfall allowance at 50 per annum in the period 2007/8 to 2011/2012. This is in addition to a small sites allowance of 32 to 2010/2011. As the development plan itself includes an allowance for windfalls, there is absolutely no reason why they should be disregarded. Nor, indeed, is there any reason why over-delivery in one year should be relevant to what allowance is made for windfalls in the following years, when the policy provides for a yearly allowance of 50.

7.89 The interim SHLAA[151] does not provide the inquiry with any reason to suppose that windfall development will suddenly dry up in Crawley. On the contrary, of all the sites considered in the assessment, there are no fewer than 45 sites listed in table 4.2 as "SHLAA sites that will potentially form part of the housing land supply for Crawley". Of the 45, two will be considered as possibly suitable for allocation (with a potential yield of 1,640 dwellings –

[149] R/CD110 paragraph 32
[150] See the skeleton argument of the Secretary of State, R/CD173 page 23 paragraph 60.
[151] R/CD117

Land East of Brighton Road and Tinsley Lane playing field).[152] Excluding those two sites, potential yields are identified for only 11 sites. Those 11 sites could deliver 936 dwellings.

7.90 It must be acknowledged that the interim SHLAA is just that. The 45 sites listed in table 4.2 are the products of an initial identification and sifting exercise, finding sites which will be the subject of further work, rather than the outcome of a final SHLAA which would give answers about suitability, availability and achievability. However, it does show that there is clear potential in the Borough for previously developed sites to come forward, as they have in recent years.

7.91 Quite apart from the interim SHLAA, it is to be noted that the Council excluded from its annual monitoring report sites which have a potential yield of 468 dwellings.[153] These are sites with planning permission and include:
(i) Lucerne Drive (one of the sites listed in H2) - 107 units;
(ii) St Wilfred's Catholic School - 70 units, under option to Bellway: the Council has had meaningful discussions with Bellway about the submission of a reserved matters application by them; and
(iii) Russell Way - 270 units: this is up for sale with full planning permission. Russell Way and the School site are windfalls.

7.92 It needs to be remembered that at the time the Core Strategy was submitted, the approach taken in the submission draft was to adopt a degree of site specificity far greater than would normally be expected, bearing in mind the guidance in the then relevant PPS12 (2004). The Council decided to identify "major" specific sites which could deliver a minimum of 100 dwellings. This in itself necessarily prevented the identification of a greater number of sites. What then happened was that the Core Strategy was found sound for a limited period, and policy H1 set out the intention to conduct an early review. The Council is now working towards the Core Strategy review in the 2008 PPS12 world, which gives greater flexibility in relation to the identification of sites than its 2004 predecessor.

7.93 Thus, there is ample robust evidence of genuine local circumstances that prevented further and smaller specific sites from being identified. In the meantime, the SHLAA provides sufficient evidence to be confident that there will be, at the very least, 50 windfalls per year, as per the Core Strategy allowance. The Council submits that there is a reasonable prospect of the delivery of 200 windfalls in the five year period.

Approach to the assessment of deliverability

7.94 PPS3 paragraph 54 sets out the relevant three tests to apply. All are focused on whether, in the five year period, sites are 'deliverable'. To be deliverable, sites should be 'available', 'suitable' and 'achievable'. To be *available*, the site must be available now. What that means, according to the DCLG SHLAA Practice Guidance, is that there are no *"...legal or ownership problems, such as multiple ownerships, ransom strips, tenancies or operational requirements of landowners. This means that it is controlled by a housing developer who*

[152] In any event, they could not be regarded as windfalls as neither appears to be previously developed land.
[153] See also Mr Woolf's main proof (R/TWB/1/1) at page 67 paragraph 3.93.

has expressed an intention to develop, or the landowner has expressed an intention to sell."[154]

7.95 A site is *suitable* for housing development if it *"...offers a suitable location for development….. . Sites allocated in existing plans for housing, or with existing planning permission for housing, will generally be suitable."*[155] A site is considered *achievable* if there is: *"a reasonable prospect that housing will be delivered on the site within five years"*.[156] The SHLAA guidance amplifies this and says *"This is essentially a judgment about the economic viability of a site, and the capacity of the developer to complete and sell over a certain period."*[157] The SHLAA guidance says that achievability will be influenced by market factors, cost factors and delivery factors (phasing and build-out rates).

7.96 Paragraph 55 of PPS3 also requires local planning authorities to identify a further supply of specific, 'developable' sites for years 6 to 10 and, where possible, for years 11 to 15. Considerable emphasis was placed in cross examination on paragraph 34 of the SHLAA guidance, which is dealing with whether a site is *developable* rather than *deliverable*. When it is understood that the relevant issue for this inquiry is whether sites are *deliverable* in the five year period, it becomes clear that the lengthy cross examination of Mr Dennington about what is "known" and the extent to which there could be "certainty" about timing, proceeded on a false premise, utilising entirely the wrong test. In the Council's submission, the only safe approach is to consider whether there is a reasonable prospect of delivery in the five year period.

Ifield Community College

7.97 The appellants advance two observations which, in their view, prevent the site from coming forward in the five year period. The first amounts to nothing more than pointing to a delay due to market conditions. The evidence does not specifically address the prospects of any recovery and what that would mean for the delivery of the site. Thus the "reasonable prospect" test has not been applied. The second is that the site is not available because it has not been bought by a developer. Applying the DCLG guidance, given that the site is owned by a landowner who has expressed an intention to sell, this is plainly wrong. The Council submits that there is a reasonable prospect of the delivery of 80 units on the Ifield Community College site by 2013.

Thomas Bennett

7.98 Like Ifield Community College, this site is owned by a willing seller who, in the current economic climate, is not marketing the land. Yet again the appellants have failed to ask the relevant question as far as availability is concerned: has the landowner expressed an intention to sell? The answer is 'yes'. The site is surplus education land which the County Council is not presently marketing because market conditions are unfavourable. The irony is that it has never before now been suggested that the land is not available.

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[154] R/CD129 paragraph 39
[155] R/CD129 paragraphs 37-38
[156] PPS3 paragraph 54
[157] R/CD129 paragraph 40

In 2006, the appellants were saying that there were insurmountable highway and PPG17 issues. Now they rely on current market conditions delaying delivery. The Council submits that there is a reasonable prospect of the delivery of 60 units on the Thomas Bennett school site by 2013.

Telford Place/Haslett Avenue

7.99 The proposal is for a mixed use scheme close to the town centre. Further away from the town centre, the Haslett Avenue old leisure centre site is an 833 unit residential scheme under construction by Fairview.[158]

7.100 In 2006, the appellants did not allow for any completions at Telford Place to 2012. It was then argued that the site was neither suitable nor available. Loss of car parking, loss of employment land and alleged land ownership issues were said to prevent the site from coming forward. The development of Telford Place was then associated with a larger redevelopment scheme including a new county library, which has now been built on the corner of Haslett Avenue. Thus, the appellants were wrong to suggest in 2006 that there was a fundamental loss of car parking issue which would prevent the new library coming forward.

7.101 By the time of the Core Strategy examination, a planning application in relation to Telford Place had been submitted for the remaining, southern area of land. That application was for mixed use development including 312 flats; outline planning permission was granted in January 2008. Core Strategy policy H2 identifies it as a strategic housing development opportunity. It is clear that the suitability and availability arguments then posited by the appellants have come to nothing. Neither the loss of car parking nor the loss of employment land has proved a constraint.

7.102 A far as land ownership is concerned, the site is owned by Development Securities and the Homes and Communities Agency.[159] What was presented as an "insuperable difficulty" resulting from "multiple ownerships" has not prevented the site's promotion and subsequent identification in the Core Strategy, nor the grant of planning permission. The appellants contend that "in the absence of any reasonable certainty" there will be zero completions on this site within the five year period. Once again, they are applying the wrong test. The real question is whether there is a reasonable prospect of the delivery of 181 units on this site in the five year period.

7.103 It is necessary to address the appellants' concern as to the effect of the Fairview scheme. Fairview have completed 514 of the 833 units. The latest intelligence estimates that they will complete the remaining 95 affordable units by December 2009 and the remaining 214 market units by October 2010.[160] It is noteworthy that Fairview's 2009 estimates show them to have exceeded their September 2008 indicative phasing programme. In other words, once they start constructing the blocks, they are in fact taking less time than they had earlier indicated. The Fairview scheme is purely a residential development. In contrast, Telford Place would offer a different

[158] See the phasing plan and table at R/CD183
[159] R/CBC/02/1 Mr Dennington's main proof pages 30-31
[160] See the text beneath the table in R/CD183

experience, partly as a result of its mix of uses, partly because of its location. Doubtless it would appeal to a different sector of the market.

7.104 The important message is that in Crawley, flatted development continues to be built. Fairview is not the only developer with faith in building flats: Wimpey is committed to completion of the development of 60 flats and 47 houses at Lucerne Drive in the next two years. Moreover, at Telford Place a developer would not have all his eggs in one basket: a mixed use scheme of the sort contemplated mitigates the risk otherwise associated with single use schemes. For all these reasons, the Council submits that there is a reasonable prospect of the delivery of 181 units on Telford Place by 2013.

Sub-regional supply: Horsham DC

West of Crawley: Bewbush

7.105 In 2006, the appellants argued that there were a number of "fundamental obstacles" to development at the West of Crawley, such that no housing completions could realistically be assumed in the period to 2016. There has been a significant shift in the evidence to this inquiry, it now being claimed that it will be 2012 before any construction of housing can commence, with completions in 2013. The purported fundamental obstacles in 2006 were first, the provision of a relief road around the north western side of Crawley; second, Thames Water's preference for a new sewage treatment works; third, competing developer interests; and fourth, many other substantial issues including landfill, flooding, achieving a sustainable form of development and the definition of the Crawley/Horsham gap.

7.106 Regarding the relief road, in accordance with the Core Strategies of Horsham and Crawley, the submitted JAAP identified that a western relief road is not needed to serve the JAAP development.[161] Nevertheless, the JAAP examination Inspector agreed that a five year safeguarding period should be set, so that the opportunity for a western relief road in the context of Core Strategy reviews is not lost.[162] Contrary to what was said in 2006, it is clear that the relief road is no obstacle to the development of the JAAP land.

7.107 Despite the claim in 2006 that Thames Water's preference for a new sewage treatment works represented a further obstacle, the delivery of the West of Crawley is not contingent upon it. The evidence before the JAAP examination and this inquiry demonstrates that with funding secured through AMP5, infrastructure upgrades will meet anticipated development levels at the West of Crawley.[163] However, if planning permission were to be granted for the North East Sector and that development were to come forward, the capacity of the Crawley sewage treatment works would be taken up. That would compromise its ability to accommodate the Core Strategy identified strategic housing development opportunity sites, potentially delaying some or all.

7.108 In relation to competing interests, that point has no force given that Crest Nicholson now controls all the land. As for viability, the appellants accept that the West of Crawley viability appraisal contains no fundamental flaws,

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[161] R/CD13 page 50 paragraph 4.117
[162] R/CD128 page 14 paragraph 9.34 – 9.39
[163] R/CD128 page 15 paragraph 9.42

and indeed they rely upon it to seek to demonstrate the viability of the North East Sector. The "other substantial issues" plainly represent no fundamental obstacles given the inclusion of West of Crawley in the Horsham and Crawley Core Strategies and the finding of the JAAP examination Inspector that the JAAP, with its stated intention to deliver 2,500 homes by 2018, is sound.

7.109 It is correct that operational approval is needed from Network Rail in order to allow the landowner to cross the railway line. Objectors promoting land to the north drew attention to the fact that the preferred site is split by a railway line. In that context, the examination Inspector had to consider whether the proposed crossings would impede the development. In other words, precisely the same issue was suggested by objectors to the JAAP as is now raised by the appellants in this case. The JAAP examination Inspector also knew that £5m had been set aside as a contingency in case a ransom was sought and had to be paid. With all this in mind, he drew the following conclusion: *"...there is no impediment to the proposed rail crossings which would link the two parts of the site."*

7.110 As to whether this issue has the potential to delay development, it is apparent that part of the infrastructure to be developed in conjunction with phase 1 includes commencement of the eastern railway crossing (to facilitate development of phase 2).[164] Indeed, it was the examination Inspector who added the word "commencement". Therefore, he was fully aware of the need to make arrangements to cross the railway in advance of phase 1. There is no new evidence before this inquiry which serves to undermine the conclusion of the JAAP examination Inspector, nor has it been suggested that his conclusion was in any way flawed.

7.111 As for the delivery of housing, the appellants suggest that the making of a planning application, an Environmental Statement and the conclusion of a S106 obligation will take a considerable amount of time. But they have produced no evidence of experience on sites which have been the subject of JAAPs in a post PPS12 (2008) world, with particular attention paid to infrastructure and viability issues. Their evidence allows no credit for the front-loading and evidence-based nature of the JAAP. It fails to acknowledge the effect of the Planning Performance Agreement and the arrangements that have been put in place to secure timely completion of a S106 planning obligation and determination of planning applications. These are all factors which have informed the Council's estimates of delivery.

7.112 For all these reasons the Council's assessment of 500 dwellings by 2013 is to be preferred.

<u>West of Horsham</u>

7.113 Since the 2006 inquiry, Horsham's Core Strategy was found to be sound.[165] Policy CP7 identifies the West of Horsham as a strategic allocation to be defined through the preparation of a supplementary planning document including a comprehensive masterplan. At the time of the Core Strategy, detailed investigations were continuing into the most appropriate form of the new A24 junction. The masterplan SPD was adopted in October 2008.

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[164] See R/CD128 page 32 re paragraph 5.5 on page 58 of the submitted JAAP (R/CD13)
[165] R/CD27

Although it refers to a grade separated junction, this merely sets out how the development is expected to address the principle in policy CP7 that the impact on the existing transport network should be minimised. The policy does not specify the requirement for a grade separated junction with the A24.

7.114 Because of viability issues, officers and members at Horsham DC have accepted that a new approach is necessary.[166] Independent access arrangements for each developer are now proposed; West Sussex County Council has been fully involved in the discussions and has no objection in principle. Contrary to the appellants' assertions, there are no constraints or potential ransom issues from Berkeley Homes' land east of the A24. As to the crossing of the floodplain, the Environment Agency has no fundamental objection to the proposed crossing of the river, nor is there any clear reason why this should cause delay. Similarly, in regard to the land west of the A24, Countryside has secured the necessary land from Tesco.

7.115 It is evident that a considerable amount of work has been undertaken to pave the way for the efficient determination of Berkeley Homes' planning application. This reinforces the likelihood that development will come forward. Indeed, the very fact that Horsham DC has seen fit to agree reductions in affordable housing provision and S106 contributions mean that the development is much more likely to proceed without delay than if the viability package had been rejected. Further, if each developer is able to pursue their applications independently, that makes delivery more straightforward. Nevertheless the Council accepts, on the premise that outline applications (for both sites) are submitted this autumn, that there would be first completions in the year 2011/2012 rather than 2010/11. On this basis, the assessment that 500 dwellings will be delivered by 2013 is perfectly reasonable.

7.116 One further point arises from the fact that this large greenfield residential development has proved not to be viable without sacrifice in the current market. Given that the outcome of the viability assessment in relation to this site has differed from that of West of Crawley, this serves to emphasise just how important it is to have a site specific viability appraisal in order to have confidence that the appeal scheme would be delivered in accordance with the timetable set by the appellants.

Windfalls

7.117 Policy CP4 makes provision for at least a further 2,250 homes on previously developed land from 2005 to 2018. Accordingly, consistent with this policy, the Council has included in the five year assessment a windfall allowance of 105 per annum from windfall sites during the period to 2013. No specific allowance is made for unidentified sites which may come forward in response to Horsham's latest Facilitating Appropriate Development SPD.

[166] R/CD157, R/CD166 and R/CD176

Sub-regional supply: Mid Sussex DC

South east and south west of Haywards Heath

7.118 Development at this strategic site is well underway, with phases 1, 2 and 3 complete. Extant planning permissions exist for phases 4 and 5, but recently Crest Nicholson advised Mid Sussex that they will not be able to deliver the relief road until 2013. They suggest that additional parcels of land will be needed for residential development to "fully fund" the road.[167] Discussions are ongoing between the County, District and Crest Nicholson in a bid to resolve the issue. This is yet another example of how the market downturn is affecting the delivery of residential development. Assuming that the market will recover in 2011, and given the mutual interest in delivering housing at this site, it is reasonable to anticipate a solution and delivery in line with the Mid Sussex trajectory.

Town Centre Sites

7.119 SPD masterplans have been produced for the towns of Haywards Heath, Burgess Hill and East Grinstead. With the benefit of the knowledge gained from the masterplanning exercise, Mid Sussex includes an allowance for town centre development in their Annual Monitoring Report. The Council acknowledges in the report the "current poor economic conditions",[168] but states that this factor has been taken into account when compiling the housing trajectory. Mr Dennington's concession that he does not think it is "known now" when development will take place should not be taken to be a concession that there is no reasonable prospect of their delivery in the five year period. It was entirely apparent in both cross examination and re-examination that Mr Dennington's view is that the delivery of development in these town centre sites is largely dependent upon market conditions.

Windfalls

7.120 The Council accepts that there is no development plan policy justification for including windfalls in the first five years of Mid Sussex's housing land supply (assumed to be 276 dwellings in the Statement of Common Ground).

Sub-regional supply: Reigate & Banstead BC

7.121 One of the ironies of this case is that the Horley North West site in Reigate & Banstead, omitted by the previous Inspector in his conclusions and which was highly material to the quashing of the 2007 decision, is not now the subject of any dispute.

Conclusion on sub-regional supply

7.122 While there is no agreement about precisely the extent of the shortfall in Horsham and Mid Sussex, the Council accepts that in these Districts, each Council is currently unable to demonstrate a five year supply assessed against the very recently published RSS. It is no part of the Council's case to suggest that these shortfalls are insignificant.

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[167] R/TWB/1/2 Mr Woolf's appendix 2, paragraph 4.1.
[168] R/CD16 page 29 paragraph 5.25

7.123 The fact that there is a significant shortfall is nothing new. As was accepted at the last inquiry, and as the Inspector concluded, there was *"a significant shortfall of some 2,251 homes against the combined structure plan requirement for the Borough of Crawley, and Horsham and Mid Sussex Districts".*[169] Against the emerging requirement in the draft South East Plan, it was agreed on the same basis that the deficit would be over 3,000 dwellings. The Inspector afforded little weight to these shortfalls, on the basis of his expectation that the authorities concerned would address the matter.

7.124 Though it is accepted that the shortfall in Horsham has grown, it does not follow that greater weight should be given to this issue. Considerable progress has been made through the adoption of the Core Strategy, the JAAP and the West of Horsham Masterplan. The 'At Crawley' study is positive proof that collaboration continues. Each of the four authorities in the GAT3 sub-region has identified a timetable to advance the recent requirements of the RSS through DPDs.

Affordable housing

7.125 Setting aside delivery issues, the provision of 760 units of affordable housing complies with RSS policies H3 and GAT3(iv), and Core Strategy policy H5. The weight to be given to that policy compliance is a matter ultimately for the Secretary of State. The Council accepts that this policy compliance is important, but submits that the provision of affordable housing does not amount to another material consideration over and above compliance with the development plan.

7.126 The NWSSA Housing Market Assessment[170] offers an up to date assessment of the need for affordable housing. The net annual affordable housing need for Crawley, based on a "high" estimate (everyone on the register) is 250 per annum. Based on a "low" estimate (households on waiting lists, including those in priority need) it is 103 per annum. In terms of delivery, Crawley has made substantial improvements, securing 211 units in 2006/7 and 232 in 2007/8, comprising 38.7% and 33.7% of all housing completions.[171]

<u>OVERALL PLANNING BALANCE</u>

7.127 The ATWP is born out of the recognition of the importance of the aviation industry to the national economic interest. It supports additional capacity and requires, as a matter of policy, that the option of a second runway be kept open. Accordingly the development, which prejudices the ATWP, must be regarded as contrary to the national interest.

7.128 In a planning context, the incorporation of this national safeguarding policy into the development plan gives it the primacy the development plan commands. In accordance with the development plan, as development of a new neighbourhood on the North East Sector would prejudice the objectives of the ATWP, it must not be permitted, unless material considerations capable of outweighing the national interest are demonstrated.

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[169] R/CD108 IR page159 paragraph 12.126
[170] R/CD118
[171] R/CD162

7.129 The real balance here is the national interest served by keeping the Gatwick option open versus the local interest in releasing this site for development and, potentially, seeing the delivery a neighbourhood on it. That balance is tilted further against planning permission by the fact that if the second runway were to be developed, the housing on that development would be subjected to undesirable and unacceptable levels of noise. The exceedence of the PPG24 desirable upper limit in a second runway world is what makes the development site unsuitable, and its development contrary to both PPG24 and PPS3. The unsuitability of the North East Sector for residential development, in a second runway world, undermines the benefits which might otherwise count in favour of the grant of permission.

7.130 Accordingly, the Council submits that planning permission must be refused and the appeal dismissed.

THE CASE FOR GATWICK AIRPORT LIMITED

8.1 GAL's case is predominantly taken from closing submissions. The material points are:

Introduction

8.2 Gatwick Airport Limited's (GAL) primary submission is that there is no reason why the Secretary of State should not reach substantially the same conclusion, in relation to the risk posed to the possible future development of a wide-spaced second runway at Gatwick airport by the development of the North East Sector in the manner proposed in the current application, as his predecessor did following the first inquiry in 2006. That conclusion was expressed as follows:[172]

> *31. The Secretary of State notes that it is common ground that the development would not impinge to any material degree on the land that would be required should a second runway be constructed at Gatwick and that if subsequent to the grant of planning permission for the appeal proposal, Government policy were to require a second runway at Gatwick, then the existence of development on the site would not frustrate that requirement (IR12.60-12.61 and IR 12.184).*
>
> *32. Notwithstanding this, for the reasons given in IR12.62-12.63 and IR 12.185, the Secretary of State agrees with the Inspector that there is a significant prospect that the existence of housing on the appeal site would bring about a change in the configuration of the second runway or its operating regime. Accordingly the form of the runway might be changed or its operating regime modified which could in turn reduce the ultimate capacity of the airport.*

[172] R/CD109 paragraphs 31-32

8.3 In fact the appellants' own case has confirmed that this conclusion remains valid today. Mr Charles' evidence showed how the noise impact of the operation of a two-runway airport on housing development in the North East Sector would be very materially reduced if the airport were to be restricted to segregated mode operations, with arrivals only on the (new) southern runway. Mr Titterington's evidence showed that segregated mode operations are bound to deliver a significantly lower overall airport capacity, measured both in terms of runway capacity and passenger throughput. GAL considers that the proposed development would also lead to pressure to move the new runway further to the north, nearer to the existing one. This would have potentially adverse consequences for the airport company's ability to provide an efficient layout and sufficient essential ancillary facilities, such as taxiways and aircraft stands, to enable full use of the two runways to be made.

8.4 The appellants criticise Mr Lockwood for not engaging in issues concerning housing land supply and availability, and therefore not seeking to draw an overall planning balance. Nor did he do so at the last inquiry, and it does not appear that the Inspector and the Secretary of State were disadvantaged by this. Clearly there is an overall balance to be struck, as in most planning decisions. The purpose of Mr Lockwood's evidence is to explain why the adverse implications of the proposed development for a possible second runway at Gatwick are potentially serious, that this is matter concerning the national interest, and that accordingly very significant weight should be given to this factor when the Secretary of State makes his decision on the appeal.

Collins J's judgment quashing the previous Secretary of State's decision

8.5 The two grounds raised by the appellants in their legal challenge to the first decision of the Secretary of State concerning her approach to the airport noise issue were recorded by Collins J at paragraph 25 of his judgement.[173] The judge's conclusions in relation to these grounds are set out in paragraphs 39-41. It has to be said that they could have been expressed more clearly. Wilkie J, in the context of the challenge by the appellants to the Council's Core Strategy, had some difficulty in understanding Collins J's reasoning.

8.6 In relation to the first ground concerning noise, Collins J said:

> *… in the context of [the Inspector's] decision that the development was not in accordance with the planning policies [i.e. those relating to housing provision] … I have no doubt that he was entitled to rely on the desirable upper limit referred to in [Annex 3 paragraph 8 of] PPG24 and he was not acting in conflict with the policy in NE19(b)(2)(vii) in so doing. Equally, I think that the Inspector was, in the context of his conclusion that there was a breach of the plan policies, entitled to rely on the desirability of allowing for a second runway.*

8.7 Ground 1 thus did not succeed. More relevantly for present purposes, however, Structure Plan policy NE19, which was central to this ground of challenge, no longer forms part of the development plan and is therefore not material to the re-determination of this planning application. It has relevance only in so far as it is necessary to be aware of what it said in order to

[173] R/CD110

understand the previous Inspector's and the Secretary of State's reasoning, and the judge's comments on these aspects of the Report and Decision Letter.

8.8 Ground 2, relating to prejudice to the second runway, also failed.[174] Collins J did however also say this:

There was evidence that the development could affect the alignment of the second runway, and thus the efficiency of the airport. Whilst those matters would not have been likely to have prevailed against a plan-compliant development, they could properly be taken into account in the context in which the Inspector and the Secretary of State did take them into account.

8.9 He also commented at paragraph 26 in his judgement:

For reasons which will become apparent, it seems to me that the question of need is fundamental. If the Inspector and the Secretary of State were correct to decide that to allow the development now would be contrary to the various policies and plans to which reference was made, they were entitled to give weight to the issues of noise and a second runway at Gatwick. However, if they were wrong to decide that there was non-compliance with the policies in relation to the need for the development, the problems of noise and the second runway could not by themselves have justified refusal. Certainly, it is wrong to put it as high as that. It would have been necessary to reconsider the matter and, judging by the way the Inspector put it in his conclusion, the likelihood is that he would have recommended that permission be granted.

8.10 It is important to recognise that these remarks do not form any part of the reasoning for the decision. Further, the judge appears to have misunderstood the Inspector's conclusions. In fact, the Inspector[175] concluded that, <u>in the absence of the possible second runway</u>, he tended to the view that material considerations outweighed the conflict with the development plan. There is nothing to suggest that, absent the policy conflict, he would have found that the national policy requirement to keep open the possibility of a second runway was insufficient to justify the refusal of planning permission. What the judge in fact appears to be saying[176] is not that policies protecting the second runway option could not have justified refusal of permission for a housing-policy compliant development, but that it would be putting it too high to say that they would necessarily have done so.

8.11 The judge's comments are in any case speculative. They relate to the merits of the planning application, and the planning balance to be struck, which (as the courts have said on many occasions) is exclusively the province of the decision maker. It may well be that the judge failed to appreciate the significance to the national interest of ensuring the provision of further runway capacity in the South East. In any event, in re-determining this appeal the weight to be attached to this consideration, and the role that keeping open the option of a second runway at Gatwick plays in this, is entirely a matter for the Inspector and the Secretary of State.

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[174] R/CD110 paragraph 41
[175] R/CD108 paragraph 12.204
[176] Attempting to make sense of the two sentences beginning "However …" in paragraph 26

Policy considerations

8.12 The overall policy position has not materially changed since the previous inquiry. Most notably, there remains a national policy requirement, now reflected in the South East Plan and in local policy, to keep open the option of providing a wide-spaced second runway at Gatwick. The parties agree that, when understood in its proper context, this means a second runway that is capable (together with the existing runway) of operating in mixed mode. Whilst the parties differ as to whether the prospect of a second runway has receded or advanced since the previous inquiry, this consideration is unlikely to prove decisive since, on any reasonable view, the policy requirement to keep open the option of a second runway remains.

Policies safeguarding the option of a second runway at Gatwick

8.13 The 2003 ATWP sets out the Government's principal conclusions about new runway capacity in the South East. This states:[177]

We believe that there is a strong case on its merits for a wide-spaced second runway at Gatwick after 2019 and that land should be safeguarded for such a runway, in case it becomes clear in due course that the conditions that we wish to attach to our support for the construction of a third Heathrow runway cannot be met…….. Taking all relevant factors into account, including the strong economic case for additional capacity at Gatwick, we therefore propose to keep open the option for a wide-spaced runway at Gatwick after 2019.

8.14 Mr Charles accepted in cross examination that this effectively amounts to a requirement, as a matter of national policy, to keep open the option for a wide-spaced second runway at Gatwick that enables both runways to be operated in mixed mode.[178] GAL further submits that, in the event that either or both of the additional runways at Heathrow and Stansted did not proceed, the development of a second runway at Gatwick would be in accordance with current policy.

8.15 South East Plan[179] policy T9(i) gives effect in the development plan to the requirement to safeguard land for a possible new runway as set out in the ATWP and subsequent Government statements. The supporting text refers to the January 2009 announcement about Heathrow; it states that "until a final planning decision is made about the future of Heathrow, and since there is a strong case on its own merits for a new wide-spaced runway at Gatwick after 2019, land should continue to be safeguarded for this".

8.16 Paragraph 24.8 of the South East Plan states that, "where possible" development should be brought forward at (inter alia) the North East Sector, Crawley. Paragraph 24.9 indicates that, if this cannot be delivered, it will be for the local planning authority to plan for alternative locations and strategies to deliver the scale of development required by policy GAT3. There is no reason why, aside from a possible second runway at Gatwick, the Plan should

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[177] CD37 paragraphs 11.11 and 11.80
[178] See R/CD51 paragraph 8.12, R/CD108 paragraph 12.62 ("... the wide-spaced runway preferred by the White Paper …")
[179] R/CD137

qualify the prospective delivery of the North East Sector in this way. The other sites are similarly qualified, again without any specific reason being given.

8.17 Crawley Borough LDF Core Strategy[180] policy G2 similarly gives effect to ATWP policy by safeguarding land for a second wide-spaced runway. This is also reflected in the policies relating to the development of the North East Sector. The first "key objective and principle" for this is to safeguard the North East Sector for the development of a new neighbourhood if and when this becomes possible without prejudice to the aims of the ATWP. Policy NES1 "identifies and safeguards" the North East Sector for the development of a new neighbourhood; but policy NES2 then starts with the words "If it is able to proceed", thus acknowledging the potential constraint imposed on the development of this new neighbourhood by the need to keep open the option of a second runway. Core Strategy policy H2 identifies the North East Sector "as an appropriate site for the development of a new neighbourhood for Crawley. Development here is currently precluded for reasons related to possible expansion of Gatwick."

8.18 Mr Charles' suggestion[181] that the January 2009 Decisions document "Adding Capacity at Heathrow"[182] mean that "there is no further need to safeguard land at Gatwick" is patently wrong. It runs directly contrary to the provisions of the South East Plan and the Crawley Core Strategy – both recently adopted and both part of the development plan – and is unsupportable. Neither the Decisions document nor the Ministerial Statement[183] indicates that the Government's policy as stated in the ATWP, either generally or in relation to Gatwick, has changed. Rather, they reaffirm existing policy. It follows that there remains a possibility that a second, wide-spaced runway will be required at Gatwick which Government policy is to protect.

8.19 Current national policy is for two new runways to be constructed in the South East - a third runway at Heathrow and second runway at Stansted. The only fallback option identified in policy if either of these does not come forward is a second runway at Gatwick. It is also clear from references to the 'strong case on its own merits' for a second runway at Gatwick that, possibly in any event but certainly in circumstances where the additional runways at Heathrow and Stansted do proceed but do not deliver as much additional capacity as was anticipated, it would then also be possible that a second runway at Gatwick would be required.

8.20 As Mr Lockwood demonstrated,[184] even if the currently planned developments proceed, potential passenger capacity at the three London airports other than Gatwick is likely to fall between 9 and 36 mppa short of the capacity envisaged by the ATWP. This, when taken together with the uncertainties that still surround the prospects for new runways at Heathrow and Stansted, means that the prospect of a new runway being required at Gatwick is if anything somewhat greater than it was at the time of the previous inquiry.

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[180] R/CD10
[181] R/TWB/2/2B Charles Rebuttal to Lockwood paragraph 4.3
[182] R/CD32
[183] R/CD37
[184] R/GAL1 sections 3.13-3.17

8.21 In relation to Heathrow, the Decisions document and Ministerial Statement of January 2009 confirm not only existing ATWP policy support for a third runway, but also that the Government considers that the environmental conditions on noise, air quality and surface access can be met.[185] However, there remains uncertainty about the amount of capacity that a third runway will add, since the use of the runway will be limited "at first" to 125,000 aircraft movements p.a., making 605,000 movements p.a. in total.[186] The preparation of an application for development consent will of course involve much more detailed assessments of the environmental impacts of the third runway than have been undertaken so far. Thus, even if such an application receives consent, it is not known whether or when the full potential capacity of the airport (702,000 movements p.a.) will be realised.

8.22 The uncertainties in relation to Stansted are equally clear. Whilst a planning application has been made for a second runway (the G2 application), the inquiry has been postponed because of the Competition Commission's findings and BAA's appeal against these. The outcome of the inquiry is uncertain but, if permission is granted and the airport is sold, there can be no certainty that a new owner of Stansted will wish to proceed with this particular project, which is not supported by a number of the airlines. In relation to Luton, the airport operator has abandoned plans for a new runway (to replace the existing one). This would have increased capacity to around 31 mppa. Although the Government is assuming a possible increase to 17 mppa,[187] there is no certainty that this will be achieved and no proposals have yet been published for any increase in capacity above the current 10 mppa.

8.23 Turning to the forthcoming airports National Policy Statement (NPS), it is hardly surprising that the Minister has said that this will be "based on" the ATWP.[188] But this does not signify that policy will necessarily be the same as – or indeed different from – existing policy as set out in the ATWP. When the airports NPS is published, however, there will surely be a greater level of certainty about whether a second runway at Gatwick is likely to be needed. The findings of the Competition Commission are likely to have very significant implications for the content of the NPS, and for the future planning of additional airport capacity in the South East more generally. The Secretary of State is asked to note that, whilst the findings of the Commission are under appeal by BAA, BAA has at the same time announced that the Gatwick sale process is continuing.

8.24 The Commission's report recognises that, whilst the operator of Gatwick would be best placed to build one of the two new runways in the South East if a second runway at Stansted does not proceed, even if additional runways at Heathrow and Stansted do proceed "there would still remain the possibility for Gatwick to lobby the Government for a second runway at Gatwick after 2019. The development of the aviation NPS would provide an opportunity to do so."[189] Thus, the Commission concludes that:

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[185] R/CD37 page 3 of 5
[186] R/GAL1 paragraphs 3.13.1-3.13.2
[187] R/CD38 page 41 table 2.8
[188] R/CD42 top of page 2
[189] R/CD41 page 120 paragraph 5.16(d), (e)

> *… in developing the NPS on airports, the Government should give due consideration to the ambitions of the new owner of Gatwick Airport, including the possibility of a second runway at Gatwick after 2019. In this respect, we note that the White Paper suggested that there was an economic case for the construction of three new runways in the South-East by 2030.*[190]

8.25 These considerations reinforce the importance at this time of giving full weight to the ATWP requirement to safeguard land for, and not to prejudice the option of, a second wide-spaced runway at Gatwick.

Policies relevant to the impact of aircraft noise on housing in the North East Sector

8.26 The interpretation and application of PPG24 is straightforward. When PPG24 was published in 1994, the (then) Department of the Environment intended that the advice in it should be read as a whole, and more particularly that the advice in Annexes 1 and 3 should be compatible and consistent. Annex 1 defines the Noise Exposure Categories for dwellings. Thus, for daytime noise from air traffic, the boundary between NEC 'B' and 'C' lies at 66 dB(A) Leq. This can reasonably be viewed as the upper limit of normal acceptability, since for planning applications to develop land falling within NEC 'B', noise should be taken into account and appropriate conditions imposed, and for applications within NEC 'C', planning permission should not normally be granted.

8.27 Annex 3 is headed "Detailed Guidance on the Assessment of Noise from Different Sources". It is immediately apparent that this guidance will elaborate, and may qualify, the guidance in Annex 1. Paragraph 8 does precisely this, stating "Recommended noise exposure categories for new dwellings exposed to aircraft noise are given in Annex 1, but 60 dB(A)Leq should be regarded as a desirable upper limit for major new noise-sensitive development". Thus, the effect of Annex 3 paragraph 8 is to reduce the upper limit for NEC 'B' in the case of major new residential development from 66 to 60 dB(A). Mr Charles agreed this was a plausible interpretation. The advice in PPG24 is entirely consistent with the Government's view that 57 dB(A) Leq is "the level of daytime noise marking the approximate onset of significant community annoyance".[191]

8.28 There are only two noise policies now contained in the development plan. The first is policy NRM10 in the South East Plan, which looks to locate new residential development away from existing and planned new sources of noise, whilst encouraging high levels of sound-proofing and screening where such development does take place.[192] The other is Crawley Borough Local Plan policy GD17, which states that "major noise sensitive development will not be permitted in areas subject to aircraft noise exceeding 60 dB(A) unless there are exceptionally compelling reasons."[193]

8.29 In relation to policy NRM10, it is wholly artificial for the appellants to argue that a second runway is not a "planned new source of noise". The reality is that it is planned, on any commonsense reading of the word when read in its

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[190] R/CD41 page 91 paragraph 10.376
[191] CD37 page 34; see also R/CD32 paragraphs 54-55
[192] R/CD137 p 106
[193] CD44 above paragraph 3.34

context, but there is uncertainty about whether the plan will be realised. Moreover both policies – GD17 in particular, since it descends to a greater level of detail than NRM10 and expressly mentions a 60 dB(A) noise limit – are entirely compatible and consistent with the advice in PPG24. It is perfectly appropriate for the local plan policy to interpret and apply PPG24 advice by including a requirement for exceptionally compelling reasons to be shown – there is no inconsistency or conflict there.

8.30 None of these policy documents (including PPG24) suggests that the provision of effective noise insulation means that residential development above the 60 dB(A) daytime aircraft noise contour will necessarily be acceptable. Indeed, it is clear that major new residential development in such areas is in principle undesirable. However, if it does take place, because there are compelling planning reasons for it to do so, then effective noise insulation must be provided.

The implications of the appeal development for a possible second runway

8.31 The issue here is whether the existence of a new neighbourhood in the North East Sector, as presently proposed, would be likely to influence the configuration and operation of a second runway, if one were to be promoted, in such a way that ultimate airport capacity might be materially reduced. GAL submits that it would. In fact, it is plain from the appellants' own evidence that this is the case.

Noise considerations

8.32 If the appeal development proceeds, there will be around 1,900 more households which would be affected by aircraft noise from a second runway and who may wish to object to a planning application for the runway. Indeed, it seems inevitable that many of them will do so,[194] and that the grounds of their objections will include the following:

(i) permission should be refused because many of the houses will fall within an area lying beyond the 60 dB(A) daytime noise contour which PPG24 sees as a desirable upper limit and which is also beyond the 57 dB(A) Leq threshold for the onset of significant community annoyance;

(ii) noise levels inside houses would only (perhaps) be acceptable with windows and doors shut, which can be unpleasant particularly in summer, and in any event the increase in noise brought about by a new runway as compared with the existing situation would be noticeable inside houses;

(iii) noise levels in gardens and areas of public open space would be high and would make these spaces much less attractive and pleasant to be in;

(iv) night-time noise would also be significantly disturbing;

(v) if the new runway is to be allowed to proceed, then it should not be permitted to be used in mixed mode because segregated mode operations, with the new runway only being used for arrivals, would significantly reduce the daytime noise impact on the North East Sector;

[194] R/CD108 paragraph 12.62: "Their voices could add to the strength of arguments …"

(vi) since segregated mode operations do not require the full separation distance of 1035m from the existing runway, which is only needed in order to allow independent mixed mode operations, then the new runway should be moved further north, thereby providing further relief to the North East Sector.

8.33 GAL does not submit that these objections would be likely to defeat a second runway proposal that was in accordance with policy and for which there was a demonstrable national need. It does submit, however that the prior development of the North East Sector in accordance with the appeal application could defeat a proposal for a wide-spaced, mixed mode second runway, which is the option that policy says must be kept open. Considerations arising from the presence of a developed North East Sector could lead to constraints being imposed on the configuration and/or operation of a two-runway airport that would not only have the effect of reducing ultimate airport capacity, but also could materially damage the business case for building a second runway.

8.34 That business case will critically depend on the capacity of a two-runway airport, and on the flexibility with which it will be possible to operate and manage that capacity. Mixed mode is inherently more flexible than segregated mode, in part because it allows the airport operator to be more responsive to airline demand for slots by varying the proportion of capacity that is allocated to arrivals and departures in a particular hour, and also provides the opportunity to achieve higher passenger throughputs. Anything that could prejudice the achievement of maximum airport capacity, and flexibility of operation, would therefore inevitably undermine to some degree the business case for a second runway.

8.35 The noise impact of a second runway on the North East Sector is bound to influence and to constrain the planning of a second runway, in particular its configuration and its mode of operation. The agreed noise contours that would result from mixed-mode operations on two runways are based on ERCD 0308 and shown in the Gatwick Airport Interim Master Plan.[195] The more recent mixed mode contours commissioned by Mr Charles from ERCD for the purposes of the present inquiry[196] are substantially similar.

8.36 The table in the Statement of Common Ground between the appellants and GAL shows that, depending on whether the original or new ERCD contours are used, of the 4,200-4,500 people living in the North East Sector, 1,390-1,600 would live in the area between the 57 and 60 dB(A) daytime contours, 1,280-1,400 would live between the 60 and 63 dB(A) contours, and 1,300-1,520 would live between the 63 and 66 dB(A) contours.[197] Thus in broad terms, all North East Sector residents would live in an area lying beyond the generally accepted threshold for significant community annoyance, and around 2/3 of the population would live in an area regarded by PPG24 as undesirable for major new residential development.

[195] R/CD50 (also CD128) drawing 9
[196] R/TWB/2/2B Charles Rebuttal of Lockwood Appendix A
[197] R/CD147 table at paragraph 2.6, rows 6 and 7

8.37 The table also gives the range of the population newly affected by noise as a result of the development of a second runway, with both runways operating in mixed mode, without and with the North East Sector.[198] The development would increase the population that would otherwise be exposed to noise levels of 60 dB(A) or more by 55-59%. It is plain from this information that a second runway would have a significant effect on residents of the North East Sector in terms of exposure to aircraft noise. This would inevitably be a significant factor in the preparation and determination of a planning application for a second runway

8.38 Mr Charles' evidence demonstrates that, if the runways were to operate in segregated mode, with arrivals only on the new runway and departures only on the existing runway, there would be a materially lesser impact in terms of noise on the residents of the North East Sector.[199] Clearly, therefore, the existence of a new neighbourhood in the North East Sector will introduce a significant additional consideration into the planning balance if and when an application is made to develop a second runway. In particular, it will change the balance of considerations in relation to the mode of operation of the runways. This is the very point that the Secretary of State made in her first decision on this appeal: namely, that there is a real risk that allowing the appeal development to proceed could lead to damaging constraints being imposed on the airport operation if a second runway were found to be required.

8.39 If the new runway were to be used in segregated mode for landings only, that would significantly reduce the amount of flexibility there would be for providing relief to other communities in the area such as Charlwood, particularly from noise from departing aircraft. Mr Turner's supplementary note shows how the noise impact on the North East Sector of segregated mode operations from two runways will vary quite significantly both below and above the mixed mode average day values, depending on the mode of operation and the direction of aircraft departures and arrivals.[200] It can reasonably be inferred that, with a mode of operation that minimises noise levels in the North East Sector, there will be other communities that will experience noise levels that are higher than those average day values.

8.40 Mixed mode and segregated mode operations with arrivals only on the new runway, are not the only options that will have to be considered if and when a planning application for a new runway is prepared and submitted. The Interim Master Plan records that a number of representations on the outline masterplan had advocated alternating segregated mode operations, and concludes that "in the event of a second runway being needed at Gatwick, the noise exposure of local communities will feature in the comparative evaluation of different runway options".[201]

8.41 The presence of housing at the North East Sector will complicate this process of option evaluation by introducing a further major consideration into the balance that will need to be struck between the competing interests of the

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[198] R/CD147 table at paragraph 2.6 rows 4, 5 and 10
[199] R/TWB/2/2B Charles Rebuttal of Lockwood Appendix B option (A)
[200] R/CD175 Further Information on Noise Levels across the Site, tables 3-5
[201] R/CD50 paragraph 9.75

different communities that will be affected by noise from a second runway. It will not be simply a matter of choosing the option which best protects the residents of the North East Sector; the balance would be a complex one, involving not only a range of environmental considerations but, critically, careful evaluation of the economic benefits of each option.

8.42 Furthermore, if the presence of housing in the North East Sector were to lead to a decision that the runways could only be operated in segregated mode, with arrivals only on the new runway, there would be pressure from residents of the new neighbourhood to move the runway further to the north. This would adversely affect the space available for essential airport facilities such as taxiways and terminal areas between the runways[202], resulting in a less efficient layout and potentially further reducing ultimate airport capacity when compared with an "unconstrained" mixed mode operation.

8.43 The outcome of such a debate is unknown. It may be that the airport operator's arguments would prevail. However, the potential prejudice to the configuration and operation of a second runway is plain.

8.44 Night flights are a further potential issue. The existing noise abatement objective for Gatwick[203] will have to be reviewed if permission is granted for a second runway, so it cannot be right that this would prevent night operations from taking place on the new runway.[204] The use of the new runway for some night flights might increase noise levels at some existing communities and might reduce noise levels at other communities. It is clear, however, that night flying from the new runway would be detrimental to living conditions in the North East Sector. Thus again the flexibility for affording relief to some communities by alternating the use of the runways for night flying for some of the time would be materially constrained by the presence of housing in the North East Sector.

8.45 The appellant has referred to airport noise related policies that apply in other locations. These do not apply to Gatwick airport, however, and are therefore irrelevant to the Secretary of State's consideration of the current application. Similarly, a methodology used in a consultation document relating to potential airport expansion in the South West should not be applied in the South East. Comparisons between populations affected by the expansion of Gatwick and other airports such as Heathrow are also of very little relevance. That is because the balance to be struck between the benefits and the impacts of an expansion proposal will differ markedly between different locations. It is therefore not possible to say that, because a certain number of people would be affected by noise from a new runway at Heathrow, it is necessarily acceptable to subject the same number of (or fewer) people to the same levels of noise from a second runway at Gatwick. There is also no policy support for such an approach.

Airport capacity considerations

8.46 The appellants sought to argue that a segregated mode of operation would not prejudice the achievement of BAA's objective of achieving a throughput of

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[202] See R/GAL/1A Appendix 1 sections 2.5-2.6
[203] CD122 p 13 paragraph 52
[204] As claimed in Charles rebuttal of Lockwood - R/TWB/2/2B paragraph 4.19 (should be 4.12)

80 mppa, or thereabouts, at Gatwick operating two runways. However, the underlying premise is wrong, and Mr Titterington's evidence is founded on a number of unjustified and unexplained assumptions. No other body has ever produced capacity estimates for a two-runway Gatwick airport operating in mixed and segregated modes that are anything like as high as those suggested by him. GAL submits that the Secretary of State would be very well advised to stick with the passenger capacity forecasts for Gatwick, based on mixed mode operations, that were used as a basis for the ATWP.

8.47 Mr Titterington's evidence assumes that both runways would be operated in segregated mode, with arrivals only on the new southern runway. He has not assessed the capacity implications of alternating segregated mode operations. He has also assumed a runway separation distance of 1035m, because he agrees that this is the minimum required to ensure the provision of adequate facilities between the runways to enable their potential capacity to be effectively utilised.

8.48 The incorrect premise that underlies Mr Titterington's evidence is that the 80 mppa figure is a target, or a stated requirement. Neither the ATWP nor the Interim Master Plan says either of these things. The figure is, rather, "a 'ball park' indicator of Gatwick's maximum potential size".[205] The figure of 80 mppa derives from the ATWP figure of 83 mppa, itself derived from SERAS,[206] and assuming independent mixed mode operations. Thus even Mr Titterington's (exaggerated) figure of 77.85 mppa[207] for Gatwick's capacity with segregated mode operations falls over 2 mppa short of GAL's preferred capacity figure, and over 5 mppa short of the figure included in the ATWP.

8.49 Contrary to Mr Titterington's assertion that the ATWP's 83 mppa figure was obtained by balancing environmental and other considerations, the South East consultation document explains that "the SERAS methodology was geared to assessing the *relative* impacts of options rather than the impacts of options compared to the present position or the mitigation of impacts that might be brought about through intervention".[208] Plainly, the 83 mppa figure was not a capacity estimate that followed from a detailed assessment of environmental constraints; that could only be done as part of the planning application process. It certainly cannot be regarded as a target which can be met by any means the airport operator chooses.

8.50 Although Mr Lockwood did not endorse Mr Titterington's runway capacity assumptions, he thought that the order of difference between that for mixed mode operations (95 movements per hour) and segregated mode operations (78 movements per hour) was not unreasonable. How Mr Titterington then gets from an hourly runway capacity difference of about 22% to an annual passenger capacity difference of about 8% is by employing a series of further assumptions which were different for each scenario.[209] The reasons for the different assumptions (concerning the duration of the summer period in which maximum hourly capacity is fully used, the duration of the evening period,

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[205] R/CD50 (also CD128) paragraph 9.6 and footnote 11; also paragraph 9.28
[206] CD37 paragraph 11.72; R/CD51 paragraph 8.12
[207] R/TWB4/1 page 23 table 4
[208] R/CD51 page 165 bottom paragraph
[209] See R/GAL/3 table at paragraph 5.5

and the proportion of maximum capacity used in each hour in summer and winter evenings) were not explained. There is also no justification for these different assumptions, for there is no technical, policy, environmental or other reason why mixed mode operations cannot achieve the same level of performance in each of these respects as segregated mode operations.

8.51 Mr Titterington also inexplicably used 92 movements per hour in his capacity calculations for mixed mode operations, even though he had previously identified an hourly capacity of 95 movements. In relation to segregated mode operations, he was unable satisfactorily to explain how the imbalance of 2 movements per hour between 40 arrivals and 38 departures would ever be made up. Moreover his assumption that the maximum hourly available runway capacity is actually used (in both modes of operation) in all daytime hours for every day of the year is hopelessly unrealistic. In practice, because

(i) the declared runway capacity is lower than peak hour maximum theoretical runway capacity by about 5%, and

(ii) the utilisation rate of the available slots averages about 87% over the year as a result of cargo and general aviation movements, and seasonal and daily differences in the demand for slots,

an assumption that around 80-85% of theoretical hourly runway capacity would be used in either scenario is more realistic.

8.52 Mr Titterington's conclusion that there is a lot of spare runway capacity at Gatwick was misguided. It appears to be based on the difference between the airport's theoretical annual capacity, in terms of ATMs, and the number of slots actually available to airlines, which is specified in the form of scheduling limits.[210] The average hourly scheduling limit is lower than the number of slots available in the peak hour. This means that some of the theoretical capacity is simply not available for use and, of the capacity that is available, some is not used because there is no demand for it from airlines.

8.53 The suggestion that, if there are 26,617 slots available in August of which 97.7% are used,[211] then there is no reason why this should not be the case in February and in every other month of the year, also defies the reality of seasonal differences in demand and in weather conditions (as well as the fact that August has three more days than February). Thus, both scheduling limits and the slot utilisation rate are lower in winter than in summer. There is no reason why this reality should change in a two-runway airport.

8.54 The result of a re-working of Mr Titterington's assumptions is that, using his hourly runway capacity estimates (which GAL does not accept) as a starting point, but adjusting his assumptions to make them less unrealistic, a mixed mode operation might theoretically yield an annual capacity of up to around 87 mppa, and a segregated mode operation an annual capacity of up to around 72 mppa. It must again be emphasised that these do not represent GAL forecasts of likely airport capacity in those scenarios,[212] but they do show that Mr Titterington has seriously underestimated the difference

[210] As given in R/GAL/3, table at top of page 11 (i.e. 48.06)
[211] R/GAL/3 table at paragraph 5.12
[212] R/GAL/3 paragraph 5.15

between the capacity of a two-runway airport operating in mixed and segregated modes.

8.55 A final point to note is that, if Mr Titterington's estimates of annual runway capacity were correct,[213] the ERCD noise contours for both mixed and segregated mode operations would be wrong. ERCD have in fact (as requested by the appellants) assumed the same number of annual ATMs (486,000) for both modes of operation. More significantly, the forecast contours for mixed mode operations, which are agreed, will have assumed significantly too few ATMs, with the result that the contours underestimate to some (unknown) degree the likely noise impacts of this scenario. Thus, the logical consequence of Mr Titterington's evidence is that a second runway operated in mixed mode would have an even greater impact, in noise terms, on the North East Sector than has been assessed in any of the parties' evidence to the inquiry.

8.56 It follows that, for all of these reasons, the Secretary of State should reject Mr Titterington's capacity estimates and continue to rely on the SERAS and ATWP capacity estimate for Gatwick, which is based on 486,000 annual ATMs for a two-runway airport in mixed mode operation[214] and which results in an estimated throughput of 83 mppa.

Conditions

8.57 The appellants have declined to accept the additional conditions proposed by GAL headed "Statutory notice" and "Gatwick Airport information packs"[215] on the basis that they are unnecessary and unreasonable. Why they are considered to be so is not explained. The clear inference is that the appellants do not wish to prejudice the prospects for the sale of the housing on the appeal site by warning prospective purchasers of a possible second runway at the airport and the implications of this for their living conditions.

8.58 If the conditions are imposed, they would have the effect of reducing (albeit to only a limited degree) the force of objections made by residents of the North East Sector to a planning application for a second runway. GAL submits therefore that they meet the Circular tests and it requests the Secretary of State, in the event that he decides to grant planning permission, to impose them. However, GAL acknowledges that the conditions could not prevent objections from being made and weighed in the decision-making process. Nor could they address the fundamental issue, which is that the existence of housing at the North East Sector would introduce a further significant layer of complexity and constraint that would make it materially more difficult to plan and to operate a two-runway airport in a manner that maximised its potential capacity.

Conclusions

8.59 The planning system is concerned with managing competing uses of land. Here, the conflict is between meeting housing land supply requirements on

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[213] R/TWB4/1 page 21 table 2: 509,391 ATMs in mixed mode, 471,783 ATMs in segregated mode
[214] See R/CD51 paragraph 8.15 table 8.1
[215] R/GAL/1A Appendix 4

the one hand and ensuring that options for meeting airport infrastructure requirements are kept open on the other. GAL submits that those two competing demands cannot both be satisfied at this time; but the latter concerns the national interest, whereas the former does not. There may be alternative sites on which housing requirements can be met, but there is no alternative location for a second runway at Gatwick to that shown in the ATWP.[216]

8.60 The allocation of the North East Sector for major new housing development in the development plan is expressly subject to the development not prejudicing the possible expansion of Gatwick through the development of a wide-spaced second runway, in accordance with ATWP policy. Thus, development plan policy gives precedence to airport infrastructure needs over those relating to housing provision.

8.61 Whilst the existence of a new neighbourhood at the NES would be unlikely to prevent the development of a second runway at Gatwick, it would be likely to compromise the delivery of what would otherwise be the best solution, in terms of airport capacity and thus economic benefit, namely a wide-spaced second runway which would be operated with the existing runway in mixed mode. This is the option which national aviation policy and development plan policy requires to be kept open, and which would be prejudiced by the grant of planning permission for the appeal development.

8.62 It follows that there is a real risk that the grant of planning permission for the appeal development at this time would be damaging to the national interest. Very substantial weight should be given by the Secretary of State to this issue in making his decision. GAL therefore strongly urges the Secretary of State to dismiss this appeal.

WRITTEN REPRESENTATIONS

9.1 **West Sussex County Council** takes no position on the planning merits of the proposal. This was also the position taken in 2006 at the original inquiry. Then as now the concern of WSCC was to ensure that the infrastructure needs generated by the development, if permitted, are met. The appropriateness of seeking the provision of infrastructure is supported by the policies in the South East Plan and the Crawley Borough Core Strategy.

9.2 WSCC has reconsidered the infrastructure needs, which although very similar to those identified at the 2006 Inquiry, have varied both as to cost and changes in the method of delivery. The assessment of need has been conducted in accordance with procedures developed by WSCC.[217] These are recognised by the appellants as being reasonable and appropriate, and are also accepted by Crawley BC when determining applications giving rise to county service contributions. Crawley's Planning Obligation SPD[218] makes specific reference to the adopted WSCC policies and the methodology that has been developed.

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[216] CD37 map on p 127
[217] R/WSCC/02B and C
[218] R/WSCC/03

9.3 The assessment has shown that there are 7 services for which WSCC has a statutory responsibility that require infrastructure provision to meet the needs of the proposed development. These are highways and transport, primary education, secondary and sixth form education, early years, youth services, library services, and fire and rescue. The basis on which the needs have been calculated is set out in various documents, including R/WSCC/01 and R/WSCC/04.

9.4 As to the suitability of "scheme" conditions to deliver the necessary infrastructure, WSCC believes that the method can still be used in circumstances such as this. None of the proposed conditions require the payment of financial contributions by the appellants - they solely require "schemes" to be submitted, approved and implemented. The nature of the schemes and the method of delivery remain to be seen. Therefore on the face of them they do not conflict with Circular 11/95 paragraph 83. Nor is it correct to treat any financial contributions that may form part of a scheme as taxation. Taxation is in essence a unilateral impost by a government over which the taxed body has no control as to its size, basis or use. That could not be further from the position in this case. Here the needs have been agreed, the cost at today's prices accepted, and the solutions identified.

9.5 It is inevitable that, as a result of EU procurement directives and the decision of the European Court of Justice in the case of Auroux v Roanne,[219] the "scheme" conditions for certain elements of the required provision, such as education, will lead to financial payments being made. If the Secretary of State does not accept that "scheme" conditions are acceptable in this particular case, and is not prepared to grant permission with such conditions, then WSCC has no alternative but to submit that the appeal should be dismissed as there is no certainty of the necessary infrastructure being provided. This would be contrary to the policies of the development plan.

9.6 **Tandridge District Council** has a number of concerns about the proposal. It has not been demonstrated to the Council's satisfaction that the development is compatible with the transport infrastructure and environmental character in the area, having regard to the likely level of traffic generation and the availability of alternative transport modes. In particular, mitigation measures should be carried out to minimise additional traffic using cross-boundary routes into Tandridge District.

9.7 The Council is also concerned about the position of the northern boundary of the North East Sector, given the impact of the development on the area of open countryside in Tandridge Distict which lies to the north east on the other side of the M23. If all the development required by the West Sussex Structure Plan can satisfactorily be accommodated on a smaller area, the Council considers that the northern boundary should be moved further south. In addition, a softer edge to the boundary, with reduced densities, should be provided. Finally, full consideration should be given to the impact of noise from Gatwick, particularly on the northern part of the area.

9.8 **Reigate & Banstead Borough Council** raises concerns about the potential impacts of (1) flooding from increased surface water drainage, and (2) traffic

[219] R/WSCC/05

movements and congestion within its Borough. It is particularly concerned that traffic modelling did not fully assess the impact of two new neighbourhood sectors to the north of Horley. Subject to the Inspector being satisfied on these issues, the Borough has no objections to the proposal.

9.9 **The Environment Agency** has no objections subject to conditions 13, 14, 15, 16, 17 and 19 of Inspector Phillipson's report being imposed.

9.10 **Mr Collins & Mr Dockray, Dr & Mrs Baker, Mr Biggs and Mr Dryer** are local residents who object on a number of grounds, including:

i. The impact of the additional traffic generated by the development on the local highway network, which is already congested at peak times by people using roads such as Balcombe Road and Radford Road as rat-runs to Gatwick airport and the industrial estates.

ii. The potential for increased air pollution, noise and accidents associated with the increase in traffic.

iii. The loss of a semi-rural area and the conflict with the aim of using brownfield sites to meet housing needs.

iv. The unsuitability of the site for housing and a school due to its exposure to excessive noise from Gatwick airport if a second runway is built.

v. The potential for housing on the site to prejudice a second runway at Gatwick, to the detriment of the local economy – the new airport owner should be allowed to decide whether to build a second runway before a decision is made on this proposal.

vi. The increase in surface water run-off exacerbating flooding problems along Gatwick Stream – on several occasions in the last 20 years the river has flooded Radford Road.

vii. The potential to increase the problem of sewer flooding on Steers Lane caused by a lack of pumping capacity at Crawley treatment works.

9.11 **The Homes and Communities Agency**, which owns part of the appeal site, remains supportive of the proposals which would deliver a significant number of much-needed dwellings. In the event that planning permission is granted, the Agency is committed to working with the appellants and the Council to facilitate early delivery of a sustainable new neighbourhood.

CONDITIONS AND OBLIGATIONS

Obligations

10.1 The usual means of securing the infrastructure that is necessary to mitigate the demands that a major development would place on local services, communications networks and utilities is a planning obligation prepared under S106 of the 1990 Act. The Council has declined to enter into a S106 agreement with the other parties because of its opposition to the proposal. In such cases a unilateral obligation is often submitted by the appellants, but

that has not been possible because it would require the agreement of the Council as a land owner. Consequently it is proposed that the necessary infrastructure is secured by means of negatively worded 'Grampian' conditions.

Conditions

10.2 A draft list of planning conditions, based largely on the conditions endorsed by Inspector Phillipson at the 2006 inquiry, was submitted by the appellants shortly after the opening of the inquiry. This was discussed and revised at a number of 'round table' sessions during the inquiry, which I led. A final list of conditions, updated to reflect the matters agreed during those discussions, was submitted at the end of the inquiry. At Annex A to this report I attach a list of suggested conditions, with reasons, which is essentially the final submitted list with a few minor amendments and corrections.

10.3 I have considered whether the conditions satisfy the six tests of Circular 11/95. Leaving aside the test of precision, which I address in my conclusions, I am satisfied that the conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable and reasonable in all other respects.

10.4 The only condition disputed by the Council is No 21, which requires dwellings to achieve at least Level 3 of the Code for Sustainable Homes. The authority believes that the condition should reflect the Government's target of securing a progressive improvement in the energy efficiency of new dwellings by requiring all homes to achieve Code Level 4 after 2013 and Levels 5 and 6 after 2016, wherever feasible and viable. It draws support for this suggestion from RSS policy NRM11 and PPS1 Climate Change supplement. The appellants argue that this is unnecessary, insofar as the proposed improvements will be introduced through other legislation with which the appellants will have to comply when it comes into force. If the changes are not made mandatory, the appellants argue that it would impose an additional and unnecessary requirement on the developer.

10.5 GAL proposes three additional conditions.[220] The first proposes that no development should take place until measures to satisfy aerodrome safeguarding criteria have been agreed and implemented. The Council and the appellants argue that because this matter is covered by other legislation, the condition is unnecessary.

10.6 The other two GAL conditions seek to ensure that, by means of a statutory notice and information pack, prospective occupiers of buildings on the appeal site would be made aware of the potential for a second wide-spaced mixed mode runway at Gatwick airport and the implications this would have for noise across the site. The Council opposes these conditions on the basis that they are unnecessary, in that if planning permission is granted, that decision is taken in the light of the noise evidence; moreover, putting people on notice would not remove any harm arising from aircraft noise. The appellants and the Council contend that planning permission could not be refused if the

[220] R/GAL/1A, Appendix 4 pages 3-4

conditions were not imposed, and submit that there is no jurisdictional basis for creating a statutory notice.

CONCLUSIONS

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

INTRODUCTION

11.1 In the period leading up to the first inquiry into this appeal, and as a result of the findings of Inspector Phillipson in his report, a range of matters previously at issue between the appellants and the Council have been resolved. Matters such as the adequacy of the environmental information, the traffic impacts of the proposal, and the nature of highway improvements and other infrastructure provision, were broadly found to be acceptable by the then Secretary of State and did not feature in the subsequent High Court challenge to her decision. Consequently it has not been necessary to address them in any detail at this inquiry. ***[1.6, 5.16]***

11.2 Nevertheless this decision has to be made afresh and I have considered all the evidence, including (where appropriate) that submitted to the previous inquiry, in reaching my own conclusions. Suffice it to say that, insofar as the matters not addressed below are concerned, I find no basis for coming to a different conclusion to that reached by my colleague in his 2007 report. Unless indicated otherwise in these conclusions, I also adopt his reasoning in the 2007 report on these other matters.

11.3 The matters about which the Secretary of State particularly wished to be informed are set out in Chapter 1 of this report; they focus on whether there is compliance with the development plan and various strands of Government policy. I return to these later. In the meantime, because the principal areas of dispute in this appeal cut across many of these matters, it is beneficial to define the main considerations on which the decision will be based as follows:

(a) Whether the proposed development is compatible with a second runway at Gatwick airport, having particular regard to:

(i) the effect of noise from a wide-spaced second runway at Gatwick on the residents of the North East Sector and on users of the primary school;

(ii) the extent to which the development of the North East Sector would prejudice a second runway at Gatwick.

(b) Whether the proposed development is required at this time to meet the housing needs of Crawley and/or the Gatwick sub-region.

A third main consideration, albeit not one that is disputed by the parties, is whether the measures necessary to mitigate the demands that the proposed development would make on local infrastructure could properly be secured by planning conditions.

COMPATIBILITY OF NORTH EAST SECTOR AND A SECOND RUNWAY AT GATWICK

11.4 The evidence to the inquiry explored the complex inter-relationship between the effects of noise from a potential second, wide-spaced runway at Gatwick airport on the proposed development, and the implications of a developed

North East Sector for the configuration, operation and capacity of this second runway. For the purposes of this assessment, the following assumptions have been made:

(i) because of the agreement preventing the construction of a second runway at Gatwick before 2019, the development proposed in this application would be completed before a second runway would be operational; ***[7.12, 8.13]***

(ii) no account is taken of any development on land identified as part of the North East Sector in the Crawley Borough Core Strategy which lies outside the appeal site. Although policies NES1 and NES2 identify sufficient land to accommodate up to 2,700 dwellings at the North East Sector, any proposals to develop land not forming part of the current proposal would be subject to separate planning applications and decisions; ***[4.7]***

(iii) noise disturbance from other sources – road traffic noise from the M23 motorway and Crawley Avenue, noise from trains on the railway which forms the western boundary of the site, and noise from industrial activity across the railway – could be satisfactorily mitigated by a combination of design and planning conditions such that, aircraft noise considerations apart, an acceptable noise environment on the appeal site would result; ***[5.3]***

(iv) in terms of aircraft noise, the operation of the existing runway at Gatwick, whatever the number of aircraft movements, would not create an unacceptable noise environment on the appeal site; ***[5.4]***

(v) unless otherwise stated, the analysis is based on the construction of a wide-spaced second runway 1,035m to the south of the existing runway, as proposed in the ATWP and shown in the Gatwick Airport Interim Master Plan.

Airports policy

11.5 The Government's first priority in the South East is to make best possible use of the existing runways. To cater for the long-term pressure on capacity, the ATWP supports two new runways in the South East by 2030, a second runway at Stansted followed by a third runway at Heathrow. Development at Heathrow is subject to stringent environmental limits being met; the ATWP proposed a programme of work to find solutions to the key environmental issues at Heathrow. In case the conditions attached to the third Heathrow runway cannot be met, and because there is a strong case on its merits, the ATWP proposes that land should be safeguarded at Gatwick for a wide-spaced second runway after 2019. ***[6.28-30, 7.12, 8.12-13]***

11.6 In January 2009 the Government decided that the environmental conditions for a third runway at Heathrow could be met, thereby removing a major obstacle to the implementation of the ATWP strategy. However, there is no change to the requirement to safeguard land for a second runway at Gatwick. ***[6.34, 7.16-17, 8.21]***

Effect of noise from a second runway on North East Sector

Technical and operational factors

11.7 The Government bases its assessments of aircraft noise on 'average mode' contours which are derived by averaging the noise created by a series of aircraft noise events over an 18 hour daytime period. The average mode contour forecasts prepared in 2003 by the Civil Aviation Authority (ERCD 0308) were used by all parties at this inquiry in their consideration of aircraft noise at 2030. In addition, in 2009 the appellants commissioned ERCD to prepare revised contours for Gatwick; these show a slight reduction in noise levels across the site, though the difference is not significant. ***[5.7, 6.8]***

11.8 Despite concerns about the confidence that can be placed in the ERCD 0308 forecasts given the large number of assumptions involved in their preparation, they remain the best published estimates available. The appellants' 2009 contours, which are accepted as a sensitivity test, lend weight to the view in the Gatwick Airport Interim Master Plan that the 2003 forecasts represent a worst case scenario. Consequently I consider that the ERCD 0308 contours can be regarded as robust. ***[5.7]***

11.9 To maximise the potential number of aircraft movements from a wide-spaced twin-runway Gatwick airport, each runway would need to operate independently in mixed mode – that is, with aircraft taking off and landing on each runway (as currently occurs on the existing single runway). The ATWP does not specifically require this (or any other) mode of operation to be safeguarded. However, it appears that the forecast maximum capacity figure of 83 mppa is taken from earlier studies which arrive at this figure on the basis of mixed mode operation. ***[7.13]***

11.10 For locations very close to an airport, the noise from aircraft is greater on take-off than on landing. At Gatwick, aircraft depart in a westerly direction for 73% of the time on average, the other 27% being in an easterly direction. The average mode noise contours reflect this split. In practice, however, aircraft will frequently take off in the same direction throughout a day, or often for a succession of days, as a result of the wind coming from a broadly consistent direction. Because the application site lies to the south-east of the airport, it would experience the higher noise levels from a second runway at Gatwick when departures are to the east, ie for 27% of the time. ***[6.9]***

Policy considerations

11.11 The appellants argue that a second runway at Gatwick is beyond the scope of the noise control regime of PPG24 because that only relates to land which 'is, or is likely to become' subject to high levels of noise. A similar contention is made in relation to RSS policy NRM10, which refers to 'planned' new sources of noise. Because the two new runways required in the South East by 2030 are proposed at Stansted and Heathrow, it is argued that there is no policy support for a second runway at Gatwick, particularly now that the Government has confirmed that the environmental conditions necessary to allow the Heathrow scheme to proceed can be met. In such circumstances, the appellants submit that the alternative option at Gatwick falls away. ***[6.76]***

11.12 To my mind, the fact that a second runway at Gatwick is only a contingency or reserve option at this stage does not mean that PPG24 and NRM10 should

not be engaged. A second runway still features in a range of up-to-date plans, not only the national airports strategy but also the RSS and the Core Strategy, which both seek to safeguard the land that would be required. Therefore it is clearly not an 'unplanned' development. Furthermore, until (at the earliest) additional runways at both Stansted and Heathrow have been granted planning permission, there can be no certainty that the Gatwick option will not be needed. In my view it would be contrary to the proper planning of the North East Sector to ignore such a potentially critical consideration as a new runway on the basis of an unduly narrow interpretation of the wording, rather than the objective, of policy. Instead, I consider that the likelihood of the planned new runway being realised goes to the weight that should be attached to the assessment made against the policies, rather than to the applicability of the policies themselves. ***[7.32, 8.13]***

11.13 There was much debate about the applicability of CBLP policy GD17. This Borough-wide noise policy is based on the advice in PPG24 and broadly seeks to apply the noise exposure categories (NECs) of that advice to residential and other noise sensitive development. However, it goes significantly beyond the requirements of PPG24 by stating that major noise sensitive development in areas subject to aircraft noise exceeding 60 dB(A) will not be permitted, notwithstanding the potential for noise insulation of buildings, unless there are exceptionally compelling reasons. ***[4.9]***

11.14 At the last inquiry the Inspector determined that policy GD17 should be discounted because it was in conflict with the later WSSP policy NE19. This sought to restrict noise sensitive uses to the noisiest 66 dB(A) contour around Gatwick airport and to ensure sound insulation for development in the 60-66 dB(A) contour range (ie it omitted the 'exceptionally compelling reasons' test - or any other test - for major development). The Secretary of State endorsed the Inspector's conclusion. Following publication of the South East Plan, the Structure Plan is no longer extant. However, policy GD17 is one of the CBLP policies saved by a direction of the Secretary of State in September 2007 until replaced by a policy in a DPD. Consequently, policy GD17 remains part of the development plan whereas policy NE19 does not. ***[6.73, 7.52]***

11.15 In similar fashion to PPG24 and RSS policy NRM10, the appellants maintain that policy GD17 does not apply because it relates to "areas subject to aircraft noise exceeding 60 dB(A)" (present tense). On this occasion the argument has greater force because the policy does not encompass, as it could have done, noise from possible or planned airport development. In addition, the Council's contention that GD17 should apply to the appeal proposal comes up against a tension between CBLP policies GD17 and H3A. The latter allocated the North East Sector for a new neighbourhood subject to the prior publication of the then anticipated national airports policy, and compatibility with the combined effects of that airports policy and PPG24 or its replacement. Thus, read as a whole, CBLP seemed to be saying that the provisions of PPG24 (which do not include the 'exceptionally compelling reasons' test) should apply to the development of the North East Sector insofar as it is affected by the proposals for Gatwick in the national airports policy, whereas the more stringent test of GD17 should apply to major noise sensitive development in areas where aircraft noise exceeds 60 dB(A) at the time of the decision. ***[6.70]***

11.16 For these reasons, and despite the fact that CBLP policy H3A has not been saved, I think there is considerable force to the appellants' argument that policy GD17 does not apply to the appeal proposal. But if this conclusion is wrong, and if it is decided that GD17 should apply to areas where noise is expected to exceed 60 dB(A) in the future, the problem remains that the specific policy in CBLP that set out the way that airport noise was to be treated in relation to the North East Sector (policy H3A) differed from the general, Borough-wide approach to aircraft noise in policy GD17. Because a specific provision for a particular development proposal would normally take precedence over a Borough-wide policy, it seems to me that the weight to be attached to the 'exceptionally compelling reasons' test in policy GD17 must be reduced.

11.17 It is also appropriate to reflect upon the other arguments advanced at the inquiry about the weight to be attached to policy GD17. Dealing firstly with the relationship with RSS policy NRM10, it is clearly appropriate for a local policy to be more specific than a regional policy. In principle, therefore, the fact that GD17 sets a particular benchmark in relation to aircraft noise could be taken as a local interpretation of the strategic policy that seeks to locate noise sensitive development away from significant noise sources. However, paragraph 9.55 of the South East Plan indicates that, in relation to planned new residential development, noise factors must be taken into account "in accordance with the guidance in PPG24". ***[6.72, 7.54]***

11.18 As previously indicated, there is a significant difference between the advice in paragraph 8 of PPG24 Annex 1, which says that "60 dB(A) should be regarded as a desirable upper limit for major new noise sensitive development", and the provision in policy GD17 which requires 'exceptionally compelling reasons' if major noise sensitive development is to be permitted in areas above 60 dB(A). To my mind it is at least debatable whether the more stringent GD17 test can reasonably be regarded as a local interpretation of PPG24. But even if GD17 is so regarded, the text of the RSS makes clear that the noise factors to be taken into account should accord with the advice in PPG24, not with a local interpretation of that advice. Therefore, in accordance with the principle that the provisions of the later plan should prevail, applying the RSS implies that greater weight should be attached to PPG24 than to policy GD17. ***[6.72, 7.58-9, 8.29]***

11.19 The appellants' contend that giving weight to policy GD17 would be contrary to Wilkie J's decision to remove from the Core Strategy the objective that development on the North East Sector should avoid "*existing or possible future aircraft noise contours of 60 dB(A) or more"*. However, and irrespective of the argument about whether the judgement was made for procedural and/or substantive reasons, I do not believe that it has any real bearing on the application of policy GD17. This is because the objective and the policy differ. The former was even more exacting than GD17 because it was a blanket restriction that did not include the 'exceptionally compelling reasons' test. Thus, if there was any substantive criticism by Wilkie J of the Core Strategy objective, that cannot be directly applied to policy GD17 because it cannot be said with certainty that the same criticism would have been made of a policy which includes an exceptions test. ***[6.74, 7.55-6]***

11.20 The point about the way in which policy GD17 has remained part of the development plan after effectively being trumped by WSSP policy NE19 for a

five year period up to the publication of the South East Plan is, I accept, a somewhat strange consequence of the development plan system. But that is not sufficient reason to not give it weight. More pertinent are two matters arising from the direction which saved policy GD17. The first is the inclusion of the caveat that saved policies would not necessarily be endorsed if presented as new policy. The second is the indication that the weight to be attached to a saved policy depends on the extent to which circumstances have changed since the policy was formulated. In this case the important changes are the emergence of the need to safeguard a second runway at Gatwick and the manner in which development plan policies, formerly WSSP NE19 and now RSS NRM10, have addressed the noise implications of such a development. ***[6.22, 6.73]***

11.21 Taking all these factors into account, I consider that there is a good case for determining that policy GD17 does not apply to the appeal proposal. If that is not the right approach, then the changes in circumstance that have occurred since the policy was formulated point to a significant lessening of the weight that should be given to policy GD17.

Effect on residential properties of noise from mixed mode operation

11.22 The ERCD 0308 contours for a second runway in mixed mode operation show that all of the proposed housing development would be on land at or below the 66 dB(A) noise contour. It is estimated that about 1,300 people would live in the 63-66 dB(A) noise band, about 1,400 in the 60-63 dB(A) band, about 1,600 in the 57-60 dB(A) band, and 200 or so would experience a noise level below 57 dB(A). In recognition of the fact that there would be significant aircraft noise across the appeal site, the application proposes that all dwellings would be constructed with acoustic insulation so as to achieve the 'good' internal standard for living rooms and bedrooms of BS 8233:1999, albeit in some instances only with windows closed. It also proposes a layout and design which maximises the number of habitable rooms located on the quieter southern facades; as well as having internal benefits, the buildings' structure would provide some shielding from aircraft noise in external areas closest to them. ***[6.10, 8.36]***

11.23 Dealing firstly with the development plan policy that is unquestionably material to the noise issue, RSS policy NRM10 proposes a number of broad measures to address and reduce noise pollution. The first seeks to locate new residential and other sensitive development away from existing or planned new sources of significant noise, while the third encourages high levels of sound-proofing and screening as part of sustainable design and construction. Whilst the proposal clearly complies with the latter measure, the proximity of the appeal site to the proposed second runway means that, on the face of it, there is conflict with the locational principle. However, no specific guidance on acceptable levels of noise is given; instead the text refers to the guidance in PPG24. ***[6.60-1, 7.50, 8.29]***

11.24 Applying the NECs from Annex 1 of PPG24,[221] over 95% of dwellings would fall within NEC B, which for air traffic noise covers the 57-66 dB(A) range. NEC B advises that noise should be taken into account when determining planning applications and, where appropriate, conditions should be imposed to ensure adequate protection against noise. The remainder of the site would fall within NEC A (below 57 dB(A)), wherein noise need not be considered a determining factor, though noise at the higher end of the category should not be regarded as desirable. No dwellings would be within NEC C (66-72 dB(A)), where planning permission should not normally be granted, nor NEC D (above 72 dB(A)), where it should be refused.

11.25 Detailed guidance on noise from aircraft is given in PPG24 Annex 3. Paragraph 8 cross-refers to the NECs in Annex 1, but then states that 60 dB(A) should be regarded as a desirable upper limit for major new noise-sensitive development. A scheme for a neighbourhood of 1,900 dwellings and associated facilities is unquestionably a "major" noise sensitive development. It is clear that the advice in Annex 1 and Annex 3 should be read together, though opinions differed on how it should be rationalised. To my mind it points to a distinction for major development between what is desirable and what is acceptable. Although those people (some 60% of the total population) exposed to noise levels above 60 dB(A) would experience greater noise than is desirable, because their dwellings would be within NEC B and would achieve a 'good' internal residential environment as a result of acoustic insulation, the Annex 3 provision is not necessarily sufficient reason to conclude that the proposal is unacceptable on noise grounds. Thus, the exposure of a sizeable population to an undesirable level of noise is an important material consideration in this case but need not be a decisive one. ***[6.78, 7.41-2]***

11.26 PPG24 also explains that the boundary between NEC B and NEC A aligns with research that revealed 57 dB(A) to be the level which marks the onset of significant community annoyance in respect of aircraft noise. The ATWP uses 57 dB(A) to assess the impact of future airport growth on the surrounding populations, the broad aim being not to increase and, where possible, to reduce the number of people exposed to aircraft noise above this level. However, the ATWP also identifies two benchmarks which differ from those in PPG24. 69 dB(A) or more is considered to be a 'high' level of noise, with the expectation that airport operators should offer to purchase properties: this presumably equates to an unacceptable noise level. 63 dB(A) or more is regarded as a 'medium to high' level of noise, where airport operators are expected to offer acoustic insulation: this presumably equates to a level that, whilst not desirable, may be acceptable provided insulation is installed. ***[6.4, 6.20, 7.23-4]***

11.27 The Council suggests a lower benchmark still by reference to the January 2009 Heathrow Decisions document, which asks the airport operator to

[221] Although the NECs are designed to apply to the assessment of new dwellings close to existing sources of noise, there is no logical reason why they should not also be applied to potential new sources of noise where, as is the case here, future noise levels can be predicted. Moreover, the fact that the dwellings would be constructed with noise insulation overcomes the reasoning why this 'reverse situation' (as described in paragraph 4 of PPG24 Annex 1) would not normally be appropriate. This approach was endorsed by the Inspector and the Secretary of State at the first inquiry.

consider extending its noise insulation to households in the new 57 dB(A) contour who, as a result of the third runway, would experience an increase of 3 dB(A) or more. However, the language is very different to that in the ATWP – the former is a request for consideration to be given, whereas the references to 63 dB(A) and 69 dB(A) in the latter are an expectation. Further, the Heathrow Decisions document relates only to that airport. It is pertinent that in the more recent (March 2009) DEFRA national guidance to airport operators on the production of noise action plans, the sole noise level identified is the ATWP 69 dB(A) figure (and the expectation of an offer to purchase above this level). ***[6.23]***

11.28 What all this means is not entirely clear. Perhaps two relevant messages emerge that might be inferred as the 'direction of travel' of Government policy. The first is a reinforcement of the view that exposure to aircraft noise above 57 dB(A) is undesirable and, where possible, should be reduced and/or limited. The second is that, for aircraft noise, if there are to be changes to PPG24, it seems likely that the boundaries between NECs would be lowered. In relation to the appeal proposal, the main ramification stems from the ATWP's approach to dwellings above 63 dB(A), where the case for noise insulation is strengthened. But because all 1,900 dwellings would be insulated, there is no reason to suppose that the residents exposed to noise above 63 dB(A) (29% of the total) would endure an unacceptable noise environment even if the ATWP thresholds were embodied in any review of noise policy. Nevertheless, in the absence of clarity about the future, decisions must be based on current policy. ***[6.23, 7.31]***

11.29 There are concerns about higher noise levels within dwellings when the windows are open, and the fact that residents would experience higher noise levels when in their gardens or moving about the neighbourhood. Neither PPG24 nor any other relevant guidance identifies such matters as separate issues, however, so it is reasonable to assume that they have been factored into the overall consideration of noise levels and NEC bands. Indeed, PPG24 specifically countenances sound insulation as mitigation for external noise, and though Annex 6 refers to the need to keep windows closed, such insulation does not cease to count as adequate mitigation if an occupier chooses to open a window. Had different standards of assessment been thought necessary for rooms with open windows, this would have been made clear. The same argument applies to gardens and other external areas, including open spaces; I do not accept the Council's notion that the Annex 3 paragraph 8 approach to 'major' noise sensitive development conveys an inference that the external environment should be treated differently. ***[6.11, 7.35-6, 8.32]***

11.30 As to night-time noise, because of the current restrictions on night flights from Gatwick and the ample capacity of the existing runway to cater for any likely increase in night operations, there is every reason to believe that all flights would continue to operate from the northern runway. Moreover, the Master Plan does not contain any night-time noise contours for a second runway, suggesting that no night-time use of this runway is contemplated. ***[6.25, 8.44]***

11.31 It is important to bear in mind both the nature of, and an individual's tolerance towards, aircraft noise. The averaged sound levels mask the periodicity of aircraft noise, which is characterised by a succession of short

(15-25 second) bursts of very high noise followed by intervals of relative quiet. As to tolerance, this varies considerably: some people are prepared to put up with levels of noise that others would find highly disturbing. Based on the results of surveys undertaken in the 1980s, the Council estimates that about 800 residents of the appeal development would be 'highly annoyed' by aircraft noise from a second runway, almost half of whom would be within the 63-66 dB(A) contour band. However, it is not known whether the original research took into account the benefits of sound insulation. Consequently, and notwithstanding evidence which suggests that people are now generally more annoyed by aircraft noise than they were in the 1980s, the applicability of these figures to the appeal proposal is questionable. ***[6.20, 7.24]***

11.32 Because aircraft noise from the existing runway is clearly audible on the site, it is reasonable to assume that those persons who were least tolerant of noise would not wish to live in the North East Sector even if they had no knowledge of the possibility of a second runway. In practice it is likely that a significant proportion of potential residents would also be aware of the possibility of a second runway; even though its impact may not be fully appreciated, that knowledge could filter out yet more people with concerns about noise. Nevertheless, the effect that this awareness would have on the numbers who would be 'highly annoyed' by aircraft noise is not known. ***[6.7]***

11.33 The final matter is the consideration of other residential developments recently approved in close proximity to airports, including at Crawley a scheme for 176 units at Apple Tree Farm, Ifield. It is appropriate to draw a distinction in scale between these schemes, which are for no more than 400 houses, and the development of a major new neighbourhood. Indeed, in relation to Apple Tree Farm that distinction was highlighted by the previous Inspector and accepted by the Secretary of State. But it is also pertinent that some of the schemes cited by the appellants, including Apple Tree Farm, involve some development in the 66-69 dB(A) noise contour range, thereby falling into NEC C where PPG 24 advises that planning permission should not normally be granted. Thus Crawley BC and some other planning authorities are not averse to approving smaller (though by no means small) residential developments partly in areas subject to appreciably higher noise levels than would exist at the North East Sector. ***[6.16, 7.39]***

11.34 Overall, virtually all the dwellings on the appeal site would, as a result of a second runway used in mixed mode, be subject to noise above the level that is regarded as the onset of significant community annoyance, and 60% of the dwellings would lie within an area where noise is considered undesirable for large numbers of people. However, as all the dwellings would be built with sound insulation, the significant adverse noise effects would be mainly experienced in the gardens and the outdoor environment of the North East Sector, including the sizeable areas of public open space. Moreover such effects would be experienced, on average, for 27% of the time. At other times, and inside the dwellings, noise from aircraft would not reach levels that would cause significant concern when assessed against current guidance.

Effect on primary school of noise from mixed mode operation

11.35 The primary school would be designed and built with noise insulation and ventilation so as to provide an internal teaching environment which would fully comply with the mandatory requirements of DfES Building Bulletin 93,

and would thereby satisfy the Building Regulations. As with the dwellings, the Council is concerned that some windows would have to stay shut (notably in north facing classrooms) to maintain acceptable internal noise levels. But that does not signify non-compliance with the regulations, and in any event there is considerable scope for the building to be designed to minimise north facing classrooms. ***[6.57, 7.43-6]***

11.36 BB93 also sets a 'good practice' standard of 60 $dBL_{aeq,\ 30min}$ as an upper limit for providing good acoustic conditions outside school buildings. It further states that noise in playgrounds, playing fields and other outdoor areas should not exceed 55 $dBL_{aeq,\ 30min}$, and that there should be one area suitable for outdoor teaching activities where noise levels are below 50 $dBL_{aeq,\ 30min}$. In the case of airports, BB93 advises that noise measurements should reflect worst case runway usage. In mixed mode operation of the second runway, the worst case external noise level at the school would be 68 $dBL_{aeq,\ 30min}$, substantially above the desired levels. Despite this being contrary to best practice, it is pertinent that the education authority, West Sussex County Council, has not objected to the potential noise impact on the school. ***[7.44-5]***

11.37 The appellants contend that it would be possible to meet the desired level for the external teaching area by means of a glazed canopy. There was limited and conflicting evidence about whether 50 $dBL_{aeq,\ 30min}$ could be secured by such means, though I see no reason to doubt that an appreciable reduction would be achieved. The appellants also argue that external noise levels would be comparable to those found at three other new schools in Crawley. But the highest noise levels there are found close to main roads (the source of the noise) and then diminish appreciably with distance into the school sites. In the appeal case the higher than desirable noise levels would be experienced more uniformly across the outdoor play facilities (albeit for only 27% of the time on average), so the circumstances are different. ***[6.58, 7.46]***

11.38 In summary, whilst there would be a satisfactory teaching environment inside the school building, the playgrounds and playing fields would, at times, be subject to aircraft noise substantially above the level regarded as good practice. It would not be possible to mitigate this noise away from the school building, though it should be possible to design the building to incorporate a small canopied outdoor teaching area which, if it would not meet the desirable standard, would exceed it by a relatively small amount.

Segregated (and other) modes of operation of a second runway

11.39 A segregated mode of operation, that is all flights taking off from one runway and all landing on the other, is often used at two-runway airports as a way of minimising the overall exposure of the surrounding communities to noise. The Gatwick Airport Interim Master Plan acknowledges that segregated mode is one of the factors that would need to be explored when evaluating future runway options. At the inquiry the effects on the North East Sector of operating in segregated mode were examined. Noise contours were produced for all departures from the existing runway and landings on the new southern runway (segregated mode A), and for all landings on the existing runway and departures from the southern runway (segregated mode B). ***[8.38]***

11.40 In broad terms the effect of segregated mode is to displace the noise levels northwards or southwards, compared to mixed mode, as a consequence of

departures being appreciably noisier than landings. However because the noise contours for each mode have different shapes and spacing, the variations do not apply evenly across the site. For landings on the southern runway (mode A), average (16 hour L_{eq}) noise levels would mostly be reduced by values of up to 6 dB(A); for departures from the southern runway, noise levels would mostly be increased by values of up to 3 dB(A). In one location in a corner of the site close to the M23 motorway, values remain roughly the same whatever the mode of operation.[222] ***[8.38]***

11.41 Detailed forecasts of population numbers within the noise contour bands produced for segregated mode operations have not been calculated for the proposed development (though ERCD has supplied them for the existing population). Nevertheless, from a careful visual inspection of the noise contour maps it appears that with all landings on the southern runway (mode A), approximately half the population would be outside the 57 dB(A) contour, roughly 80-85% would live below the 60 dB(A) contour and a very small proportion above 63 dB(A). By contrast, with all departures from the southern runway (mode B), almost all residents would live above the 60 dB(A) contour, and a small but not insignificant number towards the north-western part of the site would experience noise above the 66 dB(A) level, taking this area into NEC band C. Thus there would be a significant benefit to the North East Sector from the runways being operated in segregated mode A, but an equally significant disbenefit from segregated mode B operations.

11.42 In practice it is highly unlikely that the airport would operate in segregated mode B. This is because the greatest concentration of population around the airport lies to its south – indeed, parts of the existing neighbourhoods on the north-west edge of Crawley (Langley Green and Ifield) would experience similar noise levels from the second runway as the appeal site. The ERCD figures demonstrate that, even without the North East Sector population, over 25% more people would be affected by noise above 57 dB(A) with all departures from the southern runway as compared to mixed mode operation.[223] Because mixed mode operation gives airport operators the greatest flexibility and capacity (see later), there would be no overall benefit from operating in segregated mode B.

11.43 Therefore if the two runways were to be operated in segregated mode, that would almost certainly be mode A. This would result in appreciably less noise across virtually all the appeal site than mixed mode operation. The half of the population living below the 57 dB(A) contour, thereby within NEC A, would be in an environment where noise ceases to be a significant concern in policy terms. All but a few of the remaining 50% would live within the 57-60 and 60-63 dB(A) bands, above the level that marks the onset of significant community annoyance and, for a relatively small proportion, above the 60dB(A) that PPG24 regards as not desirable for major development, but below the level that the ATWP requires operators to offer noise insulation.

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[222] This conclusion is based on the information from Mr Charles provided in R/TWB2/3B paragraphs 5.1-2; it is taken directly from the ERCD noise contour maps submitted and, for that reason, I prefer it over the information provided by Mr Turner in R/CD175, Table 3.
[223] Taken from R/TWB2/2B Appendix A

11.44 A further consequence of segregated mode A is that the current mixed mode operations on the northern runway would be replaced by departures only, which are noisier. This would increase the noise levels experienced by the mainly smaller, rural settlements that already experience noise from the existing runway, including Charlwood to the north-west and Burstow to the east. However, it appears from the ERCD forecasts that most of these increases would be relatively small (under 3 dB(A)). Moreover, the numbers of people so affected would be substantially fewer than would be the case south of the airport.

11.45 As far as the primary school is concerned, the Council contends that the requirement in BB93 to reflect worst case runway usage means that, for segregated operations, the assessment should have regard to segregated mode B. This would increase the worst case noise level to 71 $dBL_{aeq, 30min}$. But given my conclusion that segregated mode B is highly unlikely to occur, I do not believe that it is appropriate to treat it as the worst case scenario. That remains mixed mode operation, the consequences of which have already been addressed. ***[7.45]***

11.46 Another option is alternation, a variation of the segregated mode in which each runway operates for half a day with departures only and the other half with arrivals only. This technique is used at some airports to better equalise the distribution of noise to surrounding communities and to provide some (often predictable) relief from the highest noise levels for one half of every day. Whether or not the benefits of alternation over mixed mode operation would outweigh the disbenefits is a detailed matter that would require careful investigation at the time that the second runway at Gatwick was proposed. In any event it matters little for the purposes of this analysis, for the overall (16 hour) noise levels attributed to alternation are the same as for mixed mode operation.

Extent to which North East Sector would prejudice a second runway

Safeguarding

11.47 I have already dealt with the appellants' contention that, following the January 2009 decision that the environmental conditions at Heathrow can be met, there is no longer any need to safeguard the option of a second runway at Gatwick. That is clearly incorrect, for not only has the airports policy towards Gatwick not changed, but the South East Plan (issued after the Heathrow decision) includes in policy T9 the requirement that land should continue to be safeguarded at Gatwick for a possible new runway. ***[6.63]***

11.48 The Council's Core Strategy identifies and seeks to protect from incompatible development the land physically required for the construction of a second wide-spaced runway and associated facilities, as shown on the Gatwick Interim Master Plan. As the revised application site lies wholly outside the safeguarded area drawn on the Proposals Map, the appeal proposal does not conflict with Core Strategy policy G2. A further aspect of safeguarding is the control necessary to ensure the safety of aircraft in a wide area around the airport, as governed by the Safeguarding of Aerodromes regulations. These exercise control over matters such as building heights, water bodies and lighting; subject to satisfactory details at reserved matters stage, there is no concern about compliance with these regulations. ***[6.65, 7.30]***

11.49 The final aspect of safeguarding, and the one pertinent to this case, is the potential impact on the form, configuration and operation of a second runway at Gatwick as a result of the prior implementation of the appeal proposal. The underlying premise is that the consequences of aircraft noise on a sizeable area of additional residential development on the appeal site would cause the Government not to give consent to mixed mode operation of a second wide-spaced runway, but to restrict its operation to segregated mode or, at worst, only to approve a closer-spaced second runway. GAL submits that because mixed mode operation enables the airport to operate at maximum capacity, any other mode of operation or a lesser distance between runways would significantly compromise the capacity of the expanded airport.

Implications for airport capacity

11.50 The maximum capacity of Gatwick with two wide-spaced runways operating in mixed mode is estimated in the ATWP to be 83 mppa. This is rounded down to a 'ball park' indicator of 80 mppa in GAL's Interim Master Plan. These figures are not targets or detailed capacity assessments, but estimates based on common assumptions used to assess the relative impacts of various options in the formulation of the ATWP. ***[8.48]***

11.51 The appellants sought to demonstrate that a capacity of around 80 mppa could be achieved in segregated mode operation. I share GAL's view that this exercise made a number of assumptions which are either unlikely to be achieved in practice for sustained periods, or if they could be realised, would also be achievable in mixed mode operation such that the assumed capacity of 80/83 mppa would increase. In particular, the assumption that the peak hourly runway capacity is likely to be used for much of the day and throughout much of the year fails to reflect the reality of variations in daily and seasonal demand. For this and other reasons I believe that the reduction to be applied to the theoretical maximum runway capacity is likely to be greater than the 8% illustrated by the appellants, though whether it would be as high as the 20% reduction at the upper end of GAL's range is questionable given the scope that would exist for improving throughput if demand warranted it. Thus, even if it is possible to achieve a capacity of close to 80 mppa in segregated mode, that would still be less than a higher capacity (perhaps in the order of 15% higher) in mixed mode. ***[6.54-5, 8.50-55]***

11.52 The ATWP estimates that the capacity of the airport with a close parallel second runway would be about 62 mppa, some 20 mppa less than with the wide-spaced runway operating in mixed mode. Although GAL expressed concern that a close-spaced runway could damage the business case for building a second runway, there was no evidence to support this contention. Nevertheless it is reasonable to assume that in the event that Gatwick were to come forward as the location for one of the South East's two runways by 2030, the arguments on passenger demand and economic grounds would carry ever increasing weight as successive options which reduced the capacity below the 80 mppa forecast were contemplated. And with Gatwick only likely to be required if one of the preferred runways in the South East cannot be delivered, it must be assumed that the resultant passenger demand would be very high, thereby reducing the prospects of the close-spaced runway option being chosen. ***[6.55, 8.34]***

Numbers affected by aircraft noise

11.53 Based on the ERCD 0308 forecasts,[224] 13,200 people would be subject to noise above 57 dB(A) in 2030 as a result of the mixed mode operation of a second wide-spaced runway at Gatwick. This is an increase of 7,300 people compared with the number that would be affected by the maximum use of the existing runway. With the addition of 4,300 people in the North East Sector, the total would rise to 17,500. Consequently the number of people affected by noise from a second runway at a level which marks the onset of significant community annoyance would rise by about one third as a result of the development. The corresponding number affected by noise at the higher level of 63 dB(A) would rise from 1,800 to 3,100. ***[6.43]***

11.54 The population brought within the 57 dB(A) contour as a result of a new runway at Gatwick would be much smaller than for similar schemes at some other airports around the country, though locations outside the South East have little relevance to what happens at Gatwick. A comparison with Heathrow is more germane, however, because the option at Gatwick is primarily being kept open in case the third runway at Heathrow does not proceed. I accept that the balance between benefits and impacts is particular to each airport – indeed, the much stronger economic case for Heathrow is the reason it was preferred over Gatwick in the ATWP, despite the fact that an additional 54,000 people there would be exposed to noise above 57 dB(A). Nevertheless, if for some reason Heathrow does not proceed, the fact that at Gatwick the comparable figure would be an additional 11,600, including those living at the North East Sector, is not without some relevance. ***[6.44]***

11.55 Furthermore, the increase of 11,600 at Gatwick is less than was assumed in the ATWP, where an increase (without the North East Sector) of about 15,000 people within the 57 dB(A) contour was forecast. The numbers affected by noise above 63 dB(A) would also be lower with the North East Sector than was assumed in the ATWP. Thus there is some merit in the argument that when formulating its current airports policy, the Government had accepted a much greater noise impact on the populations of the South East, whether around Heathrow or around the reserve option of Gatwick, than is now forecast for Gatwick even with the North East Sector development. It is certainly true that, whilst the economic case for Gatwick is much weaker than for Heathrow, the number of people experiencing high levels of noise from an additional runway at Gatwick would also be much smaller. ***[6.43]***

11.56 It has already been established that if the second runway at Gatwick was to operate in segregated mode A (all departures from the existing runway), noise levels across the North East Sector would fall appreciably. There is little doubt that, during consideration of detailed plans for a second runway, the residents of the North East Sector would add to the voices calling for that runway to be operated in segregated mode A because of the benefits it would bring to them. Furthermore, it is reasonable to suppose that these residents would be strong advocates of a new runway being built close to the existing

[224] As with the analysis of noise on the North East Sector, I have used these figures instead of the appellants' 2009 ERCD figures because they appear to be robust.

runway given that an even greater reduction in noise would ensue.[225] ***[6.50, 8.42]***

11.57 Of course, the effect of displacing the higher levels of aircraft noise northwards is to increase the exposure to noise of communities in other locations around the airport. There was limited evidence before this inquiry about the extent of those increases or the number of people thus affected; all that can be said with confidence is that the population is much more dispersed in the areas that would experience the higher noise levels, so significantly fewer people would be affected. Ultimately, a detailed investigation would be required and a delicate balance would have to be sought between the interests of all these different communities. ***[8.39]***

Likelihood of a second runway at Gatwick

11.58 The ATWP proposes two new runways in the South East by 2030. As a result of the Heathrow announcement earlier this year, Government support for these to be provided at Stansted and Heathrow is unequivocal. Clearly the postponement of the public inquiry to consider the planning application for a second runway at Stansted is likely to delay the implementation of that project. Even longer delays could occur if the new owner of Stansted wished to pursue a different option for a second runway, as has been mooted as a possibility. But whatever its form, under current policy a second runway at Stansted would be supported. It is possible that the capacity of Stansted could be less than was envisaged, for the current application proposes a runway operating in segregated mode with a capacity of 68 mppa, some 14 mppa lower than that forecast in the ATWP. On the other hand, the latest (2009) DfT forecasts retain the 82 mppa figure by 2030 used in the ATWP. ***[6.31, 6.38]***

11.59 Work on the detailed planning of a third runway at Heathrow has commenced and, as Heathrow is set to become the sole remaining airport under BAA's control in the London area, it is likely to be promoted forcefully in a newly competitive environment. Although the January 2009 decision has taken the precautionary step of limiting additional capacity to 605,000 ATMs by 2020, there is no good reason – based on the latest ERCD noise predictions - to suppose that the review at that time will not sanction progression to the 2009 forecast capacity of 702,000 ATMs by 2030. Even if the many factors which might delay this project mean that the ultimate capacity of 135 mppa is not achieved by 2030, I think it is reasonable to expect a capacity significantly in excess of the 116 mppa assumed in the ATWP. ***[6.34-6, 7.6]***

11.60 At Gatwick, assuming maximum use of the existing runway, the Interim Master Plan predicts an ultimate capacity of 45 mppa, marginally below the 47 mppa figure used in the latest estimates. The position at Luton is unclear following the withdrawal of the proposal to replace the existing runway. The 2009 forecasts assume a capacity of 17 mppa, some 14 mppa below the figure used in the ATWP which was based on a replacement runway being built. Although based on very limited evidence, the 17 mppa figure is the best estimate available for Luton. ***[6.38, 8.20]***

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[225] Up-to-date figures for the noise implications of a close (or closer) spaced runway were not provided. The ATWP indicates an increase of 3,000 people experiencing noise above 57dBA with a close parallel runway, but this is not directly comparable to the ERCD 0308 figures.

11.61 Taken overall, these figures suggest that the capacity of the South East airports by 2030 may be well below that anticipated in the ATWP. For this reason GAL and the Council contend that, even with the proposed two new runways, there is likely to be pressure for an additional runway at Gatwick to meet the expected demand. Whilst the logic of that argument cannot be denied, it is contrary to the current ATWP policy that only two new runways are proposed in the South East. Despite the recognition that there is a strong case on its merits for a second runway at Gatwick, this option is clearly stated to be an alternative in case one of the two preferred runways does not proceed. There is no indication in the ATWP (as there could have been) that the Gatwick option is also being kept open in case lower than predicted capacity outcomes justify a third new runway in the South East. ***[6.38, 7.6]***

11.62 The appellants point out that the latest DfT forecasts show a demand at Heathrow, Stansted and Luton for 205 mppa by 2030, which is broadly at or below the likely runway capacity even allowing for the pessimistic assumptions made above. Whilst that is so, it should be recognised that these demand forecasts are to some extent constrained by the ability of the airport operators to provide capacity. Nevertheless these figures lend some weight to the appellants' contention that the ATWP policy remains broadly on track. It is true that the situation will be re-assessed in the forthcoming National Policy Statement (NPS) on airports, but as the Government has already announced that this will be based on the ATWP, there is no reason to suppose that fundamental changes are likely. ***[6.38-9, 8.23]***

11.63 GAL submits that the findings of the Competition Commission, notably its recommendation that the Government give consideration to the possibility of a second runway at Gatwick even if Heathrow and Stansted do proceed, will have significant implications for the content of the NPS. No doubt this will be one of the very many considerations on a wide range of matters that will be taken into account in the preparation of the NPS. But, as the Competition Commission acknowledges, it does not seek to challenge the balanced consideration of economic and environmental factors that lead to the formulation of policy. ***[6.40, 8.23-4]***

11.64 In any event, with a draft NPS not expected until 2011, this appeal must be determined having regard to current policy. That policy is contained within the ATWP and subsequent ministerial statements, and retains Gatwick as an alternative in case the preferred options do not materialise. At present a second runway at Gatwick remains a possibility: it is debatable whether it is only a remote possibility, as the appellants suggest.

HOUSING NEEDS OF CRAWLEY AND GATWICK SUB-REGION

Housing policy

11.65 The appeal site comprises the major part of the North East Sector, a discrete area to the north east of Crawley urban area that has long been identified as the location for a new neighbourhood. There is little doubt that, had the possible provision of a second runway at Gatwick airport and the need to safeguard land not arisen, the North East Sector would be allocated for housing in the development plan and would comprise the major element of Crawley's housing land supply. However, as a result of the uncertainty

surrounding the second runway, the approach in the development plan is to identify and safeguard the North East Sector for a new neighbourhood *"if and when this becomes possible without prejudice to the aims of the ATWP."* (Core Strategy key objective and policy NES1). ***[4.7]***

11.66 Core Strategy policy H1 makes provision for 4,040 dwellings in the Borough in the 2001-2016 period. In the absence of 'deliverable' or 'developable' housing (as defined in PPS3) from the North East Sector, this provision comprises 1,457 completions and full planning permissions to 2006, a small sites allowance of 32 dwellings, 250 windfalls (50pa for 5 years), and 2,265 dwellings from strategic housing opportunity sites. Policy H1 acknowledges that this level of provision is insufficient to meet either the West Sussex Structure Plan requirement to 2016 or the more substantial draft South East Plan requirement to 2026, and states that an early review of the LDF will be undertaken. ***[4.6, 7.69]***

11.67 Core Strategy policy H2 lists the strategic housing development opportunities as Haslett Avenue and Stone Court (both under construction), Telford Place/ Haslett Avenue, Lucerne Drive, Ifield Community College, Thomas Bennett, Dorsten Square and Town Centre North. The policy also states: *"The North East Sector is identified as an appropriate site for the development of a new neighbourhood for Crawley. Development here is currently precluded for reasons related to possible expansion of Gatwick. However, if this barrier to development is lifted there will be no policy bar to immediate commencement of the new neighbourhood, once the necessary permissions have been granted."* ***[4.7, 7.69]***

11.68 The recently published South East Plan requires local authorities to allocate land for 36,000 additional dwellings (1,800pa) between 2006 and 2026 in the Gatwick sub-region (policy GAT3). Crawley's contribution to this total is 7,500, an annual average of 375. The policy states that the majority of the development should be in the form of major developments at or adjoining Crawley and the other main towns. The North East Sector is one of six locations previously identified in development plans where development should be brought forward where possible. If these locations cannot be delivered, the text states that local planning authorities should plan for alternative locations and strategies to deliver the scale of development required by policy GAT3. ***[4.4, 7.74]***

11.69 In summary, the North East Sector is not identified in the Core Strategy as a site that is expected to deliver houses by 2016 because of the uncertainty surrounding a second runway at Gatwick. However it is identified as an appropriate site in both the Core Strategy and the RSS, and there is no policy bar to its immediate implementation if the Gatwick preclusion is lifted.

Housing land supply - Crawley

Calculation of five year supply

11.70 The starting point for the five year supply assessment is the RSS requirement of 7,500 dwellings in the 2006-2026 period, or an average of 375pa. Completions in the first two years amounted to 1,147 dwellings, giving a residual requirement at April 2008 (the base date for the assessment) of 6,353 dwellings. The appellants' approach is to apply this residual requirement evenly over the remaining plan period, giving an annual figure of

353 dwellings and a five year requirement of 1,765 dwellings. The Council prefers to deduct the completions from the seven year RSS requirement of 2,625 dwellings, giving a five year requirement from April 2008 to March 2013 of 1,478 dwellings, or about 296 dwellings annually. ***[5.13, 6.88]***

11.71 A recent CLG research study which surveyed local authority practice[226] cites each of these methodologies as an example of best practice. Although the 'Sedgefield' example followed by the Council applies to an RSS annual requirement that varied slightly over the five year period, I do not regard that as sufficient reason to rule out this approach. And while the appellants' approach has the advantage of smoothing out peaks and troughs, it also has the disadvantage of spreading any deficit in the early years over the entire plan period rather than addressing it within five years. Nevertheless, one of the 'Liverpool' best practice examples in the research study does just that. ***[6.88-90, 7.81-2]***

11.72 From the submitted evidence, I can find no compelling reason for concluding that one approach is right and the other is wrong. It might be argued that, in an ideal world, the Sedgefield approach should be used when there is a shortfall, thereby addressing that within five years, whereas the Liverpool approach should be used when there is a surplus so as to smooth out the delivery. But this logic is not followed in the best practice guidance. Consequently, with both methods seemingly endorsed in published advice irrespective of whether there is a surplus or a deficit, there is no clear basis for determining that one approach is to be preferred over the other.

Treatment of backlog

11.73 In the period 2001-2006, there were only 556 net housing completions in Crawley compared with the then Structure Plan requirement of 1,500 dwellings for that period. The Core Strategy aims to make up the backlog of 944 dwellings in the first 10 years or so of the plan's 2001-2016 period, prior to the early review and the search for additional land. The Core Strategy states that, assessed against the more demanding 350 dwellings pa target of the Draft South East Plan, the backlog would be eliminated and the housing trajectory would go into surplus in 2009/10 before declining into deficit. ***[6.92, 7.77]***

11.74 The approach to this backlog in the South East Plan is not entirely clear. The only reference in the Plan occurs in policy H2, where one of the considerations 'also' to be taken into account in planning for the delivery of the housing provision (ie 7,500 dwellings for Crawley) is item (viii) *"the need to address any backlog of unmet housing needs within the housing market areas they relate to, in the first 10 years of the Plan"*. The appellants argue that the 944 dwelling backlog should be added to the RSS requirement; the Council takes the contrary view. ***[6.93, 7.79]***

11.75 It seems that the evolution of this matter can be traced through earlier versions of the Plan. The phrase "backlog of unmet housing need" was used in the Draft South East Plan to refer specifically to those in need of affordable housing. The number was assessed at 29,000 households in 2001. Policy H1 of the Draft Plan states that the number of dwellings to be provided includes

[226] R/CD158

an allowance to address the backlog of unmet housing need that existed in 2001 (implicitly the households in need of affordable housing). Section C paragraph 3.3.2 of the Draft Plan sought early progress to eliminate or reduce the backlog over the first 10 years of the Plan. ***[6.95]***

11.76 The Panel Report endorsed this interpretation, noting that the "wider backlog" totalled 98,000 households and included two elements of private sector need.[227] Paragraph 7.30 recounted the Panel's view that policy H1 should retain the statement that local authorities should address any backlog of unmet housing need, the purpose being to provide a clear impetus to increase the delivery rate of affordable housing. At paragraph 7.31 the Panel indicated that its recommendation for an increased regional housing level is in part designed to "give greater flexibility to assist in meeting the backlog". In relation to the Gatwick sub-region, the Panel considered the 33,000 provision in the Draft Plan to be marginally too low and proposed an increase; it gave a number of reasons in justification, one of which is "it allows for natural change, with a generous notional allowance to meet a backlog of unmet need, and some in-migration…..."

11.77 From this document trawl it is reasonable to conclude that the final South East Plan housing requirement does include an allowance, albeit notional, for any backlog of unmet housing need arising prior to 2006, the start of the RSS period. Support for this interpretation comes from the CLG research study which indicates (paragraph 4.16) that authorities working with a new RSS use this to 'reset the clock', with any over or under supply before the plan period being ignored. If this reasoning is correct, it follows that the 944 backlog at Crawley should not be added to the 2006-2026 requirement.

11.78 This is not the only plausible conclusion, however. There is no explanation in the final Plan of what is meant by "backlog of unmet housing needs", nor any indication that it might be restricted to affordable housing (elsewhere in the Plan the word "needs" patently refers both to affordable and market housing). And it is far from clear that the eight considerations listed in policy H2 are intended only to apply to "the" housing provision (ie the numbers required by policy H1). Taken at face value it is arguable that item (viii) of policy H2 could be interpreted as meaning that a backlog should be treated as an addition to the identified housing provision, to be addressed in the first 10 years of the Plan. ***[6.93]***

11.79 The Council's argument that the backlog is meant to refer to any shortfall arising early within the Plan period makes little sense. To my mind it must relate to a pre-2006 backlog: the question is whether the housing provision in RSS policy H1 includes or excludes such a backlog. On balance I think that the former is more likely to be correct, though I accept that in the particular circumstances of Crawley, where a large backlog has accrued immediately prior to 2006, the notional allowance is unlikely to fully recover the situation. Moreover it is an unfortunate consequence of timing that the bulge in completions in 2006 and 2007, which in reality is likely to have compensated somewhat for the 2001-2006 backlog, is instead used to reduce the number of dwellings needed in future years. ***[7.78, 7.80]***

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[227] R/CD112 paragraph 7.25

11.80 The final consideration is a potential inconsistency between the two parts of the development plan, the Core Strategy and the RSS. All parties agree that the housing requirement must be based on the provisions of the latter since its publication in May 2009. Moreover the treatment of the backlog is clearly related to the demand side of the equation (the scale of the requirement), which is the main change occasioned by the RSS. Thus to the extent that an inconsistency arises as a result of the conclusion that the RSS figures include an allowance for any backlog, whereas in the Core Strategy it is a specific element to be added to the need, this is a case where the provisions of the later plan prevail. Taking all these factors into account, I conclude that the backlog of 944 dwellings should not be added to the South East Plan 2006-2026 housing requirement for Crawley.

Windfall allowance

11.81 The Core Strategy includes a windfall allowance of 250 dwellings, 50pa until 2011/12. This is despite the Core Strategy examination Inspector finding no evidence of "genuine local circumstances that prevent specific sites being identified", the requirement in PPS3 if windfalls are to be included. Instead, he accepted the allowance because it reflected the number of houses granted planning permission after April 2006 on windfall sites, which he thought would be implemented. As these dwellings are now incorporated within the completions or planning permissions at April 2007, the Council accepts that to include a windfall allowance specifically in relation to these sites would be double counting. ***[6.96-8]***

11.82 Nevertheless, because a windfall allowance is included in the development plan, the Council maintains that it should continue to be relied upon (albeit now for four years rather than five) to reflect a continuing supply from this source. To some extent this situation arises from the Council's decision to identify major (100+ dwelling) specific sites in the Core Strategy instead of preparing a separate DPD that could have identified smaller sites as well. I also note the large number of sites investigated in the interim SHLAA, but there is no compelling evidence that any of these are deliverable within 5 years. In my view these factors do not amount to the "genuine local circumstances" that would be needed to justify a windfall allowance. ***[7.88-93]***

11.83 This is not to deny the likelihood that some provision from this source will emerge in future years. At the appropriate time such sites will be included in the monitoring of the supply and will then have the effect of reducing future requirements. It is also possible that some of the future windfall provision will be needed to offset any shortfall arising from sites with full planning permission, for which full allowance has been made in the current assessment (ie no discount has been applied for non-implementation, as sometimes occurs). Nevertheless, in the absence of robust evidence that prevents specific sites being identified, as sought by PPS3, windfalls cannot be assumed to contribute to the future supply. I therefore delete the 200 dwelling allowance from the Council's supply calculation. ***[6.96]***

Ifield Community College

11.84 The site has outline planning permission for a development of 170 dwellings and some health/community provision. It is owned by West Sussex CC, who wish to dispose of it: it is therefore 'suitable' and 'available'. The question is

whether any housing is likely to be delivered by March 2013. Because the County Council's marketing exercise in 2008 attracted only one offer, which was just 10% of the expected value, it has been taken off the market. The position is to be reviewed in 2010, but the County Council does not expect development prior to 2012. ***[6.107, 7.97]***

11.85 While the downturn in the housing market is perhaps the main reason for the current lack of progress with this site, there are two other factors which could further hinder delivery. One is the high proportion of flats in the approved scheme: this is the sector of the market that has been hit hardest by the recession and where developer confidence is at its lowest. This is likely to mean that disposal will take longer than anticipated. (Alternatively it is possible that a new planning application with a different housing mix might be perceived as a means of getting best value from the land in the post-recession market, which would also cause a delay). The other factor is relatively high infrastructure costs, though ultimately this goes to the price a developer is willing to pay. The inference to be drawn from the recent marketing exercise is that the County Council is not urgently seeking to dispose but is prepared to wait until it secures what it regards as an acceptable price. ***[6.107]***

11.86 The Council forecasts completions on this site towards the end of the five year period, with 80 anticipated by March 2013. I appreciate that it is difficult to make reliable forecasts in the present market conditions but, having regard to the matters outlined above, I believe this timescale is somewhat optimistic. In my view the more likely outcome is that completions will start to come forward in 2013/14; consequently I do not believe there is a reasonable prospect that any will be achieved by March 2013. ***[6.108, 7.97]***

Thomas Bennett School

11.87 Another surplus education site owned by the County Council, Thomas Bennett does not have a planning permission. Nevertheless there is no reason to doubt that it is 'suitable'; it is a brownfield site on the edge of school grounds which was supported by the Core Strategy examination Inspector. There are no known constraints to development and, as the land owner has expressed an intention to sell, it is 'available' in terms of the SHLAA guidance. Again the question is whether any housing is likely to be delivered by March 2013. ***[7.98]***

11.88 The County Council anticipates submitting a planning application in September 2010 which, it is assumed, will be in outline. Once approved, the site will have to be marketed and purchased by a developer, who will then have to draw up a detailed scheme and obtain planning permission for it. Even adopting optimistic assumptions about the time taken for each of these stages, and making no allowance for the current downturn, I think it unlikely that house completions will occur in 2½ years from the submission of the outline application. This view is broadly consistent with that of the Core Strategy Inspector, who assumed approximately a two year period between the start of the process and the commencement of development. ***[6.100]***

11.89 The Council forecasts completions on this site towards the end of the five year period, with 60 anticipated by March 2013. For the reasons given above, I believe this is too optimistic. I think the earliest that completions

are likely to come forward is in 2013/14; consequently I do not believe there is a reasonable prospect that any will be achieved by March 2013. ***[6.101, 7.98]***

Telford Place/ Haslett Avenue

11.90 Outline permission was granted in 2008 for a mixed use building comprising retail floorspace and 312 flats. The original developer has dropped out and, with the site in the hands of two new developers, it is not known whether the extant permission will be implemented. Assuming that it will proceed, there are two important factors likely to affect delivery of the completed units. The first is that, being a block of flats, it is likely that the whole scheme will be built before any flats are released. The Council suggests that a phased release might be possible: even if it is, most of the structure would have to be in place first, so completed flats are unlikely to be available until towards the latter part of the two-year build period. ***[6.103-4, 7.101]***

11.91 The second factor, as already mentioned, is the substantial decline in the market for flats. Although the site benefits from an edge of town centre location which may appeal to a particular sector of the flats market, there is no evidence that this sector has been hit any less hard by the downturn. Equally important in this case is the site's proximity to the large (833 unit) predominantly flatted development at the former leisure centre site on Haslett Avenue, which is currently under construction. Of the 621 private units here, 407 have been completed but only 117 have been sold; the site is expected to provide further completions through to late 2010. Whilst not quite so convenient to the town centre, the leisure centre site is nonetheless within easy walking distance (400m) of the town centre and in my view is likely to be a direct competitor to Telford Place/ Haslett Avenue. ***[6.105, 7.103-4]***

11.92 Given the substantial time lag between completions and sales of flats at the leisure centre site, it is reasonable to assume that units will continue to be available for some considerable time after that development is completed, probably well into 2011. Consequently it is doubtful that Telford Place/ Haslett Avenue would be programmed to yield completions until mid-late 2011 at the earliest. Even this timescale would require a start very soon, which is not possible as reserved matters applications have not yet been submitted. To my mind a more likely scenario in the current uncertain market conditions is commencement in 2011, with completions from 2013 onwards. This timescale might also be achievable if permission is sought by the new owners for a redesigned proposal, which is a distinct possibility. ***[6.105, 7.103]***

11.93 The Council forecasts completions on this site from 2011/12, with 181 anticipated by March 2013. From the above analysis it is clear that I regard this as highly improbable. Whilst it is debatable whether there will be any completions at all within the five year period, I think there is a reasonable prospect that a small number (say 20) would be ready by March 2013. ***[7.104]***

Conclusion on five year supply in Crawley

11.94 Because I am unable to decide which of the five year requirement figures is to be preferred, it is necessary to carry out two calculations. The first uses the Council's five year requirement of 1,478 dwellings. The agreed elements

of the supply are the sites with full planning permission (1,124), from which should be deducted the anticipated net losses (51), giving an agreed supply of 1,073. Based on my conclusions that there should be no allowance for windfalls and that no completions are anticipated by March 2013 from Ifield Community College or Thomas Bennett School, the sole addition to this figure is 20 completions from Telford Place/ Haslett Avenue. Thus the five year supply is 1,093, a shortfall of 385 against the requirement (roughly 1.3 years' supply). If the appellants' method of assessing the five year requirement is used, the shortfall increases by 287 to 672 (about 1.9 years' supply).

11.95 Whichever methodology is used to calculate the five year requirement, I conclude that an up-to-date five year supply of deliverable sites has not been demonstrated. Consequently the presumption in paragraph 71 of PPS3 that applications for housing should be considered favourably (subject to the other policies in PPS3 and the considerations in paragraph 69) applies in this case.

11.96 The Council contends that the five year supply calculation fails to give the full picture in Crawley. I accept that no contribution has been included from a number of large sites that have outline planning permission or are otherwise identified as potential sources of supply, but that is generally because they do not satisfy the deliverability test of PPS3. Whilst in part this may be due to the current economic downturn, it is vital to ensure that a deliverable land supply is in place when the upturn happens, as the recent letter from the CLG Chief Planner makes clear. Indeed in the early period of recovery, when some fragility in the market is likely to remain, it is all the more important that a full complement of sites is available so that developers have a good choice of opportunities to pursue and are not constrained by a shortage of supply. ***[6.86, 7.89, 7.92]***

11.97 A further plank of the Council's case is that measures are in place to bring about a significant increase in land supply in the medium term, beyond the five year period. I examine this in the next section.

Medium term supply in Crawley

11.98 PPS3 indicates that the primary land supply consideration when determining planning applications is the five year supply. However, because the appeal proposal is such a major scheme which would deliver most of its dwellings after the five year period, it is instructive to consider the position in the medium term. The South East Plan lends support to this approach, recognising that longer term housing needs and affordability can be relevant to decisions on planning applications, depending on local circumstances. Another reason for taking a slightly longer term view is the fact that the five year supply analysis has revealed that a number of the Core Strategy sites are likely to come on stream from 2013/14 onwards. ***[6.109]***

11.99 The appellants' trajectory predicts a shortfall of 764 dwellings in the 10 year period to 2017/18, rising to 1,117 the following year. The Council's assesses the shortfall to be slightly less, at 638 dwellings in 2017/18 and 1,013 the following year. Both trajectories assume that all the Core Strategy sites would be built out, but there is considerable uncertainty over the viability of the Town Centre North and Dorsten Square schemes. The former is a major mixed use redevelopment scheme that has been mooted for some time, but with no progress currently being made it must be doubtful whether a

significant proportion of the estimated 800 dwellings will be delivered by 2017/18. The position at Dorsten Square is unclear. If it is assumed that about half the delivery from these two sites would occur by 2017/18, which to my mind is reasonable given that both the residential and retail sectors have been significantly affected by the downturn, the 10 year shortfall would increase by about 500 dwellings. Although some provision is likely to come forward on smaller brownfield sites during this period, the interim SHLAA gives little confidence that substantial inroads into the shortfall will be made from this source. ***[6.110]***

11.100 The longer term analysis is inevitably rather sketchy given the focus in this appeal on the five year supply position. Nevertheless, it does serve to demonstrate that there is no obvious panacea in the offing which, in the absence of the North East Sector, would resolve the land supply shortage in Crawley. The Council rightly points out that the Core Strategy, which overtly acknowledges the lack of a medium term housing land supply, was only found sound on the understanding that an urgent review would take place to address this matter. But the first stage of this review, the recently published Housing Topic Paper, explicitly states that it will be exceptionally challenging to meet the requirement within the Borough boundary if the North East Sector, the Council's preferred option, does not proceed. ***[6.113]***

11.101 The other potential option is to meet Crawley's housing needs outside the Borough boundary. By identifying the Gatwick area as a sub-region, and by promoting collaborative working between authorities to deliver the sub-regional housing provision, such an approach is clearly supported by the RSS. Moreover, given the fact that Crawley has expanded from its new town origins across almost all of its administrative area, there is little prospect of finding a neighbourhood-sized development opportunity within its boundaries apart from the North East Sector. ***[6.114]***

11.102 Collaborative working is already under way and producing results, as demonstrated by the West of Crawley proposal in Horsham District which I consider below. Three other possible locations (Pease Pottage, Crabbett Park and West of Ifield) were introduced at the inquiry, but I share the appellants' view that these are no more than embryonic and speculative possibilities which face a range of policy and other constraints. At present, none of these three locations can be regarded as deliverable or developable within 10 years. ***[6.112]***

Housing land supply – Gatwick sub-region

11.103 Given the focus in the RSS on the Gatwick sub-region, it is necessary to examine whether housing provision elsewhere within the sub-region is sufficient to meet the sub-regional requirement in the absence of further land being identified at or adjoining Crawley. The Housing Statement of Common Ground adopts the same approach as for Crawley: the five year RSS requirement, the land supply and the differences between the parties are identified for the three relevant Councils - Horsham, Mid Sussex and Reigate & Banstead. For the first two the information is not wholly accurate as these authorities have not yet disaggregated the figures into Gatwick and non-Gatwick sub-regional parts of their areas, though it is clear that the majority of development is anticipated in the Gatwick sub-region. ***[6.115]***

11.104 To be consistent with the Crawley exercise, two land supply figures are produced, the difference between them arising from the way in which the five year requirement is calculated.

Horsham District

West of Crawley

11.105 This is one of the major locations identified in the RSS for a development, if possible, of 2,500 homes. It is the subject of a joint DPD between Horsham and Crawley Councils (the JAAP), which was found sound by the examination Inspector in April 2009: the site is therefore suitable. Although the land is under the control of a single developer, the appellants question its current availability because of potential infrastructure problems and the contention that a start will not be made until the developer has the assurance that it can complete the scheme. Two matters cause particular concern – foul sewage and the crossing of the railway.

11.106 Dealing firstly with foul sewage, the examination Inspector was satisfied that the development can be adequately serviced by the necessary utility infrastructure. Thames Water is planning to provide sewage treatment capacity in accordance with the provisions of the South East Plan, which seeks 7,500 dwellings in Crawley by 2026, and AMP5 is the process by which funding to 2021 should be secured. Although the position if both the North East Sector and West of Crawley come forward is not entirely clear, it will be many years before any capacity limit is reached, by which time it is reasonable to assume that a solution will have been found. Even if sewage treatment capacity were to become a constraint, this is unlikely to affect the early phases of development. ***[6.128, 7.107]***

11.107 As to the rail crossing, the JAAP acknowledges that approval for bridges over railways can be problematic, but refers to discussions with Network Rail being "well developed to ensure the timely bridging of the railway in three locations." This matter was investigated by the JAAP Inspector, who concluded that there is no impediment to the rail crossings. Despite casting doubts on both the timing of an agreement with Network Rail and the adequacy of a ransom contingency, the appellants produce no hard evidence to back up its assertions. Thus on both these issues, whilst it is not certain that a timely resolution will be achieved, in my view the 'reasonable prospect' test is satisfied. ***[6.127, 7.109]***

11.108 A final matter is the timing of the commencement of development. The site does not yet have planning permission and a hybrid application is not now anticipated until March 2010, with a decision expected by November that year. Although this would be a very quick turnaround for such a major application, because a great deal of the preliminary work has already been carried out and a Planning Performance Agreement is in place, I accept that it is feasible. I note, however, that the January 2009 viability appraisal that was submitted to the JAAP Inspector envisaged 150 housing completions in 2011/12 on the basis of on application being submitted in Summer 2009 and determined by Spring 2010. Given the slippage that appears to have occurred, and the very tight timetable in any event, I think the earliest that completions can reasonably be expected is Spring 2012. Because completion rates in the first year of a major development are usually well below the

maximum delivery as a result of the time it takes to bring other developers on board, I believe that the contribution from this site by March 2013 is likely to be about 250 dwellings. ***[6.129-30, 7.111]***

West of Horsham

11.109 Another of the major locations identified in the RSS, West of Horsham is effectively two separate sites of 1,000 dwellings each, divided by the A24. The Masterplan SPD published in October 2008 proposed access via a grade separated junction on the A24, though this precise form of junction is not specified by Horsham Core Strategy policy CP7. In recent months the developer of the land to the east of the A24, Berkeley Homes, has advised Horsham Council that the scheme is not viable in the current economic climate. The Council has accepted in principle a reduced infrastructure package and negotiations are on-going. One of Berkeley's main proposals is to replace the grade separated junction with a left in/ left out junction on the A24, which has implications for achieving the comprehensive development sought by policy CP7. Although the principle of independent access has been accepted by the local highway authority, the detailed technical work necessary to justify the changed junction design is yet to be completed. ***[6.121-2, 7.113-4]***

11.110 The consequences for the development on the west side of the A24, to be carried out by Countryside Properties, are unclear. Whilst it is reasonable to speculate that each scheme should be capable of separate implementation, it is not known whether Countryside faces similar viability issues, nor how Horsham Council would react if it did. The Council has given assurances that there are no constraints or potential ransom issues to delay the development of these sites, but nonetheless considerable uncertainty remains about the final form the development will take. ***[7.114]***

11.111 These prospective changes to the development will inevitably affect the delivery of West of Horsham. Until the final outcome of the re-appraisal is known, the timing cannot be predicted with confidence. Crawley Council accepts that this disruption is likely to delay the scheme by about a year, with completions not now anticipated until 2011/12; the appellants forecast no completions in the period to 2012/13. With the need for new outline applications once the details have been finalised, to be accompanied by fresh negotiations on the S106, and then followed by detailed consents and other necessary agreements, I think the Council is being overly optimistic. But given the importance that Horsham Council attaches to this scheme, I also think that some completions within the five year period are likely. I estimate that a start could reasonably be anticipated in early 2011, with completions emerging from 2012 onwards. On this basis I consider that the most likely outcome is the delivery of about 300 dwellings by March 2013. ***[6.124, 7.115]***

Windfall allowance

11.112 Horsham Core Strategy policy CP4 includes an allowance of about 105 dwellings pa for unidentified windfall sites. The Core Strategy was prepared when PPG3 was in force and the examination Inspectors found no fault with the inclusion of windfalls. The matter was reviewed when the Site Specific Allocations of Land DPD was examined, by which time PPS3 existed and was taken into account. Based on evidence that the annual average contribution from unidentified windfall sites exceeded 280 over the five years to 2006,

with further permissions granted since April 2006 likely to add over 200 dwellings, the examination Inspectors concluded that robust evidence of genuine local circumstances did exist at Horsham, and therefore that windfalls should be taken into account. ***[6.131, 7.117]***

11.113 It is true, as the appellants point out, that there was an element of expediency in this decision, in that the updating that would have been necessary to identify more specific sites and reduce the reliance on windfalls could have slowed down housing delivery. But the fact remains that the Horsham approach was found to satisfy the PPS3 test, unlike the situation at Crawley. There is no evidence before this inquiry which suggests that the windfall allowance in Horsham is not delivering the anticipated number of dwellings. Consequently I conclude that it should continue to be included in the land supply calculation. ***[6.131]***

Horsham District - summary

11.114 Using Crawley BC's method of assessment, the five year requirement is 3,936 dwellings; according to the appellants, the figure is 3,440 dwellings. The agreed elements of the supply give a net gain of 978 dwellings. To this should be added 250 from West of Crawley, 300 from West of Horsham and 525 windfalls, giving a total five year supply of 2,053. This represents a shortfall of 1,883 based on the Council's requirement, or a shortfall of 1,387 using the appellants' calculation. ***[5.13]***

Mid Sussex District

South-east and south-west Haywards Heath

11.115 These major developments to the south of Haywards Heath are being implemented in phases in conjunction with the provision of a relief road. The final 405 houses on two sites cannot be built until the final section of the relief road is in place. The developer was required to complete the road by January 2012 but, because of the economic downturn, has recently stated that it will not be able to deliver the road until 2013. It is also seeking additional residential land allocations to enable the road to be fully funded. ***[6.136, 7.138]***

11.116 Negotiations between the relevant parties are taking place but the outcome is not yet known. No alternative funding for the provision of the road is currently available. Because there is a significant constraint to the delivery of these 405 houses, which the developer does not expect to be able to unlock until 2013, at present these sites do not satisfy the 'available' or 'achievable' tests of PPS3. Thus there is no reasonable prospect of any completions by March 2013. ***[6.137, 7.118]***

Town centre sites

11.117 Mid Sussex DC anticipates that revitalisation of the town centres of East Grinstead, Haywards Heath and Burgess Hill will deliver approximately 1,500 dwellings by 2018, 400 of which are predicted by March 2013. Despite masterplans being prepared 2-3 years ago, no planning applications have been made for specific sites and, notwithstanding identification of potential sites in an interim SHLAA, Crawley BC acknowledged that the supply remains theoretical at the current time. There were no details before this inquiry of individual sites, their developers, the expected yields or timescales for

delivery, so there is nothing to demonstrate that this notional provision satisfies the 'available' or 'achievable' tests of PPS3. Without evidence of specific sites, it is not appropriate to include any completions from this source by March 2013. ***[6.138-9, 7.119]***

Windfalls

11.118 Consistent with the Mid Sussex Annual Monitoring Report, Crawley BC initially included an allowance of 276 dwellings for windfalls over the five year period. Subsequently Crawley accepted that there is no development plan policy justification for the inclusion of such an allowance. Having regard to this concession, and in the absence of the 'robust evidence of genuine local circumstances' required by PPS3, there is no good reason to include a windfall allowance in Mid Sussex. ***[7.120]***

Mid Sussex District - summary

11.119 Using Crawley BC's method of assessment, the five year requirement is 5,146 dwellings; according to the appellants, the figure is 4,515 dwellings. The agreed elements of the supply give a net gain of 3,067 dwellings. Because of my conclusion that none of three disputed components of the supply are likely to deliver dwellings by March 2013, there is nothing to be added to the agreed supply. Consequently there is a shortfall of 2,079 based on the Council's requirement, or a shortfall of 1,448 using the appellants' calculation. ***[5.13]***

Reigate & Banstead Borough

11.120 The South East Plan proposes 125 dwellings pa in the Gatwick sub-regional part of the Borough, which relates principally to Horley. Major residential developments are planned for north-east Horley, which is currently under construction, and north-west Horley. Reigate & Banstead's Annual Monitoring Report anticipates 400 dwellings from north-east Horley by March 2013, but no delivery from north-west Horley. Crawley BC and the appellants agree with this assessment; there is no reason for me to conclude otherwise. All other components of the five year supply are also agreed, giving a total supply of 497 dwellings. ***[5.13, 6.140]***

11.121 The only difference between the parties derives from the different methodologies used to calculate the five year requirement. Using Crawley BC's method of assessment, the five year requirement is 767 dwellings; using the appellants approach, the figure is 664 dwellings. This gives a shortfall of 270 dwellings according to the Council, compared with a shortfall of 167 dwellings as calculated by the appellants. ***[6.140]***

Housing land supply – Conclusion

11.122 The tables below summarise my conclusions on the five year housing land supply position for Crawley and the Gatwick sub-region, the first based on Crawley BC's approach to assessing the RSS requirement and the second on the appellants' methodology. It is important to bear in mind that the figures for Horsham and Mid Sussex relate to the whole District, not just the Gatwick sub-regional part. However, because the Gatwick sub-region is the major focus of development in these Districts, the true figures for the sub-region are not likely to differ significantly.

Crawley BC five year requirement

Council	RSS Requirement to 2013	Supply	Shortfall
Crawley	1,478	1,093	385
Horsham	3,936	2,053	1,883
Mid Sussex	5,146	3,067	2,079
Reigate & Banstead	767	497	270
Total for sub-region	11,327	6,710	4,617

Appellants' five year requirement

Council	RSS Requirement to 2013	Supply	Shortfall
Crawley	1,765	1,093	672
Horsham	3,440	2,053	1,387
Mid Sussex	4,515	3,067	1,448
Reigate & Banstead	664	497	167
Total for sub-region	10,384	6,710	3,674

11.123 It is evident that there is a substantial shortfall in the five year housing land supply throughout the Gatwick sub-region, irrespective of the method used to calculate the requirement. Thus there is no realistic prospect of the shortfall in Crawley being compensated by provision in the wider area. Indeed, the large scale of the shortfall in Horsham and Mid Sussex, the two districts required to contribute over 75% of the sub-regional supply to 2013, strengthens the case for addressing Crawley's deficit within Crawley.

Contribution from North East Sector

11.124 If planning permission is granted for the appeal proposal, the appellants contend that the first completions (50) would come forward in 2010/11 and that the site would yield 400 dwellings by March 2013. The bulk of the dwellings would come forward in the subsequent five year period, with the final completions anticipated in 2018/19. The Council questions whether, applying the PPS3 tests, the site is deliverable within the five year period. ***[6.148, 7.83]***

11.125 Apart from the noise issue, which is discussed separately, there is no dispute about the suitability of the site. As to availability, the commitment of the two developers who have prosecuted the appeal through two major inquiries and the Courts is not in doubt. Two public bodies own the remainder of the site.

The Homes and Communities Agency has recently confirmed that it remains supportive of the proposal and would work with the other parties to facilitate early delivery of the new neighbourhood. Crawley BC stated in evidence that the authority would not be "awkward" in these negotiations. Whilst it is true that no equalisation agreement exists, there is no reason to suppose that this would unduly delay the scheme. Indeed, with Beazer Homes owning almost all the land required for Phase 1, there would seem to be no obstacle to a timely commencement even if negotiations do become protracted. ***[6.148, 7.84]***

11.126 There is no evidence of how the current downturn might affect the viability of the development. The inquiry was told that a recent appraisal had been carried out and that viability was confirmed, but that assertion could not be tested. However the portents are encouraging. With Beazer Homes owning most of Phases 1 and 3 since 1998, and Taylor Wimpey owning part of Phase 2 and having an option on most of the rest of that phase, land costs are not only known but are an asset waiting to be realised. Equally important is the fact that compared to many schemes of equivalent size, the abnormal costs (primarily for noise insulation and relocation of the overhead power line) appear to be relatively low. Off-site highways works and other infrastructure requirements, whilst substantial, are not exceptional for such a large development. Thus on the limited evidence available, there is no reason to suppose that the development is not viable. ***[6.149-50, 7.85]***

11.127 In anticipation of the Secretary of State's decision on this appeal by the end of 2009, I accept that 50 completions in 2011/12 would be feasible, though this is a tight timetable that could easily be thrown off course by unexpected developments. But even if completions do not emerge until 2012/13, the scheme would still deliver a substantial number of houses by March 2013 and largely eliminate the shortfall as calculated by the Council. If the appellants' method of calculating the five year requirement is preferred, the scheme would make a sizeable contribution to meeting the backlog but would not eliminate it. Of even greater importance in the context of a Borough in which the medium term supply is so problematic is the fact that the development would be a major and assured source of dwellings throughout the subsequent five year period.

Affordable housing, housing tenure and mix

11.128 There are over 2,500 households in Crawley currently in need of affordable housing, which equates to an unmet annual need for about 250 affordable homes. The appeal development proposes to deliver 40% of its dwellings (ie 760) as affordable housing, thus meeting the target set out in the Core Strategy and the South East Plan. 70% of this affordable housing would be social rented accommodation, again as sought by the Core Strategy and thereby providing for those households most in need. ***[6.143, 7.126]***

11.129 The appellants have confirmed that the full 40% affordable housing remains viable, which is particularly encouraging at a time in the economic downtown when many other schemes are unable to deliver at this rate. The provision of 760 affordable homes would make a significant contribution to addressing the need and, indisputably, is an important consideration in favour of the proposal. ***[6.142]***

11.130 The development would also provide a mix of dwelling types and sizes, including a large proportion of houses for families. This contrasts with the current imbalance in the supply in Crawley, which is biased towards flats. It also reflects an appreciable recent shift in the evidence base which points to a post-downturn housing market in which economic factors are likely to favour both the supply of, and demand for, houses rather than flats. As the intention is to provide a wide range of dwelling sizes, including some flats and small dwellings for those households requiring them, the scheme should fully cater for the demands of the Crawley housing market. ***[6.146]***

USE OF CONDITIONS TO SECURE INFRASTRUCTURE

11.131 The infrastructure that is necessary to mitigate the demands that a major development would place on local services and networks is typically secured by means of a S106 planning obligation. In this case no such obligation exists because the Council has declined to participate. Instead it is proposed that the necessary infrastructure is secured by means of negatively worded 'Grampian' conditions.

11.132 Mostly these conditions require a "scheme" to be submitted for the subsequent approval of the local planning authority prior to the commencement of the development (or some other defined point during the development). In some cases that "scheme" is likely to take the form of a S106 planning obligation, though that is not a stated requirement. Both Crawley BC and main beneficiary of this infrastructure, West Sussex County Council, are satisfied that the required infrastructure can properly be delivered by the agreed conditions. ***[9.4]***

11.133 This same situation arose at the 2006 inquiry. Inspector Phillipson did not question the use of conditions to secure infrastructure delivery, and the matter was not raised by the then Secretary of State in her decision of May 2007. However, in a decision in October 2007 concerning five appeals by Arnold White Estates Ltd and CC Trading Ltd, the Secretary of State did not accept that Inspector's recommendation that a negatively worded "scheme" condition should be imposed, because in her view it lacked sufficient detail and therefore it failed the test of precision as set out in Circular 11/95. The Secretary of State also felt that a scheme could not be drawn up without requiring the payment of money, which would breach the principle that there can be no taxation without clear support in law. ***[6.157]***

11.134 As a result of the October 2007 decision, Inspectors are currently advised that negatively worded "scheme" conditions should no longer be used to secure infrastructure where a financial contribution is likely to be made. Counsel for the appellants submitted a Joint Legal Opinion which challenges this advice. The gist of that Opinion is reported at length in the case for the appellants. ***[6.157]***

11.135 Two separate matters arise. The first is whether the conditions include sufficient detail to satisfy the "precision" test of Circular 11/95. This is not a matter that was addressed in the Opinion. The conditions now proposed are broadly the same as (and in many cases identical to) those before Inspector Phillipson in 2006. In his opinion, the conditions then met all the tests of the Circular, including the precision test.

11.136 Such minor changes as have been made to the 2006 conditions are generally aimed at increasing their precision. For example, the "scheme" conditions which require facilities to be provided at the local centre and community centre specify the nature of the provision, give an indication of their scale and location, and tie the implementation to a particular point in the phasing programme. Furthermore, it seems to me that the level of precision is commensurate with the fact that this is an outline application for a major development that would be implemented in phases by means of a series of reserved matters approvals. Essentially, outline planning permission would establish the broad principles and parameters of the development, with the details to follow. For those matters not covered by the reserved matters process, such as the provision of affordable housing or off-site community facilities/ infrastructure, I consider that the conditions give sufficient clarity and precision about the purpose of the "scheme" and what it is required to deliver.

11.137 A number of the agreed conditions include the phrase "unless otherwise approved in writing by the local planning authority". The Courts have held generally that the introduction of a provision for informally amending a condition means that the condition is imprecise and therefore contrary to the legal tests. It also deprives the public of the right to be consulted on any changes. Consequently this phrase has been deleted from these conditions (except from conditions 21 and 22, where it is appropriate that the Council has the ability to permit occupation in cases where the release of a Certificate is awaited). A further concern is the inclusion in certain highway conditions of the word "broadly" in the phrase "broadly in accordance with drawing number……." . This is a somewhat vague term which, arguably, lacks precision. As many of the highway works drawings were revised prior to this inquiry to give greater clarity, it is appropriate to remove the word "broadly" from these conditions. Subject to these minor amendments, I am satisfied that the conditions meet the precision test.

11.138 The second matter, and the one to which the Opinion is directed, is the legality of "scheme" conditions which are likely to involve the payment of money. It is almost inevitable that the infrastructure required by certain conditions, for example the provision of secondary school places beyond the appeal site or the provision of bus services, would involve the payment of money to the relevant authority. There may be other instances, such as the provision of the on-site primary school, where the payment of money is more likely than the construction of the facility by the appellants, though the latter would be a possibility. ***[9.5]***

11.139 To my mind the arguments set out in the Joint Opinion have considerable merit. In practical terms there is a very fine distinction between (a) a scheme which requires the direct expenditure by a developer on necessary infrastructure, and (b) a scheme which involves the same payment to a responsible authority for the provision of that infrastructure. This is especially the case where the provision could potentially be delivered by either means, though there would seem to be no logical reason why the same principle should not apply to schemes where the only realistic means of delivery is a payment to the responsible authority. And as the Opinion points out, the negative nature of the condition does not impose a direct obligation on the developer to pay money. It merely imposes a means by which the

timing of the development, or a particular stage of it, is delayed until a particular precondition has been met. As to the point about taxation, it is not clear to me why any payment subsequently made as a result of a scheme, which would be voluntary and would be specifically tailored to mitigate a particular adverse impact of the development (which, if not mitigated, would be likely to lead to a refusal of planning permission), would be categorized as taxation. ***[6.137, 9.4]***

11.140 There are two important provisos. Firstly, I am conscious that the Opinion may only give one side of the argument. I draw some comfort from the fact that the Opinion is endorsed by Crawley and West Sussex Councils, for had there been any doubts in the minds of those authorities about the legality of the "scheme" conditions, I would expect them to have been raised. Nevertheless, I cannot be sure that the legal precedents on which the Opinion is based are the only relevant judgements, or that the conclusions are the only conclusions that could reasonably be drawn. The second proviso is that this is a matter of law on which I, as a planner, am not qualified to pass judgement. Ultimately this is a matter for the Secretary of State to determine.

MATTERS ABOUT WHICH SECRETARY OF STATE WISHES TO BE INFORMED

Matter (iii) - Compliance with ATWP

11.141 The essence of this matter is compliance with current Government policy on air transport, so it is appropriate to include consideration of the January 2009 Ministerial statement that the environmental conditions at Heathrow are likely to be met. This significantly increases the prospects of the preferred strategy for the South East, which is a second runway at Stansted and at a third runway at Heathrow, being delivered, although there are currently delays with the planning process at Stansted. Now that the third runway at Heathrow has been given the policy go-ahead, it must be assumed that BAA will vigorously promote this expansion, especially in a newly competitive environment. ***[11.58-9]***

11.142 The ATWP requirement to safeguard land for a second runway at Gatwick remains as a contingency in case the two runways at the preferred locations cannot be delivered. However, the ATWP does not contemplate any other circumstance under which a second runway at Gatwick might be required. Consequently, at present the most likely outcome is that a second runway at Gatwick will not be required, though it remains a possibility. Because the Gatwick solution is the sole contingency for the South East, and because airport capacity in the South East has significance for the whole of the country, the case for Gatwick would be very strong in the event that the preferred strategy does not materialise. ***[11.5-6, 11.64]***

11.143 The appeal proposal has no direct impact on the requirement to safeguard the land needed for a possible second runway at Gatwick (paragraph 11.81 of the ATWP). This is because the whole of the appeal site is outside the land identified in the Interim Master Plan and the Core Strategy as the safeguarded area. Thus the presence of housing on the appeal site would place no physical impediment in the way of the development of a second

wide-spaced runway to be operated in mixed mode (or any other mode). ***[11.48]***

11.144 The sole concern is the wider issue of noise on the surrounding residential communities. The basic aim of the ATWP is to limit and where possible reduce the number of people significantly affected by aircraft noise. "Significantly affected" is not defined in the ATWP, though it is reasonable to assume that it relates to the 57 dB(A) level which is regarded as marking the approximate onset of significant community annoyance. Assuming the mixed mode operation of a wide-spaced runway, as envisaged in the ATWP, the appeal scheme would increase the number of people experiencing noise above this level by about 4,300. Because of the location of the appeal site at the south-eastern end of the second runway, most of these people would experience this level noise for 27% of the time on average, or roughly two days a week. ***[11.10, 11.22, 11.26]***

11.145 Patently the appeal proposal is contrary to the noise objective of the ATWP. Yet it is inevitable that the provision of a new runway in the South East will lead to an increase in the numbers significantly affected by noise. At Heathrow the SERAS study (on which the ATWP was based) forecast that the third runway would result in an additional 54,000 people experiencing noise above 57 dB(A); the comparable figure for a second runway at Gatwick, including the 4,300 on the appeal site, would be 11,600. Moreover this latter figure is appreciably less than was assumed for Gatwick in the ATWP, where an increase (without the North East Sector) of about 15,000 people within the 57 dB(A) contour was forecast. Whilst these comparisons do not justify the imposition of significant noise on 4,300 people who would not be exposed to such noise if the appeal scheme was not built, they do provide an instructive context. ***[11.54-5]***

11.146 It is important to recognise that the operation of a wide-spaced runway in mixed mode is likely to be a worst-case scenario for residents of the proposed development. If the airport was operated in segregated mode with all landings on the southern runway (in my view the only realistic option for segregation), the number of people experiencing noise above 57 dB(A) as a result of the appeal scheme would be about 2,250. It must be appreciated that such a method of operation would have adverse noise consequences for the rural communities to the north-west and north-east of the airport, though the limited evidence available suggests that both the rise in noise levels and the number of people affected would be relatively small, particularly in comparison with the impacts to the south of the airport. ***[11.43-4]***

11.147 If the appeal scheme is built and a second runway at Gatwick comes to fruition, there would undoubtedly be pressure from residents of the North East Sector (and others in Ifield and Langley Green) for the runway to be operated in segregated mode, given the substantial benefits in noise reduction to them. This would have significant consequences for the airport operator in terms of reduced capacity, perhaps reducing throughput by around 15%. There is also likely to be pressure for a closer spaced runway, with even less noise impact on the communities south of the airport, though this would reduce airport capacity by a much greater amount. The outcome of the complex process of evaluating options and balancing economic issues against environmental impacts cannot be predicted. All that can be said now is that the existence of the North East Sector would be an important

consideration to be weighed in the balance, thereby adding to the complexity of the process. ***[11.51, 11.56]***

Matter (iv) - High quality design and compliance with PPS1

11.148 There has been no material alteration to the design of the proposal since the last inquiry. Although an up-dated Design Statement was submitted in May 2009, this merely reflects the minor changes to the masterplan that were tabled at the 2006 inquiry. Together these documents provide a suitable framework for the creation of a high quality, coherent environment that has a distinct sense of place. To ensure that the broad principles espoused in the Design Statement are worked up in greater detail and consistently applied across each phase of the development, a new condition (No 2) requires a detailed design and access statement to be prepared for each of the four phases. This and the other conditions would ensure the delivery of a high quality design. ***[3.1]***

11.149 A re-appraisal has taken place in light of the objectives of limiting carbon dioxide emissions and promoting decentralised and renewable or low carbon energy sought by the Planning and Climate Change supplement to PPS1. In terms of energy supply, a new condition (No 23) requires at least 10% to be secured from decentralised, renewable or low carbon sources across the whole site, thereby meeting the target of RSS policy NRM11. As to limiting carbon dioxide emissions, conditions 21 and 22 require all dwellings to be constructed to at least Code Level 3 of the Code for Sustainable Homes, and all non-residential buildings to achieve a BREEAM "very good" rating.

11.150 The Council believes that a higher target should be set for dwellings, thereby reflecting the Government's desire to achieve a progressive improvement in energy efficiency in future years. The Council considers that condition 21 should require all homes to achieve Code for Sustainable Homes Level 4 after 2013, and Levels 5 and 6 after 2016, wherever feasible and viable. Whilst I agree that this is a desirable aim, I accept the appellants' point that if this improvement is to become mandatory in future years, it will be secured by means of other legislation. Consequently, although the development would not be adopting best practice in terms of sustainable design and construction, I consider that the achievement of Code Level 3 would be an acceptable means of ensuring present-day compliance with the Climate Change supplement and RSS policy CC4. ***[10.4]***

11.151 Turning to wider sustainability issues, the North East Sector is very close to the major employment foci of Gatwick airport and Crawley's main industrial estates, and it is a convenient distance (about 3.5km) from the town centre. There is no doubt that it is a highly accessible location that is ideally placed to meet the needs of Crawley and the sub-region – indeed, as has long been recognised, there is no better location for large scale development in or close to Crawley. Moreover, a major advantage of continuing Crawley's tradition of developing whole neighbourhoods is that local facilities such as shops, a primary school and other community provision would be provided in central locations within the site. Because the site is bounded by major roads and a railway, and is relatively well-contained in the landscape, there would be no significant adverse landscape or visual impacts as a result of the development. Nor would there be any unacceptable effects on features of ecological or biodiversity interest. ***[6.154]***

Matter (v) - Housing and compliance with PPS3

11.152 The foregoing analysis has shown that there is not an up-to-date five year supply of deliverable sites in Crawley or the Gatwick sub-region. Nor does it seem that the land supply position is a short-term problem that will be resolved imminently. Historically in Crawley there was a substantial under-provision in the first half of the decade as the supply that was anticipated from the North East Sector did not materialise. Looking to the future, without the North East Sector the medium term land supply position is, in the Council's words, exceptionally challenging. And whilst the collaborative working with neighbouring authorities (on which the Council places such faith) shows signs of producing some results, the opportunities around Crawley are so limited, and the shortages in the wider sub-region are so substantial, that there can be little confidence that Crawley's future needs will easily be met outside the Borough. ***[11.94-102]***

11.153 Where a five year supply cannot be demonstrated, PPS3 advises that planning applications for housing should be considered favourably subject to (in particular) the considerations of PPS3 paragraph 69. I have concluded that the first of these, achieving high quality housing, would be met. As to housing mix, the development proposes a wide range of housing with a high proportion of accommodation for families. It would also provide 40% affordable housing, the full quota sought by development plan policy, at a time when many other schemes are unable to deliver this proportion because they are not viable in the prevailing economic conditions. Accordingly there no reason to doubt that the scheme is highly suited to meet the demands of the Crawley housing market. ***[6.142, 6.146]***

11.154 The third criterion of paragraph 69 is the suitability of the site for housing. The only question mark here is the future noise climate as a result of a possible second runway at Gatwick airport, which is addressed separately. In all other respects the site is eminently suitable, for the reasons given elsewhere. The final criterion is the effective and efficient use of land. With regard to density, an overall density of 41 dph is proposed; for an extensive neighbourhood which includes a sizeable proportion of larger, family homes, such a density implies that the land would be used efficiently. The Design Statement and masterplan indicate that land would be used effectively. ***[3.1, 6.156]***

11.155 It must be recognised that, because the North East Sector is a greenfield site, the proposal does not accord with the principle of making best use of previously-developed land. Nevertheless, the land supply analysis reveals that most of the brownfield sites on which the Council relied as a source of supply will not deliver within the five year period; further, there is no evidence that realistic alternatives exist. Moreover, the RSS recognises that some greenfield land releases are likely to be required if the housing needs of the sub-region are to be met. Thus the non-compliance with this objective is not a matter to which significant weight should be attached.

Matter (vi) - Transport and PPG13

11.156 The location of the site on the edge of Crawley, close to the employment areas and town centre, means it is ideally placed to take advantage of opportunities to encourage journeys to be made by a range of non-car modes of transport. The proposal would secure these opportunities by a range of

measures including enhanced footpath and cycleway linkages and the provision of a bus service to the town centre, employment estates, Gatwick and Three Bridges railway station. Travel plans and information packs would promote the use of non-car modes of transport, with annual reviews helping to ensure that they remain effective over time. The provision within the site of shops, a primary school, health centre, library, community centre and recreation facilities should reduce the need to travel. Furthermore, siting a large housing development close to the major sub-regional employment locations should help to reduce the current very high levels of in-commuting. Levels of parking provision would be controlled in accordance with the Council's current policy. Overall, therefore, the proposed development would do much to promote sustainable transport choices and is fully compliant with PPG13. ***[3.5-9]***

Matter (vii) - Noise and PPG24

11.157 The site is subject to noise from a number of existing sources, but in all cases it either occurs at levels that are acceptable or measures would be taken to mitigate it successfully. The only concern is the future possibility of noise from a wide-spaced second runway at Gatwick airport. If such a runway was to operate in mixed mode, most of the site would be subject to aircraft noise between 57 dB(A) and 66 dB(A), equivalent to NEC B. At this level, Annex 1 of PPG24 advises that noise should be taken into account and, where appropriate, an adequate level of protection against noise should be secured. The appeal scheme proposes that all noise sensitive development (dwellings, primary school and education/community facilities) would be built with sound insulation such that an acceptable internal noise environment would be achieved, thereby potentially satisfying the NEC B stipulation. ***[11.22]***

11.158 Detailed guidance on noise from aircraft is in Annex 3 of PPG24, which refers to the NECs but also states that 60 dB(A) should be regarded as the desirable upper limit for major new noise sensitive development. About 60% of the population of the appeal scheme would experience noise above this level. Therefore, despite the noise level that an individual would experience being potentially acceptable, PPG24 advises that it is not desirable to expose large numbers of people to this level of noise. Moreover, reading Annex 3 and Annex 1 together, PPG24 does not say that planning permission should not normally be granted for the appeal proposal - that would only apply to development, whether major or not, in NEC C (66 – 69 dB(A)). In short, PPG24 advises that because of the large scale of the proposal, the noise level experienced by 60% of the population would be above the desirable limit, and for the noisier parts of the site it would be close to the limits of acceptability, but the development would not necessarily be unacceptable. ***[11.25]***

11.159 If a second runway was to be operated in segregated mode with all landings on the southern runway (which, in my view, is by far the most likely option for segregated mode), it appears that approximately 15-20% of the population would experience noise above the 60 dB(A) level. Whether the scale of development above this threshold would be "major" in Annex 3 terms is debatable. With the great majority of dwellings being at the lower end of the NEC B range, it would be difficult to sustain an objection on PPG24 grounds. ***[11.41]***

Matter (viii) - Conditions

11.160 The recommended conditions are attached at Annex A, together with reasons for their imposition. Apart from No 21, all are agreed between the appellants and the Council. As indicated above, I consider that No 21 in the appellants' wording is acceptable and would achieve a level of energy efficiency in the dwellings that complies with current policy. I am satisfied that these conditions meet the six tests of Circular 11/95. ***[10.2-4]***

11.161 GAL suggested three additional conditions. The first, relating to aerodrome safeguarding, is covered by other legislation and is therefore unnecessary. The other two would essentially advise potential occupiers of the development about the possibility of noise from a second runway at Gatwick. I agree with the Council and the appellants that these are unnecessary, as the issues raised do not justify the refusal of planning permission if the conditions are not imposed. It is also questionable whether they are reasonable, for if planning permission is granted, that decision will have been taken on the basis that the noise environment is acceptable. As to the condition seeking a statutory notice, I was not made aware of any legislative provision enabling such a notice to be made, so the enforceability of this condition is unclear. Consequently I recommend that the GAL conditions are not added to the list. ***[6.159-60, 8.57-8, 10.5-6]***

Matter (ix) - Other planning considerations

Planning obligations

11.162 For the reasons explained previously, no planning obligations have been submitted. Instead, the provision of the services and infrastructure that is necessary to mitigate the impacts of the development is proposed to be secured by planning conditions. The acceptability of this means of delivery is a matter of law for the Secretary of State. My own view, on the basis of the Joint Legal Opinion (which I accept may be a partial rather than a balanced resume of relevant case law) and the other evidence before me, is that the proposed negative conditions are acceptable and do not conflict with paragraph 83 of Circular 11/95. ***[10.1]***

Environmental Impact Assessment

11.163 Regulation 21(2) of the 1999 EIA Regulations requires a description of the main mitigation measures proposed to avoid, reduce and offset the major adverse effects of the development. The most important of these are summarised below, based partly on a document prepared by the main parties.[228]

11.164 Water quality issues would be addressed through the installation of sustainable drainage systems and measures to prevent contamination of Gatwick Stream, associated tributaries and ponds. A scheme of remediation would mitigate any contamination found on the site of the former abattoir. Based on the principles in the Design Statement, the layout and design would seek to retain the main hedgerows, trees and woodland within the site; they would then be protected during the construction phase and included within

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the landscape management plan. As for ecology and nature conservation, measures in a biodiversity management plan would minimise the adverse effects on bats, birds, amphibians and reptiles, especially during the construction phase. The cultural heritage would be addressed by a programme of archaeological investigation and recording prior to construction.

11.165 Mitigation of the transport impacts of the development would be achieved through off-site highway improvements and a substantial package of measures aimed at encouraging non-car usage, including improvements to bus services, improved networks for pedestrians and cyclists, and travel plans. Measures to address noise from nearby main roads and the railway would be implemented by a combination of acoustic barriers and building design. The effects on social and community infrastructure would be offset by the provision of a primary school, a library, health and community provision, and extensive areas of public open space and play space. Apart from those aspects integral to the design of the development, all these measures would be secured by reserved matters approvals and planning conditions.

Other matters

11.166 I have taken account of all the other matters raised, including the concerns of neighbouring councils and local residents about traffic congestion, flooding, air pollution and loss of a semi-rural area. I consider that, where appropriate and necessary, these matters have been addressed satisfactorily, either in the design of the development or through conditions. Setting aside the question of noise from a possible second runway, there are no development control issues or other considerations that would prevent planning permission being granted. ***[9.6-10]***

Matter (i) - Development plan

11.167 As is apparent from Chapter 4, the development plan context has recently changed with the publication of the South East Plan. Thus RPG9 and the West Sussex Structure Plan are no longer extant, and matters (i) and (ii) of the Secretary of State's letter of 10 December 2008 are effectively combined.

11.168 The proposal is wholly consistent with the South East Plan strategy which identifies the Gatwick sub-region as a focus for growth and regeneration (policy SP1), and which seeks higher density, mixed use development in accessible locations in the Crawley-Gatwick regional hub (policy SP2). Given the significant shortfall in housing land supply, principally in the immediate five year period but also in the medium term, the proposal would make an appreciable contribution to the dwelling requirement of policies H1 and GAT3. Moreover, the proposal would meet the 40% target for affordable housing of the latter policy. Further, the North East Sector is specifically identified as one of the locations in the Gatwick sub-region for development to be brought forward, where possible. Thus in principle the RSS not only supports the development of the appeal site, but positively encourages it. ***[4.2-4, 6.161]***

11.169 South East Plan policy T9 reflects Government policy as set out in the ATWP and subsequent statements by supporting the development of Gatwick and Heathrow airports and safeguarding land for a new runway at Gatwick after 2019. Other than clarifying that it relates to a wide-spaced new runway at

Gatwick, the interpretation of "safeguarding" is not defined. Policy NRM10 promotes measures to address and reduce noise pollution: the appeal proposal complies with one of these measures, in that high levels of sound-proofing would be provided, but ostensibly not with another, which seeks to locate noise sensitive development away from existing or planned sources of noise. No specific noise criteria are given, though the text states that the guidance in PPG24 should be taken into account. ***[4.5]***

11.170 The Core Strategy starts from the standpoint that, although the North East Sector is the preferred location for a major new neighbourhood, it is currently unavailable as a result of uncertainty over a second runway at Gatwick. Although the site is not included in the identified housing land supply to 2016, policy H2 states that there is no policy bar to immediate development if this preclusion is lifted. The specific area of land required by Gatwick airport to be safeguarded for a second runway is addressed by policy G2 and drawn on the Proposals Map; the appeal site is close to, but wholly outside, this safeguarded area. Thus the appeal proposal is not specifically precluded by policies in the Core Strategy. ***[4.7-8]***

11.171 The saved policies of the Crawley Borough Local Plan include GD17, which aims to prevent major noise sensitive development in areas subject to aircraft noise above 60 dB(A) unless there are exceptionally compelling reasons. I have already indicated my view that either policy GD17 does not apply to this proposal or, if it does apply, it should be given less than the full weight of the development plan because of (amongst other reasons) an inconsistency with RSS policy NRM10. But if these arguments are wrong and it is decided that GD17 carries full weight, then I consider that there is a strong case for arguing that the shortage of housing land in Crawley and the sub-region, and the "exceptionally challenging" task the Council faces in identifying alternative provision, coupled with the sustainability and other benefits of the proposal, are sufficient to amount to the exceptionally compelling reasons necessary to satisfy GD17. ***[11.13-21]***

11.172 Ultimately, therefore, compliance with the development plan comes down to whether the appeal scheme conflicts with the safeguarding provision of RSS policy T9, and whether it conflicts with PPG24 and is thereby contrary to the noise requirements of RSS policy NRM10. Dealing firstly with safeguarding, the detail absent from T9 is provided by Core Strategy policy G2, which defines the area to be protected from development. As it is the function of a Local Development Document to interpret and define the strategic provision of the RSS, then taking the safeguarding policies together (T9 and G2), the proposal is not in conflict. Turning to noise, my conclusion on PPG24 is that 60% of the population would experience a level of noise that is not desirable, though that does not necessarily mean that the development is unacceptable. Consequently a judgement has to be made, balancing the impact of an undesirable level of noise against the housing and other benefits of the scheme.

BALANCE OF CONSIDERATIONS

11.173 Noise considerations aside, the development plan contains no bar to the immediate release of the appeal site for housing. The absence of a five year

supply of housing land in Crawley brings about the PPS3 paragraph 71 invocation to "consider favourably planning applications for housing". When set in the context of a sub-regional five year land supply position which shows even greater shortfalls than exist at Crawley, with little prospect of redressing the situation in the medium term either in Crawley or nearby in surrounding Districts, the housing need argument becomes even stronger. The fact that 40% of the housing would be affordable to those who cannot otherwise access the market is a further important factor to be weighed in the balance, notwithstanding that this is the level required by policy, because many schemes are currently unable to deliver affordable housing at this level.

11.174 The site has long been regarded as the best location for large scale development in or close to Crawley. It is in a highly sustainable location close to major employment opportunities at Gatwick and Crawley and not far from the town centre. The potential it offers for a significant reduction in in-commuting, coupled with a wide-ranging package of transport measures designed to promote sustainable transport choices, add further weight to the case on housing need. Taken together, the arguments in favour of the proposal are compelling.

11.175 Set against these factors in favour of the proposal is the potential impact of noise from a second runway at Gatwick and/or the extent to which the presence of an inhabited North East Sector would create pressure for a sub-optimal configuration or operation of that second runway, with a consequent lessening of airport capacity.

11.176 Gatwick is not the option that the Government prefers. Because of the recent decision that the third runway at Heathrow is acceptable in policy terms, at present it is unlikely that Gatwick will be required. But even if Gatwick is required, it is by no means certain that the second runway would produce the high levels of noise that would arise from a wide-spaced runway operated in mixed mode. It is possible that other modes of operation or runway configurations could be chosen which would have a lower overall noise impact, including across the North East Sector, though some options might increase noise levels in certain rural locations. Such alternatives would result in significant reductions in airport capacity, however. The capacity reduction might be in the order of 15% if a wide-spaced runway was operated in segregated mode, but would be much greater if a close-spaced runway was built.

11.177 If the appeal scheme is not built, there would still be a debate about the balance between environmental impacts and economic considerations at the time the second runway at Gatwick was being designed. Nevertheless, the existence of a developed North East Sector is an important consideration which would further complicate the process of option evaluation and the balance between competing interests.

11.178 Because the ATWP seeks to safeguard a wide-spaced runway operated in mixed mode, this is the option that must be assumed for the purpose of this analysis. In this circumstance, noise levels above 60 dB(A), which PPG24 says are undesirable for major development, would be endured by 60% of North East Sector residents for 27% of the time. Because sound insulation would provide an acceptable internal living environment, and an acceptable teaching environment inside the primary school, the undesirable noise would

be perceived by residents when in their gardens and the external spaces of the neighbourhood (including the primary school play areas). Similarly, although almost all the North East Sector residents would experience noise above the 57 dB(A) level which marks the onset of community annoyance, they too would endure this for two days a week on average, again when outside their homes or the school building. Even the highest levels of noise that would be experienced across the site would be below the level at which the Government advises that planning permission should not normally be granted. Thus 60% of the population would be living in a noise environment which, although undesirable according to PPG24, is not unacceptable. Noise would still be a factor for the remaining 40%, but would be below the level which PPG24 says is undesirable.

11.179 The shortage of land for housing in Crawley, the fact that this has existed for very many years, and the indication that it will be extremely challenging to find a way out of this difficulty, is itself a highly undesirable situation. Difficult choices have to be made, and it is not always possible to achieve everything that is desirable. Because a second runway at Gatwick is not current Government policy, the risk that residents of the North East Sector would endure higher than desirable (but not unacceptable) levels of noise is relatively small. But even if this were to come about, in my judgement the provision of a large number of much needed homes and their associated community facilities, all built with sound insulation, would - in the circumstances I have described - outweigh the exposure to undesirable levels of aircraft noise.

RECOMMENDATION

12.1 I recommend that the appeal be allowed and planning permission be granted, subject to the conditions set out in Annex A.

Martin Pike

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mary Cook of Counsel assisted by Melissa Murphy of Counsel	Instructed by Legal Services, Crawley Borough Council

They called

Mr S Turner MA MSc FIOA	Director of Acoustics, Bureau Veritas
Mr P Fairham BSc(Hons) DipTP MRTPI	Development Control Manager, Crawley Borough Council
Mr S Dennington BSc(Hons) DipTP MRTPI	Planning Policy Manager, Crawley Borough Council

FOR THE APPELLANTS:

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They called

Mr J Charles BSc MSc FIOA	Noise Consultant, Bickerdike Allen Partners
Mr D Titterington BSc DipTP MRTPI	Managing Director, APD Airports
Mr C Cobbold MA MBA MRICS	Director of Residential Research, DTZ
Mr C Self DipLA CNLI	Director, CSA Environmental Planning
Mr D Boswell BSc CEng MICE FConsE	Senior Technical Director, WSP Development & Transportation
Mr J Woolf MA DipTP MRTPI	Director, Woolf Bond Planning

FOR GATWICK AIRPORT LIMITED:

Neil King QC	Instructed by Berwin Leighton Paisner LLP

He called

Mr T Lockwood MA BPhil MRTPI	Consultant to Gatwick Airport Limited

DOCUMENTS

GENERAL DOCUMENTS

INQ1	Inspector's note of pre-inquiry meeting
INQ2	Crawley BC letters and notices of notification of inquiry
INQ3	Letters of representation

RELEVANT CORE DOCUMENTS FROM PREVIOUS INQUIRY

CD1	The Assessment and Management of Environmental Noise Directive (2002/49/EC)
CD2	European Council Directive 85/337/EEC (as amended by Council Directive 97/11/EC)
CD5	Town and County Planning Act 1990 (as amended)
CD6	Planning and Compulsory Purchase Act 2004
CD7	Town and Country Planning (General Development Procedure) Order 1995 (SI: 1995/419) (as amended)
CD12	Circular 08/93: Awards of Costs Incurred in Planning and Other Proceedings
CD13	Circular 11/95: The Use of Conditions in Planning Permissions
CD15	Circular 05/2005: Planning Obligations
CD18	PPS1: Delivering Sustainable Development (February 2005)
CD19	The Planning System: General Principles
CD22	PPG4: Industrial and Commercial Development and Small Firms (November 1992)
CD26	PPS11: Regional Spatial Strategies (September 2004)
CD28	PPG13: Transport (March 2001)
CD29	PPG15: Planning and the Historic Environment (September 1994)
CD30	PPG16: Archaeology and Planning (November 1990)
CD33	PPG24: Planning and Noise (September 1994)
CD36	Transport White Paper, "The Future of Transport – a Network for 2030" (July 2004)
CD37	Transport White Paper, "The Future of Air Transport" (December 2003)
CD38	Transport White Paper, "A New Deal for Transport: Better for Everyone" (1998)
CD42	RPG9 (RSS): Regional Planning Guidance for the South East
CD43	West Sussex Structure Plan 2001-2016
CD44	Crawley Borough Local Plan 2000
CD45	Planning Application and covering correspondence (January 1998)
CD46	Supporting Statement (January 1998)
CD47	Development Phasing (November 1998)
CD48	Transport Study, Final Report (October 1998)
CD49	Air Quality Investigation Summary Report (August 1998)
CD50	Contaminated Land Investigation (August 1998)
CD51	Preliminary Archaeological Investigation (May 1998)
CD52	Rail Station Visibility Study (May 1998)
CD53	Description of Historic Buildings (March 1998)
CD54	Archaeological Desk Based Assessment (December 1997)
CD55	Ecological Appraisal (January 1998)
CD56	Air Quality Investigation Railway Goods Yard, Crawley (December 1997)
CD57	Environmental Statement (June 2006 – 3 volumes)
CD58	Design Statement (July 2006)
CD59	Report to Development Control Committee on 19 December 2005 together with related Minute
CD60	Report to Development Control Committee on 7 August 2006 together with related Minute
CD64	Planning guidance for the North East Sector (December 1998)

CD65	Draft South East Plan (March 2006)
CD67	Article 14 Direction dated 19 March 1999
CD69	Agreement dated 13 August 1979 between British Airports Authority and West Sussex County Council
CD71	Crawley Urban Housing Potential Study, August 2004
CD72	Statement of Common Ground – Housing Land Supply
CD72A	Completions on non-allocated sites 2003/04 - 2005/06
CD73	Crawley Borough Housing Strategy 2004-2008
CD74	Crawley Community Strategy 2003 to 2020
CD75	Crawley Housing Needs Assessment, 2004
CD77	Mid Sussex LDF Small Scale Housing Allocations, Submission Document, May 2006
CD79	Reigate and Banstead Housing Delivery Background Paper, May 2006
CD80	East Grinstead Strategic Development Area Action Plan, Pre-Submission Document, May 2006
CD83	Statement of Common Ground – Noise Matters
CD88	Supplementary Planning Guidance Note 1, Development of Gatwick Airport (August 2003)
CD92	Crawley Borough Housing Supply/Demand Analysis 2004
CD93	Crawley Borough LDF Affordable Housing Viability Supply, February 2006
CD95	Lancet Vol 365 4 June 2005 “Aircraft and road traffic noise and children’s cognition and health: a cross-national study
CD97	Development Plan Directions, 30 March 1999 and 18 October 1999
CD98	High Court Judgment: Persimmon Homes (South East) Limited v Secretary of State for Transport, 21 January 2005
CD99	Crawley Borough Council Report to Committee BPESO 1105, 26 July 1999
CD100	WHO “Guidelines for Community Noise”, April 1999
CD101	WHO Technical Meeting Report on Aircraft Noise and Health, October 2001
CD103	Crawley Borough Council Report to Committee BPESO 1106, 26 July 1999
CD104	Minutes of the Executive, Crawley Borough Council, 12 July 2006
CD105	How Efficiently is your Council Using Land? Report of the CPRE
CD106	BS 4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas
CD108	Crawley Borough Council: Housing Action Plan, October 2005
CD109	The Future Development of Air Transport in the UK: South East (2nd edition)
CD110	ERCD report 0308 Revised Future Aircraft Noise Exposure Estimates for UK Airports, December 2003
CD111	Noise Exposure Contours for Gatwick Airport 2000
CD112	The Future Development of Air Transport in the UK: South West
CD113	BS 8233: 1999 Sound Insulation and Noise Reduction for Buildings – Code of Practice
CD114	NHS Heatwave: Guide to Looking After Yourself and Others During Hot Weather
CD116	Statement of Common Ground – Air Quality
CD117	The West Sussex Transport Plan 2006-2016, WSCC March 2006
CD118	Crawley Area Transport Plan, WSCC 2006
CD120	Crawley North East Sector – Noise Report, January 1998
CD121	Building Bulletin 93 – Acoustic Design of Schools
CD122	Night Flying Restrictions at Heathrow, Gatwick and Stansted, DfT 2006
CD123	BAA Gatwick: Community Buildings Noise Insulation Scheme August 2005
CD124	BAA Gatwick: Home Relocation Assistance Scheme August 2005
CD125	BAA Gatwick: Homes Owner Support Scheme July 2005
CD126	BAA Gatwick: Property Market Support Bond July 2005
CD127	Horsham District and Crawley Borough Local Development Frameworks: West and North West of Crawley – Joint Action Area Plan Issues and Options, September 2006
CD128	BAA Gatwick: Gatwick Airport Interim Master Plan October 2006
CD129	ECRD Report 0502: Noise Exposure Contours for Gatwick Airport 2004
CD130	Agreed statement on barrier effect of housing on aircraft noise

CD131 Agreed note on location of proposed school relative to Gatwick flight paths
CD133 Statement of Common Ground – Planning Matters
CD134 Statement of Common Ground – Transport Matters
CD135 Working Paper No 1C – Public Transport
CD136 Working Paper No 2 – Pedestrian and Cycle Facilities
CD139 Revised County Parking Standards and Transport Contributions Methodology

EVIDENCE AND OTHER DOCUMENTS SUBMITTED TO PREVIOUS INQUIRY

R/CD66 Planning Inspector letter setting out the matters on which the Secretary of State wished to be informed in respect of the previous inquiry (25 October 2005) (previously INQ1)
R/CD67 Inspector's statement of issues, delivered on the opening of the previous inquiry (previously INQ3)
R/CD68 Inspector's note on evidence relating to housing need (previously INQ6)
R/CD69 Opening Submissions of Crawley Borough Council (previously CBC00/01)
R/CD70 Closing Submissions of Crawley Borough Council (previously CBC/00/12)
R/CD71 Mr Cox's proof of evidence (previously CBC01/1)
R/CD72 Mr Cox's supplementary proof of evidence (previously CBC01/2)
R/CD73 Draft statement of common ground in respect of noise matters including alterations requested by Mr Cox (previously CBC01/3)
R/CD74 Mr Dennington's proof of evidence (previously CBC02/1)
R/CD75 Mr Dennington's supplementary proof of evidence (previously CBC02/2)
R/CD76 Mr Dennington's summary proof of evidence (previously CBC02/3)
R/CD77 Mr Fairham's proof of evidence (previously CBC03/1)
R/CD78 Mr Fairham's summary proof of evidence (previously CBC03/2)
R/CD79 Mr Fairham's supplementary proof of evidence (previously CBC03/3)
R/CD80 Appellant's Opening Submissions (previously GWB0/1)
R/CD81 Appellant's Closing Submissions (previously GWB0/18)
R/CD82 Mr Woolf's proof of evidence (previously GWB1/1)
R/CD83 Mr Woolf's appendices (previously GWB1/2)
R/CD84 Mr Woolf's rebuttal (previously GWB1/3)
R/CD85 Mr Garber's proof of evidence (previously GWB2/1)
R/CD86 Mr Garber's appendices (previously GWB2/2)
R/CD87 Mr Garber's rebuttal (previously GWB2/3)
R/CD88 Mr Self's proof of evidence (previously GWB3/1)
R/CD89 Mr Self's appendices (previously GWB3/2)
R/CD90 Professor Laxen's proof of evidence (previously GWB4/1)
R/CD91 Professor Laxen's appendices (previously GWB4/2)
R/CD92 Professor Laxen's supplementary note (previously GWB4/3)
R/CD93 Mr Charles' proof of evidence (previously GWB5/1)
R/CD94 Mr Charles' appendices (previously GWB5/2)
R/CD95 Mr Charles' rebuttal (previously GWB5/3)
R/CD96 Mr Goodwin's proof of evidence (previously GWB6/1);
R/CD97 Mr Goodwin's plans and appendices (previously GWB6/2)
R/CD98 Mr Goodwin's rebuttal (previously GWB6/3)
R/CD99 Mr Boswell's proof of evidence on sustainability, access, drainage and infrastructure issues (previously GWB7/1)
R/CD100 Mr Boswell's appendices on sustainability, access, drainage and infrastructure issues (previously GWB7/2)
R/CD101 Mr Boswell's proof of evidence on transport issues (previously GWB8/1)
R/CD102 Mr Boswell's appendices on transport issues (previously GWB8/2)
R/CD103 Mr Cobbold's proof of evidence (previously GWB9/1)
R/CD104 Mr Littman's proof of evidence (previously GWB10/1)
R/CD105 Mr Lockwood's proof of evidence (previously GAL/1)
R/CD106 Mr Lockwood's summary (previously GAL/2)
R/CD107 Closing Submissions of Gatwick Airport Limited (previously GAL/14)

NEW CORE DOCUMENTS FOR RE-DETERMINED INQUIRY

R/CD1	European Council Directive 2002/30/EC: Noise Related Operating Restrictions
R/CD2	The Civil Aviation Act 2006
R/CD3	The Environmental Noise (England) Regulations 2006 (SI: 2006/2238)
R/CD4	The Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003 (SI: 2003/1742)
R/CD5	Planning and Climate Change – Supplement to PPS1 (December 2007)
R/CD6	PPS3: Housing (November 2006)
R/CD7	PPS12: Local Spatial Planning (June 2008)
R/CD8	PPS25: Development and Flood Risk (December 2006)
R/CD9	Air Transport White Paper Progress Report (December 2006)
R/CD10	Crawley Borough Local Development Framework Core Strategy (October 2008)
R/CD11	Crawley Borough Annual Monitoring Report 2007/08
R/CD12	Crawley Borough Local Development Scheme (December 2008)
R/CD13	Horsham District and Crawley Borough West of Bewbush Joint Area Action Plan: Submission Development Plan Document (May 2008)
R/CD14	Mid Sussex District Local Plan (May 2004)
R/CD15	Mid Sussex District Core Strategy: Pre-submission Document (January 2008)
R/CD16	Mid Sussex District Annual Monitoring Report 2007-08 (December 2008)
R/CD17	Mid Sussex adopted Local Development Scheme 2006
R/CD18	Mid Sussex revised Local Development Scheme 2008: not yet submitted to the Secretary of State
R/CD19	Mid Sussex Small Scale Housing Allocation Development Plan Document (April 2008)
R/CD20	Mid Sussex: Haywards Heath Town Centre Masterplan Supplementary Planning Document (June 2007)
R/CD21	Mid Sussex: Burgess Hill Town Centre Masterplan Supplementary Planning Document (November 2006)
R/CD22	Mid Sussex: East Grinstead Town Centre Masterplan Supplementary Planning Document (July 2006)
R/CD23	Reigate & Banstead Borough Annual Monitoring Report 2007-08
R/CD24	Reigate & Banstead Borough Core Strategy: Submission Document (2009)
R/CD25	Reigate & Banstead Borough Local Plan (April 2005)
R/CD26	Reigate & Banstead Local Development Scheme (March 2009)
R/CD27	Horsham District Core Strategy (February 2007)
R/CD28	Horsham District Council: West of Horsham Masterplan (October 2008)
R/CD29	Horsham District Local Development Scheme: 2007 Review (March 2007)
R/CD30	Horsham District Annual Monitoring Report 2007-08
R/CD31	Horsham District Site Specific Allocations of Land Development Plan Document (2007)
R/CD32	Adding Capacity at Heathrow: Decisions Following Consultation (15 January 2009)
R/CD33	Adding Capacity at Heathrow: DfT Consultation Papers (November 2007)
R/CD34	Adding Capacity at Heathrow Airport, Impact Assessments (January 2009)
R/CD35	BAA's response to the Government Consultation 'Adding Capacity at Heathrow Airport' (February 2008)
R/CD36	Documents relating to 'Sustainable Development of Heathrow' (Project Heathrow)
R/CD37	Britain's Transport Infrastructure: Ministerial Statement to the House (15 January 2009)
R/CD38	UK Air Passenger Demand and CO2 Forecasts, published by the Department for Transport (15 January 2009)
R/CD39	Reforming the framework for the economic regulation of UK Airports (9 March 2009)
R/CD40	BAA Airports Market Investigation: Provisional Findings Report, published by the Competition Commission (August 2008)

R/CD41	BAA Airports Market Investigation – a report on the supply of airport services by BAA in the UK, published by the Competition Commission (19 March 2009)
R/CD42	House of Commons – Hansard Written Answers to questions 252656 and 252657 (3 February 2009)
R/CD43	Luton Airport: extract from website confirming that the draft Masterplan for London Luton Airport has been withdrawn
R/CD44	BAA Stansted: Draft Final Master Plan (September 2008)
R/CD45	Secretary of State's Decision Letter – Stansted G1 Application (8 October 2008)
R/CD46	Secretary of State's letter: postponing Stansted G2 inquiry (2 March 2009)
R/CD47	BAA Stansted Statement: Why Stansted and Why Now?
R/CD48	BAA Stansted Statement: News Update, Government delay start of G2 Planning Inquiry (March 2009)
R/CD49	Gatwick Airport Limited: Capital Investment Programme (April 2008)
R/CD50	*(not used)*
R/CD51	Consultation on the Future Development of Air Transport in the United Kingdom (SERAS 2002-03)
R/CD52	ERCD Report 0705 Revised Future Aircraft Noise Exposure Estimates for Heathrow Airport (November 2007)
R/CD53	ERCD Report 0707 London Gatwick Airport Strategic Noise Maps 2006 (December 2007)
R/CD54	ERCD Report 0802 Noise Exposure Contours for Gatwick Airport 2007 (July 2008)
R/CD55	ERCD Report 0307 (December 2003)
R/CD56	London Gatwick Airport: Interim Noise Management Action Plan 2009-2011 (December 2008)
R/CD57	Flight Evaluation Report 2007
R/CD58	Section 106 Agreement: Gatwick Airport, entered into by Gatwick Airport Limited West Sussex County Council and Crawley Borough Council (15 December 2008)
R/CD59	ERCD Report 09/04: Metrics for Aircraft Noise, January 2009
R/CD60	Draft Noise Action Plan – Agglomeration Template, published by DEFRA (March 2009)
R/CD61	Guidance for airport operators to produce airport noise action plans under the terms of the Environmental Noise (England) Regulations 2006, published by DEFRA (March 2009);
R/CD62	DEFRA Environmental Protection: Interdepartmental Group on Costs and Benefits: Tools
R/CD63	Britain's Transport Infrastructure: Motorways and Major Trunk Roads, published by the DfT (January 2009)
R/CD64	"The Future Development of Air Transport in the United Kingdom: South East – A National Consultation" published by the DfT (July 2002)
R/CD65	The International Civil Aviation Organisation – Air Transport Bureau Balanced Approach to Aircraft Noise Management
R/CD66 to R/CD107	*Evidence submitted to previous inquiry – see list above*
R/CD108	Inspector's Report to the Secretary of State – North East Sector, Crawley (22 January 2007)
R/CD109	Secretary of State's Decision Letter – North East Sector, Crawley (14 May 2007)
R/CD110	Judgment of Mr Justice Collins pursuant to Section 288 of the Town and Country Planning Act 1990 – North East Sector, Crawley (9 July 2008)
R/CD111	Judgment of Mr Justice Wilkie pursuant to Section 113 of the Planning and Compulsory Purchase Act 2004 – Crawley Local Development Framework Core Strategy (15 October 2008)
R/CD112	South East Plan Panel Report (August 2007)
R/CD113	Secretary of State's Proposed Changes to the South East Plan (July 2008)
R/CD114	Inspector's Report on the Examination into the Crawley Core Strategy

	Development Plan document (20 August 2007)
R/CD115	Costs decision of Mr Justice Collins – North East Sector, Crawley (July 2008)
R/CD116	Crawley Borough Council's Core Strategy Review Non Statutory Consultation Topic Papers (May 2009)
R/CD117	Crawley Borough Council's Strategic Housing Land Availability Assessment (May 2009)
R/CD118	Northern West Sussex's Strategic Market Assessment (May 2009)
R/CD119	*(not used)*
R/CD120	Extracts of Inspector's Report to the Secretaries of State: G1 Stansted Airport – conclusions (14 January 2008);
R/CD121	Judgment of Sir Thayne Forbes – G1 Stansted Airport (13 March 2009);
R/CD122	Manual for Streets, published by the Department for Communities and Local Government (March 2007);
R/CD123	Guidance on Transport Assessments, published by the Department for Communities and Local Government (March 2007)
R/CD124	Planning Inspectorate Procedural Guidance: Planning Appeals and Called-in Planning Applications, PINS 01/2009 (April 2009)
R/CD125	Secretary of State's letter: Crawley saved Local Plan Policies (26 September 2007)
R/CD126	Inspector's Report on the Examination into Horsham's Core Strategy Development Plan Document (5 January 2007)
R/CD127	Inspector's Report on the Examination into Mid Sussex's Small Scale Housing Allocations Development Plan Document (14 November 2007)
R/CD128	Inspector's Report on the Examination into the West of Bewbush Joint Area Action Plan Development Plan Document (9 April 2009)
R/CD129	Strategic Housing Land Availability Assessment Practice Guidance (July 2007)
R/CD130	Guidance on Housing Trajectories: Version 1, published by the Government Office for the South East (September 2005)
R/CD131	Regional Spatial Strategy and Local Development Framework: Core Output Indicators – Update 2/2008, published by the Department for Communities and Local Government (2008)
R/CD132	Demonstrating a 5 year supply of Deliverable Sites, published by the Department for Communities and Local Government
R/CD133	Horsham District Council 'Facilitating Appropriate Development': Draft Supplementary Planning Document (January 2009)
R/CD134	Horsham District Consultation Statement on the Land West of Horsham Masterplan Supplementary Planning Document (October 2008)
R/CD135	Horsham District: West Horsham Design Principles and Character Areas (April 2009)
R/CD136	A New Plan for London: Proposals for the Mayor's London Plan (April 2009)
R/CD137	The South East Plan: Regional Spatial Strategy for the South East of England (May 2009)
R/CD138	Housing Land Supply Statement of Common Ground (May 2009)
R/CD139	Planning Policy Statement of Common Ground (May 2009)
R/CD140	Crawley Borough Council Housing Strategy 2009-2013 (February 2009)
R/CD141	Building Bulletin 101: Ventilation of School Buildings (July 2006)
R/CD142	Crawley Core Strategy Examination-in-Public (NES representation) – Issue 7: Gatwick Airport
R/CD143	Inspector's appeal decision: Hopkins Homes Site, Norwich Road, North Walsham (March 2009)
R/CD144	Attitudes to Noise from Aviation Sources in England: Non SP Peer Review (published by the Civil Aviation Authority and Bureau Veritas (October 2007)
R/CD145	New Research into Aircraft Noise Published, published by the Department for Transport (November 2007)
R/CD146	Attachment A of GWB5/5: Future Population near UK Airports with and without development
R/CD147	Statement of Common Ground between the Appellants and GAL relating to noise

R/CD148	Local centre/school layout, drawing CSA/667/035 rev A (previously GWB2/6)
R/CD149	Letter dated 12 May 2009 from DCLG to Chief Planning Officers: Planning for Housing and Economic Recovery
R/CD150	Email from David Wilson (Thames Water) to David Boswell re: Sewage Treatment Works (1 June 2009)
R/CD151	Email from Lance Cooper (Thames Water) to David Boswell re: sewage treatment works (8 June 2009)
R/CD152	BAA letter to Paul Fairham: Revised Aerodrome Safeguarding Map – Gatwick Airport (30 November 2006)
R/CD153	South East Plan: extracts from Supporting Document (May 2009)
R/CD154	Extract of Crawley Borough Local Plan 1993;
R/CD155	Appeal Decision: 21, 25, 27 and 29 Tushmore Lane Crawley APP/Q3820/A/09/2096993 (12 June 2009)
R/CD156	Report: Update on Housing Issues for the Core Strategy
R/CD157	Development Management Report: Land West of Horsham (16 June 2009)
R/CD158	Housing Land Assessment Checklist published by DCLG (May 2009)
R/CD159	Letter from DCLG to Councillor Steve Jordan: Planning Policy Statement 3 (20 May 2009)
R/CD160	Statement of Common Ground between the Appellants and the Council relating to noise
R/CD161	West Sussex: table of gross and net dwelling completions by site origin 2006-07 (6 November 2007), published by West Sussex County Council
R/CD161A	Revised Crawley Borough Council Completions Table for the period 2006-2007
R/CD162	West Sussex: table of housing completions by tenure mid-2001 to 31 March 2008, published by West Sussex County Council
R/CD163	West Sussex: table of gross and net dwelling completions by site origin 2007-08 (3 October 2008) published by West Sussex County Council
R/CD163A	Revised Crawley Borough Council Completions Table for the period 2007-08
R/CD164	Position Statement by Crawley Borough Council: Examination Issue 2 – Housing (January 2007)
R/CD165	Minutes of Executive Committee for Crawley Borough Council regarding 'The Future Development of Air Transport in the UK: South East – A National Consultation, Second Edition' (27 June 2003)
R/CD166	Email from Paul Rowley to Steve Dennington re: West of Horsham DC Report (17 June 2009)
R/CD167	Secretary of State's Decision Letter: TRL Site, Crowthorne (dated 8 June 2009)
R/CD168	Inspector's Report: TRL Site, Crowthorne (16 March 2009)
R/CD169	Environment Agency plan: Map of Horsham, West Sussex (as at 18 June 2009)
R/CD170	Letter from Macfarlanes to Planning Inspectorate attaching an Opinion from Peter Village QC and Andrew Tabachnik relating to the use of conditions (14 May 2009)
R/CD171	Letter from Planning Inspectorate to Macfarlanes confirming receipt of Opinion (22 May 2009)
R/CD172	Skelton arguments on behalf of the Claimants (Section 288 challenge relating to North East Sector)
R/CD173	Skeleton arguments on behalf of the First Defendant (Section 288 challenge relating to North East Sector)
R/CD174	South East Plan – Proposed Modifications
R/CD175	Briefing Note from Mr S Turner: Further Information on Noise Levels across the Site (June 2009)
R/CD176	Email from Mr Paul Rowley (of Horsham District Council) to Steve Dennington re: Berkeleys Site, West of Horsham (19 June 2009)
R/CD177	Bureau Veritas response to Macfarlanes relating to potential conflict (22 June 2009)
R/CD178	Summary of Principal Environmental Impacts of the Appeal Scheme (23 June 2009)
R/CD179	Addendum to Transport Statement of Common Ground
R/CD180	Inspector Site Visit Locations

R/CD181	Letter from the Department for Communities and Local Government re: the timetable for the Stansted inquiry (17 June 2009)
R/CD182	Letter to Colin Grimwood from Macfarlanes re: potential conflict of interest (4 June 2009)
R/CD183	Haslett Avenue indicative phasing programme and completions table, provided by Fairview homes (18 June 2009)
R/CD184	Circular 02/2009: The Town and Country Planning (Consultation) (England) Direction 2009
R/CD185	'Triumph for People Power', Article from local paper regarding refusal of scheme at 56A and 60 North Road
R/CD186	Email from Peter Allen (Head of Property Services for Crawley Borough Council) to Paul Fairham regarding the Council's land interest in the North East Sector (24 June 2009)
R/CD187	Email from Hannah White of the Environment Agency regarding comments on the Land West of Horsham Masterplan
R/CD188	Judgment of Mr J Gilbart QC in case of Orchard (Development) Holdings Plc (as referred to in the Opinion from Mr Village QC and Mr Tabachnik) (1 July 2005)
R/CD189	Land ownership plan showing the land which is subject to option (i.e. that which is hatched)
R/CD190	'Flights on Thursday 11 June 2009': Agreed note between the Appellants, the Council and Gatwick Airport Limited
R/CD191	Email exchange between Steve Dennington and Jeremy Woolf re: amendments to the Housing Land Supply Statement of Common Ground (25 June 2009)
R/CD192	Education Position Statement as between the Appellants and West Sussex County Council (June 2009).
R/CD193	House of Lords Judgement, Magill v Porter and Magill v Weeks, [2001] UKHL 67
R/CD194	Appellants' Schedule of draft Conditions – 10-06-2009
R/CD195	List of suggested Conditions from Council
R/CD196	Appellants' Schedule of draft Conditions – 23-06-2009
R/CD197	Appellants' Schedule of draft Conditions – 24-06-2009
R/CD198	Comments of Council on draft Conditions
R/CD199	Appellants' Schedule of draft Conditions – 25-06-2009
R/CD200	Final Schedule of Conditions – 26-06-2009

SUBMISSIONS AND PROOFS OF EVIDENCE - APPELLANT

R/TWB/1/1	Proof of evidence of Mr Woolf
R/TWB/1/2	Appendices to Mr Woolf's proof
R/TWB/1/3	Rebuttal evidence of Mr Woolf
R/TWB/2/1	Proof of evidence of Mr Charles
R/TWB/2/2	Appendices to Mr Charles' proof
R/TWB/2/2A	Rebuttal evidence of Mr Charles to Mr Turner
R/TWB/2/2B	Rebuttal evidence of Mr Charles to Mr Lockwood
R/TWB/2/3A	Note to inquiry from Mr Charles
R/TWB/2/3B	Requested information from Mr Charles
R/TWB/3/1	Proof of evidence of Mr Boswell
R/TWB/3/2	Appendices to Mr Boswell's proof
R/TWB/4/1	Proof of evidence of Mr Titterington
R/TWB/4/2	Appendices to Mr Titterington's proof
R/TWB/5/1	Proof of evidence of Mr Self
R/TWB/5/2	Appendices to Mr Self's proof
R/TWB/5/2G	May 2009 Update of Design Statement (Appendix G of Mr Self's proof)

R/TWB/6/1 Proof of evidence of Mr Cobbold

R/TWB/7/1 Opening submissions of Appellants
R/TWB/7/2 Closing submissions of Appellants

SUBMISSIONS AND PROOFS OF EVIDENCE – CRAWLEY BOROUGH COUNCIL

R/CBC/01 Proof of evidence of Mr Turner
R/CBC/01/01 Appendices to Mr Turner's proof
R/CBC/01/02 Rebuttal evidence of Mr Turner
R/CBC/01/03 Summary of evidence of Mr Turner

R/CBC/02 Summary of evidence of Mr Dennington
R/CBC/02/1 Proof of evidence of Mr Dennington
R/CBC/02/2 Appendices to Mr Dennington's proof
R/CBC/02/3 Rebuttal evidence of Mr Dennington
R/CBC/02/4 Appendices to rebuttal of evidence of Mr Dennington

R/CBC/03/01 Proof of evidence of Mr Fairham
R/CBC/03/02 Appendices to Mr Fairham's proof
R/CBC/03/03 Summary of evidence of Mr Fairham

R/CBC/04/01 Opening submissions of Crawley BC
R/CBC/04/02 Closing submissions of Crawley BC

SUBMISSIONS AND PROOFS OF EVIDENCE – GATWICK AIRPORT LTD

R/GAL/1 Proof of evidence of Mr Lockwood
R/GAL/1A Appendices to Mr Lockwood's proof
R/GAL/2 Summary of evidence of Mr Lockwood
R/GAL/3 Supplementary and rebuttal evidence of Mr Lockwood
R/GAL/4 Note of Mr Lockwood requested by Inspector
R/GAL/5 Letter dated 16 June 2009 from Berwin Leighton Paisner to Macfarlanes

R/GAL/6 Opening statement of Gatwick Airport Limited
R/GAL/7 Closing submissions of Gatwick Airport Limited

DOCUMENTS – WEST SUSSEX COUNTY COUNCIL

R/WSCC/01 Position statement of Mr P Smith
R/WSCC/02A Provision of Service Infrastructure Related to New Development in West Sussex – Part 1
R/WSCC/02B Planning Obligations – The WSCC Approach to Assessing Need
R/WSCC/02C Infrastructure Contributions towards WSCC Services - Crawley
R/WSCC/03 Planning Obligations and S106 Agreements SPD – Crawley BC
R/WSCC/04 Crawley North East Sector development proposals – Children's Services
R/WSCC/05 Judgement of Court of Justice of the European Communities – Auroux & Ors v Roanne [2007] EUECJ C-220-05
R/WSCC/06 Statement of Mr C Owen

PLANS

A1	Application plan (drawing 8010/07 Rev C), submitted with the application (CD45), 19 January 1998
B1	Revised Application Plan (Drawing CSA/667/025 Rev A), submitted under cover of Jones Day letter to the Planning Inspectorate of 19 June 2006
B2	Masterplan (Drawing CSA/667/020 Rev A), submitted under cover of Jones Day letter to the Planning Inspectorate of 19 June 2006
C1	Amended Masterplan (Drawing CSA/667/020 Rev D), submitted to the first inquiry
C2	Amended Masterplan (Drawing CSA/667/020 Rev F), submitted to this inquiry

The Plans referred to in the Conditions are D2-D5, D13, D21-D26, and the updated plans bound into the Addendum to the Transport Statement of Common Ground (R/CD179)

ANNEX A

CONDITIONS

1 The development hereby permitted shall not be carried out except in general accordance with the master plan drawing number CSA/667/020 Revision F ("the Masterplan") and the Design Statement dated July 2006 (as updated in May 2009).

REASON: To ensure a high quality design of development and that any development which is carried out reflects that which has been the subject of environmental impact assessment.

2 Prior to the submission of the first reserved matters application in respect of each phase of the development hereby permitted, a detailed design and access statement in respect of that phase shall have been submitted to and approved in writing by the local planning authority. Each detailed design and access statement shall demonstrate how the objectives of the Design Statement dated July 2006 will be met. Each phase of the development hereby permitted shall be carried out in accordance with the approved design and access statement in respect of that phase.

REASON: To ensure a high quality design of development.

3 The phasing of the development hereby permitted shall be in accordance with, and in the order shown on, drawing number CSA/667/013-4 Revision E ("the Phasing Plan").

REASON: To enable the local planning authority to control the development.

4 No more than 1900 dwellings shall be constructed on the site pursuant to this planning permission.

REASON: To accord with the planning application.

5 (i) Approval of the details of the siting, design and external appearance of any part of the residential development within each phase of the development hereby permitted and the landscaping associated with it (hereinafter called "the residential reserved matters") shall be obtained in writing from the local planning authority before that part of the residential development is commenced within that phase.

(ii) Approval of the details of the siting, design and external appearance of any part of the non-residential development within each phase of the development hereby permitted and the landscaping associated with it (hereinafter called "the non-residential reserved matters") shall be obtained in writing from the local planning authority before that part of the non-residential development is commenced within that phase.

(iii) The development shall not be carried out otherwise than in accordance with the approved details.

REASON: To enable the local planning authority to control the development and to comply with Section 92 of the Town and Country Planning Act 1990.

6 (i) Application for approval of the residential reserved matters and non-residential reserved matters in respect of phase 1 of the development hereby permitted (except the primary school as to which see (ii) below) shall be made to the local planning authority before the expiration of 3 years from the date of this permission.

(ii) Application for approval of the reserved matters in respect of the primary school hereby permitted shall be made to the local planning authority before the expiration of 5 years from the date of this permission.

(iii) Application for approval of the residential reserved matters and non-residential reserved matters in respect of phase 2 of the development hereby permitted shall be made to the local planning authority before the expiration of 5 years from the date of this permission.

(iv) The first application for approval of the reserved matters in respect of that part of phase 2 of the development hereby permitted which is located to the east of Balcombe Road shall include details of the proposals for the relocation of the 132KV overhead power line.

(v) Application for approval of the residential reserved matters and the non-residential reserved matters in respect of each of phases 3 and 4 of the development hereby permitted shall be made to the local planning authority before the expiration of 6 years from the date of this permission.

REASON: To enable the local planning authority to control the development and to comply with Section 92 of the Town and Country Planning Act 1990.

7 Phase 1 of the development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the residential reserved matters or the non-residential reserved matters (as the case may be) to be approved in respect of that phase (excluding the reserved matters relating to the primary school referred to in condition 6(ii) above), whichever is the later.

REASON: To enable the local planning authority to control the development and to comply with Section 92 of the Town and Country Planning Act 1990.

8 Plans and particulars submitted pursuant to condition 5 above shall include the following details:

(i) any proposed access road(s) including details of horizontal and vertical alignment;

(ii) the layout, specification and construction programme for (1) any internal roads not covered by (i) above, (2) footpaths, (3) parking and turning areas (including visibility splays), (4) cycle parking areas and (5) cycle storage facilities;

(iii) the positions, design, materials and type of boundary treatment (including all fences, walls and other means of enclosure) to be provided;

(iv) finished ground levels for all hard landscaped areas, footpaths and similar areas, including details of all surfacing materials, street furniture, signs, lighting, refuse storage units and other minor structures;

(v) contours for all landscaping areas, together with planting plans and schedules of plants, noting species, sizes and numbers/ densities, details of all trees, bushes and hedges which are to be retained and a written specification for the landscape works (including a programme for implementation, cultivation and other operations associated with plant and grass establishment); and

(vi) lighting to roads, footpaths and other public areas.

REASON: To enable the local planning authority to control the development.

9 The particulars submitted pursuant to condition 8(v) above shall include:

(i) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter (when measured over the bark at a point 1.5 metres above ground level) exceeding 75mm, identifying which trees are to be retained and the crown spread of each retained tree;

(ii) details of the species, diameter (when measured in accordance with (i) above), approximate height and an assessment of the health and stability of each retained tree;

(iii) details of any proposed topping or lopping of any retained tree; and

(iv) details of any proposed alterations in existing ground levels and of the position of any proposed excavation within the crown spread of any retained tree.

REASON: To ensure compliance with Policies GD5 and GD6 of the Crawley Borough Local Plan 2000.

10 Before each phase of the development hereby permitted is commenced a construction management plan in respect of that phase shall have been submitted to and approved in writing by the local planning authority. Each construction management plan shall include the following matters:

(i) provision for plant and stacks of materials;

(ii) details of vehicle wheel cleaning facilities to be provided;

(iii) provision for the temporary parking of vehicles and for the loading and unloading of vehicles; and

(iv) provision for the segregation and recycling of waste generated on the site during construction.

Construction of each phase of the development shall not be carried out otherwise than in accordance with each approved construction management plan.

REASON: To ensure the orderly construction of the development.

11 Before the development hereby permitted is commenced, details of the design of the central parkland and associated open space, as shown on the Masterplan, together with proposals for their future management (covering a period of no less than 15 years), long term design objectives and long term management responsibilities shall have been submitted to and approved in writing by the local planning authority. No more than 500 dwellings shall be occupied until the central parkland and associated open space have been laid out in accordance with the approved details. The

central parkland and open space shall be subsequently managed in accordance with the approved details.

REASON: In the interests of visual amenity and the environment of the development in accordance with Policies GD5, GD23 and GD35 of the Crawley Borough Local Plan 2000.

12 Before the development hereby permitted is commenced, a landscape management plan (covering a period of no less than 15 years), in respect of all the land within the red line as shown on the Masterplan, shall have been submitted to and approved in writing by the local planning authority. The landscape management plan shall include a programme for implementation, long term design objectives, long term management responsibilities and maintenance schedules for all landscape areas (including woodlands and other incidental areas) other than privately owned domestic gardens. The development shall be carried out in accordance with the approved landscape management plan.

REASON: In the interests of amenity and the environment of the development in accordance with Policies GD5, GD23 and GD35 of the Crawley Borough Local Plan 2000.

13 No phase of development shall commence until all the existing trees/ bushes/hedges to be retained within (and immediately adjacent to) that phase, as approved pursuant to condition 5 above, have been protected by a fence erected in accordance with the guidance contained in BS5837:2005. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored within such areas without the prior written approval of the local planning authority. If any trenches for services are required in the fenced off areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

REASON: To ensure the retention and maintenance of trees and vegetation which is an important feature of the area, in accordance with Policies GD5 and GD34 of the Crawley Borough Local Plan 2000.

14 Before the development hereby permitted is commenced, a biodiversity management plan in respect of all the land within the red line as shown on the Masterplan shall have been submitted to and approved in writing by the local planning authority. The biodiversity management plan shall be based upon the mitigation and management measures contained within Table 19.1 of Chapter 19 of the Environmental Statement dated June 2006 and shall include a programme for implementation together with proposals for the following:

(i) the creation of habitats (including woodlands, grasslands and ponds) and their enhancement and management;

(ii) the conservation and enhancement of the Gatwick Stream including the provision of a buffer zone 60m wide, as identified on the Masterplan;

(iii) compensation and mitigation measures for the loss of any habitats (including woodlands, hedgerows and ponds);

(iv) the conservation of protected species including Bats, Dormice, Great Crested Newts, Reptiles and Badgers; and

(v) the prevention of light spill into any watercourse, and adjacent river corridor habitat and standing water habitats, including Ballast Hole Lake and its adjacent wooded vegetation.

The development hereby permitted shall be carried out in accordance with the approved biodiversity management plan.

REASON: To conserve the wildlife interest of the site.

15 Any water crossings to be provided within the development hereby permitted shall be by clear spanning structures (from banktop to banktop) so as not to impede the river corridor and to allow the migration of both channel and bank species.

REASON: To conserve the wildlife interest of the site.

16 Before the development hereby permitted is commenced, a detailed drainage strategy in respect of all the land within the red line as shown on the Masterplan shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the strategy shall be based upon the principle of sustainable drainage systems ("SUDS") as set out in Planning Policy Statement 25: Development and Flood Risk (2006) (or any revision or replacement of it) and shall include the following:

(i) details of compensatory flood storage works;

(ii) a programme for implementation; and;

(iii) proposals for the subsequent management and maintenance of the drainage system including any arrangements for adoption by any public authority or statutory undertaker.

The development hereby permitted shall be carried out in accordance with the approved drainage strategy.

REASON: To secure a satisfactory and sustainable drainage system to serve the development.

17 No spoil or materials shall be deposited or stored on any part of the site which lies within the 1 in 100 year flood plain, as shown on drawing number CS/000916/Figure 1 Revision A.

REASON: To prevent the increased risk of flooding due to impedance of flood flows and reduction of flood storage capacity.

18 Any walls or fencing which are constructed within the 1 in 100 year flood plain, as shown on drawing number CS/000916/Figure 1 Revision A, shall be designed to be permeable to flood water.

REASON: To prevent obstruction to the flow and storage of flood water.

19 Before the development hereby permitted is commenced, an archaeological evaluation shall have been carried out in accordance with a specification previously submitted to and approved in writing by the local planning authority. For the purposes of this condition, the specification shall include proposals for a programme of further archaeological excavation and recording if archaeological remains are identified.

REASON: In the interests of the historic heritage and in accordance with Policy BN17 of the Crawley Borough Local Plan 2000.

20 Before the development hereby permitted is commenced, a scheme to deal with any contamination associated with the former abattoir site shall have been submitted to and approved in writing by the local planning authority. The scheme shall supplement information contained within Chapter 16 of the Environmental Statement dated June 2006 and shall include an investigation and risk assessment to identify the extent of contamination and any proposed remediation measures. The development hereby permitted shall not be commenced until the approved scheme has been completed.

REASON: To ensure satisfactory land conditions and in accordance with Policy GD19 of the Crawley Borough Local Plan 2000.

21 No dwelling hereby permitted shall be occupied until a design assessment in respect of that dwelling has been submitted to and approved in writing by the local planning authority. The assessment shall demonstrate the basis upon which the dwelling shall achieve at least Level 3 of the Code for Sustainable Homes. Each dwelling shall be constructed in accordance with the approved design assessment which relates to that dwelling. Unless otherwise approved in writing by the local planning authority, no dwelling hereby permitted shall be occupied unless a final Code Certificate certifying that at least Code Level 3 has been achieved, in respect of that dwelling, has been submitted to the local planning authority.

REASON: To secure sustainable form of development.

22 Before the construction of any non-residential building hereby permitted is commenced a scheme for the inclusion of renewable energy technologies to achieve a “very good” rating pursuant to the Building Research Establishment Environmental Assessment Method, in respect of that building, shall have been submitted to and approved in writing by the local planning authority. Unless otherwise approved in writing by the local planning authority, no part of any non-residential building hereby permitted shall be occupied until a copy of a post-construction completion certificate, verifying that that building has achieved a “very good” rating, has been submitted to the local planning authority.

REASON: To secure sustainable form of development.

23 At least 10% of the energy supply of the development shall be secured from decentralised, renewable or low carbon energy sources (as described in the glossary of Planning Policy Statement 1: Planning and Climate Change (December 2007)). Details of a timetable of how this is to be achieved across the whole site, including details of physical works on site, shall be submitted to the local planning authority prior to or accompanying the first reserved matters application which is submitted pursuant to condition 5. The development hereby permitted shall not be commenced until the details have been approved by the local planning authority. The approved details shall be implemented in accordance with the approved timetable and subsequently retained as operational.

REASON: To secure sustainable form of development in accordance with policy NRM11 of the South East Plan 2009.

24 Before each phase of the development hereby permitted is commenced a scheme identifying the size/extent, specification, location, timing of delivery

and proposals for the future management of open space and play space (including local areas of play, local equipped areas of play, playing fields and other sports pitches) in respect of that phase shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition each scheme shall be in accordance with the standards of the National Playing Fields Association. Each phase of the development shall not be carried out otherwise than in accordance with the approved scheme.

REASON: To secure an orderly and comprehensive form of development, and in accordance with Policies GD4 and RL19 of the Crawley Borough Local Plan 2000.

25 No more than 200 dwellings within the development hereby permitted shall be occupied until the playing fields within the school site, as shown on the Masterplan, have been laid out and are available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

26 No more than 280 dwellings within the development hereby permitted shall be occupied until the neighbourhood equipped area of play, as shown on the Masterplan, has been completed and is available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

27 No more than 1250 dwellings within the development hereby permitted shall be occupied until the playing fields (and any associated car parking and changing facilities) in the south west corner of the site, as shown on the Masterplan, have been laid out and are available for use.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

28 Before commencement of construction of the local centre within the development hereby permitted, as shown on the Masterplan, a scheme identifying (a) the facilities to be provided within the local centre and (b) the size/extent/content of those facilities shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall include proposals to secure the following facilities within the local centre:

(i) retail floorspace of no more than 2,500 square metres (net);

(ii) a public library of no less than 146 square metres;

(iii) a health centre of no more than 500 square metres;

(iv) a recycling centre;

(v) a covered transport waiting area;

(vi) public toilets;

(vii) a children's centre/play centre of approximately 90 square metres plus ancillary facilities (including a food preparation area and toilets); and

(viii) associated parking.

No more than 1000 dwellings within the development hereby permitted shall be occupied until (1) at least 50% of the retail floorspace approved pursuant to (i) above and (2) each of the facilities listed at (ii) - (viii) (inclusive) above and (3) any other facilities included within the approved scheme, have been completed in accordance with the approved scheme. No more than 1500 dwellings within the development hereby permitted shall be occupied until all the retail floorspace approved pursuant to (i) above has been completed.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

29 Before commencement of construction of the community centre within phase 2 of the development hereby permitted, as shown on the Masterplan, a scheme identifying the facilities to be provided within that centre shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall include proposals to secure the following:

(i) a youth facility (including a community hall) of no more than 300 square metres;

(ii) changing facilities of no more than 300 square metres and related car parking;

(iii) other community facilities and/or ancillary public uses of no more than 100 square metres;

(iv) the playing fields associated with the community centre as shown on the Masterplan;

(v) car parking associated with (i) and (iii) above.

No more than 500 dwellings within the development hereby permitted shall be occupied until the facilities listed at (ii) and (iv) above have been completed in accordance with the approved scheme. No more than 800 dwellings within the development hereby permitted shall be occupied until the facilities listed at (i), (iii) and (v) above have been completed in accordance with the approved scheme.

REASON: To secure a comprehensive and co-ordinated neighbourhood development in accordance with Policy NES 2 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

30 No phase of the development hereby permitted shall be commenced until a scheme for the location and installation of fire hydrants within that phase has been submitted to and approved in writing by the local planning authority. For the purposes of this condition each scheme shall be in accordance with the Guidance Note: The Provision of Fire Hydrants and an Adequate Water Supply for Fire Fighting as published by West Sussex Fire and Rescue Services (as amended from time to time). No building hereby permitted shall be occupied until the fire hydrants) required to serve that building has been installed in accordance with the approved scheme.

REASON: To ensure satisfactory provision of fire hydrants for the occupiers of the development.

31 The development hereby permitted shall not be commenced until a scheme (including a programme for its implementation) for the provision of new fire and rescue infrastructure in accordance with the West Sussex County Council Capital Programme for Fire and Rescue Services in the period to 2016 has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved.

REASON: To secure an enhancement in the fire and rescue infrastructure within the locality of the development.

32 Before the development hereby permitted is commenced, a scheme to secure the provision of primary school and secondary school places shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall accord with the Education Position Statement dated June 2009 and shall include the following details:

(i) the mechanism (including the timing and phasing of delivery) by which a two form entry (up to 420 places) primary school (and associated community facility/interview room) shall be provided on the school site;

(ii) the mechanism (including timing) by which the demand for no more than 100 secondary school places (being the maximum number of pupils arising out of the development hereby permitted net of those pupils who can be accommodated within existing secondary school provision) shall be met; and

(iii) the mechanism (including timing) by which the demand for up to 60 primary school places arising out of the development hereby permitted shall be met (including the provision of temporary accommodation if necessary) during the period before the primary school (as above) is completed and available for use.

The scheme shall be carried out as approved.

REASON: To secure satisfactory education provision for new pupils generated by the development hereby permitted.

33 The residential development hereby permitted shall not be located otherwise than within Noise Exposure Categories A and B, assessed (as at the date of determination by the local planning authority of the scheme submitted pursuant to condition 35 below) in accordance with Annex 1 to PPG24, and taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport as shown on ERCD 0308 figure 3.4 “London Gatwick Year 2030 - Noise contours with wide spaced parallel runway” or such other noise contours as may be published by the Civil Aviation Authority in respect of such second runway.

REASON: In the interests of residential amenity.

34 Before each phase of the development hereby permitted is commenced a scheme shall have been submitted to and approved in writing by the local planning authority to protect dwellings within that phase against noise from (a) the operation of London Gatwick Airport (taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport as shown on ERCD 0308 figure 3.4 “London Gatwick Year 2030 - Noise contours with wide-spaced parallel runway” or such other noise

contours as may be published by the Civil Aviation Authority in respect of such second runway), (b) the operation of the London/Brighton railway line, (c) traffic on the A2011 and M23 and (where applicable) (d) mixed source noise. For the purposes of this condition the scheme shall include:

(i) a plan identifying the dwellings within that phase which require protection from noise;

(ii) the means by which the noise level within any (unoccupied) domestic living room or bedroom, with windows open, shall be no more than 35 dB(A) Leq 16hr (between 0700 and 2300) and no more than 30dB (A) Leq 8hr (between 2300 and 0700); and

(iii) the means by which the noise level within any (unoccupied) domestic bedroom, with windows open, shall not normally exceed 45 dB(A) LAFMax between 2300 and 0700.

Where the standards in (ii) and/or (iii) above cannot be achieved with windows open, the scheme must show how those standards will be met with windows shut and the means by which adequate ventilation will be provided. Each phase of the development shall be carried out in accordance with the approved scheme in respect of that phase. No dwelling hereby permitted shall be occupied until the approved scheme has been implemented in respect of that dwelling.

REASON: In the interests of residential amenity.

35 Before the commencement of construction of the primary school on the school site a scheme to protect the school against noise from the operation of London Gatwick Airport (taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport) shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall:

(i) include forecast LAeq30min levels for the school site, for peak hour aircraft movements on easterly departures in the period between 0900 and 1600, assuming the operation of a second wide-spaced mixed mode runway at London Gatwick Airport (as above);

(ii) specify the means by which the internal areas of the school will meet the internal noise standards set out in Building Bulletin 93 (or any subsequent document which revises or replaces it), taking the forecast levels in (i) above into account; and

(iii) include evidence of reasonable efforts to achieve a noise level of 50dB(A) Leq30min (taking the forecast levels in (i) above into account) in respect of an appropriately sized external teaching area, in particular as regards the siting and orientation of surrounding buildings and (if necessary) the provision of a canopy over part or all of the said external teaching area.

The school hereby permitted shall not be constructed otherwise than in accordance with the approved scheme.

REASON: In the interests of the amenity of the pupils and staff of the proposed school.

36 Before the commencement of construction of the local centre, community centre or health centre (as the case may be) hereby permitted, as identified

on the Masterplan, a scheme to protect the local centre, community centre and health centre (as the case may be) against noise from the M23 and from the operation of London Gatwick Airport (taking into account noise from a possible second wide-spaced mixed mode runway at London Gatwick Airport) shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall include the means by which the noise level within the operative parts of the local centre, community centre and health centre (as the case may be) hereby permitted shall not exceed 40dBLAeq30min for peak hour aircraft movements on easterly departures. The local centre, community centre and health centre hereby permitted shall not be constructed otherwise than in accordance with the approved scheme.

REASON: In the interests of the amenity of the occupiers and users of the proposed local centre, community centre and health centre.

37 No building within the B1, B2 and B8 development hereby permitted shall be occupied until the background LA90 noise levels at the noise sensitive properties which are proposed to be closest to that building, as shown on the Masterplan, have been submitted to and approved in writing by the local planning authority. At all times, the LAeq noise level (assessed in accordance with BS4142) plus a 5dB rating level (where appropriate, in accordance with BS4142) from all the activities from the proposed B1, B2 and B8 development on the site, measured 1 metre from the façade of any noise sensitive development, shall be at least 5dB below the approved background LA90 value.

REASON: In the interests of residential amenity.

38 No works to construct any building hereby permitted shall commence until a schedule of materials and finishes and, where so required in writing by the local planning authority, samples of such materials and finishes to be used for the external walls and roof of that building has been submitted to and approved in writing by the local planning authority. All buildings shall be constructed in accordance with the approved details.

REASON: To enable the local planning authority to control the development and in the interests of amenity by endeavouring to achieve a building of visual quality in accordance with Policy GD 1 of the Crawley Borough Local Plan 2000.

39 The infrastructure, which is approved pursuant to condition 5 above, shall be provided (in accordance with the approved details) before occupation of any dwelling which is serviced by that infrastructure.

REASON: To secure satisfactory standards of infrastructure for the proposed development in accordance with Policy GD3 of the Crawley Borough Local Plan 2000.

40 The number of car parking spaces in respect of the development hereby permitted shall not exceed the standards set out in Annex B to the "Planning Obligations and S106 Agreements" Supplementary Planning Document as adopted by Crawley Borough Council in August 2008.

REASON: To control the level of car parking associated with the development.

41 Once laid out, areas for the parking and/or turning of vehicles, as approved pursuant to condition 5 above, shall not be used for any other purpose.

REASON: To enable satisfactory provision for the parking and turning of vehicles within the development.

42 The area of land within the visibility splays, as approved pursuant to condition 5 above, shall be kept clear of any obstruction exceeding a height of 0.6m above the level of the nearest part of the highway. The visibility splays shall subsequently be retained at all times.

REASON: In the interests of highway safety.

43 The proposed all moves junction between the A2011 and Balcombe Road shall not open to traffic until the works to junction 10 of the M23, in accordance with drawing number 0560/SK/124D, have been completed.

REASON: In the interests of highway safety.

44 No dwelling within the development hereby permitted shall be occupied until the works to form the junction of Steers Lane and the proposed access road into the west of the site, in accordance with drawing number 0560/SK/121C, have been completed.

REASON: To provide a safe access into phase 1 of the development.

45 No more than 50 dwellings within the development hereby permitted shall be occupied until the following have been completed:

(i) works to the junction of Gatwick Road/Radford Road/James Watt Way in accordance with drawing number 0560/SK/112B;

(ii) works to the junction of Radford Road and Steers Lane in accordance with drawing number 0560/SK/116B;

(iii) works to a combined footway/cycleway on the approaches to, and across, the Radford Road railway bridge, together with the construction of traffic signals to enable the shuttle working of traffic across the bridge and the widening of the road embankments and carriageways on each side of the bridge, in accordance with drawing number 0560/SK/122D;

(iv) works to the junction of Balcombe Road and Steers Lane in accordance with drawing number 0560/SK/127B; and

(v) works to convert the existing traffic signal controlled pedestrian crossings, as situated on the southern and western approaches to the roundabout at the junction of Gatwick Road and Fleming Way, to toucan crossings in accordance with drawing number 0560/SK/131.

REASON: To provide traffic mitigation measures on the Steers Lane / Radford Road / Gatwick Road corridor and in the interests of highway safety.

46 Before the occupation of (1) any dwelling within that part of phase 2 of the development hereby permitted which is located to the west of Balcombe Road or (2) more than 300 dwellings within the development hereby permitted or (3) any dwelling within phase 3 of the development hereby permitted the following shall have been completed:

(i) works to the junction of Gatwick Road/Hazelwick Avenue/Crawley Avenue: Hazelwick Roundabout in accordance with drawing number 0560/SK/101B;

(ii) works to the junction of Crawley Avenue and Balcombe Road in accordance with drawing numbers 0560/SK/117C and 118D;

(iii) works to junction 10 of the M23 in accordance with drawing number 0560/SK/124D; and

(iv) the provision of street lighting in relation to the section of Crawley Avenue situated between the Hazelwick Roundabout in the west and junction 10 of the M23 in the east in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: To provide a safe access to that part of phase 2 situated to the west of Balcombe Road and to phase 3, and in the interests of highway safety.

47 No dwelling within that part of phase 2 of the development hereby permitted which is located to the east of Balcombe Road shall be occupied until the following have been completed:

(i) works to the junction of Balcombe Road and Heathy Farm in accordance with drawing number 0560/SK/119D;

(ii) works to the junction of Balcombe Road and Radford Road in accordance with drawing number 0560/SK/105E;

(iii) works to the junction of Balcombe Road and Antlands Lane in accordance with drawing number 0560/SK/107C; and

(iv) the provision of street lighting in relation to the section of Balcombe Road between Antlands Lane in the north and Crawley Avenue in the south in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: To provide a safe access to that part of phase 2 of the development situated to the east of Balcombe Road, and in the interests of highway safety.

48 No more than 300 dwellings within that part of phase 2 of the development hereby permitted which is located to the east of Balcombe Road shall be occupied until an emergency access from that part of phase 2 onto Balcombe Road has been constructed in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: In the interests of highway safety.

49 Before completion of the works to Balcombe Road pursuant to condition 47 above details of locations along Balcombe Road where future monitoring of traffic speeds will be carried out shall have been submitted to and approved in writing by the local planning authority. Traffic speeds shall be monitored along Balcombe Road in accordance with the approved details, every 3 months for a period of 2 years from the date of completion of the works to Balcombe Road pursuant to condition 47 above.

REASON: In the interests of highway safety.

50 Following completion of traffic speed monitoring along Balcombe Road pursuant to condition 49 above a report shall be submitted to and approved in writing by the local planning authority. If the report identifies a requirement for further traffic speed management measures within the

public highway, then such measures shall be carried out in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: In the interests of highway safety.

51 No dwelling within phase 4 of the development hereby permitted shall be occupied until works to the junction of Balcombe Road and the north east access to the site, in accordance with drawing number 0560/SK/120C, have been completed.

REASON: To provide a safe access to phase 4 of the development.

52 Before the development hereby permitted is commenced a scheme for the following works shall have been submitted to and approved in writing by the local planning authority:

(i) a combined footway/cycleway along the western side of Balcombe Road from the junction between the new link road and Crawley Avenue/Balcombe Road in a southerly direction to St. Catherines Road, Pound Hill;

(ii) an on road cycle route within Pound Hill to connect the Balcombe Road cycleway to the shops at Grattons Park and Milton Mount Schools;

(iii) an on road cycle route along Grattons Drive and Chaucer Road to link to St. Mary's Drive;

(iv) the installation of no less than 60 cycle parking stands on highway land, or such other location as may be agreed with the local planning authority, adjacent to Three Bridges railway station; and

(v) the installation of real time information screens at 4 existing bus shelters within the Manor Royal industrial area, at the locations which are shown on drawing number 0560/SK/130.

No dwelling within the development hereby permitted shall be occupied until the works have been completed in accordance with the approved scheme.

REASON: To ensure that the development will be accessible by modes of transport other than a car.

53 Before the development hereby permitted is commenced a scheme for the following works shall have been submitted to and approved in writing by the local planning authority:

(i) a combined footway/cycleway to link the existing subway below Crawley Avenue to the shops at Grattons Park and Milton Mount Schools via the northern and eastern perimeter of Grattons Park; and

(ii) a combined footway/cycleway to link the existing subway below Crawley Avenue to St. Mary's Drive via the northern and western boundaries of the public open space along, in the most part, an already defined route to form part of the Sustrans route.

For the purposes of this condition the scheme shall include a programme for implementation and shall be substantially in accordance with Working Paper 2 dated November 2006 prepared by WSP. The scheme shall be carried out as approved.

REASON: To ensure that the development will be accessible by modes of transport other than a car.

54 Before the development hereby permitted is commenced a scheme for the following works shall have been submitted to and approved in writing by the local planning authority:

(i) a short length of combined footway/cycle way along the eastern side of Gatwick Road between Tinsley Lane in the south to the existing traffic signal controlled pedestrian crossing of Gatwick Road in the north, and the conversion of two existing signal controlled pedestrian crossings of Gatwick Road and Fleming Way to toucan crossings, in accordance with drawing number 0560/SK/131;

(ii) a combined footway/cycleway along the southern side of Radford Road between Gatwick Road in the west, to a point to the west of the existing public footpath to the east of the public house in the east, to be constructed in conjunction with the traffic signal controlled shuttle working of traffic flows across the railway bridge and to form part of the Sustrans cycleway in accordance with drawing numbers 0560/SK/112B, 0560/SK/122D and 0560/SK/141A;

(iii) an on road cycle route along Tinsley Lane between Crawley Avenue in the south and Gatwick Road in the north in accordance with drawing number 0560/SK/132;

(iv) a combined footway/cycleway along the eastern side of Hazelwick Avenue to link between Crawley Avenue in the north and the Tesco superstore on Hazelwick Avenue in the south and to include the conversion of the pedestrian footbridge and approach ramps over Crawley Avenue, to the east of the Hazelwick roundabout to a combined footway/cycleway, in accordance with drawing number 0560/SK/133; and

(v) the installation of a bus shelter on the north side of Haslett Avenue East, opposite Three Bridges railway station, in accordance with drawing number TC 17/1A.

No more than 50 dwellings within the development hereby permitted shall be occupied until the works have been completed in accordance with the approved scheme.

REASON: To improve the accessibility of the development and to encourage travel by modes of transport other than the private car.

55 Before the occupation of (1) any dwelling within that part of phase 2 of the development hereby permitted which is located to the west of Balcombe Road, or (2) more than 300 dwellings within the development hereby permitted or (3) any dwelling within phase 3 of the development hereby permitted the following shall have been completed:

(i) a combined footway/cycleway along the northern verge of Crawley Avenue between the new Crawley Avenue junction in the east to the southern end of Tinsley Lane in the west, in accordance with a scheme previously submitted to and approved in writing by the local planning authority; and

(ii) a combined footway/cycleway between Tinsley Lane in the east, around the northern perimeter of the Hazelwick roundabout in conjunction with toucan crossings of the Gatwick Road slip roads, to connect to the existing cycle route using Woolborough Lane via Crawley Avenue to the west of the roundabout in accordance with drawing number 0560/SK/135.

REASON: In the interests of highway safety.

56 No more than 1850 dwellings within the development hereby permitted shall be occupied until improved pedestrian crossing facilities on Haslett Avenue East, adjacent to Three Bridges railway station, have been provided in accordance with Working Paper 2 dated November 2006 prepared by WSP.

REASON: To facilitate the safe movement of pedestrians across Haslett Avenue East.

57 Before the development hereby permitted is commenced a scheme for the provision of bus services to and from the site shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall provide for a level of bus services which is no less than that set out in Public Transport Working Paper 1C dated November 2006 prepared by WSP and shall include the following details:

(i) the destinations and routes which shall be served by the bus services;

(ii) the frequency of operation of the bus services;

(iii) the hours of operation of the bus services; and

(iv) a mechanism by which the bus services shall be reviewed and, if necessary, varied as a result of any review.

The scheme shall be implemented in accordance with the approved details including any variations approved pursuant to (iv) above.

REASON: To encourage occupiers of the development to use modes of transport other than the private car.

58 Before the development hereby permitted is commenced a scheme for the provision of bus stops (with real time passenger information) within the site shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the scheme shall include a programme for provision of the bus stops. The development shall not be carried out otherwise than in accordance with the approved scheme.

REASON: To encourage occupiers of the development to use modes of transport other than the private car.

59 Before any building hereby permitted is occupied a sustainable travel information pack shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition the pack shall include the following details:

(i) public facilities (including schools) within a 5km radius of the local centre in the site;

(ii) bus services operating in the vicinity of the development including service timetables and connections with any other public transport service and provider;

(iii) improvements to public transport provision which are being promoted as part of the development;

(iv) the location of secure storage facilities for bicycles within the development and elsewhere within a 5km radius of the local centre in the site;

(v) information regarding existing and proposed cycle and pedestrian routes to and from the public facilities included in (i) above;

(vi) services that will be provided in the local centre and the community centre hereby permitted;

(vii) delivery services by local retailers to the dwellings hereby permitted; and

(viii) car sharing initiatives such as www.liftshare.com and www.westsussexcarshare.com .

A copy of the pack shall be provided to the first occupier of (a) each building within the B1, B2 and B8 development, (b) the school, (c) the local centre, (d) the community centre and (e) each of the dwellings hereby permitted.

REASON: To inform occupiers of the development as to the availability of local facilities/services and of opportunities to use modes of transport other than the car.

60 No dwelling within each phase of the development hereby permitted shall be occupied until a travel plan in respect of all dwellings to be provided within that phase has been submitted to and approved in writing by the local planning authority. For the purposes of this condition the travel plan shall include the following provisions, measures and/or initiatives:

(i) a programme for its implementation;

(ii) appointment of a travel plan co-ordinator to manage and monitor the travel plan;

(iii) all dwellings to be provided with capability to install broadband to enable working from home;

(iv) the promotion of car sharing initiatives such as www.liftshare.com and www.westsussexcarshare.com;

(v) the promotion of a car club;

(vi) provision of secure on-site cycle storage;

(vii) an objective to secure a target of a 15% reduction in single occupancy car use during a typical weekday; and

(viii) an annual review of the travel plan by the travel plan co-ordinator to identify both the progress which has been made in respect of the measures set out in the plan and the action to be taken to address any concerns arising out of implementation and application of the plan.

A copy of the annual review (pursuant to (viii) above) shall be submitted to the local planning authority within 3 months of the review having been completed. The travel plan shall be implemented as approved.

REASON: To encourage occupiers of all dwellings in the development to use modes of transport other than single occupancy car use.

61 No building within any part of the B1, B2, B8 development hereby permitted shall be occupied until a travel plan in respect of that part has been submitted to and approved in writing by the local planning authority. For the purposes of this condition the travel plan shall include:

(i) a programme for its implementation;

(ii) a mechanism by which the local planning authority shall be provided with an annual monitoring report identifying both the progress which has been made in respect of the measures set out in the plan and the action to be taken to address any concerns arising out of implementation and application of the plan; and

(iii) appointment of a travel plan co-ordinator to manage and monitor the travel plan.

The travel plan shall be implemented in accordance with the approved details.

REASON: To encourage occupiers of the B1, B2, B8 development to use modes of transport other than single occupancy car use.

62 No less than 40% of the total number of dwellings hereby permitted shall be affordable housing (as defined in Annex B to Planning Policy Statement 3 (November 2006)), of which no less than 70% shall be available as social rented accommodation and the remainder shall be available as other types of tenure.

REASON: To secure the provision of affordable housing in accordance with Policy H5 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

63 Before any phase of the development hereby permitted is commenced a scheme for the provision of affordable housing within that phase shall have been submitted to and approved in writing by the local planning authority. For the purposes of this condition such a scheme shall provide affordable housing which satisfies local housing needs (including the needs of the disabled where appropriate and identified) and shall include:

(i) details of the type, size, tenure, location and timing of the provision;

(ii) proposals for the involvement (including future management) of a Registered Social Landlord ("RSL") (as defined in the Housing Act 1996) or such other affordable housing provider having Housing Corporation Preferred Partner status in delivering the affordable housing; and

(iii) details of any alternative arrangement involving another RSL or affordable housing provider with Housing Corporation Preferred Partner status (not specified in (ii) above) providing the affordable housing in the event that funding for the provision of any affordable housing within a phase of the development hereby permitted is not secured within 2 years of development commencing within that phase or such other period as may be agreed in writing with the local planning authority.

Affordable housing shall be provided in accordance with the approved scheme. No more than 75% of the open market dwellings within any phase shall be constructed before the dwellings to be offered as social rented properties have been completed and handed over to the RSL or such other affordable housing provider as may have been approved pursuant to this condition. No more than 80% of the open market dwellings within each phase of the development shall be occupied until all affordable housing within that phase has been completed.

REASON: To secure the provision of affordable housing in accordance with Policy H5 of the Crawley Borough Local Development Framework Core Strategy (October 2008 Revision).

64 None of the dwellings hereby permitted shall be sited within (1) 100m of the eastern boundary of the London and Brighton railway line, as shown on drawing number CSA/667/031, and (2) 40m from the western edge of the northbound carriageway of the M23.

REASON: To ensure a satisfactory living environment and to comply with Policy GD16 of the Crawley Borough Local Plan 2000.

65 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re enacting that Order with or without modification) no development within Classes A-C (inclusive) of Part 1 of Schedule 2 to that Order shall be carried out.

REASON: To protect the integrity of the development as permitted against potential noise effects, and to prevent the unconstrained extension/alteration of dwellings.

66 No works in respect of the construction of the development hereby permitted shall be undertaken at the following times:

(i) outside the hours of 0700 - 1800 on Mondays to Fridays (inclusive);

(ii) outside the hours of 0800 - 1300 on Saturdays;

(iii) on Sundays and on public holidays.

REASON: To safeguard the amenities of nearby residents in accordance with Policy GD34 of the Crawley Borough Local Plan 2000.

67 The local planning authority shall be provided with no less than 28 days' prior written notice of the projected occupation of:

(i) the first dwelling within the development hereby permitted;

(ii) the 50th dwelling within the development hereby permitted; and

(iii) every 100th dwelling within the development hereby permitted.

REASON: To enable the local planning authority to monitor compliance with this planning permission.