Immingham Eastern Ro-Ro Terminal

Additional Documents

Associated Petroleum Terminals (Immingham) Limited

and Humber Oil Terminals Trustee Limited

Planning Inspectorate Ref: TR030007

9 October 2023

Burges Salmon

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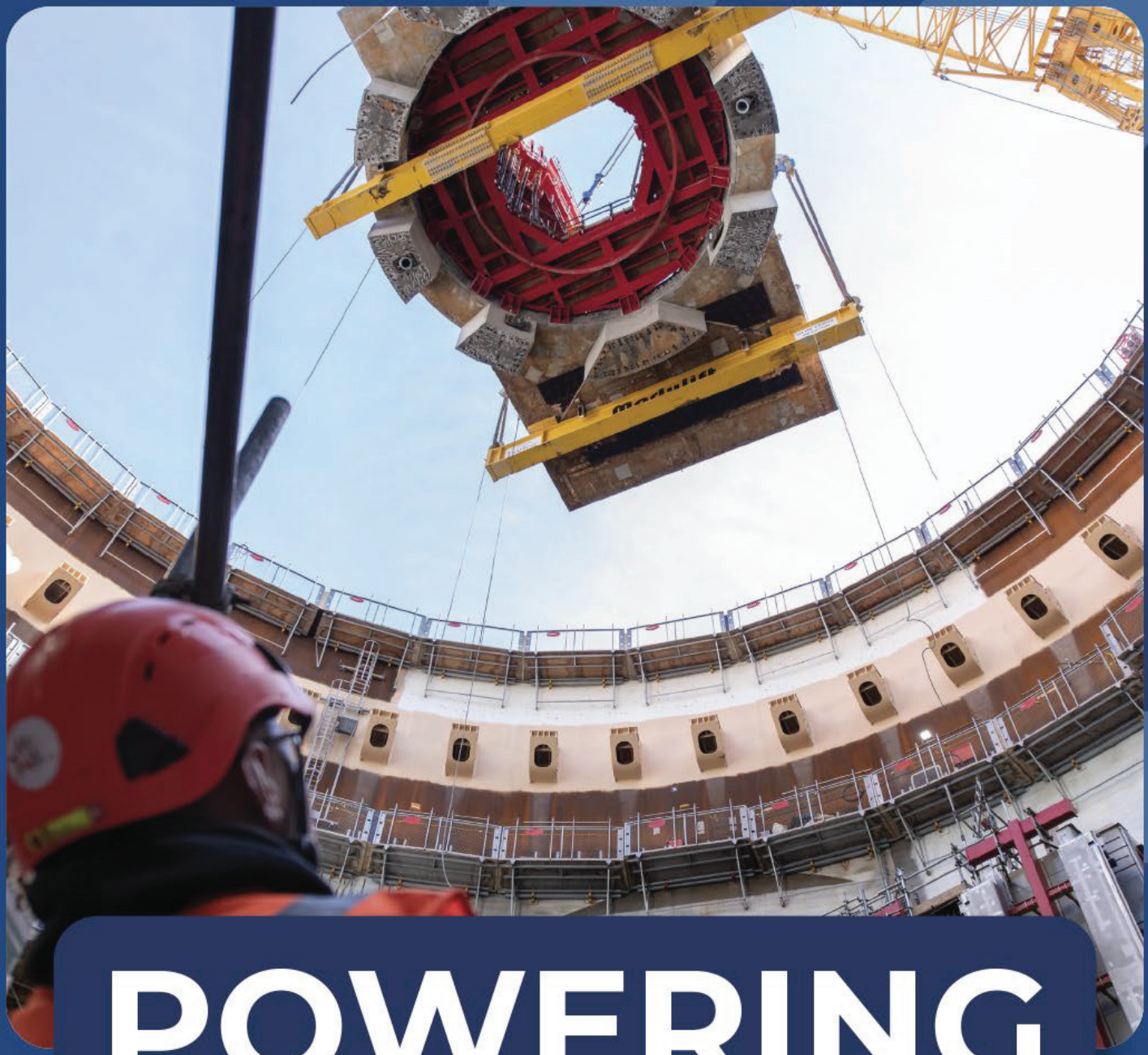
HM Government



POWERING UP BRITAIN

ENERGY SECURITY PLAN

March 2023

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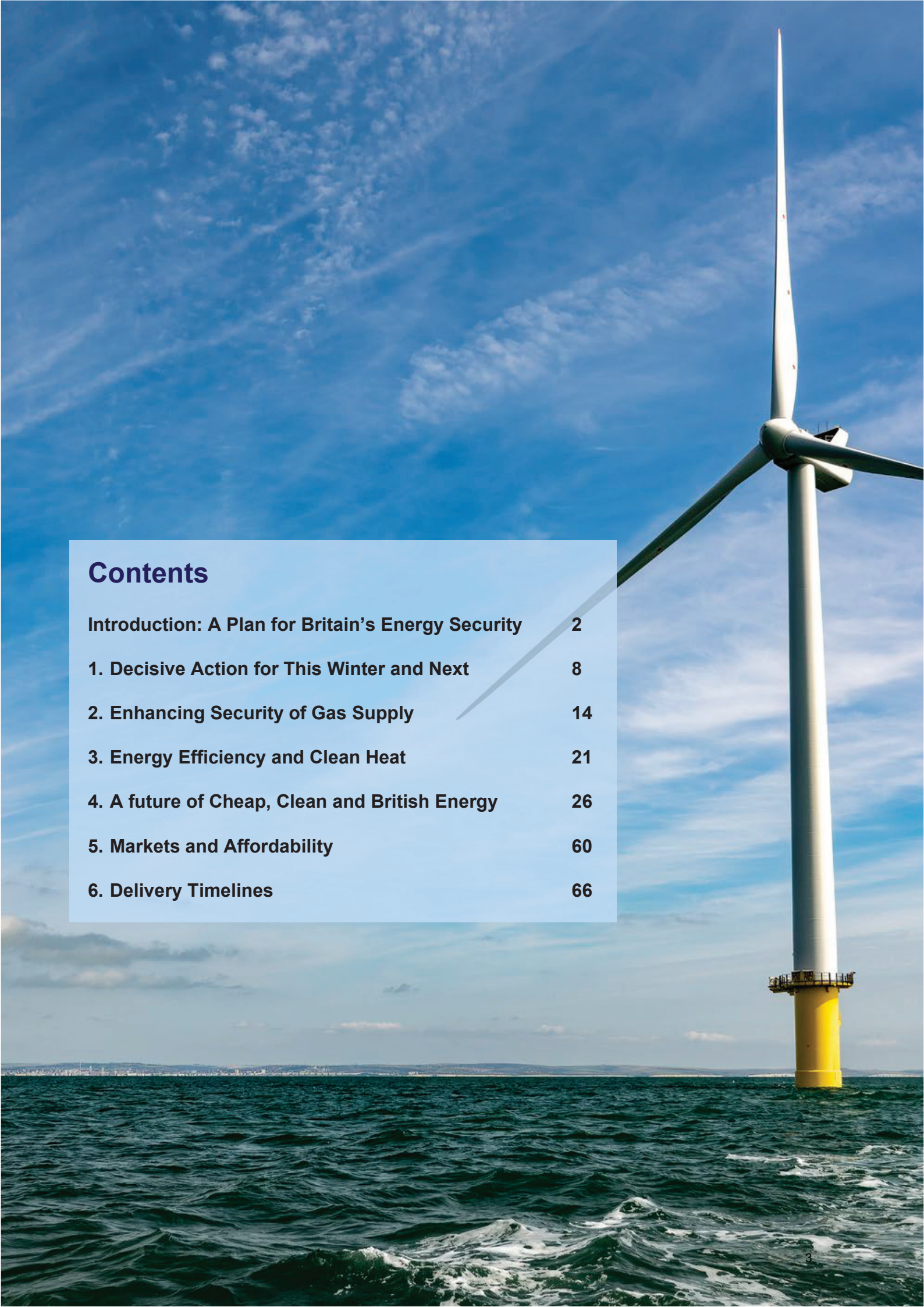

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Introduction: A Plan for Britain's Energy Security

This Plan sets out the steps the Government is taking to ensure the UK is more energy independent, secure and resilient.

Putin's illegal invasion of Ukraine 12 months ago has put the need for energy security in stark perspective. Never again will we allow our energy security to be threatened. The Prime Minister has tasked the new Department for Energy Security and Net Zero with improving the UK's energy security, creating greater energy independence consistent with net zero and reducing the risk of higher bills.

Energy security necessarily entails the smooth transition to abundant, low-carbon energy. If we do not decarbonise, we will be less energy secure. We want our energy to be cheap, clean and British.

We will build on our ambitions set out in the *British Energy Security Strategy* and the *Net Zero Strategy* for increasing the overall share of domestic energy production and reducing energy demand. We will move towards energy independence by aiming for a doubling of Britain's electricity generation capacity by the late 2030s, and we remain absolutely committed to maximising the vital production of UK oil and gas as the North Sea basin declines.

This is not the same as energy isolationism. Britain needs and benefits from importing energy, now and in the future. Our own energy production is also key to our export strategy so that we can work with our friends and allies in securing a flexible and resilient market, even as we export these fuels to our neighbours. Where we need to import energy, we will ensure this is built on relationships with strong, trusted partners and diversified sources of supply. But we recognise that we cannot be complacent and will build in resilience to our system to ensure that if there are disruptions to imports, consumers still have a reliable supply of energy.

This Plan is complemented by the *Net Zero Growth Plan*, with a focus on our long-term decarbonisation trajectory and how it can improve the UK's competitiveness, deliver an industrial renaissance and level up the whole of the UK. It should be read together with this Plan.

Energy security matters

Cheap, clean, and secure energy is not pursued as an end in itself. It is essential for enabling economic growth. Businesses and jobs in all sectors are dependent on energy. Britain led the world with the industrial revolution, off the back of a plentiful supply of coal. A future of abundant and clean energy will help to boost our economic prosperity, attract future investment and support our industrial heartlands. The cheaper our energy, the greater the competitive advantage we have.

Delivering on energy security also unleashes huge opportunities for the country. Aside from reinvigorating our industrial capability, we will see thousands of jobs protected, created and secured across our four nations. The policies and ambitions we have committed to in the *Net Zero Strategy* and *British Energy Security Strategy* will help leverage around £100 billion of private investment in the period up to 2030, as we develop new industries and innovative low-carbon technologies, and our ambitions will support up to 480,000 jobs in 2030.

For families, business owners and workers, energy security starts in the home or workplace. It is as simple as whether we can get the energy we want, when we want it, at an affordable price. As we make the transition to a secure and low-carbon electricity system, affordability will remain at the centre of our thinking, and we will take steps to ensure Britain has among the cheapest wholesale electricity prices in Europe by 2035.

It was right that the Government acted at speed to soften the blow of increasing prices, by paying around half of a typical household's energy bill this winter and around half of wholesale energy costs for some businesses. But we must learn from the last 12 months, consider how these schemes should evolve from April 2024, target support to those who most need it and take steps to fix broken energy retail markets for the long term.

Our energy strategy

This does not mean we have to redefine our strategic approach to energy. The Government has set out through the *Ten Point Plan for a Green Industrial Revolution* and *Energy White Paper* in 2020, the *Net Zero Strategy* in 2021 and in last year's *British Energy Security Strategy* a clear and consistent set of strategic objectives to enable the transformation of the energy system so it is secure, low-cost and low-carbon. We remain committed to these goals, including the ambitions for clean energy technologies set out in the *British Energy Security Strategy*.

Demand for oil, gas, and other fossil fuels will decline but they retain a crucial role. They are critical transition fuels, key to ensuring secure energy supplies and will form an important part of our future economy. We must take the necessary steps to ensure we

can rely on the supply of gas and oil, whether from domestic production or from importing these fuels.

Strengthening the UK's energy security and the transformation of the energy system in line with net zero demands significant levels of capital investment. The Government's energy strategy creates a wide range of options across different types of infrastructure deployment for UK and international investors seeking attractive opportunities for their funds.

Securing our gas supply

The UK's energy security remains hugely dependent on a reliable, resilient and affordable supply of gas.

This winter we took several crucial steps to ensure our supply of energy remained robust. We supported an increase in domestic gas production, as well as welcoming *Centrica*'s reopening of the *Rough* gas storage facility, which brought on 50% more storage capacity. Our markets and system responded well to ensure our energy system was supplied at all times.

We have learnt from our experiences of the last year and will build on this to ensure secure supplies over next winter and over the longer term. The future demand for gas will decline as we decarbonise. We will engage with industry, consumer groups and other stakeholders to discuss the future of the gas system and how we can secure the necessary levels of investment in resilient, efficient infrastructure as we transition to a clean energy system.

Security through strong international partnerships

We cannot achieve this in isolation. Our international relationships are crucial to achieving our domestic and global objectives.

This winter, we worked closely with key international partners, including European partners, to monitor and share information on energy supply and demand, and preparedness for the winter. This was central to ensuring reliable supply. Beyond the EU we work with strong trusted partners and allies including through our *Strategic Energy Dialogues* to help tackle national and global energy challenges.

A rapid shift to clean energy generation and greater energy efficiency provides the most effective route to ensuring both climate and energy security, helping to avoid risks associated with dependency on fossil fuel imports. We have been working to achieve this globally, including with our G7 partners, and more locally in the North Sea.

This transition relies on critical minerals and there is an impending risk that minerals markets become tighter, with the potential for price spikes and supply chain disruptions. Globally, the demand for critical minerals may quadruple by 2040. As a result, the security of and accessibility to essential critical minerals supply chains is a rising priority for the UK and many of our allies. To support this work internationally, in the last year we have announced a partnership to deepen collaboration on minerals mining and energy with the Republic of South Africa, and collaborations with Canada and Kazakhstan on critical minerals.

A future of cheap, clean and British energy

The best way of protecting households and businesses is by lowering the costs of the energy we consume and reducing the volumes used. This means taking further steps on energy efficiency and building out a low-cost, low-carbon energy system which reduces our reliance on fossil fuels.

The *Energy White Paper* and the *Net Zero Strategy* set out our approach to transforming the energy system, moving from fossil fuels to home-grown, clean energy to eliminate emissions and tackle climate change. The *British Energy Security Strategy* set out the key actions to accelerate delivery of clean energy, recognising its importance in delivering our climate goals whilst simultaneously providing energy security and securing greater energy independence.

How much energy we use and the ways in which we use it are essential components of energy security. Reducing energy consumption by investing in energy efficiency measures helps keep bills affordable and makes us more energy secure. Building a smart and flexible energy system that actively manages the scale and nature of demand will enable a more efficient, secure and lower cost system.

Our strategy to increase supply of low-carbon energy is dependent on enhancing our strengths on wind, solar and nuclear power generation alongside hydrogen production and carbon capture, usage and storage. This includes the infrastructure to produce, store and transport low-carbon energy around the country and to capture, transport and store carbon dioxide. We aim to remove barriers and address blockages, whilst developing new options.

An evolving plan

This Plan, and the complementary *Net Zero Growth Plan*, do not set out every action we will need to take over the next decade to deliver the transition to a cheap, clean and secure energy system. Determining the exact configuration of the future energy system is not sensible. We need to retain the flexibility to adapt to changing circumstances, develop

market frameworks that incentivise a low-cost, reliable system and provide the opportunity for innovation to develop new approaches and drive down costs.

Together these plans set out the actions we are taking, and the timeline for issues that need further work, providing certainty to the industry, to investors and to the British public on the direction of government policy and our commitment to delivery.

Some of the actions we set out in in this Plan are in response to recommendations made in the *Independent Review of Net Zero*, led by the Rt Hon Chris Skidmore MP and published in January 2023. Further detail on the review and its recommendations can be found in the *Net Zero Growth Plan* and its annexes.

We will continue to review our plans, drawing on advice from experts to test our approach and adjust our course to ensure that we remain on track to deliver our objective for a reliable, low-cost energy system, one which remains consistent with our net zero target. Delivery of the commitments in this Plan will be in accordance with the devolution settlements with Scotland, Wales and Northern Ireland.

Our Key Commitments

We will issue an update by the autumn looking at the future role that **gas storage and other sources of flexibility** can play in gas security.

We will deliver vital energy efficiency upgrades through the **Great British Insulation Scheme** and will extend the **Boiler Upgrade Scheme** to 2028 to further encourage the adoption of clean heat technologies.

We will set up **Great British Nuclear**, with the responsibility to lead delivery of the new nuclear programme, backed with the funding it needs.

We are launching a competitive process to select the best **Small Modular Reactor technologies**, with the first phase commencing in April 2023.

We are launching the **Floating Offshore Wind Manufacturing Investment Scheme**, to provide up to £160 million to kick start investment in port infrastructure projects.

We will publish action plans this year on reducing the **development time for transmission network projects** and on accelerating **electricity network connections**.

We are announcing the *Track-1* negotiation project list of **carbon capture projects**, will launch a process to enable expansion of the *Track-1* clusters and have launched *Track-2* of the CCUS cluster sequencing process to establish two further **CCUS clusters**.

We are announcing a shortlist of projects for the first **electrolytic hydrogen production** allocation round (capital co-funding and revenue support) which we intend to enter due diligence with and intend to **launch a second allocation round in Q4 2023**.

We are announcing successful applicants of the first competition window for Strands 1 and 2 of the **Net Zero Hydrogen Fund** (development and capital co-funding) and intend to **launch a second competition window in the spring,** to be run by UKRI.

We are publishing for consultation revised energy **National Policy Statements** which underline the national need for new energy infrastructure with the intention of expediting planning processes.

We intend to consult in summer 2023 on options for **a new approach to consumer protection** in the energy markets from April 2024 onwards and on the **future of the price cap on default tariffs**.

We accept the *Independent Review of Net Zero* recommendation that Government should commit to outlining a clear approach to **gas vs. electricity 'rebalancing'** by the end of 2023/4 and should make significant progress affecting relative prices by the end of 2024.

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Energy Bill [HL]

[AS AMENDED IN COMMITTEE]

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(i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and

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PART 12

CORE FUEL SECTOR RESILIENCE

CHAPTER 1

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263 General objective

The functions of the Secretary of State under this Part must be exercised with a view to—

(a) ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities, and

(b) reducing the risk of emergencies affecting fuel supplies.

264 "Core fuel sector activity" and other key concepts

(1) In this Part "core fuel sector activity" means an activity of a kind mentioned in subsection (2), so far as the activity—

(a) is carried on in the United Kingdom in the course of a business, and

(b) contributes (directly or indirectly) to the supply of core fuels to consumers in the United Kingdom or persons carrying on business in the United Kingdom.

(2) The kinds of activity are—

(a) storing oil or renewable transport fuel;

(b) handling oil or renewable transport fuel;

(c) the carriage of oil or renewable transport fuel by sea or inland water;

(d) transporting oil or renewable transport fuel by road or rail;

(e) conveying oil or renewable transport fuel by pipes;

(f) processing or producing oil or renewable transport fuel (whether by refining, blending or otherwise).

(3) In subsection (2) the references to "oil" do not include crude oil which has not yet entered any refinery or terminal in the United Kingdom.

(4) In this Part "core fuels" means—

(a) crude oil based fuels, and

(b) renewable transport fuels.

(5) In this Part "core fuel sector resilience" means the capability of core fuel sector participants to—

(a) manage the risk of,

(b) reduce the potential adverse impact of, and

(c) facilitate recovery from,

disruptions to core fuel sector activities.

(6) In this Part "core fuel sector participant" means—

(a) a person carrying on core fuel sector activities;

(b) a Part 12 facility owner.

(7) For the purposes of this Part there is "continuity of supply of core fuels" where the supply of core fuels to consumers in all areas of the United Kingdom, and persons carrying on business in all areas of the United Kingdom—

(a) is reliable and continuous, and

(b) is maintained at normal levels.

(8) In subsection (7) "normal levels" means levels that—

(a) are not substantially below average monthly levels of supply in the United Kingdom (taking account of regional variations), and

(b) are consistent with a reasonable balance between supply and demand.

(9) For the purposes of subsection (8) "average monthly levels" are to be calculated by reference to levels of supply in the five years preceding the calculation.

(10) In this Part "relevant activities or assets"—

(a) in relation to a person carrying on core fuel sector activities, means the person's core fuel sector activities (and includes any land or assets under the person's control that are associated with those activities);

(b) in relation to a Part 12 facility owner, means the owned facility.

(11) In this Part—

(a) "Part 12 facility owner" means the owner of a pipeline, terminal, or other facility or infrastructure which is used, or any part of which is used, for the purposes of core fuel sector activities;

(b) in relation to a Part 12 facility owner, "the owned facility" means the facility or infrastructure mentioned in paragraph (a).

(12) In subsection (11) "owner", in relation to any facility or infrastructure, means—

(a) a person in whom the facility or infrastructure is vested, or

(b) a lessee of the facility or infrastructure.

(13) In this Part references to a "person carrying on core fuel sector activities" include any person carrying on such activities (whether or not as the owner of the oil or renewable transport fuel).

CHAPTER 2

POWERS FOR RESILIENCE PURPOSES

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265 Directions to particular core fuel sector participants

(1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets (for example, to acquire and install specific equipment, or carry out specific works, at the person's own expense).

(2) The Secretary of State may not give a direction under subsection (1) unless the Secretary of State considers that the persons to whom this section applies have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

(3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—

(a) restoring continuity of supply of core fuels, or

(b) counteracting the disruption or failure, or its potential adverse impact.

(4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—

(a) reducing the risk, or

(b) reducing the potential adverse impact of the disruption or failure.

(5) The Secretary of State may not make a direction under subsection (1), (3) or (4) unless the Secretary of State considers—

(a) that, the corresponding cases (if any) are not sufficiently numerous to justify making regulations under section 268, or

(b) that, by reason of urgency, it is not practicable to achieve the aims of the direction by regulations under section 268.

(6) In subsection (5)(a) the reference to "corresponding cases" is to persons to whom this section applies in relation to whom the Secretary of State considers it would be appropriate to take action corresponding to the direction.

(7) This section applies to the following persons—

(a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;

(b) a Part 12 facility owner if the owned facility has capacity in excess of 20,000 tonnes.

(8) For the purposes of this Part—

(a) a business "has capacity in excess of" a specified number of tonnes if in the most recently ended calendar year core fuel sector activities were carried on in that business in relation to more than that number of tonnes of core fuel;

(b) a facility or infrastructure "has capacity in excess of" a specified number of tonnes if in the most recently ended calendar year it was used for the purposes of core fuel sector activities in relation to more than that number of tonnes of core fuels.

266 Procedure for giving directions

(1) Before giving a person a direction under section 265 the Secretary of State must give the person a written notice accompanied by a draft of the proposed direction.

(2) The notice under subsection (1) must—

(a) state that the Secretary of State proposes to give the person a direction in the form of the accompanying draft;

(b) explain why the Secretary of State proposes to give the direction;

(c) state when it is intended that the direction will come into effect;

(d) specify a period within which the person may make written representations with respect to the proposal.

(3) The period specified under subsection (2)(d) must begin with the date on which the notice is given to the person and must be not less than 14 days.

(4) Before giving a direction under section 265, the Secretary of State must consult—

(a) so far as the direction relates to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive;

(b) so far as the direction relates to relevant activities or assets in England, the Environment Agency;

(c) so far as the direction relates to relevant activities or assets in Scotland, the Scottish Environment Protection Agency;

(d) so far as the direction relates to relevant activities or assets in Wales, the Natural Resources Body for Wales;

(e) so far as the direction relates to relevant activities or assets in Northern Ireland—

(i) the Health and Safety Executive for Northern Ireland, and

(ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(f) any other persons the Secretary of State thinks appropriate.

(5) The Secretary of State must decide whether to give the person the proposed direction (with or without modifications), after considering any representations made by—

(a) the person mentioned in subsection (1), and

(b) any person consulted in accordance with subsection (4).

(6) The Secretary of State must give written notice of that decision to the person mentioned in subsection (1).

(7) If the decision is to give the proposed direction, the notice must—

(a) contain the direction, and

(b) state the time when the direction is to take effect.

(8) Consultation under subsection (4) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales must be with reference to that body's functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483).

(9) Consultation under subsection (4) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department's functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325).

267 Offence of failure to comply with a direction

Any person who, without reasonable excuse, fails to comply with a direction given to the person under section 265 commits an offence and is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Corresponding powers to make regulations

268 Corresponding powers to make regulations

(1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets.

(2) The Secretary of State may not make any provision by regulations under subsection (1) unless the Secretary of State considers that the persons mentioned in paragraphs (a) and (b) of subsection (5) have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

(3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—

(a) restoring continuity of supply of core fuels, or

(b) counteracting the disruption or failure, or its potential adverse impact.

(4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—

(a) reducing the risk, or

(b) reducing the potential adverse impact of the disruption or failure.

(5) A class or description specified for the purposes of subsection (1), (3) or (4) may not include persons other than—

(a) persons carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes, or

(b) Part 12 facility owners whose owned facility has capacity in excess of 1,000 tonnes.

(6) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.

(7) Before making regulations under this section the Secretary of State must consult—

(a) so far as the regulations relate to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive;

(b) so far as the regulations relate to relevant activities or assets in England, the Environment Agency;

(c) so far as the regulations relate to relevant assets or activities in Scotland, the Scottish Environment Protection Agency;

(d) so far as the regulations relate to relevant activities or assets in Wales, the Natural Resources Body for Wales;

(e) so far as the regulations relate to relevant activities or assets in Northern Ireland—

(i) the Health and Safety Executive for Northern Ireland, and

(ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

(f) any other persons the Secretary of State thinks appropriate.

(8) Regulations under this section are subject to the affirmative procedure.

(9) Consultation under subsection (7) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales must be with reference to that body's functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483).

(10) Consultation under subsection (7) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department's functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325).

Information

269 Power to require information

(1) The Secretary of State may by notice in writing require any of the following to provide the Secretary of State with information relating to their relevant activities or assets—

(a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes;

(b) a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes.

(2) The Secretary of State may by notice in writing require a relevant wetstock manager to provide the Secretary of State with information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

(3) In this Part "relevant wetstock manager" means a person who provides to persons who make retail supplies of core fuels in the United Kingdom stock management services in respect of such supplies.

(4) The Secretary of State may only require information under this section for the purpose of maintaining or improving core fuel sector resilience.

(5) A notice under subsection (1) or (2) may—

(a) specify the manner in which information is to be provided;

(b) specify time limits for providing information;

(c) require information to be provided at specified intervals.

(6) Before giving a person a notice under subsection (1) or (2) the Secretary of State must—

(a) notify the person in writing of the proposed contents of the notice and of the period within which the person may make written representations with respect to the proposed requirement, and

(b) consider any representations made by the person.

(7) The period notified under subsection (6)(a) must begin on the date on which the notification is given and (subject to subsection (8)) must be not less than 14 days.

(8) The Secretary of State may notify a period under subsection (6)(a) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is it is necessary to do so by reason of urgency.

270 Duty to report incidents

(1) If at any time a person—

(a) knows, or has reason to suspect, that a notifiable incident is occurring or has occurred, and

(b) meets the condition in paragraph (a), (b) or (c) of subsection (2),

that person must notify the Secretary of State of the incident as soon as possible.

(2) The conditions mentioned in subsection (1)(b) are that—

(a) the person is carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;

(b) the person is a Part 12 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes;

(c) the person is of a class or description specified in regulations made by the Secretary of State under this subsection.

(3) In this section "notifiable incident", in relation to a person, means an incident which affects the person's relevant activities or assets in such a way as to create a significant risk of, or cause—

(a) disruption to, or

(b) a failure of,

the continuity of supply of core fuels.

(4) The Secretary of State may by notice in writing require a person who has given a notice under subsection (1) to provide further information about the incident.

(5) Before giving a person a notice under subsection (4) the Secretary of State must—

(a) notify the person in writing of—

(i) the proposed contents of the notice, and

(ii) the period within which the person may make written representations with respect to the proposal, and

(b) consider any representations made by the person.

(6) The period notified under subsection (5)(a)(ii) must begin on the date on which the notification is given and (subject to subsection (7)) must be not less than 14 days.

(7) The Secretary of State may notify a period under subsection (5)(a)(ii) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is necessary to do so by reason of urgency.

(8) A notice under subsection (4) may specify—

(a) the manner in which information is to be provided, and

(b) time limits for providing information.

(9) Where a notification under subsection (1) is not made in writing, it must be confirmed in writing as soon as possible.

(10) Regulations under subsection (2)(c) may specify the meaning that "relevant activities or assets" is to have in subsection (3) in relation to persons of a class or description of persons specified in the regulations.

(11) Regulations under subsection (2)(c) are subject to the affirmative procedure.

271 Contravention of requirement under section 269 or 270

(1) A person who, without reasonable excuse, fails to comply with a requirement imposed by a notice under section 269(1) or (2) or 270(4) commits an offence.

(2) A person who, without reasonable excuse, fails to comply with section 270(1) commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

272 Provision of information at specified intervals

(1) The Secretary of State may by regulations require any of the following to provide to the Secretary of State, at intervals specified in the regulations, information relating to their relevant activities or assets—

(a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes;

(b) a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes.

(2) The Secretary of State may by regulations require a relevant wetstock manager to provide to the Secretary of State, at intervals specified in the regulations,

information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

(3) The power to make regulations under this section may only be exercised for the purpose of maintaining or improving core fuel sector resilience.

(4) The regulations may make provision about—
  (a) the information to be provided;
  (b) the manner in which information is to be provided;
  (c) time limits for providing information.

(5) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.

(6) Regulations under this section are subject to the affirmative procedure.

273 Disclosure of information held by the Secretary of State

(1) Subsection (2) applies to information held by the Secretary of State which was provided to the Secretary of State under section 269, 270 or 272.

(2) The information may be disclosed—
  (a) to any government department or devolved authority for the purpose of—
    (i) maintaining or improving core fuel sector resilience, or
    (ii) restoring, or counteracting a disruption to, or failure of, continuity of supply of core fuels (or counteracting the potential adverse impact of any such disruption or failure), or
  (b) if the disclosure is necessary for the purpose of criminal proceedings.

(3) Nothing in this section authorises the making of a disclosure which—
  (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
  (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.

In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account.

(4) In subsection (2) "devolved authority" means—
  (a) the Welsh Ministers,
  (b) the Scottish Ministers, or
  (c) a Northern Ireland department.

274 Disclosure of information by HMRC

(1) His Majesty's Revenue and Customs (or anyone acting on their behalf) may disclose information to the Secretary of State for the purpose of facilitating

the exercise by the Secretary of State of functions relating to core fuel sector resilience.

(2) A person who receives information as a result of this section may not—

(a) use the information for a purpose other than that mentioned in subsection (1), or

(b) further disclose the information,

except with the consent of the Commissioners for His Majesty's Revenue and Customs (which may be general or specific).

(3) If a person discloses information in contravention of subsection (2)(b) which relates to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it,

section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act.

(4) This section does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.

(5) Nothing in this section authorises the making of a disclosure which—

(a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or

(b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.

In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account.

Appeal against notice or direction

275 Appeal against notice or direction

(1) A person to whom a direction under section 265 or a notice under section 269 or 270(4) is given may appeal to the First-tier Tribunal against the direction or notice on the ground that the decision to give it—

(a) is based on an error of fact,

(b) is wrong in law, or

(c) is unfair or unreasonable.

(2) On an appeal under this section the Tribunal may—

(a) confirm or cancel the direction or notice, or

(b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

CHAPTER 3

ENFORCEMENT

Offences

276 False statements etc

(1) It is an offence for a person to make a statement which the person knows is false or materially misleading—

(a) in responding to a requirement imposed by the Secretary of State—

(i) under section 269 (power to require information),

(ii) under section 270(4) (duty to report incidents), or

(iii) under regulations under section 272 (provision of information at specified intervals), or

(b) in making any other statement to the Secretary of State in connection with any of the Secretary of State's functions under this Part.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

277 Offences under regulations

(1) This section applies to regulations under—

(a) section 268 (corresponding powers to make regulations);

(b) section 272 (provision of information at specified intervals).

(2) Regulations to which this section applies may provide for an offence under the regulations to be triable—

(a) only summarily, or

(b) either summarily or on indictment.

(3) Regulations to which this section applies may provide for an offence under the regulations that is triable either way to be punishable—

(a) on summary conviction in England and Wales with imprisonment for a term not exceeding the period specified or a fine (or both);

(b) on summary conviction in Scotland or Northern Ireland with imprisonment for a term not exceeding the period specified or a fine not exceeding the statutory maximum (or both);

(c) on conviction on indictment, with imprisonment for a term not exceeding the period specified, which may not exceed two years, or a fine (or both).

(4) A period specified under subsection (3)(a) may not exceed the general limit in a magistrates' court.

(5) A period specified under subsection (3)(b) may not exceed—

(a) in relation to Scotland, 12 months;

(b) in relation to Northern Ireland, 6 months.

(6) Regulations to which this section applies may provide for a summary offence under the regulations to be punishable—

(a) with imprisonment for a term not exceeding the period specified,

(b) with—

(i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or

(ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or

(c) with both.

(7) A period specified under subsection (6)(a) may not exceed—

(a) in relation to England and Wales—

(i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 comes into force, or

(ii) 51 weeks, in relation to offences committed on or after that date,

(b) in relation to Scotland, 12 months,

(c) in relation to Northern Ireland, 6 months.

(8) In this section "specified" means specified in the regulations.

278 Proceedings for offences

Proceedings for an offence under this Part (including an offence created by regulations under section 268 or 272)—

(a) may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;

(b) may not be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

279 Liability of officers of entities

(1) Where an offence under this Part committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer of the body corporate, or

(b) to be attributable to neglect on the part of an officer of the body corporate,

that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly.

(2) In subsection (1) "officer", in relation to a body corporate, means—

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person purporting to act in any such capacity.

(3) In subsection (2) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly.

Enforcement undertakings

280 Enforcement undertakings

(1) Subsection (2) applies if—

(a) the Secretary of State has reasonable grounds to suspect that a person has committed an offence falling within subsection (5),

(b) the person offers to the Secretary of State an enforcement undertaking in respect of the relevant act or omission, and

(c) the Secretary of State accepts that undertaking.

(2) Unless the person has failed to comply with the undertaking (or any part of it) the person may not at any time be convicted of that offence in respect of the relevant act or omission.

(3) In this Part "enforcement undertaking" means an undertaking to take, within any period specified in the undertaking, action—

(a) for any of the purposes in subsection (4), or

(b) of a description specified in regulations made by the Secretary of State.

(4) The purposes mentioned in subsection (3) are—

(a) to secure that the offence does not continue or recur,

(b) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or

(c) to benefit any person affected by the offence.

(5) The following offences fall within this subsection—

(a) an offence under—

(i) section 267 (failure to comply with a direction),

(ii) section 271 (contravention of requirement under section 269 or 270), or

(iii) section 276 (false statements etc);

(b) an offence, other than an offence triable only summarily, that is created by regulations under—

(i) section 268 (corresponding powers to make regulations), or

(ii) section 272 (provision of information at regular intervals).

(6) The reference in subsection (4)(c) to action to "benefit any person affected by the offence" includes action by way of the payment of a sum of money.

(7) Where a person from whom the Secretary of State has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, the partial compliance must be taken into account in any decision whether to institute any criminal proceedings in respect of the offence in question.

(8) In this section "relevant act or omission" means an act or omission of the person to which the grounds mentioned in subsection (1)(a) relate.

(9) Regulations under subsection (3)(b) are subject to the affirmative procedure.

(10) Schedule 20 contains further provision about enforcement undertakings, including provision about—

(a) procedure;

(b) compliance certificates;

(c) appeals.

Guidance

281 Guidance: criminal and civil sanctions

(1) The Secretary of State must issue guidance as to—

(a) the sanctions (including criminal sanctions) to which a person who commits an offence under this Part may be liable,

(b) the action which the Secretary of State may take to enforce offences under this Part, whether by virtue of section 280 and Schedule 20 or otherwise, and

(c) the circumstances in which the Secretary of State is likely to take any such action.

(2) The Secretary of State—

(a) must issue guidance about how the Secretary of State intends to exercise the Secretary of State's functions under section 280 and Schedule 20;

(b) must have regard to the guidance in exercising the Secretary of State's functions under those provisions.

(3) Before issuing guidance under this section, the Secretary of State must—

(a) prepare a draft of the proposed guidance;

(b) consult such persons as the Secretary of State considers appropriate;

(c) comply with the requirements of section 282.

(4) The Secretary of State may from time to time revise guidance issued under this section and issue revised guidance.

(5) Subsection (3) applies to revised guidance as it applies to the original guidance.

(6) The Secretary of State must arrange for the publication of guidance (or revised guidance) issued under this section.

282 Guidance: Parliamentary scrutiny

(1) Before issuing guidance under section 281, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.

(2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—

(a) the day on which the draft is laid before both Houses of Parliament, or

(b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.

(3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.

(4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses are adjourned for more than four days.

CHAPTER 4

GENERAL

Financial assistance

283 Financial assistance for resilience and continuity purposes

(1) The Secretary of State may, with the consent of the Treasury, provide financial assistance to a core fuel sector participant for the purpose of—

(a) maintaining or improving core fuel sector resilience, or

(b) securing or maintaining continuity of supply of core fuels.

(2) Financial assistance under this section may be given in any form.

(3) Financial assistance under this section may, in particular, be given by way of—

(a) grants,

(b) loans,

(c) guarantee or indemnity,

(d) investment by acquisition (directly or through another body corporate) of shares in or securities of a body corporate,

(e) investment by the acquisition of any undertaking or assets, or

(f) incurring expenditure for the benefit of the person assisted.

(4) Financial assistance under this section may be given on such terms and conditions as the Secretary of State considers appropriate (including provision for repayment, with or without interest).

(5) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (3)(d) without the consent of the body corporate concerned.

Power to amend thresholds

284 Power to amend thresholds

(1) The Secretary of State may by regulations amend or modify any provision mentioned in subsection (2) for the purpose of varying any amount for the time being specified in that provision.

(2) The provisions are—

(a) section 265(7) (directions to core fuel sector participants);

(b) section 268(5) (corresponding powers to make regulations);

(c) section 269(1) (power to require information);

(d) section 270(2)(a) and (b) (duty to report incidents);

(e) section 272(1) (provision of information at specified intervals).

(3) Regulations under this section are subject to the affirmative procedure.

Interpretation of Part 12

285 Interpretation of Part 12

(1) In this Part—

"company" means a company within the meaning of section 1 of the Companies Act 2006;

"continuity of supply of core fuels" is to be interpreted in accordance with section 264(7);

"core fuel sector activity" has the meaning given by section 264;

"core fuel sector participant" has the meaning given by section 264(6);

"core fuel sector resilience" has the meaning given by section 264(5);

"core fuels" has the meaning given by section 264(4);

"crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—

(a) crude oils from which distillate fractions have been removed, and

(b) crude oils to which distillate fractions have been added;

"crude oil based fuel" means any fuel comprised wholly or mainly of crude oil or substances derived from crude oil;

"enactment" includes—

(a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);

(b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;

(c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

(e) any retained direct EU legislation;

"enforcement undertaking" has the meaning given by section 280;

"oil" means—

(a) crude oil;

(b) crude oil based fuels;

(c) components;

"the owned facility", in relation to a Part 12 facility owner, has the meaning given by section 264(11);

"Part 12 facility owner" has the meaning given by section 264(11);

"person carrying on core fuel sector activities" is to be interpreted in accordance with section 264(13);

"relevant activities or assets" is to be interpreted in accordance with section 264(10);

"relevant wetstock manager" has the meaning given by section 269(3);

"renewable transport fuel" has the meaning given by section 132 of the Energy Act 2004;

"terminal" means any site for the storage in bulk of oil or renewable transport fuel.

(2) In this Part references to the "capacity" of a business or of a facility or infrastructure are to be interpreted in accordance with section 265(8).

(3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.

(4) For the purposes of the definition of "oil" in subsection (1) "component" means any substance (whether or not derived from crude oil) of a kind which is mixed with other substances to produce a crude oil based fuel.

Energy Bill [HL]

[AS AMENDED IN COMMITTEE]

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Make provision about energy production and security and the regulation of the energy market, including provision about the licensing of carbon dioxide transport and storage; about commercial arrangements for carbon capture and storage and for hydrogen production and transportation; about new technology, including low-carbon heat schemes and hydrogen grid trials; about the Independent System Operator and Planner; about gas and electricity industry codes; about financial support for persons carrying on energy-intensive activities; about heat networks; about energy smart appliances and load control; about the energy performance of premises; about energy savings opportunity schemes; about the resilience of the core fuel sector; about offshore energy production, including environmental protection, licensing and decommissioning; about the civil nuclear sector, including the Civil Nuclear Constabulary and pensions; and for connected purposes.

Brought from the Lords, 25th April 2023

Ordered, by The House of Commons, to be Printed, 29th June 2023.

PUBLISHED BY THE AUTHORITY OF THE HOUSE OF COMMONS

ENERGY BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Energy Bill [HL] as introduced in the House of Lords on 6 July 2022 (HL Bill 39).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The aim of the Bill is to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing.

2 To enable this, the Bill is structured around three key pillars:

- Leveraging investment in clean technologies.
- Reforming the UK's energy system and protecting consumers.
- Maintaining the safety, security and resilience of the energy systems across the UK.

3 In respect of leveraging investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to ensure the development of a low carbon energy system, to reduce emissions from industry, transport and potentially heat, and provide low carbon power. These measures include:

- Establishing an economic regulation and licensing regime for CO_2 transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
- Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
- Enabling the establishment of a market-based mechanism for low-carbon heat.
- Enabling the effective and safe delivery of a large village hydrogen heating trial.
- Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965 (NIA 1965).

4 In respect of system reform and consumer protection, Parts 4 – 9 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:

- Establishing an Independent System Operator and Planner (hitherto known as the Future System Operator), an independent and first-of-a-kind body acting as a trusted voice at the heart of the energy sector.
- Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
- Enabling competitive tenders in onshore electricity networks.
- Enabling the Competition and Markets Authority (CMA) to investigate more effectively the impacts of mergers between energy companies.
- Introducing a definition of multi-purpose interconnectors from which a new licensing and economic regime can be developed.
- Maintaining the existing price cap beyond 2023.

- Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
- Removing obligation thresholds under the Energy Company Obligation scheme.
- Driving the rollout of smart meters across Great Britain.
- Regulating the heat network market.
- Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
- Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
- Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.

5 In respect of the safety, security, and resilience of the UK energy system, Parts 10, 11 and 12 of the Bill include provisions to guarantee a robust and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:

- Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
- Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
- Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
- Granting the North Sea Transition Authority (also known as the Oil and Gas Authority or OGA) additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.
- Make expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office for Nuclear Regulation (ONR).
- Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.
- Enhancing the UK's nuclear third party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the NIA 1965.

- Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other police forces.

Policy background

Parts 1 and 2: Carbon Dioxide Capture, Transport and Storage and Hydrogen Production

6 Carbon Capture, Usage and Storage (CCUS) is a process involving the capture of carbon dioxide (CO_2), from industrial and commercial activities, as well as power generation, and its transportation for the purposes of permanent containment, for example in very deep subsurface rock formations, or reuse, for example in cement. CCUS can be applied to a range of processes including chemical refining, cement, and residual waste management processes, and is likely to play an essential role in meeting the UK's statutory carbon emissions targets. The Climate Change Committee has described carbon capture and storage as "a necessity, not an option" for reaching net zero emissions[1].

7 The Government has committed to provide support for the deployment of two CCUS 'clusters' by the mid-2020s and a further two by the end of the 2020s. The Government's Net Zero Strategy, published in 2021, sets out the ambition to capture and store 20-30Mt of CO_2, which includes 6MtCO_2 of industrial emissions, per year, by 2030[2]. A new carbon capture industry could support up to 50,000 jobs by 2030, split across industry, power and the transport and storage network.

8 The Government consulted in 2019 on commercial models to pull through the investment needed to deploy CCUS at scale. The Government's response[3], published in 2020, set out that the proposed model for CO_2 transport and storage is one of economic regulation. This is due to the fact that CO_2 transport and storage networks are likely to be operated as regional monopolies encompassing a range of different network users and emitters operating under different commercial models. In this model, a transport and storage company would receive a licence from an economic regulator which grants it the right to charge users in exchange for delivering and operating the transport and storage network. Here the regulator-approved prices charged would reflect efficient costs and a reasonable rate of return based on the level of risk assumed by a transport and storage company.

9 The Government considers Ofgem to be the most appropriate entity to take on the role of economic regulator for CO_2 transport and storage. Part 1 of the Bill establishes the duties and functions for Ofgem to act as economic regulator of CO_2 transport and storage and a framework for the economic licensing of CO_2 transport and storage activities.

10 The Oil and Gas Authority (whose business name is the North Sea Transition Authority) and ministers in the Devolved Administrations (the Department for the Economy in Northern Ireland) remain the relevant licensing authorities for regulating offshore CO_2 storage under the powers set out in the Energy Act 2008 to ensure the secure geological storage of CO_2.

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[1] https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf

[2] https://www.gov.uk/government/publications/net-zero-strategy

[3] https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-duties-and-functions-of-an-economic-regulator-for-co2-transport-and-storage

Part 9: Energy Performance of Premises

Clause 198: Power to make energy performance regulations

457 This clause gives the Secretary of State the power to make regulations (energy performance regulations) to enable or require the energy usage or the energy efficiency of premises to be assessed, certified, and published and to require that improvements in energy usage or efficiency are identified and recommended.

458 The clause also gives the Secretary of State the power to make regulations to restrict or prohibit the marketing or disposal of premises where their energy performance has not been assessed, certified, or publicised. Under this clause, the Secretary of State may by regulations confer functions on any person and impose requirements or make provision for securing compliance with requirements under the regulations.

459 Regulations made under this clause may also authorise, restrict or prohibit the supply or keeping of information relating to the energy performance of buildings.

460 This clause, and the two which follow, will enable the Secretary of State to amend, revoke or replace the existing energy performance of premises regime, which derives from EU law.

Clause 199: Energy performance regulations relating to new premises

461 This clause provides that the Secretary of State may make energy performance regulations in relation to new premises.

Clause 200: Sanctions

462 This clause provides that the Secretary of State may by regulations make provision with respect to the enforcement of energy performance regulations, including the imposition of civil penalties up to a specified maximum amount and for the creation of criminal offences and associated penalties (subject to the limitation set out in the clause). Regulations made under this clause must provide for a right of appeal against the imposition of a penalty.

Clause 201: Regulations under this Part

463 This Clause relates to devolution, the application to Crown and Parliament and the Territorial extent relevant Clauses.

Part 10: Core Fuel Sector Resilience

Chapter 1: Introduction

Clause 202: General objective

464 This clause sets out that the functions of the Secretary of State under this part must be exercised with a view to ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities and reducing the risk of emergencies affecting fuel supplies.

Clause 203: "Core fuel sector activity" and other key concepts

465 This clause sets out the key concepts used in this part of the Bill. "Core fuels" are defined in subsection (4) as either crude oil-based fuels or renewable transport fuels. "Core fuel sector activity", which includes storing of such fuels, amongst other activities, is defined in subsection (2), so far as the activity is carried out in the United Kingdom in the course of a business, and contributes, either directly or indirectly, to the supply of core fuels to consumers or businesses in the UK. Another key concept is that of an owner of a "Part 10 facility owner" meaning the owner of a pipeline, terminal or other facility or infrastructure which is used for the purpose of subsection (2) activities.

466 This clause also defines such concepts as continuity of supply of core fuels and core fuel sector resilience which relate to the purposes for which the measures in this part of the Bill may be employed.

Chapter 2: Powers for Resilience Purposes

Clause 204: Directions to particular core fuel sector participants

467 This clause contains powers to give directions to a person who carries on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes or is a Part 10 facility owner whose owned facility has capacity in excess of 20,000 tonnes and require them to do anything in relation to their relevant activities or assets for the purposes set out in the clause.

468 Subsection (1) provides that the Secretary of State may give direction for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the direction would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

469 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may give directions for the purpose of restoring continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

470 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may give directions for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

Clause 205: Procedure for giving directions

471 This clause outlines the process for giving directions under clause 204. This includes the requirement for the Secretary of State to give notice to the recipient of the proposed direction and consider any representations made by them. The Secretary of State must also consult with relevant bodies, including those in the devolved administrations insofar as a direction relates to relevant activities or assets in a devolved administration, before giving a direction and consider any representations made by them.

Clause 206: Offence of failure to comply with a direction

472 Subsection (1) sets out that any person who without reasonable excuse fails to comply with a direction given to them under clause 204 commits an offence and is liable on conviction to a fine or imprisonment (or both).

Clause 207: Corresponding powers to make regulations

473 This clause contains a power to make regulations which will apply to a class or description of persons who carry on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or are Part 10 facility owners whose owned facility has capacity in excess of 1,000 tonnes and require them to do anything in relation to their relevant activities or assets for the purposes set out in the clause.

474 Subsection (1) provides that the Secretary of State may make regulations for the purpose of maintaining or improving core fuel sector resilience but may not do so unless the Secretary of State considers that the persons to whom the regulations would apply have failed to make sufficient progress with steps the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.

475 When there is a disruption to or failure of continuity of core fuel supplies, subsection (3) provides that the Secretary of State may make regulations for the purpose of restoring continuity of supply of core fuels or counteracting the disruption or failure, or its potential impact.

476 If the Secretary of State considers that there is a significant risk of disruption to or failure of continuity of core fuel supplies, subsection (4) provides that the Secretary of State may make regulations for the purpose of reducing the risk or reducing the potential adverse impact of the disruption or failure.

477 Subsection (7) sets out who the Secretary of Statement must consult with before making regulations under this clause. This includes that the Secretary of State must consult with bodies in the devolved administrations insofar as the regulations relate to relevant activities or assets in a devolved administration.

Clause 208: Power to require information

478 This clause enables the Secretary of State powers to give notice to a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes, requiring them to provide information about their relevant activities or assets.

479 Subsection (2) enables the Secretary of State to give notice to a relevant wetstock manager requiring them to provide information about a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services. A relevant wetstock manager is defined in subsection (3).

480 Subsection (4) provides that the Secretary of State may only require information under this section for the purposes of maintaining or improving core fuel sector resilience.

481 Subsection (6) provides that the Secretary of State must notify the person in advance of the proposed notice to provide information and consider any representations made by that person.

Clause 209: Duty to report incidents

482 This clause places a duty on persons to notify the Secretary of State where they know or has reason to suspect that an incident affecting their activities or assets in such a way as to create a significant risk of, or cause, disruption or failure to the continuity of core fuel supply has occurred or is occurring. This duty applies to persons who are carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes, is a Part 10 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes, or is a person of a class otherwise defined in regulations made under this section.

483 Subsection (4) also gives the Secretary of State power to seek further information from a person giving notice under this clause.

484 Subsection (5) provides that the Secretary of State to notify the person in advance of the proposed notice to provide information under Subsection (4) and consider any representations made by that person.

Clause 210: Contravention of requirement under sections 208 or 209

485 This clause creates offences associated with breach of clauses 208 or 209. A person who without reasonable excuse, fails to comply with a requirement imposed by a notice to provide information under clause 208(1) or (2) or fails to provide additional information about a notified incident under clause 209(4) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

486 This clause also creates an offence associated with breach of clause 209(1). A person who without reasonable excuse fails to report an incident under clause 209(1) commits an offence and is liable on conviction to a fine or imprisonment (or both) under subsection (3).

Clause 211: Provision of information at specified intervals

487 This clause provides that the Secretary of State may make regulations in respect of a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes or a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes to provide information at prescribed intervals about their relevant activities or assets.

488 Subsection (2) provides that the Secretary of State may make regulations in respect of a relevant wetstock manager requiring them to provide information at intervals about a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

489 Subsection (3) states that this power may only be exercised for the purpose of maintaining or improving core fuel sector resilience.

Clause 212: Disclosure of information held by the Secretary of State

490 This clause sets out that information obtained under the power to require information (Clause 208), the duty to report incidents (Clause 209), or the requirement to provide information at specified intervals (Clause 211) may be disclosed to other government departments or devolved authority for the purposes of maintaining or improving core fuel sector resilience, restoring or counteracting any interruption to continuity of core fuel supply (or potential adverse impact), or if necessary for the purpose of criminal proceedings. There are restrictions on this power where disclosure would contravene data protection legislation or certain parts of the Investigatory Powers Act 2016.

Clause 213: Disclosure of information by HMRC

491 This clause gives Her Majesty's Revenue and Customs (HMRC) power to make disclosures to the Secretary of State for the purposes of facilitating the Secretary of State exercising functions relating to core fuel sector resilience. The clause provides limitations on such disclosures, including that the information must not be further disclosed without the consent of HMRC.

Clause 214: Appeal against notice or direction

492 This clause sets out that a person to whom a direction is given under clause 204, or who is given a notice to provide information under clause 208, or to provide further information about a notifiable incident under clause 209(4), may appeal a direction or notice to the First-tier Tribunal on the grounds which are set out in this clause.

Chapter 3: Enforcement

Clause 215: False statements etc

493 This clause specifies that a person who makes a statement they know to be false or misleading when responding to a notice to provide information (clause 208), a notice to provide further information about a notified incident (clause 209(4)), or in providing information at specified intervals under regulations (clause 211), commits an offence and is liable on conviction to a fine or imprisonment (or both).

Clause 216: Offences under regulations

494 This clause sets out the scope of offences that may be created under regulations in clause 207 (corresponding powers to make regulations) and clause 211 (provision of information at specified intervals).

Clause 217: Proceedings for offences

495 This clause sets out the consents required to bring proceedings for an offence under this Part, including those contained in regulations made under clauses 207 or 211, if the prosecution is brought in England and Wales, or in Northern Ireland.

Clause 218: Liability of officers of entities

496 This clause sets outs that where an offence under this Part has been committed by a body corporate is proved to have been committed with the consent, connivance, or neglect of an officer of that body corporate, then the officer commits an offence as well as the body corporate. The clause also applies to partners of Scottish partnerships.

Clause 219: Enforcement undertakings

497 This clause provides that where the Secretary of State has reasonable grounds to suspect that a person has committed an offence which falls within subsection (5), the Secretary of State may choose to accept an enforcement undertaking. An enforcement undertaking is defined in subsection (3) as an undertaking to take action for any purposes specified in subsection (4) or to take action of a description set out in regulations made by the Secretary of State.

498 A person who has an enforcement undertaking accepted by the Secretary of State may not be convicted of the offence in relation to the relevant act or omission unless they do not comply with the enforcement undertaking (or any part of it) (subsection (2)). If a person gives an undertaking which is accepted by the Secretary of State and fails to fully comply with the undertaking but has complied with part of it, then the Secretary of State must take into account such partial compliance when deciding whether to take any criminal proceedings in respect of the offence (subsection (7)).

Clause 220: Guidance: criminal and civil sanctions

499 This clause requires the Secretary of State to issue guidance about sanctions and enforcement of offences under this Part (including in relation to criminal sanctions and enforcement undertakings) and outlines the procedure that the Secretary of State must follow before issuing or revising such guidance.

Clause 221: Guidance: parliamentary scrutiny

500 This clause sets out the parliamentary procedure the Secretary of State must follow before issuing guidance under clause 220.

Chapter 4: General

Clause 222: Financial assistance for resilience and continuity purposes

501 This clause enables the Secretary of State to provide financial assistance for the purpose of maintaining or improving core fuels sector resilience or for the purpose of securing or maintaining continuity of supply of core fuels. Financial assistance under this clause may be given by way of the methods set out in subsection (3).

Clause 223: Power to amend thresholds

502 This clause enables the Secretary of State to make regulations to vary the specified threshold capacity values that apply in respect of those provisions listed in subsection (3).

Clause 224: Interpretation of Part 10

503 This clause sets out how various terms within this Part are to be interpreted.

ENERGY BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Energy Bill [HL] as introduced in the House of Lords on 6 July 2022 (HL Bill 39).

Ordered by the House of Lords to be printed, 6 July 2022

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS

Department for Levelling Up,
Housing & Communities

Our ref: APP/B3600/W/21/3268579
Your ref: WA/2019/0796

Mr Grant Anderson
Hill Dickinson
50 Fountain Street
Manchester M2 2AS

7 June 2022

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY UKOG (234) LTD
LAND SOUTH OF DUNSFOLD ROAD AND EAST OF HIGH LOXLEY ROAD, DUNSFOLD, SURREY
APPLICATION REF: WA/2019/0796

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mike Robins MSc BCc (Hons) MRTPI, who held a public local inquiry which opened on 27 July 2021 into your client's appeal against the decision of Surrey County Council to refuse your client's application for planning permission for the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side - track borehole (Loxley - 1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Road, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture, in accordance with application Ref. WA/2019/0796, dated 26 April 2019.

2. On 5 January 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. One representation has been received since the Inquiry, as set out at Annex A. A copy of this letter may be obtained on request to the email address at the foot of the first page of this letter.

6. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Costs

7. An application for for a partial award of costs has been made by your client against Surrey County Council (SCC) (IR1.1). This application is the subject of a separate decision letter.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case the development plan consists of the Surrey Minerals Plan adopted 2011 (SMP); the Waverley Borough Local Plan Part 1: Strategic Policies and Sites, adopted February 2018 (the WLP); and the Waverley Borough Council Local Plan (Saved Policies) 2002 (LP2002). The Secretary of State considers that relevant development plan policies to the appeal are those set out in the Statement of Common Ground (SoCG) (IR3.14).

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Overarching National Policy Statement for Energy (EN1) (IR3.7-3.10), The Energy White Paper (IR3.11) and the Climate Change Committee (CCC) advice (IR3.12).

Emerging plan

11. The emerging plan comprises the emerging Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies. The Secretary of State considers that the emerging policies of most relevance to this case include those set out in the Statement of Common Ground (SoCG) (IR3.14).

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The emerging Plan has been submitted for Examination with adoption

scheduled for September/October 2022. As the Plan has yet to be examined, the Secretary of State considers that it and its emerging policies carry limited weight.

Main issues

13. The Secretary of State agrees that the main issues are those set out by the Inspector at IR 11.2.

Landscape Character and Appearance

14. The Secretary of State agrees with the Inspector's analysis of the landscape and visual context at IR11.3-11.9, and further agrees with the Inspector's analysis of landscape and visual sensitivity at IR11.10-11.21. He agrees with the Inspector's conclusions at IR11.21 that overall this cannot be considered a valued landscape in Framework terms. Like the Inspector he finds it is a landscape that is clearly valued by local residents and the associated businesses and agrees that it has value from its function as an AGLV, and as setting to, and buffer on the edge of the AONB (IR11.112), He also agrees (IR11.21) that it retains protection, both in policy terms and within the Framework.

Landscape and Visual Effects

15. For the reasons given at IR11.22-11.45, the Secretary of State agrees that there would be a significant level of landscape and visual impacts from the proposal, dependent on a number of factors, particularly including the period of operation and, allowing for restoration, its reversibility (IR11.45).

Timeframes

16. For the reasons given at IR11.46-11.52, the Secretary of State agrees that the effects of the proposal would be short term, and that while there may be evidence of the contruction elements and hedgerow loss for a period after the end of the temporary permission, very significant improvement should have been made and the level of harm accordingly reduced (IR11.52). However, he further agrees that there are significant harms to the character and appearance of the landscape from the proposal, and that while the scale of this harm is tempered by its short-term nature, the harm is to the AONB, its setting, and the AGLV (IR11.53).

The Site Investigation Report

17. The Secretary of State agrees with the Inspector's analysis of the Site Investigation Report at IR11.54-11.62. He further agrees with his conclusions at IR11.64 that it has not been demonstrated that the site has been selected to minimise adverse environmental impacts and therefore conflicts with SMP Policy MC12. For the reasons given at IR11.64 the Secretary of State agrees that the weight given to this conflict is tempered by an acknowledgement that there would be environmental constraints associated with sites within an area that would meet the significant technical constraints.

Conclusion on Landscape and Visual Impacts

18. The Secretary of State agrees for the reasons given IR11.22-11.64 and at IR11.112 that the proposal would result in harm to the landscape character and appearance of the area and degrade the qualities of the setting of the AONB (IR11.112). He further agrees that while there are only limited effects on the AONB itself, it is of a high sensitivity (IR11.112). As such he agrees that the proposal conflicts with SMP Policy MC14

(IR11.63) and WLP policies in that regard (IR11.113). However, he further agrees for the reasons given at IR11.63, 11.113 and 11.129 that the weight given to this harm is tempered by the short-term nature of the proposals.

Effect on Living Conditions and Local Businesses

19. For the reasons given at IR11.66-11.71 the Secretary of State agrees with the Inspector that while there would be some change in the noise environment, assessed against the predicted noise levels, with conditional controls to ensure compliance with those levels, there is nothing to suggest that the site would not meet the expected guidance standard during the temporary period of operations (IR11.71). Similarly, with respect to vibration, for the reasons given at IR11.72 he agrees with the Inspector that this will not be significant during the drilling phases. Furthermore, during construction and reprofiling of the site there may be some vibration but the Secretary of State, like the Inspector, finds no reason to consider that the effects would be perceived at distance to the nearest receptors.

20. For the reasons given at IR11.73-11.74 in respect of the Trew Fields Festival, the Secretary of State agrees that the proposal would not compromise the festival (IR11.74).

21. In respect to the wedding business at High Billinghurst Farm, the Secretary of State agrees, for the reasons given at IR11.75-11.79, that in light of the temporary nature of the proposal, and the mitigation measures that would be secured through conditions, the potential for negative perceptions of the venue would contribute a moderate level of additional weight to the harm to the overall character and appearance of the area. He further agrees that in this regard the proposal would be contrary to Policy MC14 of the SMP in this regard (IR11.79).

Conclusion on Landscape Character and Appearance and Effect on Living Conditions and Local Businesses

22. For the reasons given above, and at IR11.129, the Secretary of State agrees with the Inspector that the harms he has identified can be tempered by their short-term nature and by mitigation through conditions, specifically those associated with noise, lighting and the coordinated working with neighbouring businesses. He further agrees that the weight given to the harms, while significant for short periods such as when the drilling rigs are in place, can nonetheless be considered overall as moderate.

Highway Matters

23. In respect of traffic generation projected for the scheme, for the reasons given at IR11.80-11.103 the Secretary of State agrees with the Inspector's conclusions that the proposed traffic management, which can be further assessed under conditions and highways approvals, has been shown to be acceptable in terms of highways safety and the local road network. He further agrees the proposal would comply in this regard with SMP Policy MC15 which seeks that arrangements for site access and traffic generated by the development would not have any significant adverse impacts on highway safety or the effective operation of the highway network (IR11.103)

Downstream Impacts

24. With regards to the Court of Appeal's judgment in *R (Sarah Finch) v Surrey County Council (2) Horse Hill Developments Ltd (3) SofS Levelling-Up, Housing and Communities*, handed down 17 February 2022, the Secretary of State has considered IR

1.8 and 1.9 and the representations on this case and does not consider that the project as described in paragraph 1 and in light of the evidence in this case, gives rise to the need to consider environmental effects liable to result from the hypothetical eventual use of any hydrocarbons. He agrees with the Inspector that granting permission for this proposal does not create any presumption in favour of consent for subsequent phases (IR11.117).

Benefits

25. For the reasons given at IR11.114-11.115 and IR11.128 the Secretary of State agrees with the Inspector that the operation in terms of exploration and possible production, would contribute to the economy in terms of jobs and potentially some local spend and agrees that the weight to be given to this benefit is limited (IR11.128).

26. Whilst the Secretary of State has considered the exploratory and appraisal application before him on its own merits, for the reasons given at IR11.116 the Secretary of State agrees that exploration and appraisal are a necessary part of mineral development and without it, the currently acknowledged benefits of production cannot be realised. For the reasons given at IR11.117-11.127 the Secretary of State agrees that there is a reasonable likelihood of confirming a viable resource for extraction, and that while the proposal would not, in itself, deliver commercial quantities of gas, nonetheless, there are positive benefits that must accrue from the exploration/appraisal phase (IR11.127). He further agrees (IR11.129) that the overall thrust of government policy, as well as the vision of the SMP, are supportive of the utilisation of mineral resources within acceptable environmental constraints. While he has had regard to the Inspector's analysis at IR11.127 and acknowledges that the project is not itself an extraction project, and would be short term, he considers that the exploration/appraisal phase is a necessary precursor to extraction without which it would not be possible to identify the extent and viability of the resource so as to consider and possibly achieve the potential benefits. Whilst he again agrees with the Inspector that granting permission for this proposal does not create any presumption in favour of consent for subsequent phases (IR11.117), the Secretary of State affords great weight to the benefits of the proposed development in line with the Framework.

Other Matters

27. For the reasons given at IR11.104-11.105 the Secretary of State agrees that in relation to effects on Dunsfold Park it is appropriate to give little weight to the suggestion that the proposals could affect the development (IR11.105). Similarly, for the reasons givent at IR11.106 he agrees that there will be no material harm arising from the proposal on the nearby gypsy and traveller community.

28. For the reasons given at IR11.107 in respect of environmental impacts on ecology, the Secretary of State agrees with the Inspector and is satisfied that the Ecological Appraisal, along with conditions are sufficient to address this matter. For the reasons given at IR11.108 in relation to groundwater and air pollution the Secretary of State agrees with the Inspector that there is no evidence that there would be harmful emissions from the well either before or during operations.

29. In relation to the matter of common land, the Secretary of State is in agreement with the Inspector for the reasons given at IR11.109-11.110 that the proposed junction alterations do not conflict with land registered as common land.

30. For the reasons given at IR11.111 regarding the financial situation of the operator to complete restoration the Secretary of State agrees with the Inspector in attaching no weight to this line of argument.

Planning conditions

31. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.14, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is in conflict with SMP Policies MC12 and MC14 relating to oil and gas development and minimising the impact of mineral development, and is in conflict with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

33. Weighing against the appeal are harm to the landscape character and appearance of the area, including degrading the qualities of the setting of the AONB and failure to demonstrate the site has been selected to minimise adverse impacts; and harm to local businesses. The Secretary of State affords these matters collectively moderate weight.

34. In favour of the appeal the Secretary of State affords the benefits of the gas exploration/appraisal phase great weight, and the economic benefits limited weight.

35. Overall, the Secretary of State considers that the material considerations in this case indicate indicate a decision which is <u>not</u> in line with the development plan – i.e. a grant of permission.

36. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted, subject to conditions.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side - track borehole (Loxley - 1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Road, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture, in accordance with application Ref. WA/2019/0796, dated 26 April 2019.

38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

40. A copy of this letter has been sent to Surrey County Council, Waverley Borough Council, Alford Parish Council and Dunsfold Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Hill Dickinson	13 April 2022

Annex B List of conditions

Approved Plans and Drawings

1) The development hereby permitted shall be carried out in all respects in accordance with the following plans/drawings:

DRAWING NO	REV	TITLE	DATE
ZG-UKOG-L1-PA-01	0	Site Location Plan	March 2019
ZG-UKOG-L1-PA-02	0	Location Plan	March 2019
ZG-UKOG-L1-PA-03	0	Existing Site Plan (Composite)	March 2019
ZG-UKOG-L1-PA-04	0	Existing Site Plan 1 of 3 (Well Site to Burchetts SW Corner)	March 2019
ZG-UKOG-L1-PA-05	0	Existing Site Plan 2 of 3 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-06	0	Existing Site Plan 3 of 3 (Burchetts NW Corner to High Loxley Road)	March 2019
ZG-UKOG-L1-PA-07	0	Existing Sections Plan (Well Site)	March 2019
ZG-UKOG-L1-PA-08	1	Proposed Construction Layout Plan 1 of 4 (Well Site)	December 2019
ZG-UKOG-L1-PA-09	1	Proposed Construction Layout Plan 2 of 4 (Well Site to Burchetts SW Corner)	December 2019
ZG-UKOG-L1-PA-10	0	Proposed Construction Layout Plan 3 of 4 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-11	0	Proposed Construction Layout Plan 4 of 4 (Burchetts NW Corner to High Loxley Road)	March 2019
ZG-UKOG-L1-PA-12	1	Proposed Construction Sections Plan	December 2019
ZG-UKOG-L1-PA-13	0	Proposed Access Layout Plan - High Loxley Road	March 2019
ZG-UKOG-L1-PA-14	0	Proposed Access Layout Plan - Pratts Corner	March 2019
ZG-UKOG-L1-PA-15	1	Drilling Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-16	1	Section Through Drilling Mode Layout Plan (BDF Rig 28 - Height 37m)	December 2019
ZG-UKOG-L1-PA-17	0	Section Through BDF Rig 28 Drilling Rig (Height 37m)	March 2019
ZG-UKOG-L1-PA-18	0	Section Through BDF Rig 51 Drilling Rig (Height 38m)	March 2019
ZG-UKOG-L1-PA-19	1	Initial Flow Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-20	1	Section Through Initial Flow Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-21	1	Section Through PWWS MOOR 475 Workover Rig (Height 35m)	May 2019
ZG-UKOG-L1-PA-22	0	Section Through PWWS IDECO BIR H35 Workover Rig (Height 34m)	March 2019
ZG-UKOG-L1-PA-23	1	Extended Well Testing Mode Layout Plan (with Temporary Noise Mitigation)	December 2019
ZG-UKOG-L1-PA-24	1	Section Through Extended Well Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-25	1	Retention Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-26	1	Section Through Retention Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-27	1	Proposed Well Site Fencing & Gates Section Plan	December 2019
ZG-UKOG-L1-PA-28	0	Proposed Entrance Fencing, Gates & Security Cabin Section Plan	March 2019
ZG-UKOG-L1-PA-29	0	Proposed Restoration Layout Plan 1 of 5 (Well Site)	March 2019
ZG-UKOG-L1-PA-30	0	Proposed Restoration Layout Plan 2 of 5 (Well Site to Burchetts SW Corner)	March 2019
ZG-UKOG-L1-PA-31	0	Proposed Restoration Layout Plan 3 of 5 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-32	0	Proposed Restoration Layout Plan 4 of 5 (Burchetts NW Corner to High Loxley Road)	March 2019

ZG-UKOG-L1-PA-33	0	Proposed Restoration Sections Plan 5 of 5 (Well Site)	March 2019
6033.504	A	Wellsite Construction Details Sheet 2	13 February 2019
SK-04	B	Post-mitigation Scheme of Lighting Layout	1 November 2019

2) From the date that any works commence in association with the development hereby permitted until the cessation of the development/completion of the operations to which it refers, a copy of this permission including all documents hereby approved and any documents subsequently approved in accordance with this permission, shall be available to the site manager, and shall be made available to any person(s) given the responsibility for the management or control of operations.

Commencement

3) The development hereby permitted shall be implemented before the expiration of 3 years from the date of this permission. The developer shall notify the County Planning Authority in writing within seven working days of the commencement of the implementation of the planning permission.

Time Limits

4) The development hereby permitted shall be for a limited period only, expiring 3 years from the date of the implementation of the planning permission referred to in Condition 3. By this date, all buildings, plant and machinery (both fixed and otherwise) and any engineering works connected therewith, on or related to the application site (including any hard surface constructed for any purpose), shall be removed from the application site and the site shall be reinstated in accordance with the restoration details set out in Condition 31. Notwithstanding this, any plant or equipment required to make the site safe in accordance with the Oil & Gas Authority general arrangement requirements at the time and agreed with the County Planning Authority may remain in position.

5) Prior written notification of the date of commencement for each phase of development works hereby permitted (Phases 1-4 as described at Section 3 of the Planning Statement and Environmental Report dated 19 April 2019, including workovers and side-tracks) shall be sent in writing to the County Planning Authority not less than seven days before such commencement.

Hours of Operation

6) With the exception of drilling, workovers, extended well tests and short-term testing, no lights shall be illuminated nor shall any operations or activities authorised or required by this permission, take place other than during the hours of:

   07:00 to 19:00 hours on Monday to Friday;

   09:00 to 13:00 hours on Saturday.

   Apart from the exceptions referred to above, there shall be no working at any time on Sundays, Bank Holidays, Public or National Holidays.

Highways, Traffic and Access

7) a. No development shall commence until a scheme has been submitted to and approved by the County Planning Authority (including the entering into of an agreement under s. 278 of the Highways Act 1980) for the carrying out and completion of the proposed access road within the site, including its junction with High Loxley Road, any highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between

the site access and the junction of High Loxley Road and Dunsfold Road ("the Initial Highway Works"). The junction of the site and High Loxley Road shall be provided with 2.4m x 70m visibility splays in both the leading and trailing traffic directions in accordance with drawing number LTP/3134/03/05.01 REV B dated 10 October 2018 and, thereafter, the visibility splays shall be kept permanently clear of any obstruction above 0.6m high. Any works to the highway necessary to accommodate the development hereby permitted shall use flush set concrete retainers incorporating a ribbed surface to demarcate the edge of the carriageway.

b. No development shall commence until an agreement under s.278 of the Highways Act 1980 (in such form as may be agreed with the County highways authority) has been entered into providing for the permanent closure of the site access onto High Loxley Road, the full reinstatement of any curbs and verges, the removal of the highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between the site access and the junction of High Loxley Road and Dunsfold Road and the full reinstatement of the highway, and providing for such works to be undertaken prior to the expiry of the time specified in condition 4 for the duration of the planning permission.

8) No operations associated with the well site compound shall take place unless and until the proposed access road within the site including its junction with High Loxley Road, any highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between the site access and the junction of High Loxley Road and Dunsfold Road have been constructed in accordance with the scheme approved pursuant to condition 7(a). No other development shall begin before the junction works and the new access road within the site have been completed in accordance with the approved scheme**.**

9) Prior to the commencement of the development hereby permitted, a Transport Management Plan, in accordance with the submitted Framework Construction Transport Management Plan (dated September 2019), shall be submitted to and approved in writing by the County Planning Authority. The plan shall cover all phases of the development and include:

   a) Parking for vehicles of site personnel, operatives and visitors;

   b) Loading and unloading of plant and materials;

   c) Storage of plant and materials;

   d) Programme of works for each phase;

   e) Provision of boundary hoarding behind any visibility zones;

   f) Measures to manage and enforce HGV deliveries during permitted hours of operation and HGV routeing so as to ensure that all heavy goods vehicles access and egress the site to and from the east via the B2130 signalised junction with the A281.

   g) Measures to prevent the deposit of materials on the highway;

   h) The carrying out of a 'Pre' construction condition survey of the highway with subsequent 'Post' construction condition surveys to be undertaken once every 6 months after the development has commenced:

      i) between the site entrance on High Loxley Road and the junction between High Loxley Road and Dunsfold Road; and

      ii) the section of Dunsfold Road situated 50 metres either side of the junction between High Loxley Road and Dunsfold Road;

   i) On-site turning for construction vehicles;

j) Abnormal Load Traffic Management Plan;

k) Having consulted with High Billinghurst Farm the submission of traffic management measures, by phase, for the cumulative traffic flows generated by the development hereby permitted and High Billinghurst Farm during an 'event' (as defined by Waverley Borough Council Decision Notice WA/2020/0220 dated 26th March 2020). The measures shall be designed to minimise the use of traffic signals or optimise signal operation in the interests of the free flow of traffic within High Loxley Road;

l) Measures for traffic management by phase at the High Loxley Road/Dunsfold Common Road/Dunsfold Road junctions;

m) Measures for traffic management by phase at the junction of the site access track and High Loxley Road; and

n) Final details of the placement, specification and design of all road traffic signage by phase. Only the approved details shall thereafter be implemented, retained and used by each phase whenever operations are undertaken.

o) Details of maintenance and testing of signalling equipment and banksman training

Only the approved details shall be implemented as part of the development.

10) No operations hereby permitted shall commence until a speed limit reduction to 40 mph has been implemented at the following locations:

a) High Loxley Road for a distance of 275m from its junction with Dunsfold Road;

b) Dunsfold Common Road for a distance of 360m from its junction with Dunsfold Road;

c) Dunsfold Road for a distance of 195m to the west of its junction with Dunsfold Common Road;

d) Dunsfold Road for a distance of 399m to the east of its junction with High Loxley Road.

The speed limit reduction shall be implemented and thereafter maintained throughout all phases of the proposed development.

11) There shall be:

a) no more than 20 two-way (10 in - 10 out) HGV movements to or from the site in any one day. The site operator shall maintain accurate records of the number of HGVs accessing and egressing the site daily and shall make these available to the County Planning Authority on request; and

b) no HGV movements to or from the site taking place outside of the hours of 09:00-17:00 Monday-Thursday, 09:00-13:00 on a Friday and a Saturday and all day on Sundays, Bank Holidays, Public or National Holidays.

Noise and Vibration

12) Prior to the commencement of the development hereby permitted, a scheme of noise mitigation shall be submitted to and approved in writing by the County Planning Authority. The mitigation measures will ensure that the noise levels set out in Conditions 14 and 15 are met. The approved mitigation shall be put in place prior to any operations taking place and shall be retained and maintained for the duration of the works.

13) Prior to the commencement of the development hereby permitted, a noise monitoring plan (NMP) shall be submitted to and approved in writing by the County Planning Authority, taking into account the noise limits set out in Conditions 14 and 15. The NMP shall include a methodology for undertaking noise surveys, with the results of the monitoring reported to the County Planning Authority within 14 days of monitoring. Should the site fail to comply with the noise limits, within 14 days of notification of any breach of the noise limits, the applicant shall submit a scheme for the approval in writing by the County Planning Authority to attenuate noise levels to the required level which shall be implemented within 7 days of the County Planning Authority issuing approval for the scheme, or the source of noise shall cease until such a scheme is in place. Noise monitoring shall only be undertaken by those competent to do so (i.e. Member of Associate grade of the Institute of Acoustics).

14) For operations such as site preparation and reinstatement, the level of noise arising from any operation, plant or machinery on the site, when measured at, or recalculated as at, a height of 1.2 metres above ground level and 3.5 metres from the façade of a residential property or other noise sensitive building that faces the site shall not exceed 65 dB L_{Aeq} during any 30-minute period between the hours of 0700 to 1900 Monday to Friday and 0900 to 1300 hours on a Saturday and at no other time. No temporary work causing audible noise at any noise sensitive receptor is permitted at any other time including Sunday, Bank Holiday or National Holiday.

15) For operations other than as set out in Condition 14, including drilling, testing and appraisal, maintenance workover and flaring, the daytime and evening noise levels (0700 hours to 2200 hours Monday to Friday and 0900 hours to 1300 hours Saturdays) shall not exceed 48 dB L_{Aeq}, 30 minutes. At all other times, the noise levels shall not exceed 42 dB L_{Aeq}, 30 minutes. These noise limits apply 3.5 metres from the façade of any affected property.

16) Between the hours of 19:00 to 07:00 inclusive, no tripping shall be undertaken, nor shall casing be cemented except in cases of emergency.

17) All plant and machinery shall be adequately maintained and silenced in accordance with the manufacturer's recommendations at all times.

Lighting

18) The development hereby permitted shall be undertaken in accordance with the measures for mitigating the impact of lighting outlined in Section 7.1 of the submitted Lighting Assessment dated November 2019.

19) Operational lighting shall be installed in accordance with Drawing No SK-04 Rev B Post Mitigation Scheme of Lighting Layout dated 1st November 2019. All lighting required for operations and maintenance will be locally switched and manually operated on an 'as required' basis and luminaires over cabins/stores doors will be controlled by 'presence detection' with a manual override.

20) Obstacle lights shall be placed as close as possible to the top of the drilling rig and workover rig (and any crane deployed in workover activity outside of daylight hours). These obstacle lights must be steady red lights with a minimum intensity of 200 candelas. Lights must be visible from all directions and illuminated at all times. Unserviceable lamps must be replaced as soon as possible after failure and in any event within 24 hours.

Water Environment

21) Prior to the commencement of the development hereby permitted, details of the design of a surface water drainage scheme shall be submitted to and approved in writing by the County Planning Authority. The design must satisfy the SuDS

Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, National Planning Policy Framework and Ministerial Statement on SuDS. The required drainage details shall include:

a) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features including the proposed High Density Polyethylene membrane to be incorporated into the construction of the well site, silt traps and inspection chambers;

b) Details of how the drainage system will be protected during construction and how run-off (including any pollutants) from the development site will be managed before the drainage system is operational;

c) Details of how surface water levels within the well site will be monitored and how operations will be managed during periods of saturation;

d) Details of drainage management responsibilities and maintenance regimes for the drainage system; and

e) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off-site will be protected.

22) Prior to the commencement of drilling, testing and appraisal, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the County Planning Authority. This must demonstrate that the approved surface water drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements including surface water attenuation devices/areas, flow restriction devices and outfalls.

Geotechnical Issues

23) The 'Area of hardstanding for access, cabins and car parking' shown on Drawing No: ZG- UKOG-L1-PA-08 Rev 1 Proposed Construction Layout Plan 1 of 4 (Well Site) dated December 2019, shall be retained and maintained for these designated purposes and no HGV parking or storage of consumables, fuel, process chemicals and/or mechanical/electrical plant is permitted in this area.

24) Prior to the commencement of the development hereby permitted, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the County Planning Authority. The plan shall include:

a) Soil Conservation and Management Plan, for the protection and conservation of excavated material supported by design methodology inclusive of the means of extraction, methods of storage and maintenance of soils in accordance with guidance provided by the Defra 'Code of practice for the sustainable use of soils on construction sites' and the measures adopted for reinstatement and restoration;

b) Slope Stability Assurance Plan, for the level working platform and the integrity of the impermeable membrane liner supported by methodology inclusive of a timed programme of ground investigations to inform the geotechnical and

hydrogeological parameters used in the final design and construction of the proposed earthworks;

c) Construction Quality Assurance Plan, for the construction of retaining structures (i.e. perimeter bunding and earthworks) and containing structures (i.e. perimeter ditches and the impermeable membrane) inclusive of final design details and methods of membrane sealing (i.e. with drilling cellars, 'rathole' or 'mousehole', pavements, floor slabs and foundations) supported by design methodology and details of any further geotechnical assessments to be performed; and

d) Construction Quality Monitoring Plan, for the testing, inspection and maintenance of retaining and containing structures together with details of the placement and design of any groundwater monitoring wells to be installed.

25) Prior to the commencement of drilling, testing and appraisal, a Construction Environment Management Plan (CEMP) Verification Report shall be submitted to and approved in writing by the County Planning Authority. The verification report should include:

a) Details that demonstrate compliance with the CEMP;

b) Justification for any changes or deviations from the agreed CEMP;

c) The results and location plans of all field and laboratory testing, including certificates of compliance, and inspection records;

d) Post-construction load testing to demonstrate the stability of retaining structures, containing structures and earthworks;

e) Any other site-specific information considered relevant to proving the integrity of the construction works; and

f) Provision of details of any changes including 'as-built' plans and sections of the approved CEMP, as identified under (b) above.

26) Prior to the commencement of the development hereby permitted, a Pre-development Baseline Geochemical Testing Report shall be submitted to and approved in writing by the County Planning Authority. The testing methodology shall comprise as a minimum the following:

a) The collection of soil samples on the exposed soil formation after the well site and access track have been excavated to the final formation level. Sampling of the well site compound will adopt a grid pattern (not greater than 20m spacing) and sampling shall be carried out prior to the laying of the membrane and placement of any crushed rock hardstanding, slabs or foundations;

b) The locations and elevations of the sampling locations shall be recorded accurately;

c) The methodology shall set out the range of potential contaminants to be tested for relevant to the proposed works, test methods, and limits of detection; and

d) Details of the testing laboratory to be used and the accreditation status for each test.

27) Prior to the commencement of restoration works a Post-Development Geochemical Inspection and Testing Report shall be submitted to and approved in writing by the County Planning Authority. The report shall present details of:

a) The results of geochemical analysis of soil samples collected from the exposed soil formations adjacent to the sampling point locations adopted for the Pre-Development Baseline Geochemical Testing Report approved pursuant to Condition 26 after removal of the infrastructure and before the replacement of any restoration soils to allow for independent verification and site inspection prior to restoration if necessary;

b) Comparison of the laboratory results for the 'Pre' and 'Post' development phases; and

c) If contamination is identified, a Contaminated Land Risk Assessment Report inclusive of a strategy for the design and implementation of any remediation required.

28) All excavated topsoil and subsoil shall be permanently retained on the site for subsequent use in restoration. No soils or soil making material for use in the restoration shall be brought onto the site, unless required by an approved site remediation scheme.

Ecology and Biodiversity

29) Prior to the commencement of the development hereby permitted, an initial Landscape, Environment and Biodiversity Restoration and Enhancement Plan shall be submitted to and approved in writing by the County Planning Authority. The plan shall include:

a) Year 1: Environmental Reinstatement and Enhancement Plan, as recorded within the Loxley Well Site Landscape, Environment and Biodiversity Restoration and Enhancement Plan (Section 2, EDP Report 4788_r002c dated October 2019) inclusive of the replacement of trees and hedgerows removed during construction works, a programme to retain and protect existing trees and hedgerows and a timed programme for the planting of new trees and hedgerows and the creation of new biodiversity habitat; and

b) Precautionary Method Working Statements for great crested newts and reptiles, as recorded within the Loxley Well Site Ecological Impact Assessment (Chapter 6: Mitigation, Aecom Project No. 60555556 dated December 2018).

The approved plan shall be implemented in full and those protection measures that are required to be retained shall be maintained in a functional condition for the duration of the development and any agreed aftercare period.

Archaeology and Heritage

30) Prior to the commencement of the development hereby permitted, a programme of archaeological work in accordance with a Written Scheme of Investigation shall be carried out, submitted to and approved in writing by the County Planning Authority.

Restoration

31) Within 12 months of the implementation of this permission or prior to well site decommissioning (whichever is the sooner) a Final Landscape, Environment and

Biodiversity Restoration and Enhancement Plan shall be submitted to the County Planning Authority for approval in writing. The plan shall include:

a) Landscape Restoration, Biodiversity and Environmental Enhancement, as recorded within the Loxley Well Site Landscape, Environment and Biodiversity Restoration and Enhancement Plan (Section 2, EDP Report 4788_r002c dated October 2019) designed to deliver biodiversity and wider environmental net-gain making use of native species and reflecting the historic use of the site as worked agricultural land and forestry;

b) The ecological surveys performed to support the Loxley Well Site Ecological Impact Assessment (Aecom Project No. 60555556 dated December 2018) shall be repeated to establish the ecological baseline required to inform the plan and ensure that there are no adverse impacts on habitats and species;

c) Slope Restoration Plan supported by methodology inclusive of any further ground investigations required to inform the geotechnical and hydrogeological parameters used in the final design and construction of the earthworks required to restore the site to its pre-development state; and

d) Soil Restoration Plan: inclusive of measures to cultivate and improve the soils prior to re-spreading and restoration and measures to ensure aftercare for a period of 5 years post development completion.

The plan as approved shall be carried out in full and all planting implemented pursuant to this permission shall be maintained in good, healthy condition and be protected from damage for five years from the completion of site restoration. During that period any trees or shrubs which die, or are severely damaged or diseased shall be replaced in the next available planting season with others of a similar size and species.

32) The restored land shall be brought to the required standard for agriculture and woodland use. The applicant shall notify the County Planning Authority in writing within seven days once the planting or seeding has been completed and within one year from the date of notification a meeting shall take place, to be attended by representatives of the applicant, the landowners (or their successors in title) and the County Planning Authority, to monitor the success of the aftercare. Annual meetings will then be arranged and held within the period of five years from the commencement of aftercare.

The Planning Inspectorate

Report to the Secretary of State

by Mike Robins MSc BSc(Hons) MRTPI

fgan Inspector appointed by the Secretary of State

Date 8 March 2022

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL MADE BY

UKOG (234) LTD

against

SURREY COUNTY COUNCIL

CONTENTS PAGE

GLOSSARY

Agency	Environment Agency
AGLV	Area of Great Landscape Value
AILV	Abnormal indivisible load vehicles
AONB	Surrey Hills Area of Outstanding Natural Beauty.
APC	Alfold Parish Council
CCC	Climate Change Committee
DPC	Dunsfold Parish Council
Framework NPPF	National Planning Policy Framework (July 2021)
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (3rd Edition)
HA	Highway Authority, Surrey County Council
HE	Hascombe Estates
HGV	Heavy Goods Vehicle
HSE	Health and Safety Executive
LGD	The Loxley Gas Deposit
LNG	Liquified Natural Gas
LP 2002	Waverley Borough Council Local Plan (Saved Policies) 2002
LVIA	Landscape and Visual Impact Assessment
NMP	Noise Monitoring Plan
OGA	UK Oil and Gas Authority
PEDL	Petroleum Exploration and Development Licence 234
PPG	The National Planning Practice Guidance
PROW	Public right of way / Footpath
RSA	Road Safety Audit
SCC	Surrey County Council
SIR	Site Identification Report
SMP	Surrey Minerals Plan 2011
SoCG	Statements of Common Ground
TMP	Traffic Management Plan
WLP	Waverley Local Plan 2018
ZTV	Zone of Theoretical Visibility

File Ref: APP/B3600/W/21/3268579
Land South of Dunsfold Road and East of High Loxley Road, Dunsfold, Surrey

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by UKOG (234) Ltd against the decision of Surrey County Council.
- The application Ref WA/2019/0796, dated 26 April 2019, was refused by notice dated 15 December 2020.
- The development proposed is the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side - track borehole (Loxley - 1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Road, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture.

Summary of Recommendation: That the appeal be allowed.

Procedural and Preliminary Matters

1.1 At the Inquiry, an application for partial costs was made by UKOG (234) Ltd against Surrey County Council (SCC). This application is the subject of a separate Report.

1.2 As a consequence of the ongoing pandemic, the Inquiry was held virtually and sat for 9 days. The proceedings were live-streamed in addition to the PINS' Teams platform. This allowed all those who wished to participate and/or observe to do so.

1.3 I was able to carry out an unaccompanied site visit on the 23 July 2021 to the general area, including publicly accessible viewpoints. After the end of the presentation of evidence, I carried out an accompanied site visit on 12 August 2021, following an agreed itinerary, including access to the appeal site, High Billinghurst Farm and Thatched House Farm. At this visit, I also viewed the road network surrounding the site, including Hook House Road, and revisited the main viewpoints within the Surrey Hills Area of Outstanding Natural Beauty (AONB).

1.4 Prior to the Inquiry, Waverley Borough Council (WBC), at the time reported as being in association with Alfold Parish Council and also, when presenting to the Inquiry, with Dunsfold Parish Council, sought and were granted Rule 6 status and took a full part in the Inquiry, including presenting evidence on landscape and planning matters.

1.5 On the 5 January 2022, the Secretary of State for Levelling Up, Housing and Communities (the Secretary of State), under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, directed that he would determine the appeal. Accordingly, this is now presented as a Report and recommendation for subsequent consideration. The reason for this direction is that the appeal involves proposals giving rise to substantial regional or national controversy.

1.6 Statements of Common Ground (SoCG) were submitted to address both the overarching scheme and specific matters, including landscape and transport

matters. These and all other documents associated with the scheme were made available virtually and can be accessed on Core Documents for Land South of Dunsfold Road and East of High Loxley Road Public Inquiry - Surrey County Council (https://customer.surreycc.gov.uk/loxley-inquiry-core-docs).

1.7 Notwithstanding the submission of a draft agreement, made under section 106 of the Town and Country Planning Act 1990, to address re-instatement of highway works, following discussions with the Council and agreement on the wording of conditions, this has not been pursued. I deal with this in more detail under the conditions section below.

1.8 Following dismissal in the Court of Appeal of *R(Finch on behalf of the Weald Action Group & Others) v. Surrey County Council (& Others) [2022] EWCA Civ 187*, the main parties were given an opportunity to comment on any relevance to the current appeal[1]. It is noted that the Council did not chose to add further comment, WBC opined that the end use of gas associated with the proposal should be included in the assessment of impacts and the appellant noted that the matter had been addressed in *Preston New Road Action Group and Frackman v Secretary of State for Communities and Local Government [2018] Env LR*, and that the Court of Appeal's decision had no implication for the appeal proposal.

1.9 The Court of Appeal's decision, comprising a related applicant and a site relatively close to this proposal, which had been referred to in evidence, was shared for comment with the main parties for completeness. Nonetheless, the recommendation is that, as it refers to the production of fossil fuels rather than exploration or appraisal stage of a resource, it is not of direct relevance. I have set out my reasoning and recommendations on that basis.

The Site and Surroundings

2.1 The appeal site forms part of a large agricultural field in use for grazing. The proposed access would cross this and adjacent fields, predominantly along the field boundaries, to join the main road network on High Loxley Road. This connects to Dunsfold Road, the B2130, at a junction known as Pratts Corner. The Dunsfold Road defines the southern edge of the AONB and the site itself lies within an Area of Great Landscape Value (AGLV). At the time of the Inquiry, the site had screening to the north and east by mature woodland, known as The Burchett's.

2.2 There are traditional farmhouses, with associated dwellings and buildings, to the north at Thatched House Farm, which includes a micro-brewery and festival site, to the west at High Loxley, and to the south at High Billinghurst Farm, which is a wedding venue. All include Grade II listed structures.

2.3 Approximately 800m to the south and east lies Dunsfold Aerodrome, also the site of a car test track, which has outline permission for a major Garden Village development of 1800 homes and further facilities, and is also

[1] ID187

referred to as Dunsfold Park.

Background and Planning Policy

3.1 The appellant was granted a Petroleum Exploration Development Licence (PEDL) in 2008 covering the proposed scheme area, PEDL234. This allows for the right for exploration and extraction of oil or gas for a period of 30 years.

3.2 The evidence presented to this Inquiry confirms that this licence covers an area where conventional gas reserves are identified in typical anticlinal accumulations. Although questions continued to be put before and at the Inquiry regarding the extraction methodology, I have no substantive evidence challenging the appellant's position, a position accepted by SCC, that they are seeking to exploit a conventional resource without high volume hydraulic fracturing, or 'fracking'.

3.3 In the 1980s, wells at Godley Bridge (GB-1, GB-2 and GB-2z) and at Alford (A-1) indicated a gas deposit extending west to east, the Loxley Gas Deposit (LGD). Analysis indicated a crestal area, that is the area at the top of the anticlinal feature where the gas reservoir is closest to the surface, lying near to Dunsfold Aerodrome. A previous well at Broadford Bridge indicated a possible secondary reservoir lying underneath the Loxley deposit.

3.4 The proposal before this Inquiry is therefore, the further exploration of these deposits to determine commercial viability. To do this, the appellant reports that it is necessary to drill as close as possible to the crestal area to determine the extent of the gas column, either from the initial well, Loxley-1, reported as a deviated well, or a side-track well, Loxley-1z.

3.5 This is a period of considerable and rapid change in the energy industry. Climate change concerns are driving a transition from fossil fuels to renewable and low carbon sources. I am very conscious of the considerable concern of many objecting to this proposal that the exploration and production of new fossil fuel resources should not be contemplated today, irrespective of the licences granted by the government, through the Oil and Gas Authority.

3.6 While I address the main issues against policy below, it is nonetheless important to understand the current policy position on this matter specifically.

3.7 The Overarching National Policy Statement for Energy (EN1) set out, in 2011, that the UK must reduce its dependence on fossil fuels, which nonetheless were considered to still be needed as part of the transition to a low carbon economy. The development plan for this area includes the Surrey Minerals Plan 2011 (the SMP) in which Policy MC12 deals specifically with Oil and Gas Development. This plan was informed by a Climate Change Strategy from 2008, but I am conscious that this has been updated in 2020, and the new strategy refers to a 'climate emergency' and delivering net zero carbon by 2050. Nonetheless, the SMP identifies the Weald Basin as one of only two locations in southern England where commercial deposits of hydrocarbon are thought to exist and noted a

number of exploration and production sites across the County.

3.8 It recognises three separate stages of development, exploration, appraisal and production, and the expectation that exploratory wells will consider locations minimising their intrusion, controlling vehicular activity and routeing and controlling noise and light emissions. The policy itself requires that the drilling of boreholes for any of these phases will only be permitted where the authority is satisfied that, in the context of the geological structure being investigated, the site has been selected to minimise adverse impacts on the environment.

3.9 This separation of the three stages of development is consistent with the more recent national policy and guidance. The National Planning Policy Framework (the Framework), recently updated in July 2021, does set out that the planning system should support the transition to a low carbon future, but still requires that mineral planning authorities plan positively for the three phases of development, and differentiates specific requirements only for coal. It records the need to ensure there is a sufficient supply of minerals for the energy that the country needs and that great weight should be given to the benefits of mineral extraction, including to the economy, although it explicitly sets out expectations regarding the natural environment, noise, restoration and aftercare, amongst other matters.

3.10 As I said above, this is a rapidly changing area and the latest government position is perhaps most clearly set out in the Energy White Paper 2020. Although I note the recent publication of the Government's Net Zero Strategy[2], this does not change the position as regards conventional gas production; that it will continue to play a part in the transition from a fossil fuel economy to one based on clean energy.

3.11 The Energy White Paper, while it acknowledged that onshore gas represents a much smaller proportion of the domestic supply to potential offshore sources, still clearly states the transitional importance of natural gas supplies. While it projects a decrease in production of up to 80% by 2050, the projection for demand is forecast to reduce but continue for 'decades to come'. That gas will come from somewhere, and currently the UK is reliant on imports, both by pipeline from Europe and as Liquefied Natural Gas (LNG) by sea.

3.12 As recently as March 2021[3], the Climate Change Committee (CCC) advice to the Secretary of State for Business, Energy and Industrial Strategy (BEIS), in addressing the context for onshore petroleum production in the UK, noted that even if consumption falls in line with the recommended path, there will be a challenge to meet the UK's fossil fuel demand, given the decline in North Sea production. It is suggested that this means the UK will continue to need additional gas supplies beyond that available from Europe and the North Sea until 2045 and potentially beyond 2050. This also identified a role for fossil gas with Carbon Capture and Storage (CCS) to assist in scaling up hydrogen use.

[2] Net Zero Strategy – Build Back Greener – BEIS October 2021
[3] CD.J4

3.13 While there are some more recent approaches set out in the government's Net Zero Strategy and the CCC's independent assessment of that strategy, documents that were produced after the closure of the Inquiry, they have not introduced any new measures or indicated any change in the strategic approach to natural gas at this time.

3.14 The full list of policies relevant to the appeal are set out in the SoCG. In particular the Council's reasons for refusal alleged non-compliance with SMP Policies MC12 (oil and gas development), MC14(iii) (reducing the adverse impacts of mineral development) and Policy MC15 (transport for minerals). WBC also set out their consideration of non-compliance with a range of policies in the Waverley Borough Council Local Plan (Saved Policies) 2002 (LP 2002), the Waverley Local Plan (Part 1) 2018 (the WLP) and the emerging Local Plan Part 2.

The Proposal

4.1 The proposal includes a compound area within which a drilling rig will be located for part of the time, an access track and ancillary development, including a new access off High Loxley Road. It is proposed for a temporary period of three years. The access provision includes some improvements to the Dunsfold Road junction, a large, gated entrance from High Loxley Road and up to 1 km of access track around the edge of fields leading to the proposed site compound.

4.2 Four phases are proposed, including access and well construction (14 weeks[4]); drilling testing and appraisal (60 weeks); well plugging, abandonment and decommissioning (5 weeks); and site restoration (5 weeks). This represents approximately 19 months, but the appellant highlights matters of contract tendering and preparation, drill rig delays, assessment periods, decision taking and other matters, which they say means that a reasonable period is three years, although some opportunities for reductions in the timescale are possible.

4.3 Heavy good vehicles (HGVs) are likely to be involved in all four of the phases but would vary in frequency, with a proposed maximum of up to 10 movements per day. The initial proposal is to obtain results utilising a deviated well, Loxley – 1, which should represent a maximum of 12 weeks on site, but were the side-track well also be required, Loxley - 1z, then, in direct answer to my question, a drilling rig could be on site for a maximum of 20 weeks in all. Additional use of a crane or workover rig could extend the presence of such tall structures on the site for an additional 10 weeks.

4.4 The probability of success quoted by the appellant is 60-70%, and 30-40% for the secondary target. Independent analysis[5] was quoted as suggesting a resource of some 44-70 billion cubic feet (bcf), with some 78% falling within the appellant's licenced area. This, it was reported, would be the second largest gas accumulation found in UK onshore history and could result in annual production rates of 4-5 bcf, sufficient to generate electricity for some 200,000 homes, described by the appellant as a meaningful

[4] Figures from SoCG
[5] Xodus Group Ltd

regional project size.

The Case for the Appellant

5.1 The full submission made by the appellant can be found at CD.K10, the material points are as follows:

Introduction

5.2 The Framework paragraph 215 (repeating earlier guidance) requires that minerals authorities should: "*clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for*;…".

5.3 This project covers two of those phases, exploration and appraisal[6]. Such an approach (applying for permission for more than one phase) is recognised to be appropriate by the Planning Practice Guidance (PPG)[7].

5.4 As is common ground between the appellant and SCC, the proposals stand to be assessed on their own terms and merits and not as an application for a permission to produce hydrocarbons. Equally, this is not a proposal for fracking; questions on this arose from a lack of understanding as to what fracking actually is[8]. WBC had clearly not read UKOG's evidence since, as was pointed out, this is an application for conventional hydrocarbon exploration and the geological strata targeted here are already fractured.

5.5 On the other hand, while the benefits of production cannot be obtained by the current proposals if permitted, it cannot be ignored that this application is an essential prerequisite to securing such benefits and without it they cannot be obtained. The application should therefore be viewed in that context and in the light of the fact that Government energy policy requires the continuation of a secure energy supply and the production of gas, notwithstanding climate change issues and the move towards Net Zero by 2050.

5.6 As was explained, the target resource, the Loxley Gas Deposit (LGD), has already been "discovered"; it is already known from four wells drilled in the 1980s that there is conventional gas within the Portland sandstone layer in this area. However, the legacy wells did not establish commercially viability for the LGD because they did not encounter gas at a sufficient thickness. The appellant holds PEDL 234, a licence issued by the OGA for a period of 30 years. The licence commits them to seek energy minerals within the licence area for a period of 30 years and, in order to retain the licence, the appellant has a commitment to the OGA to drill a borehole to investigate what is believed to be the central crestal area of the LGD and to do so before 31 December 2023.

5.7 The primary objective of the project is therefore quite specific, the appellant wishes to determine whether the LGD will be commercially viable

[6] See the description of the development in the application form [CD.A2/1].

[7] See PPG Minerals 094, Reference ID: 27-094-20140306

[8] WBC seemed to think it used explosives when in fact it uses liquid under high pressure.

by drilling it within a "target zone", which is the area which has been identified, following a detailed analysis of subsurface data using modern analytical tools, as the central area of the LGD's anticlinal feature. That is the area of the Deposit lying closest to the surface. This target zone has now been mapped[9]. There is also a secondary target at a greater depth within the underlying Kimmeridge formation.

5.8 The development for which planning permission is sought is to be strictly time limited. The total project period is to be limited by proposed condition 4 and through the description of development to no more than three years. It is not accepted by the appellant that to limit the lifetime of the permission to 20 months is prudent and, despite assertions to the contrary, SCCs planning witness agreed in oral evidence that the period is a matter for the choice of the operator. As the appellant explained, three years is the period considered reasonably required to carry out the various phases of works described and to build in flexibility for delays and issues arising as well as allowing time for appraisal of the results. Those, largely consecutive, phases would comprise:

- The construction of the access and well site. This would include minor highway improvements at the junction of Dunsfold Road and High Loxley Road, the construction of a new junction within High Loxley Road, the installation of up to 1km of new compacted-stone access track within the Site, and then the construction of a compacted-stone well site with an impermeable membrane, perimeter surface run off containment ditch and drilling cellar to accommodate a conductor casing. Security fencing would be erected around the well site and at the entrance gates but would not be along the lengths of the access track (Phase 1).

- The mobilisation and demobilisation of plant and machinery ancillary for the drilling of one borehole (Loxley-1), one side-track borehole (Loxley-1z) and the subsequent appraisal by initial and extended well testing (Phase 2).

- Following the end of testing, the removal of all surface equipment followed by well suspension, plugging and abandonment (Phase 3).

- Restoration of the site to its original appearance and use followed by a period of aftercare (Phase 4).

5.9 The specific time periods for each phase are not fixed. It is the intention of the appellant to undertake the programme of works as quickly as possible but it is acknowledged[10] that there is significant potential for contingencies. Nonetheless, if the operation can be concluded earlier then it will.

5.10 However, to understand the likely worst case in terms of environmental effects, the appellant has presented robust estimates of the particular periods of each phase and subphase. As is apparent, the drilling rig, two

[9] Mr Sanderson PoE – Figure 9, p17
[10] Mr Bone in oral evidence

different options for which are shown on the plans[11] will be in place for a relatively small proportion of the total time period. The initial drilling will require the rig on site for up to 12 weeks[12] and Loxley-1z would require another period of up to 8 weeks[13]. There may be other periods when a workover rig or crane may be needed but overall it is estimated that the period when either a crane or a rig is required would not exceed 30 weeks during Phase 2 and three weeks in Phase 3[14]. At other times, the impact of the Appeal Proposals will be reduced.

Time period for the development (Condition 4)

5.11 In its SoC at paragraph 25, SCC raised for the first time a new contention that the overall period of three years was not justified. At that stage, it was suggested that the proposal should be limited to a period of 18 months, a position which has now been amended (in EiC) to 20 months. This point, which does not appear to have any basis in the consideration of the Committee, was not raised at any stage by officers in their consultation with the appellant and is in fact inconsistent with the approach taken on other sites such as Horse Hill. SCC planning witness accepted it was not raised by members.

5.12 It is also not clear that the issue goes anywhere, given that SCC argued that the Appeal Proposals would be unacceptable whether or not the revised Condition 4 was accepted by the Inspector. Moreover, SCC's landscape and highways evidence did not consider the implications of a shorter period as opposed to what was sought. It is unclear on what basis or on whose authority this new point was advanced. For the reasons given, the appellant argues that it is a bad point.

5.13 Moreover, the underlying factual premise behind SCC's position is flawed.

- If permission is to be granted it must be for a period that will realistically enable the appellant to achieve its project objectives and give sufficient flexibility to deal with circumstances, as they may arise, even if there is a reasonable prospect of the timescales being less. It is not a question of simply adding together the anticipated durations of the various phases.

- The length of time needed must be principally a matter for the appellant because it is only they who have sufficient knowledge of the operations to judge whether a period of time is adequate or not. This was accepted in cross examination.

- The appellant's witness gave detailed evidence in his proof and orally that 20 months would not be long enough. Although he was challenged on aspects of the time periods which he had allowed for in presenting his view, there was no getting around the basic point that it is inherent

[11] CD.A3/17 and 18
[12] KB proof at
§2.3
[13] KB proof at §2.6
[14] See PS Table 3, p 17.

to a project of this kind (where specialist equipment is being used, there are a number of detailed regulatory regimes operating, and the operators are drilling exploratory wells at over 1km depth below the surface) that delays and problems can arise. Procurement and contracting cannot be carried out entirely in advance (as explained in response to SCC cross-examination) and would certainly need to be done post the commencement of the development through the implementation of the site access works. Following this, there also needs to be sufficient time for the appraisal and review of material acquired during the testing phase, for obtaining further consents from the OGA or HSE (which could not be finally sought until a rig was selected and/or might need to be changed following rig selection[15]) and for unforeseen operational delays of issues in the procurement process/with the availability of specialist equipment which are beyond the control for UKOG.

- Particular criticism was made in cross examination in relation to the 26 weeks which is identified for "site retention", by which the appellant means a period in which the site can be put into a retention mode[16] to consider results from the testing and to determine whether to make an application for planning permission for a production facility. SCC suggested this as evidence of inconsistency, going so far as to suggest that a longer period should have been sought[17]. However, it is nothing of the kind. In response to questions from the Inspector it was accepted that it was (a) reasonable to allow the appellant a period to analyse the results of testing and to decide whether to go ahead and apply for a production consent and (b) that he was not qualified to assist the Inspector as to the appropriate period for that consideration. In this respect, the Inspector will be assisted by the evidence of the appellant's witness who explained how they have sought to strike a pragmatic and prudent balance between the desire to complete the project within the shortest possible period, which is desirable not only as a way to minimise environmental impacts but as a way to reduce cost, and the need to make sure that sufficient time is available.

5.14 It follows that SCC's suggestion that the Appeal Proposals should be restricted to 20 months by the imposition of a more onerous form of condition 4 is not acceptable and should be rejected.

5.15 The Appeal Proposal, as applied for, therefore stands to be assessed against the development plan and other material considerations. These can be summarised, it is argued, by reference to a number of central submissions including the sustainability of the Appeal Proposal:

5.16 National and local policy both recognise a compelling need for the exploration and exploitation of new gas reserves. This case is not reduced or at odds with the imperative to reduce carbon emissions but is in fact an

[15] As explained by KB

[16] As shown on Application Plans 25 and 26 [CD.A28/25-26]

[17] Contrary to SCC's primary case that a maximum period of 20 months should be imposed through condition 4

essential plank of the Government's strategy to meet zero-carbon in 2050. It is incorrect, as some interested parties suggested, that Government policy is restricted to offshore domestic gas production. Offshore production forms a major element in that policy but onshore gas is also part of the supply. This is clear from the Energy White Paper which recognises the critical role which the domestic oil and gas sector has as a whole:

"The UK's domestic oil and gas industry has a critical role in maintaining the country's energy security and is a major contributor to our economy. Much of the crude oil from the North Sea basin is exported, with the UK making extensive use of strong trading links to meet domestic refinery demand. Domestic production still met 46 per cent of the country's supply of gas in 2019, with the vast majority of this supplied from North Sea offshore production with a smaller proportion from the onshore oil and gas sector." *(emphasis added)*

5.17 Reliance on domestic gas supply is the most efficient use of resources by virtue of proximity to the end user, the displacement of higher emissions intensity LNG and avoiding the emissions incurred in transportation. It would also allow UK regulators control over the exploration and appraisal process in the best interests of climate change mitigation and would bring significant costs savings over an imported equivalent.

5.18 Hydrocarbons can only be extracted where they are found and, although directional drilling for gas offers some opportunity to search for a location over a wider area, there are limitations imposed by geology and site sensitivity.

5.19 Within these parameters, the appellant has sought and succeeded in securing a site which offers an opportunity to minimise the inevitable impacts of a development of this kind, and has successfully developed the scheme, with, it is argued, the detailed involvement of SCC officers, to mitigate such impacts to an acceptable level. The highways impacts fall far short of substantiating a valid reason for refusal and the residual landscape impacts, while real, are short-term and reversible.

5.20 In this light, and for the reasons advanced by the expert witnesses for UKOG and the benefits of the Appeal Proposal, the appellant states that the reasons for refusal fail to take account of the policy significance of the proposals, mistake and overstate the objections raised and should be tested against the experienced judgment of SCC officers who twice recommended the grant of permission.

Need for the Development

5.21 The need for domestic gas exploration is clearly established in national policy and is not seriously disputed by any of the main parties. The appellant is the holder of PEDL 234 from the OGA which imposes an obligation on them to seek to appraise the commercial viability of the LGD. The LGD is estimated to have a mean case recoverable resource of 44 billion cubic feet and an upside case of 70 billion cubic feet; which would

make it the second largest gas accumulation found in the UK's on-shore history[18].

5.22 Such projects form an essential part of the process of establishing onshore gas production which, in common with other mineral extraction other than coal, is to be given great weight in accordance with the Framework paragraph 211. The Framework, in its revised form, retains the principle that great weight should be given to the benefits of mineral extraction (p211) and reminds decision-makers (p209) that: "It is essential that there is a sufficient supply of minerals to provide the…energy… that the country needs. Since minerals are a finite natural resource and can *only be worked where they are found, best use needs to be made of them to secure their long-term conservation."*

5.23 Framework paragraph 215, whilst encouraging decision-makers to distinguish between the different phases of onshore gas development, also states that mineral authorities should "*plan positively*" for them.

5.24 Beyond the Framework, there is a range of policy statements which make clear that the expansion of the UK's gas capacity is a matter of national priority. As set out section 7 in the SoCG (planning) [CD.E4], SCC and the appellant are agreed that:

- The Appeal proposal will meet the aspirations of the Government energy policy including as contained in AES 2013;
- The roadmap to carbon neutrality as envisaged by the CCC provides that onshore gas has a significant role to play during the transition to a low carbon economy; and
- Within that context, the UK Government states it is critical that the UK retains good access to gas in particular.

5.25 SCC also agrees that its own Climate Change Strategy is not predicated upon restricting hydrocarbon exploration:

"At a local level, SCC's Climate Change Strategy is not predicated upon restricting hydrocarbon exploration. At a national level, the Climate Change Act 2008 (2050 Target Amendment) Order 2019, is not predicated upon restricting hydrocarbon exploration. It is informed by the Committee on Climate Change that find by 2050 the UK will still consume almost 70% of the gas we do today to support a hydrogen-based economy. Within this context the UK Government state it is 'critical' that we continue to have good access to gas. Given the continuing role of gas in providing for the UK's energy needs during the transition to a low carbon economy, the extraction of hydrocarbons is consistent with national climate change mitigation policy."

5.26 It is also agreed, at SoCG s7.1c, that there is no conflict with WLP Policy CC1, and at s7.1d, that the location of the Site accords with SMP MC1.

[18] Mr Sanderson Proof at 3.4

5.27 The appellant's planning evidence points to other national policy documents, in particular the Energy White Paper (Dec 2020)[19], which confirm that the UK will rely on natural gas "*for decades to come*". The SMP itself recognises the role which Surrey has to play in this, noting that the Weald Basin is "*one of only two locations in southern England where commercial deposits of hydrocarbons are thought to exist*" [CD.C1 s3.16]. Without being permitted to explore and appraise gas discoveries such as those here, onshore gas production as anticipated by Government policy cannot realistically continue.

5.28 This powerful national case for hydrocarbon exploration and extraction forms the starting point for the consideration of the appeal.

Site Location and Search

5.29 It is a commonplace that mineral reserves can only be investigated and extracted where they are found[20]. This is recognised by the SMP which notes that some of the PEDL licensed areas in Surrey lie wholly or partially within the AONB[21]. Even for sites within the AONB, it does not suggest that those applications should be refused but states that development should be confined to sites where the impacts are capable of suitable mitigation[22].

5.30 SCC and WBC have sought to argue that alternative sites should have been considered for the Appeal Proposals, with SCC focusing on sites "*further to the east"*[23]*.*

5.31 In considering this argument, which was not raised by the Committee, it is important to begin by recognising that in law there is no general requirement for decision-makers to consider alternatives in respect of planning applications outside of EIA or certain specific kinds of development such as communications masts. This was addressed by Carnwath L.J. (as he then was) in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P. & C.R. 19 (cited at P70.01.12 of the Planning Encyclopedia). Further, absent clear planning objections to the scheme in question, alternative schemes will normally be irrelevant: see *R. (Langley Park School for Girls Governing Body) v Bromley London Borough Council* [2010] 1 P. & C. R. 10 at s44. Nonetheless, even where relevant, an alternative can only attract material weight if there is a real possibility of it eventuating. As Auld LJ and the Court of Appeal held in *R (Mount Cook) v Westminster CC* [2017] PTSR 1166:

"32. In my view, where application proposals, if permitted and given effect to, would amount to a preservation or enhancement in planning terms, only in exceptional circumstances would it be relevant for a decision-maker to consider alternative proposals, not themselves the subject of a planning application under consideration at the same time (for example, in multiple

[19] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

[20] See Framework 209

[21] CD.C1 at s3.19

[22] CD.C1 at s5.40

[23] SCC SoC at s18

*change of use applications for retail superstores called in by the Secretary of State for joint public inquiry and report). And, even in an exceptional case, for such alternative proposals to be a candidate for consideration as a material consideration, there must be at least a likelihood or real possibility of them eventuating in the foreseeable future if the application were to be refused. I say "likelihood" or "real possibility", as the words tend to be used interchangeably in some of the authorities… If it were merely a matter of a bare possibility, planning authorities and decision-makers would constantly have to look over their shoulders *1179 before granting any planning application against the possibility of some alternative planning outcome, however ill-defined and however unlikely of achievement. Otherwise they would be open to challenge by way of judicial review for failing to have regard to a material consideration or of not giving it sufficient weight, however remote." (emphasis added)*

5.32 In this policy context, there is some basis for considering the way in which the site has been identified which is found at Policy MC12[24]. That policy sets out the need for the decision-maker to be satisfied that site selection has sought to minimise adverse effects on the environment. MC12 does not require a site selection exercise to be undertaken and only requires it should be shown that adverse effects have been minimised. It is putting too much on the words "*has been selected to minimise*" to suggest a site selection exercise demonstrating there are no viable alternatives is required and this is made clear not only by the language used but by the contrast in paragraph 5.42 of the SMP with regard to "gas storage underground" only.

5.33 This was the specific requirement in relation to which the Site Identification Report (SIR) was prepared. This was not some kind of "contrived" post-facto justification (as put to in cross examination) but was in fact a record of the wider site search process carried out on behalf of the appellant. That process was not targeted at finding the "least-worst site", as was put by SCC on the basis, the appellant argues, of an entirely unjustified rewriting of the policy which sought to impose a much higher test than the policy contains, but was about finding areas of lesser environmental and policy constraint within an area where the technical requirements of the project could be met.

5.34 As acknowledged by the appellant's witnesses, the starting point has been to recognise the technical requirements for the wells given their purpose:

- The intention is to confirm the commercial viability of the LGD. This requires Loxley-1 to enter the primary and secondary targets in their Crestal Areas - which are broadly located under Dunsfold Aerodrome[25].

- There is some scope for directional drilling to reach those targets, which has been taken into account, as suggested by Policy MC12. However, the technical constraints and the risks associated with longer range directional drilling are significant and it is a consequence of a longer deviation that it "*will mean a longer drilling phase*"[26], which will in turn

[24] CD.C1 pp. 37-38
[25] Mr Sanderson's proof Fig.9
[26] CD.C1 at s5.38

increase the environmental impacts of the project in question. This basic proposition was not challenged by SCC.

5.35 However, the appellant's planning witness was also clear that his has been an "inclusive"[27] approach which led him to identify some sites within Table 3 of the SIR which are even outside of the area of search, being 500m beyond the further extent of the LGD[28], which was identified as the likely zone within which technical requirements could be met. He had located those sites primarily through a desktop assessment which began by overlaying different forms of environmental constraint as well as rough buffer zones around residential properties of between 300-350m set back. This then formed the basis for a series of site visits in February to June 2018 through which he formed a judgment as to which sites were likely to be feasible in environmental terms, reducing the range of options to 6. From the 6 residual locations identified as demonstrating a high degree of suitability, two were made available and the option with the lowest anticipated level of environmental impact selected: see section 6 of the SIR.

5.36 There was detailed cross examination in relation to this process and a number of criticisms were made about the extent to which the SIR itself contains a complete record of the assessment carried out. The appellant explained that the site search and selection process was more extensive and inclusive than the SIR explains. SCC would appear to ignore the fact that sites were considered beyond 500m and indeed beyond 1km, and applied a site sieve and investigated even unpromising sites at that distance. SCC again chose to ignore the detailed explanations given in evidence of the wider nature of the site selection exercise and how it was selected or the fact that at no stage did SCC officers ask for further information after receipt of the SIR nor had SCC instructed their own witness or anyone else to identify a single additional site. It is surprising, if the approach of UKOG was as hopeless as SCC seeks to characterise, that not a single concern was raised in the 2 years from the submission of the application. The approach by SCC at Inquiry was a wholly opportunistic one and ultimately misconceived when NM explained the position.

5.37 However, the SIR is not a formal requirement of Policy MC12 or any other policy and does not constitute a comparative assessment of sites. The lower-case text to the SMP only suggests the need for "*potential locations for wellheads*" to be "*assessed thoroughly*" in the case of underground gas storage (5.42). Contrast 5.37, which sets out key considerations to be considered in general, and which, in the appellant's view, were in fact considered.

5.38 The policy question is whether the site has been selected to minimise adverse environmental impacts and both the SIR and the appellant's evidence demonstrates that in the appellant's view it has. There was nothing from either SCC or WBC to indicate that other sites might be

[27] Mr Moore in response to cross-examination

[28] The Inspector will note that this is 500m beyond the maximum extent of the LGD (as shown on SS's Fig 8), not from the edge of the target Crestal Area.

available which would have a smaller environmental impact, or even that any particular sites had been overlooked. Although SCC's SoC suggested that "*the question arises why a site could not be selected further to the east*"[29] this was not followed up in their evidence and it was confirmed in cross examination that they had not considered any alternative. The appellant's detailed explanation of why eastern sites would not be feasible was not challenged. SCC's only point was to suggest that the area of search could be extended if the allowance was made for further directional drilling but this is inconsistent with the technical evidence with respect to the constraints on such drilling and, in any event, there is nothing to suggest that such a search would yield additional options. Further, as the appellant explained, to extend the directional drilling further from the crestal area would have greater impacts since a larger rig would be needed and the exploration and appraisal operations would take longer. There would also be increased risk that the critical rock core samples would be compromised.

5.39 It is submitted by the appellant that the Site has been selected to minimise adverse impacts, having regard to the physical constraints of the geology and the location of the maximum gas concentration.

Reasons for refusal

5.40 The planning application for planning permission was accepted by SCC on 28 May 2019, following extensive pre-application consultation with the minerals planning and highways teams going back to March 2018 and June 2018 respectively[30]. Further information was submitted at the request of officers and on 29 June 2020 the application was reported to Committee with a recommendation to approve[31].

5.41 Notwithstanding the recommendation, the Committee resolved to refuse on the basis that in their view "*it has not yet been demonstrated that there is a need for the development nor that the adverse impacts in respect of highways, noise, lighting and air quality will not be significant contrary to policies MC12 [Oil and gas development], MC14 [Reducing the adverse impacts of mineral development] and MC15 [Transport for minerals] of the Surrey Minerals Plan 2011."*

5.42 Following representations from the appellant and others, SCC accepted that the resolution was invalid and agreed to remit the matter to the Committee.

5.43 In order to address the Committee's concerns, the appellant submitted further information[32], which specifically addressed the issues raised by the putative reasons for refusal. Officers reported the matter to Committee on 29 November 2020 with a further recommendation to approve[33].

5.44 Notwithstanding that reinforced recommendation to approve, the Committee again resolved to refuse permission. The final reasons for

[29] SCC Statement of Case §18
[30] CD.A4/1
[31] CD.B3 and B4
[32] CD.A34
[33] CD.B6 and B7

refusal were that:

"1. It has not been demonstrated that the highway network is of an appropriate standard for use by the traffic generated by the development, or that the traffic generated by the development would not have a significant adverse impact on highway safety contrary to Surrey Minerals Plan Core Strategy 2011 Policy MC15.

2. It has not been demonstrated that the applicant has provided information sufficient for the County Planning Authority to be satisfied that there would be no significant adverse impact on the appearance, quality and character of the landscape and any features that contribute towards its distinctiveness, including its designation as an Area of Great Landscape Value, contrary to Surrey Minerals Plan Core Strategy 2011 Policy MC14(iii)."

5.45 These reasons for refusal were in direct conflict with the advice of officers and, as summarised below, they do not stand up to close scrutiny. Moreover, it is to be noted that they did not allege breaches of policy as such but only alleged failures to demonstrate compliance. Despite this, SCC's evidence at the Inquiry largely accepted that the evidence presented in support of the Application was adequate but instead sought to establish the existence of breaches and thus extended beyond the reasons given by the Committee.

Highways

5.46 The potential impact of Appeal Proposals upon the road network was an issue that was identified at the very earliest stage of considering the Site and consultation was undertaken with the Highway Authority (HA) from June 2018, including a site visit on 26 July 2018[34]. Since that time, the proposals have been subject to detailed discussion and assessment by the HA on technical and safety grounds including:

- Multiple pre-application discussions following the July 2018 site visits including feedback on specific aspects of the scheme.
- The production of an independent Stage 1/Stage 2 Road Safety Audit (RSA) by the HA in Dec 2018.
- Formal consultation responses to the application on 29 July 2019[35] and 20 February 2020[36].
- Extensive further feedback on issues raised between February and November 2020, including specific responses to the concerns raised at the June Committee meeting[37].

5.47 WBC has not raised highways objections yet they sought to give evidence in

[34] CD.A4.1 pg 8
[35] CD.L11/1
[36] CD.L11/2
[37] CD.L31/1

closing submission about a recent incident, which it is submitted should be ignored and/or given no significance. There is no basis for making any assumptions with regard to that incident without any evidence as to the circumstances.

5.48 This advice led officers to inform the Committee that the HA's overall assessment was that the proposals were supported by a "realistic and robust" assessment and were capable to delivering safe and suitable access:

"The Highway Authority considers the submitted technical information provides a realistic and robust assessment, such that the Highway Authority is satisfied, subject to the recommended highway conditions and informatives being imposed on any permission granted, that safe and suitable access for all vehicles, including HGVs and abnormal load deliveries, can be provided."

Members had no additional technical or expert highways evidence before them when they refused permission.

5.49 Following the exchange of evidence, a SoCG with SCC was agreed (WBC having declined to call any highways evidence) which recorded that:

- There is no objection regarding the suitability of the network in respect of any vehicles smaller than HGV (s2.6);
- HGV numbers (s2.9) and hours of operation can be controlled (s2.10), and routeing in accordance with the TMP [CD.A23] will mean that no objections arise regarding any routes to the north-west or south-west of Pratts Corner (s2.7);
- The advisory signage on Dunsfold Road/B2130 which currently "Unsuitable for HGVs" does not relate to any concern over the suitability of the section of that road between Pratts Corner and the A281 (s2.13);
- Beyond the junction with Dunsfold Road, there are no concerns in relation to the A281 or other major roads (s2.8);
- The agreed conditions will avoid cumulative impacts with High Billinghurst Farm (s2.11); and
- There is no objection in relation to sustainable transport policies (s2.2).

5.50 The remaining areas of dispute therefore relate solely to the suitability of High Loxley Road and Dunsfold Road and, specifically, whether these roads or the measures which will be put in place to manage traffic on them will give rise to significant safety concerns. These were issues which were at the heart of the HA's consideration including through the RSA[38]. As was agreed in cross examination, given their statutory responsibilities for roads and highway safety, the HA officers were likely to have adopted a cautious approach.

[38] Agreed by GF in XX

5.51 To explain the Committee's rejection of that technical advice, SCC relies on the evidence of their witness, instructed in mid to late May 2021 (sometime after their other witnesses) and it is agreed that neither he nor any other expert gave advice to the Committee to support a highways reason for refusal. It is submitted that this evidence is not strong and generalised and is insufficient to substantiate SCC's highways reason for refusal.

5.52 From the appellant's viewpoint it was striking, given the detailed level of analysis which SCC as HA had already carried out, that SCC did not discuss their concerns with highway officers. As a highways expert representing the very same authority, this was, it is argued, a serious omission. As agreed in cross examination, the highways officers not only are those who have regular involvement for the roads in question (and thereby a base of knowledge which extends beyond the 2.5 months since the witness was instructed) but also have specific duties and responsibilities for highways safety. This was particularly egregious given that their case rested on specific assertions about the safety of a section of road in their care, the section of the Dunsfold Road between Pratts Corner and the A281, and on the adequacy of the temporary signals and turning arrangements into High Loxley Road which they would be responsible for regulating.

5.53 SCC's approach did not question the technical judgments of the SCC highways officers nor did it consider that they had incorrectly applied the guidelines. More significantly, it did not challenge the RSA undertaken by the HA nor had one been undertaken. It was accepted that, if necessary, further RSAs could be undertaken as part of the s.278 process. Rather, SCC now sought to present their approach as being informed by "caution", and that of the HA and the appellant as being hamstrung by reliance on the "guidelines" but, as the evidence shows and was accepted in cross examination, there was no basis for suggesting that the HA or appellant had done anything other than consider all of the data available. The appellant argues that there was no foundation at all for SCC's view that officers had only applied "the guidelines" and not their judgment overall and their contentions, when examined, do not stand up.

5.54 In relation to the specific points advanced:

- The suggestion was that the additional temporary requirements on the highway to manage the traffic safely, such as traffic lights, cones and signage, presented a novelty to drivers and was a safety hazard particularly if, for example, the lights malfunctioned.

- However, this does not bear examination since there is no reason to suppose that such matters will not be approached safely by road users. It was not suggested there would not be good visibility of the lights and signage as drivers approached the junction with High Loxley Road, and they are a frequent presence on roads in any event, as they have been recently on the Dunsfold Road. Malfunctioning traffic lights is nothing particular to these proposals, and can be managed as in other cases.

- The numbers of HGVs added to the network, to be controlled by condition, is a small percentage of those already on it and will include periods when there are none at all. While there may be fewer larger

HGVs on the network, it is notable that SCC did not survey usage but relied on earlier work for the High Billinghurst Farm permission[39]. That other count already shows a significant number of larger HGVs amongst the larger total number of HGVs[40] on the network and those coming to site are limited to the short periods of setting up and dismantling the rig and in any event cannot exceed the maximum of 10 HGVs (20 movements) coming to the Site each day. The effect of the additional numbers of HGVs was exaggerated by SCC witnesses generally in the light of the agreed traffic count data[41].

- The principal footing on which SCC sought to contend that the Dunsfold Road was unsafe was by comparison with the national road accident statistics at Appendix A to their transport proof. However, the comparisons sought have no reasonable statistical justification for the manner in which they sought to use them. The line of figures relied upon relates to "other rural roads" but there is nothing to show that they are comparable or along what lengths. The total numbers of accidents on the relevant section of the Dunsfold Road are low and, as their witness accepted, choosing a longer stretch of the road might significantly change the picture. The fact that there was debate as to the possible significance of annual changes between 5 and 1 Personal Injury Collisions serves to underscore the numerical sensitivity of the issue. In response to questions seeking any guidance where the national accident statistics were utilised, SCC's witness relied on the COBA 2020 User Manual Part 2 (Chapters 3 to 5)[42]. However, this document, which relates to the cost-benefit analysis of trunk road schemes and links, and which ascribes a monetary value to accident savings, has no application whatsoever to the assessment of accidents in safety terms. It is not adopted in a single piece of road safety guidance, which would be bound to be the case were national statistics considered to be relevant or reliance on this issue. As the opening words of Chapter 3, s3.1 make clear:

  "*The benefits from a reduction in the number and severity of accidents constitute an important element in the appraisal of trunk road schemes. It is necessary to put a money value on accident savings so that they are given an appropriate valuation relative to that given to construction costs and to time and vehicle operating cost savings."*

  As the appellant maintained, this analysis is of little utility applied to a stretch of road of this kind and should be treated with caution. It remains the case that there is no road safety guidance which advises the use of the national accident statistics in the manner presented by SCC and reliance on it casts further doubt on the reliability of the judgments reached. As accepted, the previous road safety record for Dunsfold Road and the HGV access route was at the heart of the HA's consideration. That consideration was based on the industry-standard

[39] CD.A31
[40] The High Billinghurst Farm counts appeared lower than the agreed ATC counts referred to in the SoCG.
[41] Transport SoCG 2.4
[42] CD.J6

approach of analysing recorded collisions and their circumstances at specific locations, rather than comparison to any national statistics. Reliance on these matters was misconceived and unreasonable. The appellant contends that SCC's continued reliance on the UK statistics simply underlines the unreasonable reliance placed on irrelevant statistics and a focus on 1 year post-improvements.

- SCC's witness relied on accident records which had been considered by the HA officers but those records provided no support for their position given the absence of any accident records involving HGVs other than a horse lorry, which is not a type of vehicle which will be used at the Site. It was accepted that that the records showed that the lorry had not been at fault. It was also agreed that 5 years without HGV accident was not just a matter of good luck. Accordingly, SCC also sought to rely on anecdotal evidence of non-injury collisions, at least as demonstrating that there was some form of evidence which had not been investigated. However, this was also an unwarranted complaint and lacked any objective investigation or assessment. The anecdotal sources had been raised prior to the Committee decision and were referred to in the Officer's Report. They are inconsistent also with Alfold Parish Council (APC) suggesting one accident per year[43] in contrast to a single resident's allegation that there have been two to three per month[44]. Moreover, none were said to involve turning manoeuvres or HGVs. The HA did not consider it appropriate to investigate further, which would not be normal in any event, nor did SCC's witness take steps to verify the claims made. In the appellant's view, such evidence forms an unreliable basis for the assessment of road safety and should be given limited weight. The reality is that SCC sought to rely on inconsistent information which had not even been investigated.

- SCC's closing comments doubles down on this evidence and continues to exaggerate what will be a small number of amendments and is wrong with regard to the number of abnormal indivisible load vehicles (AILVs), which are set out in the appellant's evidence. The definition of HGV given by SCC in s60 (line 6) is incorrect as the figures wrongly only account for larger 4+ axle HGVs, not all HGV sizes (many of which are 2 or 3 axle) and the fact that a range would operate with regard to the Site.

- It is misconceived to suggest that the RSA was not complied with in that there are a few instances where the appellant has not followed the recommendation proposed. However, as the RSA itself makes plain:

  "The recommendations in this report refer to possible solutions to overcome a safety problem. There may be other acceptable ways in

[43] CD.L2/2

[44] See SW rebuttal appendix 2

which to overcome these. The audit team will be pleased to discuss any alternative solutions."

- Read fairly, and as made clear in the Officer Report, it is clear that the RSA process resulted in a number of changes to the proposals, which have made them safer and which have allowed the HA to reach a view that the proposals are acceptable in highways terms.

5.55 The appellant submits that no significant highways impacts arise, consistently with the position agreed with the HA prior to the Committee decision.

Visual and Landscape Effects

5.56 As in relation to highways, SCC's second reason for refusal asserts that the appellant had not provided "sufficient" information to demonstrate that there will not be significant adverse impacts on the landscape. Although this position is nominally maintained[45], in the appellant's view, it lacks credibility and did not appear to be pursued with any vigour. In addition to the detailed plans and design statement, the application was supported by:

- The Landscape and Visual Impact Assessment (LVIA);
- Additional information and visualisations provided at the request of officers; [CD.A27]
- A Light Impact Assessment [CD.A16] which was followed by further clarificatory information including a revised assessment [CD.A24]; and
- An outline Landscape, Environment and Biodiversity Restoration and Enhancement Plan [CD.A21/2], which set out a mitigation and restoration plan that includes replacement planting from Year 1 of the development.

5.57 No objection to the proposal on the grounds of insufficient evidence was raised by the County Landscaping Consultant or the Surrey Hills AONB Planning Adviser[46]; nor by SCC's planning officers who were able to give detailed consideration to all the issues raised on the application[47].

5.58 Much of SCC's closing focuses on statutory and policy requirements which are not disputed and nor is the value ascribed to the setting of the AONB. SCC does not appear to have noted section 7 of the appellant's proof which specifically focusses on the setting of the AONB. It also appeared to overlook the LVIA which also deals with this issue and does not overlook the wider landscape and context[48].

5.59 The LVIA was prepared by a colleague of our witness and sets out a thorough and transparent assessment of the effects of the proposal. It was

[45] Ms Brown PoE EB - s8.2
[46] Officer Report - s82 and s87
[47] Officer Report - s300-370
[48] For Example : LVIA at Section 3, ss4.5-4.23, s6.1 (noting the importance of Hascombe Hill), ss6.8-6.18

subject to internal peer review[49] and, in accordance with the Guidelines for Landscape and Visual Impact Assessment (3rd Edition) (GLVIA3), it sets out its methodology in full at Appendix EDP 250 and presents its conclusions in respect of each receptor through the tables at Appendix EDP 6[51]. Landscape and visual receptors were identified by reference to a 2km study area[52] and a baseline ZTV exercise, and the LVIA makes clear that the assessment is carried out by reference to the 'worst case' winter views, albeit that it explains that winter photography was not possible due to the timescales of the planning application (s4.4). While this point is repeated by SCC in closing, they are unable to explain why their own witness did not do so given their lengthy involvement in the case and the attempt to characterise that evidence as comprehensive is misconceived given the large number of issues which had to be added in chief to plug the considerable gaps in evidence. Notably, the appellant states, given the nature of the application, the LVIA was explicit that its judgments as to the magnitude of effects were reached taking into account not only the geographical extent and scale of change which the receptor would experience but also the duration of the change and its reversibility, and the terms used are defined carefully[53]. It also judged, taking account of the proximity of the AONB and the AGLV designation, that the landscape and visual receptors should (in the main) be accorded a 'high' or 'very high' sensitivity. The LVIA's methodology[54], including the identification of the study area[55] and approach to sensitivity[56], is now agreed by all the main parties.

5.60 Whilst the assessment of impacts will be informed by the Inspector's own assessment from his site visits and the plans, the following observations are made with respect to the evidence heard at the Inquiry.

5.61 At the Inquiry, it became clear that the main issues as between the main party's witnesses are the extent of the effects in visual and landscape terms and the length of time it would take until after restoration to achieve neutral effects. There was little between them in terms of the assessment of the sensitivity of the receptors, for example. It is common ground between them that following restoration, the landscape and visual effects will be neutral (subject to the timescale for this). That must be the starting point for consideration of the evidence SCC advances, given it is accepted that the effects will be reversed following restoration. However, it finds little if any consideration in their proof despite its obvious relevance and the terms of GLVIA3 paras. 5.51-5.52. There was no consideration by SCC's landscape witness before cross examination of the fact that the reversal of effects would be progressive, ending with the planting of new hedgerow

[49] LVIA pg 4

[50] CD.A9/2

[51] CD.A9/3

[52] See Plan EDP L1

[53] Appendix EDP 2, see in particular A2.24-25.

[54] Landscape SoCG §3.2

[55] Landscape SoCG §4.1

[56] Landscape SOCG §6.2-4

when the site access was removed.

5.62 It is argued that a curious aspect of SCC's landscape and visual evidence was that much of what was put in cross examination and the extensive evidence in chief of their witness was material which received scant or no attention in the evidence. Even though some of the appellant's evidence was disputed (e.g. valued landscape) there was no rebuttal and the first time that SCC's position was clarified was in cross examination. The lack of discussion or even reference in their proof to the short duration of the permission, the relevance of duration and reversibility of effects (no more than a limited discussion of the retention phase at s6.13) and the application of Framework p174 on "valued landscape" (no more than a paragraph reference) is stark. In cross examination, it was asserted this was inherent because of the reference to the permission being temporary. However, there was no such reference in the proof to this, still less any discussion of its obvious materiality.

5.63 As for the accounting for duration as an inherent element of their assessment, this is far from obvious and lacked the transparent explanation of judgments required by the best practice guidance in GLVIA3, for example, pp. 21-22. Indeed, it is doubtful that it would be correct to treat it as inherent given it merited a response but only in the limited context of s6.13. It is simply inconsistent to claim that it was implicit and considered generally when it appears neither in the description of development in Section 6 of the landscape proof of evidence, nor in Appendix B2, and is only referred to in the proof in order to dispute its relevance at s6.13. The better explanation is that it was not properly considered in accordance with good practice which may explain the disagreement with the appellant over the assessment of impacts.

5.64 Another reason exists to doubt SCC's explanation, namely the dispute over the use of "temporary" and "short-term" which turned out to be obviously ill-considered when the witness appeared to be unaware of the fact the terminology had been explained (following best practice) in the LVIA App 2, A2.24. The reference to other passages in GLVIA3 turned out to be passages dealing with the classification of effects of all descriptions for the purposes of the EIA Regulations. It still fails to explain the lack of consideration of GLVIA3 paras. 5.51-5.52 and Figs. 5.1 and 6.1.

5.65 Against this background, there was a stark contrast in terms of the transparency and rigour which each expert's work displayed:

- The appellant's evidence drew on the LVIA which had been reviewed in detail following instruction and first visits to the site. The appellant's witness adopted the methodology used, including its definition of terms, and concluded that the professional views reached were ones from which he did not significantly differ. As with the LVIA, his written proof followed a careful structure focusing on the issues in dispute and was supported by appropriate additional evidence in the form of additional

plans and sections (WG proof Vol 2) and ZTV drawings (WG Rebuttal Part 2).

- By contrast SCC's witnesses' evidence displayed no clear methodology but tried to avoid the issue by saying that she had adopted that set out by EDP in the LVIA. That this was neither plausible nor correct became apparent in cross examination, where the witness had to be shown the definitions of temporary and short-term which had been used and of which she was plainly not aware: see above and LVIA App 2, A2.2. She was unwilling to acknowledge the role of gradation in duration of effects or of the importance which reversibility has in informing judgments on magnitude.

- The witness was also opaque as to how she had reached her judgments. Her evidence was supported by a significant number of ZTVs (which she drew on to identify a wide range of additional "receptors") but she accepted in cross examination that these were of "limited value" – something borne out by the fact that a large proportion[57] of her additional visual receptors were judged by her to experience no effect. Where she asserted that additional effects would arise which had not been taken into account in the LVIA these were often unsupported by proper evidence which would allow her judgments to be confirmed, for example she presented no photographic evidence at all to support her contention that there would be Major/Moderate adverse effects on FP277 (in circumstances where the LVIA had not identified any effects[58]) nor did she provide any winter views despite having been instructed since February 2021 and her complaint that the appellant should have done so.

- Perhaps more starkly, the appellant contends, her willingness to reach judgments as to the magnitude of effect on the Raswell and Lodge Farm (her visual receptors 16 and 17) gives rise to serious concern about her overall approach given that (a) the only evidence she provides to evidence such impacts are her photos from the site towards the receptors (SSC 13 and 11) which, as she agreed in cross examination, do nothing to explain what the scale of change experienced at the receptor may be and (b) it emerged in cross examination that she had never actually visited either location, there was no access to Raswell and she had made her assessment from the road not the receptor.

- Her willingness to make such judgments without any proper basis or explanation suggests that her focus has been on raising objections to the Appeal Proposals, rather than on providing a balanced and objective description and assessment.

- This tendency can also be seen in her failure to engage with RPS, SCC's landscape consultants, or with officers, or with the appellant's landscape witness. Despite having been instructed since February 2021,

[57] See CD.I9, Table B.4, visual receptors 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 29, 30, 34 and Bryn Mawr and Stovoldshill Farm

[58] A difference in judgments which EB highlighted in EiC

she accepted that she had made no attempt to discuss her views with SCC's advisers or to verify her understanding of the information which had been presented. Likewise, although in her proof at s3.1(8) she raised concerns about the accuracy of the visualisations which EDP had presented at the Application stage[59], her technical criticisms were not explored with EDP before the point was raised on 29 June 2021 and she maintained the point in her oral evidence despite detailed rebuttal from the appellant, which explained that the visualisations had been prepared on the basis of on-site surveying work and detailed computer modelling[60]. Her willingness to do so on the basis of out of scale sections derived from data sets of markedly lower accuracy tells against her providing a proper objective assessment to the Inquiry as did her emphasis on the rural tranquillity of the general locality of the Site from High Billinghurst Farm which wholly ignored (as did SCC in closing) the activity to be generated by the expansion of wedding functions there for 75 events per annum (generating over 200 days of activity when the days for setting up and removal are taken into account) and the noise levels fixed for the weddings being significantly in excess of the agreed noise limits to be applied to any permission granted on this appeal. This can be seen if comparison of conditions 3-5 of CD.E19 and proposed conditions 16-17. The documents relied upon by SCC in closing predated the permission for High Billinghurst Farm and they simply ignored the changes.

5.66 Given these weaknesses, as noted already, and the acceptance that a neutral effect would be achieved following restoration, the main area of concern with SCC's evidence is the lack of any clear consideration of the reversibility and limited duration of the proposals as an important aspect of the determination of magnitude of the landscape and visual effects (GLVIA3 figs. 5.1 and 6.1 and ss5.51 and 5.52). As the appellant's witness explained, the fact that the whole of the development can be restored to at least a neutral landscape position within a period of three years (or thereabouts) is plainly key to the proper assessment of its effects. Likewise, it must be important to note the differences between the durations which different phases may have and the interplay between that duration and the scale or size of the effects will arise during it. For SCC, it is not clear whether there has been any proper consideration of duration: something which would be an obvious reason for her greater assessment of the significance of the effects. SCC's landscape witness was unable, in cross examination, to point to a single place in her evidence where she had taken duration into account (even though it is spelled out in the LVIA) and her 'clutching at the straw' of the description of the development as temporary (a) is not referred to in her proof and (b) ran contrary to her claim that the proposals were not temporary. Moreover, her only reference to duration at s6.13 was to misunderstand the "retention" period and to reject the limited duration issue:

"The appellant's assessment of effects relies heavily on the temporary nature of the anticipated effects in reaching the conclusion that these

[59] CD.A27

[60] At WG Rebuttal §§1.13-1.15 and Appendix WG1.

should be considered acceptable in determining the appeal, notwithstanding that the application includes the potential for the site to be retained for further use. The retention option in the application is at odds with appellant's LVIA assessment that there would be zero effects after the application period (appellant's LVIA Part 1 paragraph 6.11)." (emphasis added)

This suggests that when drafting her evidence she took the line which was to treat the Appeal Proposal 'as if' the works were authorised to be retained beyond the life of the permission. Although she disowned that approach, her failure to explain or identify duration as a key aspect of the proposals casts real doubt on her judgments.

5.67 Other aspects of this evidence also suggest that she has overstated the likely effects:

- In response to cross examination, she held to her assessment that it would take 5-10 years for the scheme to achieve neutrality of impact following the restoration works and planting. In holding this position, she seemed to ignore the fact that the site would have progressively had all infrastructure removed and be restored to agriculture; or that the roadworks on HLR and at the junction will have been removed[61]. The hedge would be in place and growing in a double row and it is submitted that there is nothing to suggest (a) that such replanting is not consistent with agricultural use, (b) the initial growth of the hedge would not be sufficient to reduce residual impacts significantly. Looking at the landscape more broadly it is clear that hedge cutting and replanting is not unknown and it is hard to see what residual effects will persist. Again, the insistence on the 5-10 years appears unrealistic and she insisted that she had adopted a worst case. If a realistic view is taken, it must be the case that the effects will be very largely removed and reversed by the end of the permission rather than the time for the hedgerow to mature.

- In evidence in chief she emphasised tranquillity as a key aspect of the landscape baseline but, as she accepted in cross examination, she had not taken account of the impact of the wedding venue at High Billinghurst Farm, nor its extended operations pursuant to the extended permission. The grant of planning permission for up to 75 events per year, with a far more generous maximum noise limitation than as proposed for the appeal site[62], will not only directly disturb local tranquillity but will lead to significant additional traffic movements for guests (Mr Gordon suggested up to 250 guests per event), staff and caterers etc both on the days on which weddings are scheduled and the days around it.

- The emphasis on disruption caused by vehicle movements (picking up on SCC advocate's focus on HGVs "trundling across the landscape", which was not in their proof) and the "highway clutter" was exaggerated given the close controls to be imposed on the number of

[61] See draft conditions 4, 7 and 33
[62] See condition 4 of the CD.E19

movements per day (a maximum of 20 two-way trips) and the high baseline for traffic movements in the landscape which already exists and the limited time in which these matters will occur.

- Similarly, her focus on highways signals and other "clutter" lacked realism given that they are (a) reversible and (b) not significantly different from other kinds of roadworks which are common both in the area and across the country.

5.68 WBC's witness also took an exaggerated approach to the landscape evidence, although, as he freely admitted, his evidence was not founded on a detailed assessment of particular receptors and his overall judgment went no further than to record that the proposal would give rise to noticeable adverse effects in landscape terms. He made some criticisms of the LVIA but these, in the appellant's view went nowhere: his comment on winter views failed to acknowledge that the issue had been directly addressed within the LVIA; and his suggestion that night-time images were needed does not explain why the LVIA had not sufficiently addressed the issue through its reliance on the Lighting Impact Assessment[63].

5.69 The appellant's evidence took all of these aspects of the Appeal Proposals into account but in a more proportionate manner. It does not dispute that the proposals will give rise to impacts but considers that in landscape terms they will be comparatively low and will not give rise to more than limited effects on the landscape setting of the AONB. This took account of the proposed felling of Burchett's Wood as a worst case scenario but concluded that this would not substantially change the overall assessments in the LVIA given the benefits of topography, proposed mitigation in the form of the screening fence, and the planting that would remain within the Appeal Site boundary. To that might be added the likelihood that any felling, or "thinning" as it is described in the last paragraph of CD.J8, appears unlikely to remove the screening currently provided given the Hascombe Estates' (HE) commitment to avoid disturbing (a) the undesignated heritage assets[64] (see CD.J8) and (b) the ancient woodland[65] (CD.L27/1) as is set out in the appellant's Response note. Whether or not the proposed felling will actually take place (which the appellant doubts) it seems clear from the recent letter that the clear felling of the wood in its entirety is unlikely within the three year period of the proposed development. JSCC's attempts to make something of the significance of felling[66] in closing ignores the fact the issue was discussed in correspondence between SCC, the AONB Board, as was put in cross examination to their landscape witness, who appeared unaware of it, and was fully taking into account by SCC officers in recommending the grant of permission: see Officer Report ss311, 320-325.

5.70 The appellant's landscape witness was also the only one to offer a proper analysis of the question of whether the local landscape amounts to a valued

[63] See LVIA §3.21

[64] For possible extent see Mr Moore's Rebuttal Figure 10

[65] For possible extent see Mr Moore's Rebuttal Figure 9

[66] and an attempt to make something of ash dieback when the arboriculture report provides no basis for assuming the trees are at risk during the lifetime of the proposed permission.

landscape for the purpose of Framework p174 a). As set out in Section 4 of the landscape proof of evidence, a structured and objective assessment of the site's value does not indicate that the site possesses "*something such as physical attributes that raise it above the ordinary*"[67] and the history of the AGLV designation does not reveal that this designation is founded on any specific identification of landscape quality, distinct from the role which the AGLV has traditionally played as a placeholder and buffer for the AONB and future AONB review. The setting of the AONB is now specifically protected by the recent Framework changes and there is agreement as to the sensitivity of the setting in any event between the landscape witnesses. This position was largely echoed by WBC's witness who accepted in cross examination that the only characteristic which he had identified as being "out of the ordinary" in respect of the local landscape was its "interconnectivity" (by which he meant visual interconnectivity[68]) with the AONB. However, as the *Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited* [2015] EWHC 488 (Admin) judgment confirmed (at s17), merely being within the setting of another landscape is unlikely to amount to a demonstrable physical characteristic capable of demonstrating that a landscape should be treated as valued. SCC's questions in cross examination and in closing continued to ignore s13 of the *Stroud* judgment and their witnesses' approach was similar. Although she maintained that there were other physical qualities which took the landscape out of the ordinary, it is submitted that, as the AGLV Review has recognised, the immediate landscape to the east of High Loxley Road is in fact of a lower quality than other parts of the Surrey Hills area.

5.71 In any event, it is clear that all the witnesses have treated the sensitivity of the landscape in the same way; whether or not the site is within a valued landscape for the purposes of Framework paragraph 174a) will need to be taken account in the planning balance but it is not otherwise determinative.

Other objections

5.72 Other points have been raised by WBC and interested persons. These have been addressed through the evidence (both written and oral). The key points as they emerged at the Inquiry are responded to as follows.

Impact on High Billinghurst Farm

5.73 In addition to the landscape witnesses, evidence was given by Mr Gordon and WBC in relation to the impact which the Appeal Proposals might have on the wedding events business which is currently operating there under a section 73 permission granted on 11 December 2020.

5.74 Mr Gordon's evidence to the Inquiry is on the basis that the Appeal Proposal will have a significantly urbanising effect on High Loxley Road and the outlook to his property, which the appellant shows is not correct.

5.75 Although he focused on the impact on High Loxley Road as the "main

[67] Cleve Park decision, cited in Mr Gardiner's proof at 4.31.

[68] Mr Friend in response to Inspector's questions

impact" in his oral evidence[69], it is clear that only a small portion of High Loxley Road will be affected by the widening and junction works and the creation of the access. These impacts, the appellant argues, will be limited to the life of the permission and that portion will not be visible from High Billinghurst Farm itself. The number of daily HGV movements is limited in any event and will not occur for all periods of the permission.

5.76 The potential impact on clientele travelling to and from events is largely mitigated by condition 13, which (following amendment to address Mr Gordon's evidence to the June 2020 Committee) is now proposed to restrict HGV movements to before 1300 on both Friday and Saturdays.

5.77 Impacts outside of those times can, if necessary, be mitigated by liaison with the operators of High Billinghurst Farm pursuant to condition 9(k) which also provides a mechanism for ensuring that traffic management signals are programmed so that they are not there when guests arrive. In any event, this kind of signalling would not be an unusual feature in the context of this part of the countryside.

5.78 The operational noise generated by the Appeal Proposals will be low and is conditioned to a level which will keep it far below the volumes permitted at the wedding venue. It is clear that Mr Gordon's permission entitles his functions to generate much higher noise levels than those that will be permitted on the appeal site[70].

5.79 The visual impact from having a rig on site (whether drilling or workover) will be of limited duration and in all probability for significantly less than a year. Further, while it will be partially visible from the northern side of High Billinghurst Farm in at least some of the viewpoints identified, it is to be noted that there is no evidence before the Inquiry that it will be visible from the area which actually has permission for use as a wedding venue: see permission plan at CD.E19/2. This may be capable of clarification on the site visit, but it is telling that none of the photos used by Mr Gordon or SCC[71] to describe the impact are from the permitted wedding venue location itself.

5.80 Any impacts in terms of loss of revenue and resulting effect on the local economy (which was the focus of WBC's evidence) will of course be dependent on significant harm to the popularity and therefore viability of the business. There is no evidence that such harm would arise.

Impact on Thatched House Farm

5.81 The visual impact of the scheme on Thatched House Farm was assessed as part of the LVIA and within the appellant's evidence. It was judged that a moderate adverse effect would arise. The noise impacts were assessed

[69] In response to questions from the appellant. He sought to row back from this position in his email to the Inquiry following evidence [CD.J3]

[70] CD.E19 conditions 3-5

[71] CD.I95 - See SSC1-6 at Appendix D.2 to Ms Brown's proof.

within the Noise Impact Assessment[72] which concluded that no adverse or significant adverse effects would arise. Mr Herman criticised that assessment on the basis that the appellant's measurements for the distance between the well site and Thatched House Farm were inaccurate. This is not the case. As is clearly set out, Thatched House Farm has been measured to be 320m between the centre of the well site and the exterior wall of the receptor. This is the relevant metric, representing as it does the distance between the acoustic centre of the noise producing activity (which, as can be seen from the plans, the drilling activity may even be centred slightly further south) and the receptor itself. Moreover, the proposed conditions limit the noise both during the day and at night and the noise limits are to be judged from a point 3.5m from the façade of Thatched House Farm as a sensitive receptor and the distance is therefore irrelevant since the noise levels must be met in that close proximity to Mr Herman's property.

5.82 The proposed felling of Burchett's Wood may, if it goes ahead, increase impacts on Thatched House Farm [73]. This issue was specifically addressed at the Committee stage by the introduction of proposals for the 4m high screening fence along the northern boundary and a 4m high security fence along the eastern boundary, both with camouflage netting[74]; the appellant also committed to placing benign non-operational plant along the same boundaries in the event that the felling were to occur. In reliance upon this, officers advising Committee (see Officer Report s349 and s458) were content that the felling would not give rise to significant additional impacts. Officers also considered the impacts on Thatched House Farm in terms of heritage: see Officer Report s605.

5.83 It is notable the SCC Officers, when reiterating their recommendation to approve in November 2020, and having considered the further representations made, stated at p.4 of the Update Sheet:

"Officers are satisfied that the impact on local businesses, the environment, climate change and residential amenity have been fully addressed in the Officer report attached at Annex 1. These issues have been taken into account in the conclusions and recommendation contained in the Officer report. In particular, the applicant has agreed to abide by Informative 21. This advises the applicant to have particular regard for the residents and businesses that neighbour the site, particularly Thatched House Farm to the north and High Billinghurst Farm to the south. The informative also advises the applicant to liaise with neighbours to ensure the impacts of the development are minimised and maintained at acceptable levels. Officers are satisfied that this represents a sufficient and proportionate response to the impact of the development on local businesses and immediate neighbours…"

Impact on Other Housing/Housing Delivery

[72] CD.A10

[73] CD.A26/2

[74] See Application plan PA-16 Rev 1 CD.A28/16

5.84 Both Mr Herman and WBC also sought to argue that the Appeal Proposals may have an adverse effect on the delivery of housing at Dunsfold Aerodrome. This appeared to be on the basis of an inference that directional exploratory drilling will discourage prospective purchasers[75]. No evidence was presented to evidence this discouraging effect and, as the appellant explained, the reality is that there can be no surface impacts from directionally drilling a borehole of some 6-8 inches at a distance of some 1km or so below the surface[76]. While it is not suggested that significant public concerns about the risks of drilling could never be a material consideration, it is clear that any concerns which prospective purchasers would have here would not be material given that (a) such concerns would be baseless and (b) the concerns are plainly at nowhere near a high enough level to discourage the occupation of such dwellings. The appellant referred to 13 other gas and oil fields in Surrey and Hampshire which also extract under significant residential centres. The owner of the site, Dunsfold Airport Ltd, has not raised any such concerns in its representation[77].

Climate Change

5.85 Climate change arguments were raised by Ms Clough and Ms Finch. This was squarely addressed by the appellant's planning witness, who demonstrates that continued reliance on gas forms an essential part of the Government's continued thinking on energy and climate change mitigation[78]. As the appellant explained, the provision of domestic gas obviates the need for LNG imports, which is, in practice, the likely replacement for any shortfall in domestic supply given the willingness of Germany (for example) to pay higher prices for pipeline gas. The calculations at Table 4[79] show the level of pre-combustion carbon which would be saved on the base or upside cases for future Loxley gas production on the basis of a comparison with LNG imports.

5.86 That this is an appropriate comparator is confirmed by page 3 of the CCC's letter of 31 March 2021 [CD.J4] which, although mainly focused on the case for shale gas extraction confirms that the choice at the margin for shortfalls in fossil gas is likely to be between shale gas and LNG:

"For fossil gas, the choice at the margin to fill this gap is likely to be between shale gas and imported liquefied natural gas (LNG), some of which may come from shale gas produced elsewhere in the world. We judge, therefore, that LNG is the appropriate comparator for UK onshore shale gas production when considering the implications for GHG emissions."

Other Environmental Risks

5.87 In the course of their evidence and questions, WBC made a number of points relating to other potential risks of the Appeal Proposals including the risks of breaches of the environmental permit through unauthorised

[75] Mr Arthurs proof at §5.25.

[76] Mr Sanderson, in response to Inspector's questions

[77] CD.L17

[78] see Mr Moore's proof at 3.29, 4.3 and 4.6-4.7

[79] Mr Sanderson's Proof

emissions to air or ground and even the possible risk of some kind of explosion in the well-bore.

5.88 These points, which were predicated on the "possibility" of breaches occurring, are not material to this Appeal. Emissions and substance control are covered by the Environmental Permit, dated 26th June 2020 [CD.G1]; other matters in relation to well design and construction will be a matter for the HSE.

5.89 Paragraph 112 of the PPG confirms the long-established approach to matters which are covered by other regulatory regimes:

"Some issues may be covered by other regulatory regimes but may be relevant to mineral planning authorities in specific circumstances. For example, the Environment Agency has responsibility for ensuring that risk to groundwater is appropriately identified and mitigated. Where an Environmental Statement is required, mineral planning authorities can and do play a role in preventing pollution of the water environment from hydrocarbon extraction, principally through controlling the methods of site construction and operation, robustness of storage facilities, and in tackling surface water drainage issues.

There exist a number of issues which are covered by other regulatory regimes and mineral planning authorities should assume that these regimes will operate effectively. Whilst these issues may be put before mineral planning authorities, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies. However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body:

….

- *Well design and construction – the Health and Safety Executive are responsible for enforcement of legislation concerning well design and construction. Before design and construction operators must assess and take account of the geological strata, and fluids within them, as well as any hazards that the strata may contain;*
- *Well integrity during operation – under health and safety legislation the integrity of the well is subject to examination by independent qualified experts throughout its operation, from design through construction and until final plugging at the end of operation;*
- *…*
- *Operation of surface equipment on the well pad – whilst planning conditions may be imposed to prevent run-off of any liquid from the pad, and to control any impact on local amenity (such as noise), the actual operation of the site's equipment should not be of concern to mineral planning authorities as these are controlled by the Environment Agency and the Health and Safety Executive;*
- *…*
- *Flaring or venting of any gas produced as part of the exploratory*

phase will be subject to Department of Energy and Climate Change controls and will be regulated by the Environment Agency. Mineral planning authorities will, however, need to consider how issues of noise and visual impact will be addressed;"

5.90 It follows that the speculative concerns raised by WBC, which appeared to run together with their repeated references to fracking despite it forming absolutely no part of the proposals, are not relevant.

Common Land

5.91 Despite agreement in the Highways SoCG to the contrary (at s2.5), WBC repeatedly asserted that works to the junction of Dunsfold Road and HLR would involve work to or use of common land without following the correct procedures. This is not the only example where WBC unreasonably sought to depart from the SoCG which Mr Arthurs himself had signed on behalf of WBC and APC. He continues this unreasonable approach in his closing at paragraphs 9 and 10 and has simply failed to recognise the significance of agreement in the SoCG. The appellant has addressed this issue through the note submitted as CD.J7. There is no need to further rehearse the issues which are straightforward other than to comment that it is extraordinary for a public authority (whether acting as a Rule 6 party or otherwise) to continue to raise allegations in this manner. The point was raised by WBC directly with SCC in August 2019 (See CD.50/1) and June 2020 (see CD.32/1). It was addressed by the HA directly and then in the Officer Report at s284. There was therefore no rational basis for WBC's suggestion that new matters had arisen which justified reneging on the signed position in the SoCG.

Policy Compliance and Balance

5.92 The benefits of the scheme and the degree of policy compliance were addressed in the appellant's evidence and were largely unchallenged. The merits of the exploratory and assessment phase must be considered fairly and SSC's "*have cake and eat it*" assertion simply undervalues the compliance with national planning and energy policy and meeting them requires these phases.

5.93 Within the development plan, the SMP is the principal or dominant plan against which the Appeal Proposals fall to be assessed as it contains the most relevant and specific guidance for an application of this nature.

5.94 SCC identify conflict in respect of Policy MC14(iii) and Policy MC15 on the basis of significant adverse impacts in terms of landscape and highway safety. This is disputed, but even if there were some residual conflict the appellant is clear that it would be outweighed by the benefits generated by the Appeal Proposals together with other material considerations. Those considerations and benefits are summarised in evidence and include, at their heart, the recognised need for onshore gas exploration, which is discussed above.

5.95 WBC took a much more scattergun approach to the allegation of policy conflict, identifying some 22 policies which were alleged to be breached, two of which, it was later accepted in cross examination had actually been

superseded. The appellant has addressed each of these allegations[80]and it is not proposed to repeat the reasons why no additional development plan conflict arises. Nearly all of the allegations, such as breach of Policy CC1 of the WLP or Policies D1, D2, IC2 and IC5 of the LP 2002, fall away as a result of the factual issues discussed above: that is the impact on climate change mitigation or impact on local businesses. Others, such as the alleged conflict with Policy RD8 (Farm Diversification) proceed on a misunderstanding of the basis on which the Appeal Proposals have been justified and are, in any event, not breached. Again, it is submitted that any conflict would be outweighed by the benefits generated by the Appeal Proposals together with other material considerations.

5.96 It is to be noted that neither SCC or WBC set out or acknowledge any consideration of the benefits of the scheme beyond making the limited point that most of the benefits are concerned with securing the chance of a successful production facility. This is plainly correct though it tends to undervalue the importance of that opportunity. As acknowledged above the project is not itself a production project but it is an essential prerequisite for the delivery of such projects in the future. This is a material benefit deserving of great weight in the planning balance given the importance of hydrocarbons in latest Government policy including the recently reissued Framework.

Conditions

5.97 Draft conditions have been agreed between the appellant and SCC initially in the SoCG (with areas of disagreement highlighted) and discussed further on Day 8 of the Inquiry. For the purposes of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the appellant hereby records its agreement to the imposition of the pre-commencement conditions set out (or to any variations of them imposed by the Inspector which are to substantially similar effect).

5.98 The Inspector will note that both parties consider that the revised wording for conditions 7 and 8 are sufficient to address the issue of securing post-restoration highway works and that there is, accordingly, no need for a s.106 agreement.

5.99 As explained at the conditions and s.106 session, this is plainly the right approach. Framework paragraph 55 provides that planning obligations should only be used where it is not possible to address unacceptable impacts through a condition, but here (a) a s.106 would be unable to secure the off-site works on land within the control of the HA (b) any agreement to agree would be enforceable such that (c) the only mechanism which can be used is the same "Grampian" style obligation that can equally be contained within the conditions. As such, this is that unusual case where the conditions actually provide better security for SCC than a s.106. Paragraph 10 of the PPG[81] is designed to prevent the use of "Arsenal" conditions (where the condition related to a s.106, the content of which might be unclear) but there is no transparency concern here: the form of

[80] Mr Moore's proof - section 5
[81] Use of Conditions paragraph 010 Reference ID: 21a-010-20190723

the highways restoration works has already been agreed with the HA and is the subject of detailed evidence before the Inquiry.

Conclusion

5.100 In conclusion, the appellant, UKOG, requests that its proposals should be granted planning permission and the appeal allowed.

The Case for Surrey County Council

6.1 The full submission made by SCC can be found at CD.K8, the material points are as follows:

Landscape

6.2 In considering the impact on the landscape, it is important to remember that the appeal site does not just consist of the drilling area. It extends to include the access track across open fields, the access onto High Loxley Road and the highway works at Pratts Corner.

6.3 The entrance to the site access will involve the removal of hedgerow and other significant vegetation loss along High Loxley Road, and the introduction of a utilitarian security cabin, gates and fencing and a passing place for HGVs, will change the rural character of this single rural, lane which is a valued, sensitive link between important recreational routes.

6.4 The use of the site access itself by HGVs trundling across an open field in plain view from the AONB will be discordant in the landscape.

6.5 The development at the well site will involve extensive earthworks, structures and fencing that are all alien, uncharacteristic and not in keeping with the layout, massing, traditional vernacular form, materials and boundary treatment of the existing rural built environment of the AGLV. The height and scale of proposed vertical structures, including rigs and a crane will stand out beyond any existing tree cover and will adversely affect visual amenity, and views from the AONB, as accepted by the appellant.

6.6 All this, coupled with the industrial activity and required night time lighting, will detract from the tranquil and intimate character of the area.

6.7 These effects have to be considered in the context of the status of the landscape in policy terms.

6.8 All parties accept that the whole appeal site is within the setting of the AONB. This point is significant in statutory and policy terms for a number of reasons, as accepted by the appellant's landscape witness in cross examination.

6.9 First, statutory provisions, including s.85 of the Countryside and Rights of Way Act 2000, require that *'in exercising or performing any functions in relation to, or so as to affect land'* in AONBs, relevant authorities '*shall have regard'* to the purposes for which these areas are designated. The PPG[82] makes clear that this duty applies not just to sites within the AONB but is relevant in considering development proposals that are situated outside AONB boundaries, but which might have an impact on their setting or protection.

[82] CD.F2 ID8-039-20190721

6.10 Furthermore, the PPG recognises[83] that land within the setting of the AONB "*often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important"* (as is the case with the view from Hascombe Hill) and "*where the landscape character of land within and adjoining the designated area is complementary*."

6.11 Additionally, there is a further emphasised importance to AONB setting, and the great weight to be accorded to harm to it, in the new addition to the Framework (para 176), discussed in the planning balance section below.

6.12 The landscape area within which the site sits is not just important in views to and from the AONB, but it also has a number of shared characteristics with the AONB. The site is within the amber part of area W6 of the AGLV review document[84]. The applicable descriptor for the relevant area in the table at p.38 of CDE.24 is:

"This area has a number of shared characteristics with the Wooded Weald AONB but the landscape is more open and its condition in parts is beginning to break down. The influence of Dunsfold aerodrome is also a factor."

6.13 The appellant's landscape witness accepted that the detracting factors mentioned in that description do not apply to the appeal site. This is clear from the appellant's Plan EDP L3 in the LVIA (CD A9/6) which clearly describes the appeal site as:

"a generally tranquil landscape despite proximity of Dunsfold Road and Dunsfold Aerodrome due to the strong sense of enclosure by undulating topography and overlying woodland, tree belts and hedgerows."

6.14 Accordingly, there is no sense of the condition of the landscape in this location 'beginning to break down'.

6.15 The AGLV Review document, 2007 (at CDE.24), in common with the AONB Masterplan, also recognises the framed, seated view from Hascombe Hill, from which the proposed development will be visible, as a strategic view (para 6.7, p.36).

6.16 In addition to being within the setting of the AONB, the site is in an AGLV designated under WLP Policy RE3. The policy text protects the setting of the AONB (at para (i)) and states (at para (ii)) that the AGLV is to be retained for its own sake and as a buffer until there is a review of the AONB boundary (see also explanatory text at 13.32 to 13.36).

6.17 No such review of the AONB has been completed. Whilst there was a study undertaken in 2013 which recommended that the area to the West of High Loxley Road be included in the AONB, this plainly pre-dated (by five years) the adoption of Policy RE3 and cannot logically reduce the weight to be

[83] CD.F2 ID8-042-20190721
[84] CD.E24 (note: Mr Gardiner accepted that it had been wrongly classified as area W8 in the LVIA at para 2.32 and in para 4.18 of his proof).

afforded to the AGLV under that later policy. Policy RE3 has full weight at this time and cannot properly be described as a mere 'placeholder'.

6.18 Both the WLP (at para 13.29) and the PPG (at ID8-040) make clear that the AONB Management Plan is another important material consideration. The applicable management plan in this case is the Surrey Hills AONB Management Plan (2020 – 2025) (CD.D2). The importance of the AGLV is recognised in the Management Plan at p.19 in the following respects:

- Acts as buffer to AONB;
- Inherent landscape quality;
- Important in protecting integrity of AONB landscape;
- Particularly views to and from the AONB;
- Application of the Management Plan policies and actions to AGLV land has been instrumental in helping to conserve and enhance the Surrey Hills.

6.19 Relevant important features of the AONB are highlighted at p.17 and include views, tranquillity, dark skies and country lanes. The type of development proposed in this case is identified as a key pressure and threat (p.18 para 1.12 – 'Energy (oil, gas, fracking)'). Further, the Planning Management Policies at p.33 highlight the public views into and out of the AONB (at P2 and P6) and tranquillity is highlighted in P2.

6.20 Other relevant aspects of the Management Plan were overlooked by the appellant. At p.34, the importance of sunken lanes and verges is highlighted and the problem of highway signage clutter is identified. And at p.35 it is stated that "*The impact of development proposals on the surrounding Surrey Hills road network, including any highway mitigation measures, will be given great weight when assessing the acceptability of the development."* This is plainly important given the valued character of High Loxley Road as a country lane and all the highway disruption and clutter that is to be introduced at Pratts Corner, right on the edge of the AONB. Worryingly, in the view of SCC, there was no reference to this part of the Management Plan in the appellant's LVIA or their landscape proof.

6.21 It is clear from all of the above that the appeal site is valued in landscape terms. It is within the setting of the AONB, it acts as a buffer to the AONB, it shares characteristics with the AONB (with no detracting features), it includes important features of the AONB and it is within views to and from the AONB. Its important role in these respects is recognised in the PPG, the AONB Management Plan and in the Framework itself.

6.22 Notwithstanding all this, the appellant's witness was at pains to resist the contention that the site is a 'valued landscape' within the terms of the Framework para 174(a). However, he accepted, as he had to, that a landscape does not have to be within the AONB for it to be a 'valued landscape' – indeed it does not have to have any designation. And he accepted, where an area is designated as valued in local policy (as it is here – as part of an AGLV) the starting point is that it is valued in Framework

terms. Indeed the significance of a local designation is recognised in the PPG[85].

6.23 But, in reliance on *Stroud DC v. SSCLG* (CD.H1), the appellant's witness sought to resist the proposition that a landscape's role as forming part of the setting to the AONB can make it a valued landscape. His contentions in this respect were plainly misconceived. Paragraphs 17, 16 and 13 of the *Stroud* judgment demonstrate that the reason why the Judge considered that the landscape in that case could not be 'valued' as part of the setting was because it was not in fact considered part of the setting in policy terms. That situation simply does not apply in this case. This landscape's role as setting to the AONB is clearly recognised by its designation as AGLV (see Policy RE3 above). There is nothing in the *Stroud* judgment to suggest that either being within the setting and/or being within views to and from the AONB is not sufficient to make a landscape 'valued' in Framework terms.

6.24 Against all the affirmations as to value in the policy documents, the appellant has sought to rely on their own assessment of the GLIVIA3's Box 5.1 factors. These factors are explained more fully in Technical Note 02/21 'Assessing landscape value outside national designations (CD.E35 at para 2.4.4). But on closer examination it became clear that this assessment[86] was materially deficient in numerous respects:

- As to the first box in the table, landscape quality (and, in fact the last box, perceptual aspects), he makes reference to detractors. This is in flat contradiction to the appellant's own plan notation in the LVIA (at CD.A9/06 set out above) which points to the tranquillity of the landscape and the lack of detracting features.

- As to the second box, scenic quality, whilst he acknowledges the view to the site from Hascombe Hill FP533, he fails to accord it the appropriate significance and value in his assessment as a strategic view from the AONB.

- As to rarity, he fails to recognise the importance of relatively rare views from the AONB (given its wooded nature) and fails to appreciate the relative rarity of High Loxley Road as a narrow, winding, single track, sunken lane bordered by sloping verges, providing an attractive recreational route and no through access. He overlooks the fact that such a feature is expressly recognised as important in the AONB (see above).

- When considering representativeness, his assessment overlooks the appellant's own assessment in the LVIA which states: "*The baseline appraisal of the site has found many key characteristics representative of the LCA are present in the local landscape context of the site*" (LVIA para 7.15).

[85] PPG - ID: 8-036-20190721
[86] Mr Gardiner's proof p.18 table EDP 4.1

- As to conservation interests, he states "*the only known cultural associations relate to the agricultural land use*". This is plainly wrong. It ignores the areas of archaeological significance next to the site as set out in the appellant's heritage report (CD.A15 para 7.2 and 7.3) and it ignores all the listed buildings in the scattered historic farmsteads in close vicinity, (High Billinghurst Farm, High Loxley Farm and Thatched House Farm).

These are material omissions.

6.25 Finally, as to recreation value, he places weight on the fact that there is no public access within the well site and fails to appreciate and explain the important role of the landscape context within which there are a number of recreational routes and the fact that the landscape is a visual feature in views from recreational routes within the AONB.

6.26 Indeed throughout table EDP 4.1[87], it is clear that he has narrowly assessed the well site alone, not even the entirety of the appeal site and certainly not the site context, contrary to the express guidance which states:

"when assessing landscape value of a site as part of a planning application or appeal it is important to consider not only the site itself and its features/elements/characteristics/qualities, but also their relationship with, and the role they play within the site's context. Value is best appreciated at the scale at which a landscape is perceived – rarely is this on a field-by-field basis" (top bullet on p.12 of CD.E35).

6.27 Further, in his refusal to accept the valued role of the site in terms of it being part of the setting to the AONB, the appellant has failed to take on board the valued functional role emphasised in the landscape value guidance in the last box of Table 1 p.11 CD.E35:

"Landscapes and landscape elements that have strong physical or functional links with an adjacent national landscape designation, or are important to the appreciation of the designated landscape and its special qualities."

6.28 All these omissions materially undermine the objectivity and reliability of the appellant's assessment. By stark contrast, SCC argues, their witness's assessment[88], is comprehensive, objective and fully supports her view of the site sitting within a valued landscape.

6.29 The inadequacies in the assessment of landscape value are representative of inadequacies in assessing the impact of the development on the character and appearance of the landscape:

6.30 No winter views are included in the LVIA in circumstances where tree cover and hedgerows are relied on repeatedly as filtering and screening views to the appeal site. Whilst it is stated (para 4.4) that a worst-case scenario should be used for visual assessment, the appellant's witness could point to

[87] Mr Gardiner's proof p.18
[88] Ms Browns Proof - Table B.1, Appendix B

nowhere in the LVIA where the winter position has in fact been factored into the assessment.

6.31 The intrusive effect of the mitigation, including 4m high security and screening fencing (which will be in place throughout the development including the retention phase), has not been properly considered. Further, the benefits of tree and hedge re-planting have been overestimated. As SCC's witness made clear, these distinctive elements in the landscape will take 5 to 10 years to re-establish after the end of the three year development period.

6.32 Even where adverse visual effects have been acknowledged, we say their significance has been underplayed. The level of effects matrix in the methodology in the LVIA (at EDP A2.5 and para A2.29) has not been applied in the assessment of effects. At tables EDP6.1, 6.2 and 6.3 at pages 35 to 36 of the LVIA, the appellant's witness accepted in cross examination that the effect on the 'perceptual and sensory' receptor should be recorded as 'significant adverse'. Similarly, at tables EDP6.4 to EDP6.6 (p.38 to 39 LVIA), he was forced to accept that the effects on all the viewpoints set out there should be recorded as 'significant adverse'. Importantly, these include views from public footpaths and bridleways including from the strategic viewpoint within the AONB.

6.33 Further, the appellant's tendency to assess effects by reference to the previous phase of the development, rather than by reference to the existing baseline further tends to underestimate effects and undermines their assessment.

6.34 The differences between the parties as to effects are set out in Appendices B to F to the Landscape Statement of Common Ground. In light of all of the deficiencies in the appellant's evidence set out above, and given the quality of the explanation and detail recorded by SCC, these assessments are to be preferred.

6.35 Finally, it is important to take into account the effects of the felling of the Burchett's. This is part of the 'worst case scenario' which the LVIA acknowledges is important to assess as per the advice in GLVIA3 (para 4.4 LVIA). Notwithstanding this, the assessment of these effects by the appellant is wholly inadequate.

6.36 The felling of the Burchett's prior to, and/or during the course of, the development is a realistic and likely prospect. This is evidenced by the existence of the felling licence dated 4th October 2019 (which runs until 4 October 2024)[89]. The evidence from the HE[90] unequivocally sets out that they intend to start felling in Autumn 2021 and that they have the necessary access arrangements and hardstanding to facilitate this (and it is understood that these were pointed out at the Inspector's site visit). Whilst speculative comments have been made by the appellant's planning witness as to the size of felling equipment and large vehicles that would be required, he admitted in cross-examination that he has no expertise or

[89] CD.E16-3
[90] CD.J8

experience in felling operations. His representations are contradicted by HE who do have experience in such felling operations and who state that a smaller vehicle can be used effectively and can be accommodated on the access.

6.37 The existence of the Burchett's in helping to screen the site is relied on in the EIA screening opinion (quoted at para 1.9, p.3 LVIA CDA9/01) and extensively throughout the LVIA (see LVIA paras 3.31 to 3.32 p.20, para 4.4 p.23 and para 4.7 p.24, para 6.14 p.39, para 6.17 p.40 and in conclusions at para 7.15 p.43).

6.38 The screening effect of the Burchett's is also relied on at CD.A9/10 – Plan EDP L7: Visual Appraisal (together with reliance on Ash trees on Dunsfold Road which have since been removed). Similarly many of the appellant's viewpoints rely on the Burchett's as ameliorating the effects of the development[91].

6.39 Notwithstanding all this reliance on the existence of the Burchett's, the assessment of the effects of the loss of the Burchett's is scant and inadequate (see Landscape proof, paras 8.2 to 8.6 on p. 30). For example, the effect of the development on Thatched House Farm in circumstances where the Burchett's is felled is not assessed at all (see also CD.A39 where mitigation is suggested but no assessment at all is made of the extent of effects).

6.40 The appellant relies on the tree line on the northern boundary of the well site to perform the same screening role as the Burchett's (para 8.2, proof). This is entirely unrealistic in circumstances where that tree line is in single file, all deciduous, not continuous and includes trees subject to ash die back[92].

6.41 The suggestion in this proof that the findings of the LVIA are not considered to materially change if the Burchett's were felled (para 8.6) is unreal and striking in circumstances where such very significant reliance is placed on their screening role throughout the LVIA (see above). Also, significantly, the SIR (CD.A5) states (at section 6 p.13, e15):

"In spite of being 500m south of the Surrey Hills AONB, the effects of development at Location 15 (the appeal site) would be significantly reduced by The Burchett's, a mature evergreen and deciduous woodland capable of screening the visual effects of development in view to and from the AONB."

6.42 This again goes to show the lack of objectivity and reliability of the appellant's position. The appellant relies on the Burchett's when it suits them (throughout the LVIA and in the SIR, before they knew about the imminent felling) and then abandon all reliance on them when it no longer

[91] see CD A.9/9 – EDP L6 – location of viewpoints and see EDP VP1 and VP2, (CD. A9/11), EDP VP3 and VP4 (CD A9/12), EDP VP7 – notes well site screened by woodland (the Burchett's), EDP VP8 (Hascombe Hill) note well site screened by woodland (the Burchett's) but site access still visible, EDP VP9 – notes well site screened by woodland, EDP VP10 – notes well site screened by woodland, ditto EDP VP 11, EDP VP12

[92] see CD.A21-3 Appx B – Addendum to Arboricultural Impact Assessment, e25 and e38-39 and see CD.A41-1 ref to G50, ash die back

suits them (when they have to factor in the felling as a realistic assessment of worst case scenario).

Highways

6.43 As accepted by the appellant's transport witness, the local highway network is not of an appropriate standard to accommodate the development. Dunsfold Road west of Pratts Corner is unsuitable for HGVs and the agreed condition on routeing will prevent HGVs from travelling to the site from the west. From the east, the turn into High Loxley Road is physically constrained, preventing HGVs from being able to turn in without very significant highway works and traffic management measures.

6.44 Widening works are required both at the Pratts Corner junction, along High Loxley Road and significantly south of the access on High Loxley Road (both to the west and east of the carriageway as confirmed by the appellant).

6.45 Mobile traffic signals are proposed to be configured on four arms of the Pratts Corner junction with traffic lights in the carriage way, traffic cones and multiple signage (see plan at CD.A23-3, p.28-29). These are proposed to be erected and then removed, erected and then removed, repeatedly on multiple occasions within a day or across a week as and when HGV deliveries are expected, sometimes on an hourly, part day or daily basis (this was set out in answers to the Inspector). This repeated removal and reinstatement will, in SCC's view, confuse drivers, adding to safety risks. And much of the highway signal clutter will be in the carriage way itself due to the soft, narrow verges, further restricting the ability of the highway to accommodate the traffic.

6.46 The attempts to manage the traffic safely have gone through various iterations. The road safety audit (CD.E18) raised a number of significant safety risks, with the main recommended solution involving retaining the existing priority junction and significantly widening and remodelling the bell mouth to High Loxley Road and providing more passing places along its route; in other words, a completely different arrangement[93]. The developer's responses rejecting these recommendations (recorded in summary in CD.E18) show how inherently unsuitable this location is. Not only were the recommended works of widening and remodelling likely to be physically impossible within the highway, given that it is bounded by common land, it is obvious that the developer was forced into a risky trade-off between environmental concerns and highway safety. The safety recommendations could simply not be accommodated without increasing the unacceptability of the access arrangements in environmental terms to a degree higher than could be countenanced.

6.47 The HA has apparently accepted this trade off and compromised on the recommendations of the safety audit. For example, a clear risk was identified of traffic from Dunsfold Common Road violating the red light when turning left onto Dunsfold Road. Such risks are inherent in temporary traffic signals, given that they do not have the legal force of permanent

[93] (see for example RSA recommendations in relation to B2.3, B2.5, B3.1 and B3.3; see also full RSA at CD.E18/1 and see junction plan at p.28 of CD.A23-3

traffic lights and there can be a perception (and sometimes a reality) that the lights may be at fault. However, a specific risk was identified in this location caused not least by the necessary long inter-green periods. Instead of following the RSA recommendation, the means of addressing this is going to be to move the red light so as to prevent drivers from being able to see that the road is clear (and thereby reducing their confidence in breaching the red light, but, SCC argues, making it more dangerous when they do so). This seems far from a satisfactory solution, particularly when the repeated erection, removal and reinstatement of the signals throughout the development period allows scope for signals to be placed in slightly different locations each time. The more convoluted the arrangements the more reliant one is on good, skilled driver behaviour when navigating the signals to allow for constrained HGV manoeuvres, and this reliance is not just for a one-off situation but on a repeated on/off basis during the course of the development. SCC has explained in their evidence how this reliance increases safety risks.

6.48 Another example is the identified risk of an increase of collisions on parallel unsuitable routes. The disruption and delay caused by the operation of the signals at the Pratts Corner junction gives rise to the risk that drivers will want to keep moving and will seek to avoid the junction. As identified in the RSA (B3.3 of CD.E18), this will lead to increased use of alternative unsuitable routes, thereby increasing the safety risk on those routes. Again, in relation to this risk, the recommended solution of widening the bell mouth of High Loxley Road had to be rejected and no alternative solution has been put in place.

6.49 There are other cases of issues identified by the RSA (such as the conflict problems identified in High Loxley Road – see B2.2, B2.4, B2.5, B3.1), where the traffic signal system similarly has no good solution, with tweaks to it creating as many problems as it solves (as shown by the two iterations as to traffic management on High Loxley Road, both of which have been partially abandoned) meaning that the use of banksmen will be necessary. As shown on the Outline Banksmen Method Statement (at CD.A32/5), that will itself rely on a number of steps and a chain of communication (between driver, manager, one banksman and another banksman), all prone to human error and equipment failure (mobile phones running out of battery for example). And this is not a one off occasion, it is a procedure that will need to be used up to 20 times per day (10, two way movements) for up to 56 weeks and for up to 10 times per day (5, two way movements) during other periods throughout the development duration. Whilst some HGVs may be smaller and not require such management, there is no breakdown of the HGV types and numbers in the information provided and there is no suggestion that the larger HGVs will be in the minority.

6.50 And on up to six occasions, depending on the choice of rig, the size of the HGV visiting the site will be so large that it will not be able to navigate the junction in forward gear at all. Instead it will need to pass the junction with High Loxley Road, perform a three point turn back into Dunsfold Common Road and enter High Loxley Road from the west. This will rely on intensive traffic management and cause inconvenience to road users and is another demonstration of the unsuitability of the highway network in the vicinity of the site for the development proposed.

6.51 It is not just the junction and the access from High Loxley Road that are unsuitable, the route from the A281 along Dunsfold Road has its own significant limitations. That route includes two 90 degree bends which have proved hazardous to traffic. SCC's transport evidence[94] demonstrates that the accident rate for the B2130 between Dunsfold Common Road and the A281 was between 690 and 738 accidents per billion vehicle kilometres for the years 2015 to 2019 which is double the largest UK rate since 2009 and nearly 4 times worse than the latest statistics for this type of road.

6.52 In response, the appellant's witness pointed to the improvement works undertaken by the highways authority in 2017/early 2018, namely the imposition of a lower speed limit. However, he fairly accepted that it is too early to tell whether that has had any material beneficial impact. In any event, the average collision rate for the years 2018 and 2019 (since the speed limit reduction) remains high at an average of 527 personal injury accidents per billion vehicle kilometres, which is still more than double the average accident rate 2018/19 for that type of road[95]. Whilst there is no specific guidance as to comparing accident rates in this way, it was explained how it is a useful guide to the relative safety of the stretch of road. Accident rates are expressed in this way in the COBA 2020 User Manual Part 2[96]. The type of road is also taken into account[97]. SCC's witness was not challenged on his calculations, type of road comparator nor on the traffic flows that informed his exercise.

6.53 All this matters because it is acknowledged that HGVs using this stretch of road are forced to cross the centre line of the carriage way when negotiating the two 90 degree bends. Indeed the accident involving the horse box and another vehicle self-evidently involved one vehicle crossing the centre line, as accepted by the appellant's witness.

6.54 Whilst there have not so far been any other recorded accidents involving HGVs at those bends, it is clear that the number of larger HGVs using that stretch of road has, up until now, been very low, probably due to the 'unsuitable for HGVs' sign deterring such use[98]. The total number of HGVs (class A4 and larger) using that stretch westbound was 49 and eastbound was 41 and this was in total over a seven day period. In this context, the development traffic which amounts to up to 10 two way HGV movements per day (and unrestricted in size) for up to 56 weeks (with up to 5 two way HGV movements at other times) is highly material, will significantly increase the incidences of where the centre line is crossed, and in turn will unacceptably increase highway safety risk.

6.55 In addition, there is evidence of a high incidence of accidents at Pratts Corner involving damage to the boundary wall of The Gatehouse[99]. Whilst these types of accidents are not routinely recorded, they are clearly

[94] Mr Foulkes' proof para 4.2.3 – which was not disputed on its own terms in cross examination or by Mr Windass
[95] Mr Foulkes Proof App A - 195 = half x (201 + 188).
[96] Chapters 3 to 5 at CD.J6, where, at para 3.8 – 3.9 it is explained how this takes into account both the traffic flow and the length of road being considered
[97] see chapter 4 of CD.J6 and see Appendix A to Mr Foulkes' proof
[98] see Vision Transport Planning report at CD.A31 p.42 for vehicle categories and see westbound and eastbound results over a 7 day period at p.49 and 56 respectively
[99] CD.L2/2

material to the consideration of highway safety and the physical adequacy of the junction to accommodate traffic, as accepted by the appellant's witness. Neither the appellant nor the HA have investigated or grappled with this issue and its potential implications for the safety of a junction which is key to the ability of the highway network to enable access to and from the development.

The Planning Balance

6.56 Statute requires that the application for planning permission for the proposed development be determined in accordance with the development plan unless material considerations indicate otherwise.

6.57 The appeal proposal is in conflict with a number of development plan policies. First, it is clear from the highways evidence set out above, the highway network is not of an appropriate standard for use by the traffic generated by the development and cannot be made appropriate. Further the development would have a significant impact on highway safety. It follows that Policy MC15 of the SMP is breached in two separate respects, (ii) and (iii).

6.58 Second, as is clear from the landscape evidence, there would be a significant adverse impact on the appearance, quality and character of the landscape contrary policy SMP Policy MC14(iii).

6.59 Furthermore, insufficient information has been provided to enable proper assessment of the landscape impacts, similarly contrary to Policy MC14(iii). For example, and as set out in more detail above, no winter views were provided and no proper assessment of the worst case scenario, being circumstances where the Burchett's wood was felled, was provided.

6.60 Furthermore, SCC consider that, in terms of inadequate information, the SIR (at CD.A6) is entirely inadequate to demonstrate that the site has been "*selected to minimise adverse impacts on the environment*". The appellant's planning witness accepted that this reference to the environment in Policy MC12 includes landscape and highways related matters.

6.61 The requirement for a site to be selected to minimise impacts on those matters necessarily includes a comparative exercise between this and other sites in order to show that this is the least-worst viable site in landscape and highways terms. If it is not demonstrated that there are no available, viable sites with fewer or lesser adverse impacts on the environment then there is inadequate information to demonstrate that the site has been selected in a way that meets the policy test in Policy MC12.

6.62 The SIR is woefully inadequate to demonstrate how the site has been selected and to demonstrate in any respect that it is the least-worst in environmental terms. It simply does not show whether or how adverse impacts on the environment have been minimised by site selection. This is for a number of reasons:

6.63 First, the report does not follow its own parameters in relation to technical constraints. It states (at p.8) that directional drilling enables a search area

to extend up to 1km beyond the footprint of the below ground gas discovery and it appears to indicate that the site search area has been defined accordingly. But it is then clear from figure 2 that that is not the case as the red-lined site search area has only been extended 500m beyond the below ground gas footprint. It then appears that the search area has not been followed in any event as some sites are well beyond it (see sites 18 to 23 in Table 3), even though it has always apparently been known that they would not be technically viable. Much was made of technical constraints in the appellant's evidence but there is no explanation anywhere as to how those constraints have affected the site selection process, nor as to what sites have been ruled out on that basis and why.

6.64 Second, the 'sieving process' is entirely opaque. Whilst a list of 'direct constraints' and 'indirect constraints' has been set out and described (at pages 10–11 of the SIR), there is no indication whatsoever as to how these constraints have been considered in relation to the sites, nor what degree of constraint(s) or types of constraint(s) has led to rejection. In the summary at para 4.3, it is stated that there are '*no locations free from designation or constraint with some locations hosting a mix'* and that '*the selection of any site would therefore engage at least one planning policy or environmental designation constraint giving rise to a degree of conflict'*.

6.65 How that conflict has been resolved in reaching the shortlist of 23 sites is entirely unclear. Professional judgement will have been exercised but SCC question against what parameters and criteria. There is no clarity as to what judgements have been made, nor as to what trade-offs have been made between the degrees of different constraints at the various sites. There is no list of those excluded from the list of 23 and no explanation as to the threshold for inclusion in that list. It is not possible to ascertain from the report what level and type of constraints applied to the excluded sites, nor is it possible to interrogate the judgements that have been applied.

6.66 The appeal site certainly has more than '*at least one planning policy or environmental designation constraint*', it is in an AGLV, in the setting of an AONB, close to residential dwellings, close to a bridleway, remote from highway access, to name but a few, and it is not clear how it made the shortlist.

6.67 Further, once on the shortlist of 23 sites, there is no objective comparison set out between them. Whilst Table 3 purports to set out the basis of 'assessment of development potential' by setting out the direct and indirect constraints for each site, key constraints have been left out in relation to some sites (at least in relation to the appeal site – site 15) and yet have been included in relation to others. For example, in relation to the appeal site there is no mention of the appeal site's proximity to residential dwellings (i.e within 350m of a residential dwelling – defined as a constraint at p.11 SIR). There is no mention of the appeal site sharing a field with a bridleway and being in close proximity to other recreational routes (identified as a constraint at p.10). The assessment of other shortlisted sites includes these constraints. The report provides no consistency of comparison nor any assurance as to how the sites have been ranked to minimise environmental effects and enables no scrutiny of the method adopted.

6.68 It has been confirmed that no landscape or highways expertise was employed in the site selection process. No expert landscape or highway judgements were made in either the site sieving exercise or the comparison of shortlisted sites. The first involvement of any such expertise was when a highways expert visited with officers from the Council when the site had already been selected to be progressed.

6.69 Finally, in relation to this, we have the evidence of Mr Sanderson which throws a raft of technical constraints into the mix, none of which are set out in the SIR nor appear to relate to the process set out in that Report. Indeed it is again entirely opaque how those constraints have been applied to the various sites either at the 'sieving' stage or at the post-shortlist stage in the site selection process.

6.70 In sum, the SIR is inadequate and far from transparent. There is simply no way of knowing whether or not, or how, the site has been selected to minimise adverse environmental effects.

6.71 Where a proposal is in breach of development plan policies, will cause planning harms (as SCC says has been demonstrated in the landscape and highways evidence), and is sought to be justified by need, the availability of alternative sites is very likely to be an important material planning consideration (see *R (oao Forge Field Society) v. Sevenoaks DC* ([2015] JPL 22 (at para 84) and *Trust House Forte Ltd v. Secretary of State* (1986) 53 P & CR 293). In a case such as this, where Policy MC12 mandates a site to be selected in a particular manner, necessarily involving comparison with alternatives, proper consideration of those alternatives is plainly necessary, see *Derbyshire Dales DC v. SSCLG* [2010] (1 P & CR 19) at para 37, and note that there was no policy in that case requiring it to be demonstrated that the site had been selected to minimise environmental effects.

6.72 Finally on the development plan, on the basis of the landscape evidence set out above, there is significant conflict with Policy RE3 of the WLP, which states that the setting of the AONB will be protected where development outside its boundaries harms public views from or into the AONB and which makes clear that the AGLV is to be retained for its own sake and as a buffer to the AONB.

6.73 As to whether there are other material considerations to justify allowing the appeal, notwithstanding the conflicts with the development plan, a key material consideration is obviously national policy in the form of the Framework and the PPG.

6.74 So far as the Framework is concerned, there is a breach of paragraph 111 due to the unacceptable impact on highway safety. There is additionally a breach of paragraph 174(a) and (b) due to the landscape impacts (as discussed above).

6.75 Contrary to para 211(e) of the Framework, the application does not provide for restoration and aftercare at the earliest opportunity. Contingency on contingency is provided in the programme, including significant time for procurement delays, preparation of tenders, final tender evaluation, contract preparation and regulatory processes all of which can be

undertaken pre-commencement and which do not need to prolong the harmful landscape and highways effects (as set out in cross examination of the appellant's technical witness). The proposed 'retention' period serves no useful purpose. It does not allow time for a further planning application to allow for extraction/production (a process which would require significantly more years, but it does unacceptably lengthen the harmful landscape and highway effects of this application. The three year period contrasts sharply with the 'typical' period of 12 to 25 weeks for exploration[100], even when adding in time for testing (29 weeks), and is not justified.

6.76 As to the site's location in the setting of the AONB, the appellant's planning witness agreed that Framework, para 176, recognises that insensitive development within the setting of the AONB is capable of causing adverse impacts on the AONB itself. Further, he accepted that the effect of para 176 is that great weight is required to be accorded to any such adverse impacts in accordance with the first part of para 176. Plainly (and again, as shown in the landscape evidence) this proposal does constitute insensitive development in the setting of the AONB and its adverse impacts on the AONB (particularly in terms of view to and from the AONB) should be accorded great weight in the planning balance.

6.77 On the other side of the planning balance, the appellant seeks to accord 'significant weight' to numerous aspects of Government statements relating to supplying the UK with gas, maintaining security of supply, reducing gas imports, adapting to climate change and the economic benefits of extraction and production. It was fairly accepted that that weight should be tempered to the extent it relies on non-planning policy. It was also accepted that some of the claimed benefits relating to carbon emission reduction rely on hydrogen production which is uncertain and speculative.

6.78 However, the appellant's witness valiantly maintained that all these so-called benefits should continue to be accorded significant weight notwithstanding that they are not benefits of the proposed development at all, but are instead only potential benefits of some possible, speculative future application.

6.79 The PPG is clear on this[101] and emphasises that applications for the exploratory phase should be considered on their own merits and "*should not take account of hypothetical future activities for which consent has not yet been sought*." All the claimed benefits of extraction to which the appellant accords significant weight, fall within the category of 'hypothetical future activities' which cannot be taken into account.

6.80 The witness nevertheless persisted and pursued the 'have cake and eat it' line whereby claimed benefits of future potential production are accorded significant weight but in circumstances where the adverse environmental effects of that potential production are not taken into account at all. Such a course is perverse, particularly in circumstances where the temporary, short-term nature of the exploratory proposed development has been

[100] PPG – ID: 27-098-20140306
[101] PPG - ID 27-120-20140306

repeatedly relied upon by the appellant and where extraction/production would necessarily be much longer term (as accepted by the UKOG witness). The repeated attribution of 'significant weight' to the possible benefits of a different proposal undermines this witness' objectivity and the reliability of his planning balance.

6.81 For similar reasons, most of the economic benefits set out by UKOG are irrelevant to this appeal as they are potential future benefits of a future application. Their witness accepted that this proposal will not itself produce any income and will instead be a cost. Further, whilst the proposal represents an investment (in the region of £6M to £7M), he accepted that this would primarily be in specialist equipment and expertise which is only available on a national or international basis. Any ancillary local investment is entirely unquantified and unparticularised.

6.82 In conclusion on the planning balance, the proposed development is contrary to the development plan and there are no material considerations to justify allowing the appeal as a departure from the plan. The benefits cited by the appellant are largely speculative and illusory and are not to be taken into account. By according them significant weight, the appellant's assessment of the planning balance is fatally undermined.

6.83 For all these reasons, SCC respectfully submits that the appeal should be dismissed.

The Case for Waverly District Council and the Parish Council

7.1 The full submission made by WBC can be found at CD.K9, the material points are as follows:

7.2 Whilst the application is for a temporary period of three years, important principles will be set by the grant of permission in relation to the scale and type of development proposed in the planning application. Any future application for oil and gas extraction at the site will rely heavily on the fact that the principle of site access, impact on the AONB and valued countryside, as well as impact on local residents and businesses have been considered acceptable.

7.3 As a result, local residents' lives and future of local businesses will be greatly impacted.

The Evidence

7.4 Insofar as there is a tension between the primary evidence on the need for the gas exploration activity, creation of a safe vehicle access, impacts on landscape, and the impact on the amenity of residents and businesses given by the respective witnesses, the evidence provided on behalf of SCC, as the determining Minerals Authority, and WBC and the Parish Council should be preferred for the following reasons:

Highways Safety

7.5 The access to the site is off the B2130 Dunsfold Road at a very narrow and sharp bend onto the single lane, unclassified High Loxley Road. The appellant claims that the vehicles accessing the site are largely confined to the higher classification road network. This will only be the case if adequate management arrangements are put in place. However, it does not detract from the fact that Dunsfold Road and High Loxley Lane are not suitable or adequate to accommodate large heavy goods vehicles (HGV's) and abnormal indivisible load vehicles (AILV).

7.6 As stated by SCC's Highways Witness, the additional heavy goods vehicles would be liable to add unacceptably to the poor accident record on the B2130. The B2130 Dunsfold Road comprises two 90-degree bends, which force heavy goods vehicles to cross the centreline of the road; this would in WBC's view, compromise highways safety to an unacceptable degree.

7.7 An alternative assessment for vehicles accessing the site from the west, in the event that the B2130 Dunsfold Road from the A281 Horsham Road is closed, has not been undertaken. As a result, the transport assessment is considered to be incomplete.

7.8 The appellant's technical assessments and appeal evidence claims that sufficient visibility splays can be achieved at the proposed access junction onto High Loxley Road, and at the High Loxley Road/Dunsfold Road junction. Swept path analysis indicates the need for localised carriageway widening to enable all construction vehicles, including HGVs and AILVs to safely navigate the route and turn into the unclassified High Loxley Road,

that is between 2.5-3.1m, but it will need to accommodate vehicles that are 3.5m wide, as referenced in plan LTP/3134/03/04.01.C and 02.B.

7.9 The area required for the carriageway widening is on grass verge areas. The grass verge area was classified as 'common land' and remains so on SCC mapping system, the appellant provided a note, dated 4 August 2021[102], to confirm that 3ft (0.91m) of the verge is now highways-maintained land. WBC remains of the view that even if highway-maintained, the verges should be retained and that SCC was to do so in the public interest.

7.10 The proposed Access Layout Plan at Pratts Corner[103], confirms the extent of land required to achieve access from Dunsfold Road into High Loxley Road. As the access is extremely restricted, significant intrusion onto the grass verge areas is required. WBC remains concerned that the scheme as drawn encroaches onto Common Land and no measures of provision to protect the grass verges has been made. The scheme as drawn will result in both the degradation of the highways verges and a negative impact on highways safety at this dangerous junction.

7.11 As stated by SCC's transport witness, the provision of the temporary traffic signals at Pratts Corner could pose issues for the safe operation of the local network; the proposal was described as extraordinary and unworkable. There is conflict with SMP Policy MC15 (ii) because the road is not of a sufficient highway standard to accommodate the development traffic. To put this in context, the Carriageway Widening Preliminary Design LTP/3134/03/03.01.C identifies 56 pieces of equipment that have to be placed on and off the road to allow the larger vehicles to turn into and out of High Loxley Lane. No time assessment of this operation was provided, but concern must remain at the nature and scale of the operation and the implications if it fails due to technical and human error.

7.12 There is conflict with SMP Policy MC15 (iii), because the temporary traffic management traffic signals would give rise to lengthy cycle times, as well as set-up times, meaning that there could be non-compliance by other road users, which could cause extra unnecessary accidents and delays.

7.13 Last weekend, 8 August a car careered off the road into the undergrowth at Pratts Corner, this only helps to emphasise just how dangerous this corner junction is and how the arrangement proposed is simply unworkable in practice. A car also came off the road at one of the 90-degree bends on Dunsfold Road on 12 August. A more obvious expression of how this stretch of road is presently considered dangerous and unsuited to HGV and AILV vehicles is difficult to imagine.

Landscape

7.14 Both SCC and WBC's landscape witnesses dealt thoroughly with the policy framework setting out the nature and constraints of the site, within the local, and district landscape. They set out their conclusions on issues of

[102] CD.J7
[103] CD.A3/14 ZG-UKOG-L1-PA-14

landscape harm and visual impact respectively. It is WBC's view, that they did not seek to exaggerate their case and grappled with elements where their judgment simply differed from that of the appellant's landscape witness.

7.15 The appellant's witness was carefully selective in his treatment of the applicable guidance, and in a number of cases simply wrong in his approach to it. The errors in his approach were ones not only of understanding and applying policy but also related to matters of substantive analysis of the impacts of the proposed scheme.

7.16 In relation to the Framework, the appellant was not accurate in interpretation of the paragraph 174 assessment. Both SCC and WBC concluded that, using the guidance contained in GLVIA3 Box 5.1 to help in the identification of 'valued landscapes', the site must be concluded as such. There were no material factors that could possibly exclude the application site from being considered as a 'valued landscape' within the AGLV and that the paragraph 174 assessment confirms that the scheme would result in harm to this 'valued landscape'.

7.17 The recently updated Framework acknowledges the important relationship that open countryside has in the setting of the AONB, Para 176 states "*The scale of development in all National Parks and AONB's should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas".* The strong and obvious relationship between the appeal site and the adjoining Surrey Hills AONB was established by SCC and WBC in their evidence and, given the appeal site's complementary rural character within the area identified as AGLV within the WLP, it makes a significant contribution to the special qualities of the AONB that define its character.

7.18 These assessments conclude that substantial adverse landscape impact caused by the proposed development will be noticed from within the AONB and surrounding landscape, within the AGLV, during daylight and night-time hours over the three-year period of the site's operation. It is difficult to comprehend how the proposed operations listed below cannot have an obvious and harmful impact on the AONB, AGLV and the 'valued landscape':

- 37m and 35m drilling rigs, complete with lighting,
- the raised well compound complete with 4m high fencing that measures 126m x 93m (equivalent to 2 football pitches),
- 25m high coil tubing unit,
- 9m high mobile lighting towers,
- up to 12m high shrouded flares,
- temporary storage tanks, portable cabins and amenity facilities up to 3m high,
- removal of 55-60m of exiting hedge on High Loxley Road to achieve access to the application site – with accompanying hardstanding area

with access gates and portacabin,

- temporary access arrangements at Pratts Corner, which will be adjacent to the AONB and will introduce an urbanising element to the rural character of the landscape.

7.19 WBC's landscape witness points in particular to the conflict with three special landscape qualities, defined as (1) wide, unspoilt and expansive panoramic views; (2) areas of high tranquillity, natural nightscapes; and (3) a variety in the setting to the AONB. The identification of the AONB's setting as a special quality in and of itself is further explained in the AONB Management Plan, which sets out that the AONB's rural hinterland of undeveloped countryside is particularly significant because part of its natural beauty derives from wide panoramic views, and as such the deeply rural character of the land adjoining the AONB forms an "essential setting" to the AONB. WBC's witness confirmed that the tranquillity consideration is "relative", absolute tranquillity is not a requirement. The appeal development would not conserve and enhance the tranquillity of the AONB or its hinterland, as a matter of common sense, it must therefore harm that special quality.

7.20 SCC and WBC have identified a number of additional locations, including some views from the AONB, where the visual effects of the development would be significantly adverse and contrary to the appellant's assessment findings. Indeed, public footpath FP277 was identified as not having been identified on views; this path connects Hascombe Hill with Dunsfold and Cranleigh and is considered to have specific 'rarity' value.

7.21 The tree felling licence granted at the Burchett's wood was not taken into account in the original assessments. This would further expose the proposed exploration site to the wider countryside and AONB, resulting in harm. The Hascombe Estate confirmed the timescale and programme for felling will commence in the Autumn, access will be provided from Thatched House Farm.

7.22 Importantly, both SCC and WBC considered the impact of the development once mitigation was established. They both concluded that when a logical methodology is followed, the assessed landscape effects will remain materially adverse after mitigation measures have been introduced. The degree of residual harm would remain unacceptable, contrary to the appellant's assessment. The proposed mitigation measures cannot mitigate the potential landscape effects of the proposed development due to its height, footprint and the 24 hours lighting required. During the use of the site for drilling operations the magnitude of change may fluctuate but will never fall below medium. On a site defined as having a sensitivity rating to change as high, the outcome would be moderate adverse, resulting in a material landscape effect, not a minor-material effect as suggested by the appellant.

7.23 The temporal impacts including the site retention were discussed at length by all of the landscape witnesses. Both SCC and WBC were of the opinion that, even if the mitigation landscape planting, described in Phase 4, were to be successful, the period from the commenced of development until the

mitigation of landscape harm is at an acceptable level would be 10+ years. As a result, the impacts of the operation are medium to long-term and not short-term as suggested.

The Planning Balance

7.24 The harm demonstrated by the highways and landscape evidence is entitled to substantial weight. The harm of the kind described in the evidence is credible and fully justified, it substantiates the stated reasons for refusal alone. However, as presented at the Inquiry, additional planning reasons should also be considered as part of the wider Planning Balance assessment. These are summarised below.

7.25 The proposed development fails to accord with SMP Policies MC15 and MC14(iii). In addition, WBC consider that the proposals are contrary to Policies SP1, SP2, ST1, AHN4, EE2, RE1, RE3, NE1, CC1, CC3, SS7 and SS7A of the WLP, and Policies D1, D2, D5, C6, H8, IC2, IC5, RD8 and M17 of LP 2002.

Needs Case

7.26 The appellant, in their evidence, reaffirmed that the 'need' for the well was to ultimately supply gas, and possibly oil, from an indigenous source to meet UK demand that was ultimately more sustainable and in the interests of climate change than purchasing the product from alternative sources. The Weald Action Group raised a number of key areas of concern, that are summarised below:

- National Energy and Planning Policy is evolving to ensure a reduction in carbon emissions: The 2020 Energy White Paper (EWP) has climate change at its core and the move away from reliance on fossil fuels. Commitment is targeted at the offshore sector;
- The 2020 Carbon Budget Report refers to the demand for gas falling by 75% by 2050;
- Onshore gas has a negligible impact on maintaining secure gas supplies at 0.5%;
- Onshore gas production will have a negative impact on greenhouse gas emissions;
- The Fracking Moratorium in 2019 scaled back on-shore production and in some respects confirms drilling on land as being unsuitable in the UK;
- Rise in renewables, reduced oil and gas demand by 20%; and
- The updated Framework 2021 has sustainable development as a core principle, para 7, and now includes reference to the UN17 Global Goals for Sustainable Development to 2030 – with a shift and greater focus on tackling climate change.

7.27 On the 10 August 2021, a sober assessment of our planet's future was delivered by the UN's Intergovernmental Panel on Climate Change (IPCC),

a group of scientists whose findings are endorsed by the world's governments. The landmark study warns of increasingly extreme heatwaves, droughts and flooding, and a key temperature limit being broken in just over a decade. The report "is a code red for humanity", says the UN chief. Their report is the first major review of the science of climate change since 2013.

7.28 Scientists say a catastrophe can be avoided if the world acts fast. There is hope that deep cuts in emissions of greenhouse gases could stabilise rising temperatures. The scientists are more hopeful that if we can cut global emissions in half by 2030 and reach net zero by the middle of this century, we can halt and possibly reverse the rise in temperatures. Echoing the scientists' findings, UN Secretary General António Guterres said: "*If we combine forces now, we can avert climate catastrophe. But, as today's report makes clear, there is no time for delay and no room for excuses. I count on government leaders and all stakeholders to ensure COP26 is a success*."

7.29 One of the key findings in the IPCC report is that emissions of methane have made a huge contribution to current warming. The study suggested that 30-50% of the current rise in temperatures is down to this powerful, but short-lived gas. Major sources of methane include agriculture, and leaks from oil and gas production and landfills. A further reduction in the exploration and mining of gas and oil has been made possible as renewable energy, biofuel and hydrogen technologies and outputs have developed and output increased significantly in the past ten years.

7.30 WBC agree with and support the stance of the Weald Action Group. Climate Emergencies have been declared by both SCC and WBC, the lag and inconsistency in the policy approach of the SMP and WLP will be addressed as part of plan reviews in line with the Framework guidance. The need for the operation in this site adjacent to the Surrey Hills AONB and within the AGLV is not justified, in fact it is contrary, WBC consider, to the very core sustainability principles of the newly published Framework 2021.

7.31 The alternative site selection is not considered by WBC to be robust, the absolute need to utilise this site has not been justified. In cross examination, the UKOG witness confirmed that the application site location was 'less than optimal'. The expert witnesses confirmed that no specialist landscape and highways input into the original site selection process was provided. It was suggested that the site selection was 'opportunistic' in nature and based on which landowner would be open to an agreement. UKOG could neither confirm nor deny this suggestion.

Local Economy

7.32 High Billinghurst Farm (a wedding venue) and Thatched House Farm (Cancer Charity and Brewery) provided evidence in relation to the potential negative impacts of the well and its operation on the established and valued local businesses that directly adjoin the application site. The drilling operation and lorry movements would be directly visible from both properties that operate on the unique selling point of their peaceful and unspoilt country location looking across open fields and up to the AONB.

The proposed operation will result in potential loss of several million pounds per annum to the local economy.

7.33 The appellant has sought to justify the drilling operation as a farm diversification activity that would be supported by Policy RD8 (LP 2002). The nature of the operation would not be supported by the policy and the need for it to support the existing farm operation has not been fully justified.

7.34 The proposal would result in an adverse impact on the local businesses and economy in conflict with Policy MC14 of the SMP, Policies EE2, CC1 and RE3 of the WLP, Policies D1, D2, IC2, IC5 of the LP 2002, and Para 81-85 of revised Framework 2021.

Impact on Amenity

7.35 WBC accept that, if there is strict compliance with the suggested planning conditions, the negative impacts arising from noise, air and water pollution can be managed to acceptable levels. However, harm will nonetheless arise due to the industrial nature of the proposed exploration and its close proximity to sensitive residential and business receptors.

7.36 These properties presently enjoy a peaceful country location where both daytime and nigh time noise and air pollution levels are very low. The operation of the drill, generators, flares and vehicle movements will demonstrably alter this in a negative way. These impacts should be considered as part of the overall planning balance assessment.

Housing delivery

7.37 The proposed exploration mining operations will encroach onto the Dunsfold Aerodrome site, as confirmed by the appellant's witness, and as indicated in the plans[104]. UKOG's drilling operation will occur directly beneath Dunsfold Garden Village. In fact, it is this location that is the desired area for gas and oil extraction.

7.38 The proposed exploration operations have the potential to impact on the delivery and viability of the strategically important Dunsfold Garden Village residential development that has been granted planning permission. Environmental searches conducted on behalf of prospective purchasers of property in the area by their legal advisors are already being alerted to the prospect of onshore oil and gas exploration and production. The perception of operations associated with gas and oil extraction under the site may be a deterrent to some purchasers, even if fracking is not part of the extraction process.

Dunsfold Travellers Site

7.39 In proposed exploration mining operations will encroach onto the Dunsfold travellers site. As is the case in Dunsfold Village this activity has the

[104] CD.A3/2 ZG-UKOG-L1-PA-02 - Hydrocarbon Exploration Testing and Appraisal

potential to impact on the established living conditions and general amenity at the travellers' site.

Site Bond

7.40 WBC have requested a bond is provided to ensure the highway and indeed the site is returned to its present state. During EiC, the appellant's company witness confirmed the less than robust financial standing of UKOG and NM confirmed that action had been taken to enforce site restoration at the Markwells Wood site in West Sussex. In view of this uncertainty the Inspector is requested to consider the need for a bond at the site to ensure the highway and landscape is restored to a satisfactory state within the timescales agreed in the event that the Appeal is allowed.

The Benefits of the Scheme

7.41 The key benefit of the proposed operation output as suggested by the appellant is the provision of gas and oil resources to meet a national need. Alternatives to meeting the nation's energy needs in a more sustainable form are already available. The production and use of fossil fuels will harm the environment; this is now an undisputed fact. Any appraisal of the national benefit of these resources must be balanced against the cost to wider society and the harm to the fragile environment we live in – in accordance with Framework 2021.

7.42 The appellant in their PoE and EiC claims that the proposed oil well development will result in up to £6-7 million investment on the site with 'significant expenditure retained in the local or Surrey based economy'. The benefits of the investment on a national level will be minor and the positive impact on the local Surrey and South-East area limited.

7.43 SS and NM in their EiC confirmed that the stated benefits in kind arising from the exploration operation were not based on any confirmed monitoring of local impacts. The claim should, therefore, be excluded from any assessment.

Conclusion

7.44 The inspector is respectfully invited to dismiss the appeal.

The Case for other persons appearing at the Inquiry

Statement by Kirsty Clough, Weald Action Group, CD.K4 with attachments.

8.1 I wish to challenge the assertions made by appellant's planning witness in his proof of evidence on behalf of UKOG that UK National Energy Policy establishes a strategic need for further onshore exploration of conventional hydrocarbons.

8.2 The 2020 Energy White paper: Powering our Net Zero Future, published in December 2020, presents the latest government thinking on how energy policy will develop in the coming years. Oil and gas is covered in chapter 6. This chapter focuses almost exclusively on the large offshore sector and the objective of ensuring the UK Continental Shelf is a net zero emissions basin by 2050. The onshore sector is barely referred to. It is mentioned once in relation to its size relative to the offshore sector (on page 134), and once regarding the impacts of Covid-19 on the industry (on page 135).

8.3 In May this year, my local MP Jeremy Hunt was asked by another of his constituents to ask the Department of Business, Energy and Industrial Strategy to identify Government statements or policy documents setting out what the Government would regard as its current energy policy relating to UK oil and gas.

8.4 The response that was passed onto us from The Rt Hon Anne-Marie Trevelyan MP dated 21 May referred to CD.K4/2: the written Ministerial Statement on Energy Policy from 24 March by the Rt Hon Kwasi Kwarteng MP, Secretary of State for Business, Energy and Industrial Strategy, regarding the North Sea Transition Deal and the Review of Future Licensing of Offshore Oil and Gas; and the press release and policy paper relating to the North Sea transition deal[105].

8.5 Neither the Ministerial Statement, press release or policy paper relate to the onshore oil and gas sector. Where the onshore sector is briefly mentioned in the policy paper this is largely in relation to onshore facilities associated with offshore production.

8.6 In short, there is no mention of the strategic importance or need for further onshore conventional oil and gas exploration in current Government energy policy. Indeed, previous government support for onshore fossil fuel exploration stemmed from the possibility of exploiting the potentially extensive unconventional onshore fossil fuel resource. This is evidenced in the final Government Annual Energy Statement issued in 2014, the 2012 Gas Generation Strategy and the 2012 Energy Security Strategy all of which site the potential strategic importance of unconventional shale gas. The extraction of these resources has now been ruled out, at least in the short-term, by the 2019 moratorium on hydraulic fracturing. This moratorium appears to have marked the end of the UK Governments strategic interest in the onshore oil and gas sector.

[105] CD.K4/1

8.7 In conclusion there is no current Government Energy policy that I am aware of that can be used to back up a view that there is a strategic need for further exploitation of conventional onshore fossil fuel reserves.

Statement by Darcey Finch, CD.K5.

8.8 The previous speakers have commented on important issues regarding this appeal and so I feel that the most crucial points have been mentioned. However I would like to speak briefly on behalf of the younger generation. The past month we've seen the results of the changes in the climate. Flooding, heatwaves, fires and droughts.

8.9 We must take the needs of the Planet seriously. Exploration for oil and gas, whether found or not, is the beginnings to a destructive cycle that we must break out of. The UK are leading the way in becoming carbon neutral and however it's dressed up, digging up more fossil fuels does not reflect the commitments that have been made for our futures.

8.10 We're 100 days until world leaders gather at the COP26 climate summit in Glasgow, it has never been more president than now to begin focusing on reducing emissions, sustaining the UK's biodiversity and protecting our environment. It is just the wrong time in history to start searching for more fossil fuels.

8.11 In just 50 years, humans have wiped out 68% of global wildlife populations. A 2019 a report revealed that 41% of UK species studied have declined. This threatens our own life on Earth. Respecting and protecting our planet isn't something we need to do for the beauty or the moral responsibility from one species to another, although this is the very thing that Surrey prides itself on, but it's the toolbox to the function of our society. It is the fundamental piece of the puzzle to make clean water, clean air, food production and more.

8.12 Everything we do has an impact, and we now have to start balancing the impacts and decide which ones are having the worst implications. Unquestionably it is fossil fuels by a very long way.

8.13 I hope I, and the younger generation, can hope to see a commitment to an earth-minded future.

Statement by Tom Gordon CD.K6 and CD.J3 and written representations by Terence O'Rourke Planning consultant

8.14 During the Surrey County Council committee meeting which voted to refuse this application, a great deal of time was spent discussing the commercial impact on local businesses which was a significant concern to members. Whilst members were advised by officers that economic impact had been considered, they were advised that this was not something that there were grounds for refusal on. I strongly disagree with this view and consider that this issue is highly relevant as detailed in my Inquiry representation.

8.15 However the significant negative impact on local businesses has not been given due consideration from the very start. In UKOGs SIR it states that site visits took place to identify sites, and yet there is no acknowledgement

in the report of the presence of our wedding venue, which is highly sensitive to impacts arising in close proximity to it. This was either not taken into account at all, or not adequately taken into account. In contrast, however, site 3 at Wildwood was discounted due to its proximity to the Wildwood golf course. The very first time UKOG visited our property, was on 30 January 2019, when they came to announce that they had already selected the site.

8.16 The wider perspective from our home and wedding venue offers spectacular views across beautiful, rural countryside, with undulating pastures and woodland against the backdrop of the Surrey Hills, a designated AONB. The exploratory well site will sit in a field, directly in the centre of this landscape, in a designated AGLV. In the appellant's planning proof of evidence (at paragraph 4.31) reference is made to UKOGs other exploration site at Broadford Bridge, and the production site at Horse Hill, as being located acceptably within a similar rural environment to Loxley Well.

8.17 The appeal site cannot be compared to those sites, firstly due to the presence of our wedding venue business and other local businesses that would be adversely affected by the proposed development. Secondly, neither is sited in an AGLV or in close proximity to an AONB. Surely these designations must count for something and have been made in order to protect the land from unnecessary and damaging industrialisation such as this?

8.18 The timing of this hearing has meant that your site visit has coincided with the height of summer, when all the trees and hedgerows are in full bloom, offering much greater visual protection to the identified site. I therefore would ask that you to consider how different this landscape will be during the winter and spring time, when there are no leaves or light cover on the trees, and it is extremely likely that Burchett's Wood will have been felled, leaving the proposed site fully exposed to and from the AONB, like a gaping wound on the landscape.

8.19 As you have not had the opportunity to visit my wedding venue I would like to provide you with some background and context. The approach to our property and wedding venue, down High Loxley Road, is nothing short of exquisite and possibly one of the most important aspects of our venue that sets the scene and fills clients with excitement and anticipation. As you drive along it's like stepping back in time. A single track rural lane, meandering through pastures and rolling countryside edged with hedgerows, trees, and wild flowers - no white lines, no signposts, no lights. A quintessential English country lane.

8.20 It provides the very tranquil approach that leads to High Billinghurst Farm, the home, where my family and I have invested our time, our energy and our savings in developing a very special wedding venue business which has gained a unique and outstanding reputation.

8.21 Our wonderful approach and idyllic rural location, with far reaching views towards Hascombe Hill in the AONB, are key features that set us apart from many others and they create the very first impression of our venue to prospective couples. First impressions are extremely important in this

business as they set the tone for the whole event so please do not underestimate the importance of this aspect.

8.22 There is no doubt that considerably widening High Loxley Road, enough to accommodate two passing HGVs, the removal and replacement of hedgerows and trees with over 50 metres of security fencing and gates, traffic controls, signage and artificial lighting, will completely destroy the rural character and tranquillity of our approach, creating an intensely negative first and last impression for any client that comes to view our venue. Particularly as they will often be attending during the week, when the proposed exploratory drilling site will be fully operational.

8.23 This impression will further be exacerbated by the undoubtable presence of protestors and police, as evidenced at other sites such as Horse Hill, and for anyone considering to invest as much as £180,000 on creating the perfect wedding day, this initial impression would, without question, rule us out as a potential location, even before they have actually arrived at the venue itself.

8.24 The damage to the lane with be nothing less than catastrophic, and any future reinstatement of hedgerows and trees would take many years to establish. Another entrance was previously applied for a little further way along the B2130, directly into the field which leads to the proposed site. Even this would have been more suitable than the current location, which is located on a blind bend, with 4 approaches, and a steep, sharp incline into a single track narrow lane frequented by walkers and horse riders.

8.25 The drilling site perimeter is only 328 metres from my home and less than 100 metres from our boundary. It will sit directly between us and our views towards the Surrey Hills which form the backdrop for many of our outdoor wedding ceremonies and blessings. The ability to hold outdoor ceremonies is a great attraction of our venue, and now increasingly so, following the long awaited amendment to the regulations which came into effect on the 1 July, legalising outdoor civil wedding and partnership ceremonies.

8.26 As the Lord Chancellor Robert Buckland QC MP said: A couple's wedding day is one of the most special times in their lives and this change will allow them to celebrate it the way that they want… …Which I am sure does not include being overshadowed by an industrial exploratory oil and gas site running 24 hours a day, 7 days a week, emitting constant noise and light, with the risk of foul-smelling and possibly toxic gases being released.

8.27 Public sentiment has now radically changed with regards to the plight of our planet and the negative effects of pollution, particularly with regards to fossil fuels and an oil field and our wedding venue are simply not compatible. It is the younger generation that are leading this revolution as they are the ones who will suffer the most in years to come. They are our clients.

8.28 As shown in SCC's proof of evidence, the compound together with the 37 metre high oil rig and associated equipment will be in direct line of sight and earshot of our home and business. Our rural setting will be ruined, which will have an immediate and devastating impact on our business, our

reputation and our livelihood, together with many of the other business that all help to support and provide services for the weddings that we hold here, and that cater to the needs of the attending guests.

8.29 Our seated internal dining capacity is 167 guests and we host larger numbers outside under marquees. Our last outdoor wedding (before the pandemic) was for 250 guests and included a ceremony on the main lawn, which faces directly towards the proposed site (with the Surrey Hills AONB in the background). We are now licensed to hold up to 75 events a year, many of which will take place on a Friday. In fact about 40% of our weddings scheduled to take place this year will do so during the week when the proposed site would be fully operational.

8.30 By next year we hope to reach our 75 weddings capacity, which would attract to this part of Surrey as many as 11,000 visiting guests from all over the country and indeed from all over world. And so quite apart from the income that is generated by the wedding preparations themselves, huge revenue is generated for the local businesses that service the needs of these visiting guests, many of whom will often stay for several days if not weeks, particularly if they have travelled from abroad.

8.31 Now that restrictions have at last been lifted and weddings can proceed as normal I would expect that we could conservatively generate in the region of £4m every year for the many businesses and suppliers that all help to support our events, the vast majority of which are based in Surrey including: Caterers, local food producers, serving staff (typically about 20 per event), florists, stylists, dressmakers, marquee companies, musicians, event planners, technicians, celebrants, photographers, hotels, B&Bs, drinks suppliers including our neighbour at The Crafty Brewing Company, mobile bars, pubs, taxis and not least of all the local parish churches where ceremonies often take place bringing them essential income and outreach.

8.32 Like many others, our business has been very badly affected by the restrictions imposed over lockdown which have caused so much uncertainty. In 2020 we had to postpone over 40 weddings, but thankfully, now restrictions have been lifted, confidence has grown and our weddings have at last begun again in earnest.

8.33 Every day we are receiving new enquiries and carrying out viewings with couples eager to celebrate their wedding day here. We now have the opportunity for our business to recover and flourish, along with all our other local suppliers. Permitting this application will not only severely impact our business, but many, many others locally.

8.34 Our representations submitted in relation to this planning application and in particular, our further representation submitted to this Inquiry, set out in detail our concerns, both related to our home and business and wider concerns, and I would urge you to please consider these carefully.

8.35 Our further representation, through Terence O'Rourke Consultants, in particular, clearly identifies the planning policies with which this proposal is in conflict, and the reasons why any benefits, which we consider to be

limited, do not outweigh the significant harm that will arise to us, the wider community and the environment.

8.36 I would therefore urge you to visit our venue as part of your site visit in August and consider this when making your decision, and refuse this speculative application in search of more fossil fuels, because the adverse impacts clearly outweigh any possible benefit.

8.37 In a further statement, concerned at a response made to questions from the appellant suggesting that the effect on the venue would be about 6 months to a year, this was referring to the main installation and drilling works. I did mention that the entrance on High Loxley was one of the main concerns. However, the impact and visibility by the industrialisation of High Loxley Road and the field that adjoins ours where the site will be located, will be continually visible and will have an impact on our business and our home until such time as the site is fully restored, should that ever occur.

8.38 Marquee events are not commonplace here and the marquee is only ever used for dining which is finished by 8:00pm at which point guests will go into the barn to dance etc. Our events are generally held within the barn, which we have invested heavily in sound proofing, including double glazed acoustic glass and double skin insulated walls to help ensure any external noise is kept to the minimum.

8.39 Whilst we do have an amplified sound limit of 95dB, we have installed a noise limiting PA system (noise array) which includes directional speakers over the dance floor controlled by a Symetrix Prism Digital Signal Processor which limits, controls and removes specific troublesome frequencies. We also have a condition that specifies that our music noise levels do not exceed the background noise determined from 1m from the facade of our closest residential property (which is 500m distance). Whilst we also have a condition that states no amplified music shall be played outside the hours of 8:00pm - 1:00am we do not allow this and our contract with clients states that no amplified music is allowed to be played outside at all. Furthermore we have a condition that all external doors will be closed at 8:00pm.

8.40 Our license does allow us to hold events until 1:00am however we do not offer that as part of our standard contract. We have a music off policy of 11:30pm. We have never had any complaints and we are very careful about managing sound during events as my family and I also live here and we do not wish to be unduly disturbed ourselves.

Statement by Ashley Herman CD.K7, with additional commentary CD.J2

8.41 UKOG's website states that *"At the heart of UKOG is a commitment to minimise the impact of operational development on local communities and the local environment".*

8.42 If onshore drilling must take place, "*Well sites should be located in places that provide minimal footprint and visual impact, not close to rural villages or houses. They should be in locations that do not unduly disrupt the local community and mindful of the impact that industrialisation can have on a rural economy and way of life. Unsightly impacts on the natural beauty of*

Britain's countryside and on the environment, are matters that I take very personally".

8.43 Those words are not mine. They are Stephen Sanderson's, the CEO of UKOG, taken from UKOG's website.

8.44 In their report, Surrey County Council Officers stated that minerals must be exploited "*where they are found*" this may be the case but it is contradicted by the Appellant, who states that Loxley is one of 23 sites they considered for exploration under their licence. I would suggest that the reason this site was chosen has as much to do with a willing Landowner, as geological necessity.

8.45 In its Statement of Case, the Appellant concedes that the Loxley site is "*out-with a preferred area for primary aggregates*" in a "*remote location*".

8.46 It is not remote at all. It is situated in the centre of a community comprising Thatched House, High Billinghurst and High Loxley Farms (all of which are Grade 2 listed heritage buildings) and the long-established 350-strong Gypsy, Romany and Traveller community living within 400 metres of the proposed site at Lydia Park and New Acres.

8.47 Thatched House Farm and High Billinghurst support local business, which will be seriously and adversely impacted by UKOG's activities if this appeal is allowed. The Gypsy, Romany and Traveller Community at Lydia Park and New Acres, living 400 metres from the proposed site have raised petitions and submitted letters of representation against the application, but they have not been consulted at all in the overall planning process. As a recognised minority, this oversight is a significant breach of their rights.

Distances, Screening And Access

8.48 From the outset of this application, the Appellant has persisted in misrepresenting the distances from the proposed site to Thatched House Farm and neighbouring properties. The Appellant states that the distance to Thatched House Farm is "*approximately 350 metres*". This is incorrect.

8.49 My Planning advisers, Terrence O' Rourke and I have measured it. It is 237 metres, a difference of over 100 metres, which is highly significant, particularly in terms of noise and pollution. Of course, the Appellant may argue that distances should be measured from the centre of its proposed site or even from the furthest perimeter to a receptor. But this is disingenuous.

8.50 Industrial activities, such as generators, drills, cranes, plant, flares, and transport movements could be positioned anywhere within the proposed site, which could easily be 100 metres closer to our home, than might be supposed from the Applicant's statements.

8.51 The Appellant is relying upon its site to be screened from our home by the woodland, known as Burchett's, which is largely comprised of a harvest crop of coniferous trees. But as the Appellant is aware, the Forestry Commission has granted a licence to the Burchett's landowner, HE, to

harvest the entire woodland by clear-felling all the trees. This will completely expose the site to my home, the AGLV and the AONB.

8.52 I believe the felling work, commencing at the Eastern boundary of Burchett's, will commence this autumn. Furthermore, in February 2021, the dense vegetation and most of the trees along the Southern verge of Dunsfold Road, were felled by the Landowner, which removed an entire section of screening between the AONB and the soon-to-be-felled Burchett's woodland.

8.53 Nevertheless, the Appellant is still suggesting that: *"the surrounding trees would have a visually softening benefit effect when viewed at distance and consequently, it would be difficult to justify refusal on visual impact grounds when viewed from the AONB".* It would not be difficult because the softening benefit will not be effective because the trees will have been chopped down.

8.54 The Planning and Regulatory Committee Members of Surrey County Council were not encouraged to visit the site by Planning Officers, possibly due to Covid restrictions and so Planning Officers were content to rely upon the Appellant's own drone footage of the screening and approaches. This footage failed to demonstrate the viewpoints from the North, the nature of the roads and narrow access - not least because it was shot from above.

8.55 So, it fell to us residents who will be most affected by UKOG's proposal, to commission a factual and unbiased video of the approaches to the site, taken at ground level, from a car. The Planning Officers were reluctant to make our footage available to the Planning Committee – preferring to use The Appellant's bird's eye view but Members insisted they should view ours, which clearly demonstrates that the junction from Dunsfold Road into High Loxley Road is extremely narrow and dangerous.

8.56 I also have legal advice that the access to the site required by UKOG would include crossing over common land and no one has produced evidence to counter that advice.

8.57 It is also reasonable to stress that the Appellant's landscape photographs have been taken in the spring and summer. Whereas winter views, without the benefit of foliage cover, would paint an entirely different picture, especially when the Burchett's woodland is felled.

Impact On Surrounding Housing

8.58 The drilling arc, as described by the Appellant, demonstrates that the target area falls directly beneath the site of Dunsfold Garden Village, which has been designed as one of the greenest new settlements in the country. This will have an adverse effect on the ability of Dunsfold Park to deliver the housing quota so needed by Surrey because no one would wish to purchase a home beneath which UKOG are drilling for fossil fuels, especially the Kimmeridge, which I understand requires fracking or stimulation. UKOG's proposed activities are already being flagged up in local searches.

Our Enterprises

8.59 In its Statement of Case (7.26) the Appellant states that: *"There are no other unacceptable economic impacts".* This pointedly overlooks the value to the local economy of our farming and enterprises at Thatched House Farm and High Billinghurst's highly regarded rural wedding and events venue which are described by Waverley as "thriving local businesses".

8.60 Our annual Trew Fields Cancer Awareness Festival was established in 2015. It is held over three days in July and attended by 1000 people each day. There are regular follow up and camping retreat days held throughout the year. Attendees include medical and health practitioners from the NHS and overseas, faith leaders, cancer sufferers, carers, families affected by cancer, health practitioners and other interested parties.

8.61 Trew Fields offers talks and lectures by oncologists, nurses, palliative care practitioners, dieticians, patients, conventional and alternative practitioners and provides an opportunity for people to meet and share their experiences. All held in a festival-like atmosphere with its marquees and campsite just 95 metres from UKOG's proposed site.

8.62 Trew Fields introduces circa £175,000 annually into the very local economy, in the form of wages, catering, services and accommodation. To put it plainly, I do not think it will not be viable for the Trew Fields events to be held so close to a hydrocarbon site.

8.63 We also have The Crafty Brewing Co - an award-winning craft brewery, which sells beer locally and nationally. It employs 9 local people and offers apprenticeship and business mentoring programmes. Its marketing messages reinforce its rural credentials. In 2019, we were intending to drill a borehole, rather than having to rely on more expensive mains water however, this has been put on hold because it cannot be guaranteed that UKOG's activities will not pollute the well.

8.64 The Appellant suggests that it intends to invest "*approximately £6 million with significant expenditure retained in the local or Surrey-based economy*". But the bulk of this will be spent on specialist hydrocarbon exploration equipment and infrastructure, which are neither local nor of benefit to the local economy.

8.65 Thatched House and High Billinghurst Farms' combined economic contribution to the local economy is circa £5m per annum. They are real and happening now. But, if this appeal is allowed, our "thriving local businesses" which crucially rely upon their rural, tranquil settings, will be ruined because no one in their right mind would choose to celebrate their wedding in a rural surrounding, blighted by the industrial view and sounds of a hydrocarbon well site, nor would a cancer awareness organisation choose to hold their events in fields 95 metres away. It is absurd to suggest otherwise.

Farm Diversification

8.66 In its Statement of Case the Appellant refers to its activities as contributing to "Farm Diversification", stating that the rent they pay to the Landowner

"*will secure the long-term viability of the supporting agricultural business… keeping it active within the rural economy and maintaining a long tradition of sustainable countryside management*".

8.67 It is a matter of public record that the field upon which the Appellant wishes to establish its activities, was only acquired in January 2019, a few weeks before the UKOG lease was registered. It therefore might reasonably be argued that the field was acquired for the purpose of accommodating UKOG. This is perfectly within the rights of both the Landowner and UKOG, but it does cast doubt upon this being a farm diversification project.

8.68 Furthermore, it fails to comply with Waverley Borough Council's local plan Policy RD8, because agriculture, forestry or horticulture will not remain the principal or dominant use of the field:

- the hydrocarbon operation will introduce an activity which will adversely affect the character or amenities of the area;
- it will be materially detrimental to the amenities or privacy of nearby properties;
- the amount of traffic likely to be generated will prejudice highway safety and cause significant harm to the environmental character of country roads;
- there are significant vehicular access issues;
- it is not small scale;
- it is not unobtrusively located.

8.69 I would suggest that failure to comply with Policy RD8 alone is enough for this appeal to be refused.

Environmental Impact

8.70 This is a tranquil area, and the nights are extremely quiet, with an existing background noise of 19dbl. However, UKOG's proposed activities will increase this level to 45dbl, more than twice the existing level and even higher during the day.

8.71 Chronic noise exposure, some of which will be 24-hours a day during drilling and workovers, for an aggregate period of some 30 to 50 weeks, is a foreseeable risk to my family's health, especially if the calculations for noise mitigation are based upon erroneous distances between the well site and our home.

8.72 This so concerned Waverley Borough Council's Environmental Health Officer, that she wrote to Surrey County Council, noting that the Applicant had dismissed the fundamental principle of BS4142, which is the assessment of an introduced noise source, as measured against the existing background noise levels, to determine the likely adverse impact.

8.73 She viewed the Appellant's submission that noise impacts were insignificant as "*highly questionable and I do not agree with the conclusion that 'noise levels are considered to be acceptably low*".

8.74 The EHO stressed that UKOG had disregarded BS4142 on the basis that the application is short-term and temporary nature in nature, rather than permanent and she was at pains to point out that a period of three years cannot, by any means, be considered temporary. Another point that has worried Waverley's EHO was air pollution. She commented that: "*Serious air-quality implications will occur. Nitrogen Dioxide concentration, when considering the current background level, will considerably increase to: "114% of the one-hour standard" and "…the impact on local air quality can clearly be seen".* The process contributions will "*cause an exceedance of the critical level of Nitrogen Dioxide and Nitric Oxide*". Clearly, this is of massive concern to us and the Gypsy, Romany, Traveller community, who live in caravans and mobile homes so close to the site.

8.75 The night skies above our farm are dark and starry. Bright lights introduced into the landscape will be the cause of light pollution to the AGLV and AONB which, apart from ruining the countryside, is injurious to nocturnal wildlife. This will be further exacerbated when the Burchett's trees have been felled.

Minerals Plan

8.76 There is an 'elephant in the room', in that SCC Planning Officers had recommended approval. But Members disagreed at both meetings. At the November Planning Committee meeting, some Members expressed their unease about the reasons given for refusal. They had wished to include impacts on local economy and business, but Officers were reluctant to allow this, even though they had at the June meeting.

8.77 Planning requires balance and Surrey's local policies encompass provisions for adverse economic impact as being material considerations for providing solid, legal reasons to refuse this appeal – as does the Framework.

8.78 The SMP, 2011, provides guidance, tempered with caution. For example, it warns that mineral exploitation: "*Should not impose significant impacts on the community"* and if there are significant adverse impacts of mineral development on communities and the environment, permission should be refused. Relevant factors, causing adverse impacts, are "*material considerations*" and may ultimately show that land identified in a plan is unsuitable for minerals development in which case, "*planning permission should be refused*".

Need

8.79 As to need, the Appellant admits that "*The projections for demand for oil and gas are much reduced*" and this is supported by an article published in the February 2016 edition of Master Investor magazine, by Stephen Sanderson, who wrote: "*Essentially, in the last 35 years, for every barrel of oil we've used, another two have been added to the stockpile*"

8.80 Furthermore, the Appellant's aspirations for exploration at Loxley have been inconsistent, ranging from searching for oil, then gas, then wishing to provide hydrocarbons for the delivery of PPE to the NHS and, more recently, the manufacture of hydrogen from gas, which, I understand, causes dramatic CO2 emissions.

8.81 What I know is that I don't want fossil fuels to be extracted in my back yard, 240 metres from my bedroom.

Site Restoration

8.82 If the Appeal is allowed, The Appellant will be able to impose major changes to the local landscape and highways. Oil and gas exploration is extremely risky, and companies are vulnerable to financial failure.

8.83 The Framework requires that minerals planning authorities should provide: "*for restoration and aftercare at the earliest opportunity and that Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances*. I believe that this is an exceptional circumstance.

8.84 The September 2020 accounts of the Appellant's parent company, UKOG PLC, recorded a loss of £20.9 million which took its accumulated losses to £80 million, and its assets appear to be based upon the value the company places upon its prospective resources. During 2020 the company was obliged to raise £7.73 million from its shareholders to carry out its operations, resulting in considerable equity dilution and it is currently raising £5 million.

8.85 In the annual accounts the CEO states: "*Raising funds from equity remains the most sensible and realistic way to fund projects for forward growth."* In short, the Appellant is relying upon its shareholders to continue to support the company. None of this is to cast doubt on the probity of management but simply to reflect the very high risk associated with this type of exploration company.

8.86 This is a local issue because, bearing in mind the Appellant's financial results, and its reliance upon the continuing support of shareholders, there must be some doubt as to the Appellant's ability to pay for the clean-up and restoration of its site and the highway.

8.87 If this appeal is allowed, I would strongly ask that a Section 106 Agreement, supported by a bond and / or cash is required, to ensure that the restoration of our immediate environment is secured. There is precedent for this. In 2016, Nottinghamshire County Council required £600,000 bonds from IGas to cover restoration of its Misson site.

8.88 And, on April 4th, 2019, in The House of Lords, in answer to a question from Baroness Jones of Moulsecoomb, Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy stated that Mineral Planning Authorities may take financial security to cover decommissioning costs, should they consider it necessary.

Common Land (from CD.J2)

8.89 It might assist you to have the two letters of advice I received from my Solicitors, Penningtons, whose opinion is that the Common Land at Pratts Corner and High Loxley Road extends to the verges of the Highway.

8.90 This used the plans from Surrey County Council, who maintain the Register of Common Land. This shows various areas of land comprised in Commons Registration Unit CL162. The enlarged section shows more clearly the roadside verges in the vicinity of Thatched House Farm, which is shown to be 3 feet in width. The evidence provided at that point, 16 July 2020[106], ignores the argument that the verges have not been removed from the unit CL162 on account of the fact that the order made following the hearing in 1979 referred to the land edged red and the research established that it is only the extent of the surface of the highway area that was edged red on the map attached to the decision notice.

The Framework

8.91 In the final analysis everything appears to point back to the National Planning Policy Framework. Surrey County Council's Planning Officers relied upon the Framework's recommendation, and it is worth remembering that the Framework is just that, a framework, not a dictat and is open to interpretation, as was evidenced by the Planning Members disagreeing with their Officers, just as they are entitled to do, in the interests of democracy.

8.92 A hydrocarbon operation situated next to a rural wedding venue, cancer awareness event site, and a craft brewery, will undoubtedly have significant adverse economic impacts, leading to loss of business, income, and employment, with consequential harm to amenity, the local community and economy. Paragraphs 84 and 85 of the Framework addresses this by stating that planning policies and decisions should enable:

8.93 *"The sustainable growth and expansion of all types of business in rural areas, and the development and diversification of agricultural and other land-based rural businesses"* and *"that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable."*

8.94 The Appellant's proposals do not satisfy the Framework's criteria. Even on the assumption that the Appellant strikes it lucky, which has not been the case in previous explorations, Loxley's contribution would be insignificant in terms of a meaningful contribution to the UK's declining need for fossil fuels.

8.95 When balanced against the adverse impacts of the planning application, (even before UKOG commences drilling), the harm far outweighs any good and consequently, in the interest of our local community, my neighbours, my home and business life, I would respectfully ask you to refuse this appeal.

[106] CD.J2/2

Statement by Stephen Hayward, Dunsfold Parish Council

8.96 The Parish Council align themselves with their earlier written representations and the case to be brought by WBC. In addition to concerns regarding traffic management issues and effects on local business they consider that there are three key points: the Climate Emergency, the Paris Climate Agreement and matters of energy security.

8.97 The Climate Emergency: It is generally accepted that the current known reserves of hydrocarbon fuels exceeds the quantum of such fuels which can be consumed on our planet without further harming the climate. In light of the resolutions passed by the County Council and the resultant policies committed to by the County Council acknowledging this climate emergency and the immediate need not to further endanger our planet's climate, the Parish Council would suggest that it would be inappropriate and unreasonable for your Committee to approve this application.

8.98 The Paris Climate Agreement: The Court of Appeal has supported the argument made by the Councils for a number of London Boroughs, in opposing the proposed third runway at Heathrow Airport, that the construction of such a runway at Heathrow Airport would be illegal because of the direct impact that the operation of such construction would have on the commitments made by the UK government relating to climate change as part of this Climate Agreement. Applying that principle to this application, the applicant has failed to provide any evidence that the exploitation of these hydrocarbon reserves will assist the UK in complying with its treaty obligations. This is particularly important in light of the revised arrangements for COP26 which is now proposed to take place next year in Glasgow.

8.99 Energy Security: The appellant has suggested that the exploitation of Loxley Well will support the UK's energy security by helping to reduce the UK's reliance on imported energy. However, the cancellation, earlier this year, of the moratorium on onshore wind farms will enable such energy security to be enhanced by renewable and other zero carbon forms of UK sourced energy. In addition, since a number of the wind farms which were caught by the moratorium were close to commencing construction such projects are exactly the type of "shovel ready" infrastructure projects being championed by the Prime Minister and his Government particularly post COVID 19. Even more relevant is the Prime Minister's announcement at the Conservative Party Conference committing the UK to ensuring that by 2030 all electricity supplied to UK residential users will be generated by off-shore wind farms. Refusing this application will show the Council's support for these zero carbon schemes which are also consistent with the Council's policies on climate change more generally.

8.100 These are at the forefront of government thinking and are key to considerations here. In the Parish Council's view, the appeal should be rejected on these three grounds.

Written Representations

9.1 In addition to those who made representations at the Inquiry and the statutory consultees and Parish Councils around the area who commented on the application, there were some 188 written submissions in response to notification of the event. These included those from businesses, including the Hascombe Estate, the gypsy and traveller community at New Acres, Lydia Park and Hilltops and from local residents.

9.2 These responses were generally supportive of SCC and WBC's position in opposition to the proposal. The focus of concerns was in relation to climate change concerns, indicating no need for hydrocarbon exploration or production, landscape harms to the AGLV and AONB, other environmental impacts to groundwater, air pollution and noise and transport concerns on both the approach to the site and particularly the junction into High Loxley Road. These matters are reflective of those set out by parties that addressed the Inquiry, as well as the main parties in this case.

9.3 For the Hascombe Estates (HE), a further written representation was submitted in response to discussions in the Inquiry regarding the potential felling of the Burchett's, CD.J8. This noted that the appellant accepted that the felling licence permits Hascombe Estate to remove the assets but that they "would be surprised if there is a genuine intention to do so".

9.4 They wish to make it clear that this is incorrect and that work is intended to commence in the Autumn of 2021, in compliance with the felling licence. In relation to the appellant's statements, they make the following comments:

- *they do not agree that the access is constrained, they have, in the past, accessed the woodlands across the drive of Thatched House Farm, over which there is a right of way for forestry and agriculture purposes. The owner of Thatched House Farm is aware of this and can confirm the arrangement if necessary;*

- *in addition to the Right of Way across Thatched House Farm's drive, there is an agreement with the owner of Thatched House Farm to access our woodlands across his fields;*

- *harvesting the woodland blocks will be undertaken in small incremental stages. This will not require large, oversized machinery to access the woodland, as pictured in the appellant's statement. It will be achieved by utilising logging forwarder machinery. Logs will be taken to low loaders, positioned on an area of hardstanding, which already exists at Thatched House Farm. In addition, modern logging equipment has the capability to cut logs into planks of pre-determined dimensions, thus removing the need for large articulated HGV transporters, requiring separate access or areas of the highway to accommodate them.*

9.5 They are aware that there are some undesignated heritage assets within the woodland, but these will not be disturbed by the operation. Indeed, it is their intention to ensure that they remain intact and safeguarded.

9.6 Forestry falls under permitted development but, should a planning application be required to resolve any access and/or harvesting constraints,

they have no reason to believe that such consent would not be forthcoming.

9.7 It is HE's intention to commence the felling of Burchett's woodland this Autumn. The initial works will be in the Eastern section of the woodland, lying to the south of Thatched House Farm. The wood will be thinned out, exposing the proposed well operation to both Thatched House Farm, Dunsfold Road and the AONB beyond.

Conditions

10.1 The suggested conditions were discussed at the Inquiry based on a final agreed draft, albeit with some areas of disagreement remaining between the main parties[107]. The focus of the discussions was to ensure that all matters of control and mitigation were properly addressed and all conditions were necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests and, in the event that permission is granted, they should be imposed as set out in the attached Appendix 4.

10.2 Th draft conditions may have been altered in minor terms so that they comply with the tests. The following conditions, which are addressed in greater detail, are those over which there was no agreement or upon which further comment is needed.

10.3 Conditions 1 and 4 included matters relevant to the discussion over the acceptable temporary period of operations, with the appellant confirming that they wished the retention mode layout plans to be included. My conclusions that a three year temporary period would be acceptable has informed these conditions.

10.4 I queried the requirement for Condition 2 but accept that it would provide clarity for operators and for enforcement officers in this case. I discussed whether Condition 6, which deals with operational lighting was sufficiently defined from that associated with obstacle lighting, or indeed lighting required across the site. I am satisfied that the condition is necessary and allows for specific activities to be covered by later Conditions 19 and 20.

10.5 At the time of the discussion on conditions, SCC were still seeking a s106 obligation to address final restoration of highway areas outside of the appellant's control. Notwithstanding those discussions, agreement was reached on a form of Grampian condition sufficient, with SCCs agreement, to ensure suitable restoration without the need for a further legal undertaking. I note on this matter, interested parties were seeking a bond to ensure that restoration would be completed. My own assessment of the guidance on conditions and obligations bears out the main party's conclusions that this matter can, in this case, be addressed through the revised and recommended Conditions 7 and 8. I do not consider a bond a necessary requirement in this case.

10.6 The original agreed list of conditions included one in relation to a restriction on bulk movement of materials and one requiring the setting out of areas within the site to ensure HGV parking provision and that they can enter and leave the site in forward gear. It was generally agreed that with the managed access point and the compound site separated from the public road network, these conditions were unnecessary and I have not recommended their inclusion.

[107] In the SoCG, but updated for the Inquiry

10.7 Condition 14[108] initially referred to temporary operations, which I considered to lack clarity. Revisions to that and Condition 15[109] have addressed this, which I have also considered against the expectations of the PPG[110].

10.8 Turning to reasons, the relevant conditions are listed in (). In addition to the plans condition (1), the availability of plans (2) and the implementation condition (3), which are necessary to provide certainty, the development is a temporary one with the period limited (4) and delivery set out in phases (5) to minimise impact and ensure restoration.

10.9 To address potential impacts on the character and appearance of the area and the living conditions of surrounding businesses and residents, hours of operational activities are controlled (6), and noise, vibration and lighting addressed (12, 13, 14, 15, 16, 17, 18 and 19) as well as addressing aviation risks (20) from the rig structures.

10.10 To address highway safety and subsequent restoration of the highways, schemes are required for works and removal of highway works (7, 8) as well as an agreed Transport Management Plan (9), speed restrictions (10) and restrictions on HGV movements (11).

10.11 To address potential risks to the water environment, including, flood risk, pollution and groundwater contamination, detailed design of a sustainable drainage system is required (21, 22), restrictions on use of non-impermeable areas imposed (23), a Construction Environmental Management Plan agreed and implemented (24, 25) and a geotechnical report agreed and implemented (26, 27).

10.12 Conditions 7, 9, 10, 12, 13, 21, 24, 26, 29 and 30 require matters to be approved before development commences. This is necessary because these conditions address impacts that would occur during construction, or schemes of work that need to be agreed before construction commences. The appellant has provided written agreement of these pre-commencement conditions in their Closing Statement.

10.13 To protect the biodiversity of the site and surrounding area, a Biodiversity Restoration and Enhancement Plan is to be agreed and implemented (29) and in light of the known archaeological potential of the site, a written scheme of investigation is to be agreed (30).

10.14 To support restoration of the site, the retention and reuse of topsoil is required (28) as is a Final Landscape, Environment and Biodiversity Restoration and Enhancement Plan (31, 32).

[108] Condition 16 in the draft conditions listing.
[109] Condition 17 in the draft conditions listing.
[110] PPG - ID: 27-020-20140306 and 27-021-20140306

Inspector's Conclusions

11.1 Taking account of the evidence in this case, including the submissions and representations on which I have reported above, I have reached the following conclusions. References in square brackets [] are to earlier paragraphs in this report.

Introduction

11.2 Following a full assessment of the submissions from both the main parties and others interested in the appeal, I now set out the main issues as:

- the effect of the proposal on the landscape character and appearance of the area, including that of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV);
- the effect on living conditions for residential and commercial activities local to the site, with particular regard to noise and disturbance; and
- the effect on highway safety, including the suitability of the road network and traffic movements associated with the operation.

Landscape Character and Appearance

11.3 Although it bears little on the necessary overall approach to this matter, I deal first with the appellant's argument that the Reason for Refusal on landscape matters only referred to considerations that it had not been demonstrated that sufficient information had been provided. To my mind, matters including, but not limited to, the SIR, the full extent of viewpoints, the implications of the removal of the Burchett's, the extent of landscape effects on the AONB and visual effects on residents and businesses from alterations and signage associate with the road access and junction, as well as the access route across the fields, are all matters that may be considered to have not been fully addressed or only partly addressed in the original submissions. I draw no points on the consequence of such matters or whether these should have been addressed in a more robust fashion by SCC at an earlier stage. These are mute points as the landscape implications have now been thoroughly addressed through the course of the Inquiry. [5.44, 5.45]

11.4 The appellant submitted a LVIA, which was reviewed and in part updated by their landscape witness. Despite taking some exception to the range of viewpoints and the lack of winter views and clearly, with the assessments, the methodology was accepted by the main parties as sound. No alternative LVIA was submitted.

Landscape and Visual Context

11.5 The appeal site lies in open countryside to the northern edge of an agricultural field and is currently screened to the north and east by the mixed deciduous and conifer woodlands of the Burchett's and High Loxley Furze. A public right of way (PROW) lies to the south of the appeal site. There are three principal residential sites close to the proposed compound,

Thatched House Farm and associated dwellings to the north, High Loxley Farm to the west and High Billinghurst Farm to the south. A number of traditional and more recent agricultural buildings are visible in the immediate surroundings.

11.6 The site is within National Character Area 121, Low Weald, and the WW5: Grafham to Dunsfold Wooded Low Weald landscape character area, as defined by the Surrey County Council Landscape Character Assessment (2015). Following my site visits, I consider that it generally accords with the key landscape characteristics, including the undulating landform, blocks of woodland, scattered farmsteads and the land rising north to form the setting to wooded greensand hills. Indeed, a recognised element of this landscape is its position just to the south of the Surrey Hills AONB, whose boundary currently extends to the edge of the Dunsfold Road.

11.7 The site also lies within the setting of the AONB; this was not only accepted by the main parties, but is a function of the wider landscape designation of the AGLV. This designation was retained in the WLP under the policy relating to the AONB, Policy RE3. In this, the AGLV is designated for its own sake, which I read as its landscape value, but also as a buffer to the AONB, subject to a review of the AONB boundary. That review is not complete, and yet work has been done in assessing the relevant areas of the AGLV and their common characteristics[111]. [5.58, 6.8, 6.16, 7.17, 7.19]

11.8 The site falls within part of area W6, assessed as having a number of shared characteristics with the AONB, but being more open with the condition in parts beginning to break down. The review noted the influence of Dunsfold Aerodrome.

11.9 In terms of the visual context, while Zones of Theoretical Visibility were produced by both of the main parties, these unsurprisingly indicated, within an essentially flat or rising landform, extensive potential viewpoints. Of particular relevance, in addition to the PROW to the south of the field and views from the residential properties, are the two footpaths identified rising up into the AONB as well as the strategic viewpoint, noted in the AONB management plan, from a gap in the tree cover on the top of Hascombe Hill. Views will also be obtained of the site and its access from the road network, including Dunsfold Road and High Loxley Road.

Landscape and Visual Sensitivity

11.10 As agreed by the main parties in the Landscape SoCG, the sensitivity of the landscape outside of the AONB was agreed to be high, while that of the AONB, very high. I see no reason to disagree.

11.11 In terms of visual amenity, receptors associated with the nearby residential properties and PROW in the AONB were agreed to be very high along with some of the other PROWs. There remained some disagreement over some of the other footpath viewpoints and open access land, but many were considered of high sensitivity.

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11.12 My own observations generally support these positions. There is no question that the Burchett's, a mix of deciduous, possibly ancient woodland, but mostly later commercial coniferous species, along with the adjacent woodland blocks, including High Loxley Furze, would provide considerable visual screening of all but the highest structures, the drilling or workover rigs. While the appellant made a number of suggestions regarding impediments to the potential felling of the woodland, I am satisfied that the felling licence is in place, access is viable through Thatched House Farm and there are no obvious machinery restrictions. While parts of the woodland are potentially ancient woodland, I note the Forestry Commission confirms it forms part of the clear fell licence, and I can see no reason why felling could not be sensitively managed with regard to the remains of the Canadian military structures, reported to still exist within the woodland. [5.69, 8.52, 9.4-9.7]

11.13 Consequently, to inform an assessment of the effects of the proposal, the implications of the woodland felling must be fully accounted for, as must the assessment of seasonal changes to the hedgerows and deciduous tree cover around the site.

11.14 In terms of sensitivity, the other key difference between the parties related to the assessment of this area as a 'valued landscape'. I have no doubt to those who live there or who chose to walk along the footpaths nearby, this is a valued area, but the terminology has relevance when assessed against the national policy within the Framework, which seeks to protect and enhance such valued landscapes. [5.62]

11.15 The appellant argues that while they have accepted the site falls within the AGLV and the setting of the AONB, this, on its own, could not elevate the landscape to the status of valued, and that the *Stroud* judgement confirms this. The landscape, they say, while possessing some positive elements had few physical attributes that could lift it out of the ordinary. Their assessment against GLVIA3, Box 5.1, found no basis to conclude the site to be of higher than ordinary value. [5.65, 5.70]

11.16 SCC, on the other hand, argued that this landscape, within the setting of the AONB and experienced in views to and from the AONB is recognised in the local plan as an AGLV. It has both rarity and conservation and cultural significance, including the archaeological features and the Canadian Military Base remnants nearby, and has recreational value associated with the extensive PROW network surrounding the site. It was argued that reliance on the *Stroud* judgement was inappropriate in this case, as there is nothing within that to suggest that being within the setting of an AONB cannot make the landscape a 'valued' one. This position was supported by WBC. [6.21, 6.22, 6.23, 6.24, 7.16, 7.17]

11.17 There is no question in my mind that the entirety of all countryside areas outside of national designations cannot be considered as valued in Framework terms, notwithstanding that, as I have said above, local residents and others may value them. There must be features, both physical and perceptional, that raises them out of the ordinary. While I fully accept that GLVIA3 Box 5.1 cannot be considered a definitive test for valued landscapes, it nonetheless provides a structured approach to

consideration of such physical and perceptional elements that could contribute to such. The main parties have all addressed elements of these factors.

11.18 What is clear is that designations, under local policy, as in this case as an AGLV, do not in themselves determine which areas should be or can be considered as valued, nor can being in the setting of an AONB, albeit these are indictors of a landscape that potentially has value beyond just its rural nature. Such local designations have, in many cases, been removed from local plans; this clearly cannot define those areas as no longer having valued landscapes.

11.19 My observations are that the wider landscape here is different to that of the rising slopes and escarpment of the AONB. It has a role as a buffer, perhaps most notably between the overtly industrial character of Dunsfold Aerodrome and the pastoral qualities north of Dunsfold Road. However, there are detractors, for example, industrial elements, such as the solar farm, mobile phone mast or digester plant, or even the more sterile landscapes associated with horse paddocks and stabling. [6.13, 8.20-8.22, 8.70]

11.20 Local to the site, these detractors are less obvious and there is a sense of tranquillity and containment, despite some long views out to the AONB. However, even with this, I cannot conclude that this area is significantly different to the wide swath of AGLV. As the WLP acknowledges, a substantial part of the rural area is within the AONB and/or the AGLV. While SCC have argued that an assessment of a valued landscape cannot be made on the basis of the individual site, nonetheless, the relationship of the site to the wider context is crucial to an understanding of its value. [6.26]

11.21 In this case, the site is agricultural grassland, it is part of a wider context with an agricultural character, and has some features of the protected AONB but other detractors. Within this context, there is undoubtedly some value to this part of the AGLV in its role providing a setting to the AONB, some recreational value, not directly, but in terms of maintained rural character in wider views, and some cultural association, albeit not immediately visible, but associated with certain features within the woodlands and potentially medieval or older remains. However, these elements do not represent significant differences to the wider AGLV or rural landscape areas more generally. Overall, I cannot recommend that this be considered a valued landscape in Framework terms. However, it clearly retains protection, both in policy terms and within the revised Framework which seeks that development within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

Landscape and Visual Effects

11.22 To my mind there are three distinct parts to this appeal that need to be considered in landscape and visual impact terms. These include the Dunsfold Road junction to High Loxley Road, the site entrance and the

access road as it crosses the fields to reach the compound and the compound itself and associated drilling or workover rigs. [6.2-6.6]

The Junction

11.23 The current access into High Loxley Road off Dunsfold Road is on a sweeping bend with a narrow bellmouth, a low-key entrance and well-vegetated verges. A larger junction into Dunsfold Common Road is found further to the west. The AONB boundary is currently the northern edge of the Dunsfold Road.

11.24 While there would be slight widening of the highway around the High Loxley Road junction, it is the introduction of signage and demountable traffic control systems, including temporary lights, that would introduce a substantial change during times of use. Although I accept that during such times, this would significantly change the character of the area, signage, including in relation HGVs is already present at the Dunsfold Common Road junction, and the periods over which the temporary equipment would be in place are limited. Overall, I consider that there would be no material harm to the landscape of the area or visual impacts associate with the proposed junction changes. [6.3, 6.20, 8.22]

The Site Access

11.25 The main entrance to the site would be constructed a short distance along High Loxley Road following removal of the hedgerow and trees lying just beyond the existing field access. The proposal is to have a gate, some 24m in length fronting onto the road, with a passing place and security cabin behind. The gate is proposed to be in four sections and formed of close boarded timber. While I note suggestions that this would retain a more residential character, at this scale it exceeds even an agricultural form and despite the chosen material, which would have some softening effect, would nonetheless present a significantly urbanising or even industrial scale element on what is otherwise a single-track country lane. [5.8, 6.3, 7.18, 8.22]

11.26 The proposed access route follows a dogleg path aligned with field hedgerows, but these are not substantial boundaries, particularly where it crosses from High Loxley Road edge to the Burchett's. As a result, regular movements of HGVs across this rural landscape would materially alter the character of the area and present a jarring visual intrusion into views from local footpaths and even, at distance, from the AONB. [6.3]

The Compound

11.27 Turning to the compound. The site would be levelled by cut and fill, lowering the southern edge of the site. A very substantial security and acoustic barrier fence is proposed to surround the site with a security gate on the western side for access. This boundary would be up to 4m high and is proposed to be faced with camouflage netting. [5.69, 5.82]

11.28 This would be a large structure and I have no doubt there would be significant effects on the landscape local to the site. Walkers using the PROW within the field would have relatively unobstructed views, despite a

high point in the landform between the two. Irrespective of the boundary material finish or intervening planting, it would clearly be a substantial man-made intrusion into an otherwise rural area. However, with the southern boundary fence set on the existing field level outside of the topsoil bund, I am satisfied that little if any of the equipment within the compound would be visible other than when the workover or drilling rigs are on site, which I address below.

11.29 High Billinghurst Farm is some distance to the south of the site. There is an intervening topographic highpoint and the compound would be set below the level of the existing field and a topsoil bund, although the boundary fence would be set above that. There would also be a fairly robust hedgerow between the two. Nonetheless, and even accounting for the higher land and vegetation, this would be a substantial structure which would be visible, albeit its purpose may not be apparent at times other than when the rigs are on site. [5.79, 8.28]

11.30 From the north and east, much of the earlier assessments relied in part on the Burchett's providing screening, and indeed the trees lining Dunsfold Road. Those trees are already removed and evidence put to the Inquiry strongly suggests that much of the Burchett's could be removed before or during operations at the site. I note the appellant relies in part on retention of a single row of trees on the northern boundary of their site, presumably lying outside of the felling area. However, these are comprised of a mixture of Ash trees and other species and as such not all can be guaranteed to remain, and a single row, particularly through periods without foliage, would provide only limited screening. In response, the northern boundary is proposed to be at 4m too, albeit this would be level with the compound floor. As a result, any raised views, such as those from the footpaths rising into the AONB and the strategic viewport on Hascombe Hill, would be able to appreciate the equipment, storage and cabins within the compound. [5.82, 5.69, 6.31, 6.35-6.40, 7.18]

11.31 During periods when rigs are on site, there would be a significant increase in landscape and visual effects. The rigs may be up to 38m high, significantly exceeding the height of the existing woodland, or any other structures in the immediate area. They would be an entirely alien feature in this landscape. Taking account of the need for cranes and workover rigs, tall structures may be on-site, dependant on the assessment findings, for up to 30 weeks in all. [4.3, 5.10, 6.5, 7.18]

11.32 During the operational period there would be a requirement for lighting on the site, although lighting associated with the access route across the fields would not be required. This is a relatively dark area, separated from any larger towns or street lighting, and I am satisfied that this contributes to its landscape value and character.

11.33 A lighting assessment was carried out and reviewed to take account of the felling of the woodland. This acknowledged the need for some lighting requirements and necessary controls to prevent unacceptable light spill, particularly during the drilling phase. This has informed the recommended conditions. [5.56, 5.68]

11.34 Nonetheless, considerable concern was expressed by WBC in particular associated with the lighting of the tall structures, and SCC considered that the night time lighting would have landscape impacts. [6.6, 7.18, 7.22, 8.22]

11.35 To achieve compliance with lighting standards, some specific mitigation measures are required. To my mind, adopting these requirements would address light levels on the compound area itself and the only concern would be in relation to the period when the rig or crane structures are in place. Quite clearly there is required obstacle lighting to address risks with the tall structures, and during 24 hour working there would be a need for sufficient lighting to address health and safety concerns. As a result, there will be some lighting over relatively short periods that I consider would have an effect on the character of the area, and some additional visual effects.

11.36 I have found the site, and immediate local area to be relatively tranquil, set away from the road network, but potentially still influenced by some road noise and possibly noise from the aerodrome and associated industrial units. Adding noise, albeit controllable to be within guideline levels, and particularly activity, which may take place over continuous 24 hour periods would have a material effect on the character of the area. However, the significance of such an effect would be likely to be limited to the immediate surroundings.

Landscape and Visual Effects

11.37 Drawing these elements together, HGVs will be a constant low-level presence throughout much of the operation, although during the initial access construction and levelling of the compound, their routing across the relatively open fields coupled with laying the track would be a significant presence for that 14 weeks. Tall structures would introduce very significant detracting elements to the landscape for up to 30 weeks, while the substantial enclosed compound with boundaries up to 4m high, would be in place for most of the operating period. There can be no question that such elements would be of a scale and activity level out of step with the relatively tranquil, agricultural and rural character that currently exists.

11.38 In landscape terms, I consider the implications of the wider site, including the access and changes to High Loxley Road, would be of medium significance, but high for the area local to the compound. The influence reduces with distance as the topography and woodland cover reasserts the rural character, nonetheless the proposal would introduce a level of industrialisation and uncharacteristic scale, exacerbated during the period of drilling. I consider it would have a major/moderate adverse effect locally.

11.39 The activity would be seen from the AONB, both from footpaths rising towards the upper slopes and from the strategic viewpoint within it. The outlook from the strategic viewpoint is an important one as much of the footpath in this part of the AONB is within woodland. There is an enhanced value to the sudden vista which opens up, as it provides an important context to the high escarpment and landscape change from the low weald. The landscape experienced in this outlook is typical of that of the AGLV designation providing the setting to the AONB. The framed view offers a

layered context with the dispersed woodland blocks, open fields and a strong rural character; there is limited influence from settlements or the road network. The aeroplanes on Dunsfold Aerodrome are a clear and obvious anachronistic element. However, the proposal would introduce HGV traffic crossing the area of open space in the foreground of this, and on removal of the Burchett's, a view of the large compound site. Taking account of the high sensitivity and importance of this contextual element of the setting to the experience of those within the AONB, I consider the effect to be major/moderate adverse. [6.15, 6.22, 6.24, 6.32]

11.40 I consider that the appellant has tended to underestimate the landscape harm particularly in earlier assessments, often appearing to rely on the presence of the Burchett's to limit the perception of the site, and, in my view, underplaying the impacts of the access gate and the HGV traffic. While that traffic level would be relatively low, potentially one or two movements per hour, this would nonetheless be highly uncharacteristic elements within a landscape generally devoid of traffic influence, especially when the HGVs would be viewed as crossing open fields. [5.67, 6.3, 6.4, 6.35-6.41]

11.41 In terms of visual effects from the residential dwellings agreed as being of high sensitivity, my finding is that of a moderate adverse effect, although this is made greater by the potential loss of the Burchett's, and more significant still during the period of drilling. I consider that from the local PROW, the effect would be major adverse, and from the wider PROW network, moderate adverse. The strategic viewpoint would be degraded by a further anachronistic element, one without perhaps the quirkiness of the aeroplanes. However, the view from here is at some distance and while the compound, rigs and HGVs would be perceived, they would not compromise the view, but degrade it; a moderate adverse impact. The removal of the Burchett's may open up views from the north, which, coupled with the existing loss of trees along the Dunsfold Road, may allow for glimpsed views from drivers. I find such effects to be limited and reliant on an oblique view generally. Nonetheless, the effect would be minor adverse. [8.54, 8.55]

11.42 Most of these findings are similarly recorded by the appellant, and while I note that SCC have concerns regarding a number of additional viewpoints, I find the evidence supporting these to be limited, and unlikely to add much to my overall conclusions.

11.43 SCC's perspective, largely supported by WBC, the Parish Councils and local objectors, is that there would be a significant adverse effect on the landscape resource and visual quality of the area, comprising the characteristics, features, aesthetic and perceptual qualities that define the special character of the Surrey Hills AONB and its setting and the AGLV, as well as local country lanes and the PROWs. [6.5, 6.32, 6.34,6.58, 7.18, 7.20]

11.44 Weighed against this, the appellant concludes that the level of intrusion would be of a lower order, always judging their conclusions alongside the short-term temporary and wholly reversible nature of the appeal project. Accordingly, they argue the effects would not significantly harm the special qualities of the AONB for the duration of the appeal scheme and there

would be no lasting adverse effects on the AGLV. As such, they conclude that the landscape and visual effects would not be sufficient to justify dismissing the appeal. [5.39, 5.56]

11.45 My own conclusions are that there would be a significant level of landscape and visual impacts from the proposal, dependant on a number of factors. To my mind, these particularly include the period of operation and, allowing for restoration, its reversibility.

Timeframes

11.46 The application that led to this appeal was for a temporary period of three years. While I note that the PPG indicates a duration period for exploratory drilling of some 12-25 weeks, the proposal goes significantly beyond that. I have set out above that the phasing programme comprises approximately 19 months. It is from this that the Council suggest that the time period should be 20 months overall, to limit the period of harm. However, the appellant highlights other matters, which they say means that a reasonable period is three years, although some opportunities for reductions in the timescale are possible. [4.2, 5.11-5.14, 6.75]

11.47 There are two possible timeframes comprised within the application. Should the Phase 2 drilling indicate that the LGD is not commercially viable, then decommissioning and restoration can take place, with the site being cleared, if not fully restored, well within the temporary permission timeframe. Alternatively, if initial testing indicates the deposit may be viable, then it is clear that some appraisal time would be necessary to plan for extended testing. Subsequent to this, holding the site in retention mode while an appraisal is completed on the next steps, which could include further testing or a move to production on this or another site, would appear reasonable.

11.48 On the basis of the evidence, I am satisfied that there are additional time implications in setting up contracts and securing equipment. Overall, I conclude that the three year period would represent the maximum but still acceptable requirement for the setup, drilling appraisal and restoration phases; accordingly I have reflected this within the conditions, but also in assessment of the effects of the proposal.

11.49 SCC argued further that such assessment of effects should extend beyond the three year period, contending that the reversibility of the scheme would not be achieved until the harm from hedgerow loss and construction was addressed. As a result, they suggested that there would remain harm even following the planting of hedgerows, re-seeding the access track and site compound and other required restoration. This matter is relevant in ensuring that Framework requirements to provide for restoration at the earliest opportunity are met, and in understanding whether the harm can be considered short-term and reversible. [5.61-5.64, 6.75]

11.50 A further issue raised by WBC was that the company had a poor record of restoration and referred to the Markwells Wood site. While it is apparent that there may have been some issues over timing, I have evidence that restoration of this site has been completed. It is also clear that the

restoration plans for the appeal site are appropriate to return the site to its original condition; the proposal can therefore be considered reversible, the issue is the timescale. [7.40, 8.22, 8.88]

11.51 It is wrong to say that the harms I have identified would be permanent, it would equally be wrong to say that there would be no reduction in harm prior to complete regrowth of replacement planting or seeding; benefits would arrive from the removal of the compound, drilling equipment, the access track and the gates, and further benefits would accrue from the initial replanting up until full restoration is achieved. Consequently, at the end of the temporary period, many of the harms I have identified above would be addressed.

11.52 On that basis, I am satisfied that the effects of this proposal would be short-term, and while there may be evidence of the construction elements and hedgerow loss for a period after the end of the temporary permission, very significant improvement should have been made and the level of harm accordingly reduced.

11.53 Nonetheless, I have identified significant harms to the character and appearance of the landscape from the proposal. The scale of this harm is tempered by its short-term nature, but the impacts are to the AONB, its setting and the AGLV. The Framework has recently been up-dated confirming that development within the setting of an AONB should be sensitively located and designed to avoid or minimise impacts.

The Site Investigation Report

11.54 Having considered the effects of the scheme, it is clear that introducing an essentially industrial activity into a rural landscape will represent significant and potentially harmful change; local and national guidance accepts this. The Framework seeks that policy should set out criteria to ensure that such operations do not have unacceptable adverse impacts on the natural environment. This is reflected in Policy MC12 of the SMP, which expressly deals with oil and gas development, and which, similarly to Framework expectations regarding the setting of the AONB, states that applications will only be permitted where the proposed site has been selected to minimise adverse impacts on the environment. To assess compliance with this policy it is necessary to consider the SIR, the robustness of which was challenged by SCC. [5.37, 5.38, 6.60-6.70]

11.55 To address technical constraints, the area of search was set out in Figure 2 of the SIR[112], although the indication was that this would be set at a distance of 1km beyond the footprint of the below ground gas discovery. In attempting to marry these up, it would appear to me that the extent of the deposit included areas where the depth of the gas column would be too small to provide effective appraisal of the resource, and a 500m area had been set to ensure suitable distance was maintained from the target crestal area. [5.36, 6.63]

[112] CD.A5

11.56 The SIR set out an expectation that the preferred transport solution would be access off the A or B classified road network with a bellmouth capable of accommodating the flows of HGVs and AILVs. Further direct constraints were set out, including nature conservation and landscape designations and heritage assets, and indirect constraints, including residential dwellings within 350m and proximity to formal and informal recreation as well as farm businesses.

11.57 I have reviewed the SIR and it is unclear how the initial 23 sites were selected. The appellant argues that it was a desk based judgement and the 23 short-listed sites were chosen because they represented those with the least level of constraint. Surprisingly, this 23 included, for example, Dunsfold Park, the consented scheme for 1800 house on Dunsfold Aerodrome, which, from the description of constraints, I would have assumed would have been discounted in the first sieve. [6.65]

11.58 Nonetheless, the authors of the SIR are experienced in such searches and a further assessment of the remaining 23 sites is set out in the SIR. From these, six were highlighted as demonstrating a high consistency with the development plan, and from these, only were two were identified as being available.

11.59 Again, I have reviewed Table 3, the assessment of development potential, and the reasoning is unclear. The appeal site does not meet the transport expectations, considerable adjustments and mitigation being required because the bellmouth is not capable of handling the flows of HGVs and AILVs, nor can the visibility be provided without additional speed limit controls. Furthermore, the site is within 350m of a residential property, there is a public footpath within the field and there would be visual access with the AONB. None of these constraints are recorded against Site 15, the appeal site. Even the argument that technical constraints prevent the consideration of sites further to the east, set out in the appellant's technical evidence[113], appears somewhat contradictory, promoting 2 sites as alternatives, but discounting them because of the complexity and risks associated with lateral or side-track drilling, even though, presumably they were within the area of search already established to address such technical constraints. [5.35, 6.64, 6.65]

11.60 The site obviously meets the technical constraints, it also meets the availability criterion. However, it is unclear to me that the process of addressing the environmental factors and constraints has been robust; the evidence just does not support that.

11.61 However, this site may well be the site best placed to minimise adverse impacts, but the choice is only justified on the basis of what appears to be a judgement against a somewhat selective application of constraints. Nonetheless, the technical search area as a whole is one that is unlikely to contain a site devoid of any such constraints and improved access options may be associated with greater direct or indirect effects on residents or heritage assets for example. [5.36]

[113] Mr Sanderson Proof

11.62 SMP Policy MC12 does seek a measure of selection, on this I draw little from the comparison with the accompanying text to Policy MC13, which the appellant suggests more clearly requires a selection process. The policies must be read plainly and that means the appellant's choice of site should be justified based on a robust approach to ensure that adverse impacts on the environment are minimised. This matter is not about whether there are alternatives, in fact none have been offered, it is about whether there is compliance with the policy. [5.31, 5.32, 5.38, 6.71]

Conclusion on Landscape and Visual Effects

11.63 Taking all these matters into account, if the impacts I have found regarding landscape character, visual effects and tranquillity, were permanent or of medium to long-term duration, then this proposal would clearly conflict with the policy aims and objectives for the mineral planning authority and the AONB. However, it is a compelling fact that any harm would be reversed in terms of these matters under the restoration scheme. Nonetheless, I consider that there would be harm to the landscape character and appearance of the area, including the AONB, and therefore conflict with SMP Policy MC14, which seeks to ensure no significant adverse impacts from the development. However, the weight I give to this is tempered by the short-term nature of the proposals.

11.64 I also find conflict with Policy MC12, as the evidence before me does not demonstrate that the site has been selected to minimise such adverse impacts. The weight I give to this conflict is tempered by an acknowledgement that there would be environmental constraints associated with sites within an area that would meet the significant technical constraints, especially noting the influence of the Dunsfold Aerodrome/Dunsfold Park development, which lies within the optimal location, and the alignment of the crestal area for both the primary and secondary targets.

11.65 Such policy conflict must be weighed against supporting policies and the benefits of the scheme in the planning balance.

Effect on Living Conditions and Local Businesses

11.66 I have addressed matters relating to visual impacts of the proposal on residential receptors above. WBC and interested parties maintain further objections to the proposal in relation to noise and vibration, as well as economic impacts on local businesses, notably in relation to the Trew Fields Cancer Awareness Festival, run in two fields adjacent to the Burchett's at Thatched House Farm, and the wedding business at High Billinghurst Farm. [7.32-7.34, 8.15-8.34, 8.59-8.65, 8.92]

11.67 National policy and guidance accepts that mineral development will have associated noise, often of higher levels over short durations or associated with 24 hour working periods. The acceptability of such impacts are a function of the proximity to the receptors. In this case, the nearest receptors are at Thatched House Farm, approximately 320-330m from the centre of the site compound, and High Billinghurst Farm, at some 390m.

11.68 A Noise Impact Assessment has been carried out, which addressed the national guidance and SCC's local guidance[114], which specifically deals with oil and gas development. While I note concerns about the absence of an assessment in accordance with BS4142[115], there is no substantive evidence before me criticising or challenging the outcome of this assessment. I have also considered carefully whether the assessment has correctly addressed attenuation distances, that is, from the centre of the compound, from individual noise sources or from the boundary. I am satisfied that noise is correctly assessed in this report. [5.81, 8.72-8.74]

11.69 The predicted night time noise levels are up to 42dB$_{LAeq,1hr}$. This is reliant on the provision of machinery screening, barriers and boundary acoustic screening, and I note was updated to address an assessment excluding any attenuation associated with the Burchett's. Some specific noise generating sources, such a tripping, are proposed to be mitigated through specific conditions, which also address noise limits at receptors.

11.70 Nonetheless, I am conscious that this is perceived as a tranquil area, albeit I have noted references to road noise and specifically to car noise from the Dunsfold Aerodrome test rack. While the appellant refers me to allowed noise limits associated with the wedding venue, I give this little weight as High Billinghurst Farm is a different location, considerably removed from other receptors and representative of only short-term, intermittent noise levels. [5.65, 5.67, 5.78]

11.71 However, while I accept there would be some change in the noise environment, assessed against the predicted noise levels with conditional controls to ensure compliance with those levels, there is nothing before me to suggest that the site would not meet the expected guidance standard during the temporary period of operations.

11.72 I appreciate that there are similar concerns with respect to vibration. I do not consider this to be significant during the drilling phases, such operations are at depth and near surface effects are likely to be minor. This is confirmed in the local noise guidance. During construction and reprofiling of the site there may be some vibration, but I have no reason to consider that the effects would be perceived at distance to the nearest receptors.

11.73 Turning to economic impacts, I start with the Trew Fields Festival. I have no doubt that this is a valuable and popular event, and would appear to involve daily programmes with some overnight camping in fields adjacent to the Burchett's. I was able to perceive a reasonable level of screening from the woodland between the fields and the site, although if removed, this effect would be much reduced and the 4m boundary screening, even with camouflage netting would be readily seen, as would some levels of activity, especially if the drilling rig was in place at the time. However, felling of the woodland, if it occurred, would also significantly affect the backdrop to the fields, and the works themselves would have the potential to be disruptive. [5.81-5.83, 8.60-8.62]

[114] Guidance for Noise and Vibration Assessment and Control 2020
[115] BS 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound

11.74 Indeed with the event taking place over a single weekend, it is this matter of timing that is critical. While there are no obvious controls to ensure drilling operations and the festival do not overlap, the chances are limited and could be subject to a level of coordination if festival dates are known in advance. This is a commitment I have noted has been made by the appellant. HGV movements are significantly reduced over weekend periods and I do not anticipate that these will be a significant detractor. Overall, while I understand the concerns and there would be some visual impacts, especially were the woodland to be fully removed, overall I cannot see that the proposal would compromise the festival. [5.76]

11.75 With regard to the wedding business at High Billinghurst Farm. This is clearly a successful enterprise and I note it has expanded and is proposed to expand further for a short period. Although able to host 75 events per year, this is reported to reduce to 50 events in 2023. During my site visit I was able to appreciate the setting and facilities offered, with a number of different outside spaces and a large barn, whose construction and sound controls have been detailed in the owners submissions to this Inquiry. I do not consider that noise would be significantly perceived across the distances separating the main areas of the site from the compound, and HGV movements across the fields would not be a significant factor. However, one outside space, detailed in supplied images, does look across the fields towards the site. I have dealt with the topography limiting perceptions during normal operations, but have found that the rig would be a negative addition to the view. [5.73-5.80, 8.29, 8.30, 8.38-8.40]

11.76 Coupled with this, the owner set out concerns that the site entrance on High Loxley Road would be a further detractor, establishing an industrial character that would deter the clients he was seeking to attract. I do have some sympathy with this, having found the entrance a large and imposing addition to the area and a significant detractor from the tranquil country lane. Nonetheless, it represents only the first part of the journey to the site, the rest being largely unaffected by the proposal. [5.75, 8.19]

11.77 It is difficult to quantify how such perceptions may affect a business. A critical component is coordination of event timing and I note the efforts made and conditions requiring coordination and exclusion of HGVs from Friday and Saturday afternoons. Equally, I am conscious that the business does not only have events on the weekend, and even at 50 events per year this could mean more than one in any week in favourable months. However, the venue is not devoid of detractors, including, for example, the digestion plant and noise associated with activities at Dunsfold Aerodrome.

11.78 On balance, I have to accept that there may be some negative perceptions engendered by the presence of a drilling operation, and potentially on viewing if clients are assessing the venue. However, I cannot see that the site operations would materially affect individual weddings. On any event day there would be significant levels of associated traffic coming to and from the site, including guests and support staff, which would significantly exceed activities associated with the appeal proposal and detract from the perceived tranquillity in any sense. During the day, I am satisfied that noise can be reduced to acceptable levels from the appeal site. While lighting is generally controlled by conditions, there is some obstacle lighting

that, when a rig is present, may introduced a distracting and jarring additional presence during evening and night time periods, albeit the main part of the venue for evening or night time events is on the opposite side of the complex.

11.79 Overall, I consider that the introduction of the access gates, compound and drilling operation could have the potential to introduce a negative perception of the venue if association is made by future clients, although actual impacts would be limited. In light of the temporary nature of the proposal, and the mitigation measures that would be secured through conditions, I consider that this would contribute a moderate level of additional weight to my earlier findings of harm to the overall character and appearance of the area. In this regard, it would be contrary to Policy MC14 of the SMP, which seeks to ensure there would be no significant impacts arising from the development.

Highway Matters

11.80 It is important to note that despite general acceptance by SCC's HA to the proposals, which went through a number of iterations and Road Safety Audits (RSA), the decision of the Planning and Regulatory Committee represents the position of the Council on this matter. SCC maintained their opposition to the scheme on highway grounds and presented evidence and a witness on this matter at the Inquiry. [5.49, 6.43]

11.81 The principal concerns regarding highway matters related to the use of Dunsfold Road and the junction to High Loxley Road by HGVs and AILVs. These arose because of significant concerns argued by SCC and interested parties regarding the safety of that road, in particular the series of sharp bends, but also including Pratts Corner, and the implications of the necessary signage and lighting to allow for the manoeuvres to get the larger loads into High Loxley Road and onto the site access. There are therefore concerns regarding highway safety as well as delays, prompting unsafe manoeuvres or use of what are perceived as unsafe alternative routes. [6.43-6.48, 7.12]

11.82 A Transport SoCG was agreed between the main parties and confirmed that matters in dispute focused on HGV, including AILV, movements and not those of other scheme vehicles. In addition, despite advisory signage at the junction of Dunsfold Road and the A281 indicating the road as unsuitable for HGVs, the main parties agreed that the part of the network which had prompted the advisory signage was that west of Pratts Corner. This was accepted not to form part of the routeing for traffic associated with the scheme. I see no reason to disagree. [5.49]

11.83 Traffic generation projected for the scheme was also agreed at 10 HGVs coming to the site, 20 HGV movements per day. I am satisfied that this would represent a maximum, which could be controlled by condition, although there would be periods when there could be less or even no HGV traffic.

11.84 The appellant commissioned a Transport Statement (TS), which utilised automatic traffic count data from October 2018 and 2019; additional ATC

data has been referred to in the Inquiry associated with the further development of High Billinghurst Farm from March/April 2019. Although these latter figures were slightly lower, there was a relatively consistent picture of existing traffic ranging from 5,234 to 6,159 two-way movements Monday-Friday 07.00 to 19.00, of which between 552 and 779 were identified as HGVs, approximately 12.2-15.2% of flows. Weekend movements were considerably lower with a lower proportion of HGV movements, between 5.5 and 8.3%.

11.85 Dealing with Dunsfold Road initially, SCC and interested parties have highlighted what they perceive as the poor safety record of the stretch of the road between Pratts Corner and the A281. To some extent this includes evidence of accidents involving vehicles which had come off the road into ditches at both my site visits, but is perhaps most clearly supported by the HA improvements made in 2017/18. These were directly in response to the poor safety record and comprised chevron signage and improved surfacing and I note there is now 40 mph restrictions through these bends. [6.51, 7.13]

11.86 The appellant's TS highlights that recorded Personal Injury Collisions (PICs), for which typically a period of 5 years is used in such assessments, showed that between 2013 and 2017, there were no PICs recorded involving HGVs. However, the appellant rightly addressed this in more detail in the Inquiry evidence noting that between 2015 and 2021 there were some 26 PICs between the proposed access and the A281, with one relating to a horsebox and a car, the closest, the appellant argues, to an HGV event, although the car was identified as being at fault. [6.53]

11.87 SCC refer to anecdotal evidence, also commented on by Alfold Parish Council and interested parties, regarding non-injury accidents at Pratts Corner, although the frequency of these is reported very differently. Nonetheless, put simply, I accept that the combination of long straight sections coupled with a series of sharp bends has historically led to presumed speeding, failure to negotiate the corner or crossing of the centre lines and accidents. [5.54, 6.55]

11.88 SCC go further in comparing the safety record of this road to national averages, calculating that, based on traffic flows and injury accidents, the rate was between 690 and 738 accidents per billion vehicle kilometres. This they suggest is double the largest UK rate and nearly four times worse than the latest statistics for this type of road. [6.51-6.54]

11.89 Such an approach is not typical of those employed in assessing effects of new development, and SCC accept that it comes from Department of Transport figures and would appear is utilised, for example, in analysing cost and benefits for new road schemes. The referred to table, RAS10002[116], draws on the reported accident rates for other rural roads. To my mind, there are a number of challenges in interpreting this data from a broad swath of road types and applying it to a short, single section of road. Nonetheless, such analysis accords with my view, as expressed

[116] Mr Foulkes Proof Appendix A

above, that there have historically been accidents associated with this stretch of road, and indeed the HA response to providing improvements is assuredly evidence of this. [5.54]

11.90 However, this is not the key issue in this case, no matter how much it legitimately concerns local residents. The question is whether the addition of 20 HGV movements maximum per day during the temporary period of this proposal would materially lead to an increase in highway safety risk.

11.91 The Dunsfold Road from the A281 is generally of sufficient width for cars and HGVs to pass safely. Swept Path Analyses (SPAs) have been submitted for the junctions and for the corners of particular concern. Based on the evidence, I have little concern over the alignment and width in relation to what might be termed normal HGVs along this stretch. There is good visibility to each corner, the vehicles would be able to manoeuvre without needing to cross the centre line and there is no reason to suppose that the HGVs would approach at such speeds as to compromise other traffic. In fact, the lack of an accident record related to HGVs would bear this out.

11.92 Nonetheless, I must consider larger HGVs and particularly the AILVs that would be associated with bringing and removing the rigs from the site. SCC tested the evidence on the proportion of larger HGVs within the total numbers recorded by the ATCs and suggested that despite what may appear to be a low number of daily HGV movements, there could be a significant proportionate increase in the larger type of vehicle. [5.54, 6.54]

11.93 This has relevance as these are the vehicles where there may be a need to cross the centre line on the corners. Nonetheless, I am content that there would be only a very small number of movements within this category which would, in all normal circumstances, still allow sufficient room, as confirmed by the HA, for other cars to pass at these points. Their occurrence would be rare, the speeds would be low and their movements often accompanied by the introduction of signals at Pratts Corner, which I address below. [6.54, 7.6]

11.94 Overall, while accepting that the road has a poor historic accident record and that improvements instigated by the HA should have improved but potentially not eradicated that risk, I am satisfied that the HGV traffic associated with the scheme would not materially increase the highway safety risks along this stretch.

11.95 I turn then to Pratts Corner and the planned traffic management. The proposed scheme to manage HGVs accessing High Loxley Road has been through a number of iterations, RSAs and discussion and finally agreement with the HA. Nonetheless, SCC and interested parties remain concerned by the risks associated with what they see as a scheme that could result in confusion, delays, direct risks through poor driver response and encouraging the use of unsafe parallel routes. [5.46, 5.50]

11.96 The scheme initially set out, has been updated to include, in addition to other measures in the Framework Construction Traffic Management Plan (TMP), revised positions of temporary lights and the use of banksmen. This was in part due to acknowledged risk of conflict with High Billinghurst Farm

wedding event traffic, which is proposed to be addressed through conditions excluding HGV access at certain times, and partly in response to the RSA, albeit the direct feedback and recommendation from that process was to widen the bellmouth at High Loxley Road and retain the priority junctions to allow for compliant turns by HGVs. The designers' response[117] noted the restrictions in terms of width and land ownership and promoted different further controls, including a four way traffic controlled signalised system, although some movements would be addressed through the use of banksmen alone.

11.97 I do not hold with SCC's view that promoting an alternative view to that expressed in the RSA is inherently unsafe; it is a normal part of assessment and engineering design. Nonetheless, the current scheme is one that would require mounting and removal of the signage, cones and temporary lights on a regular basis with banksmen in place to manage that and to establish a clear one way system for HGVs to turn into High Loxley Road and subsequently into the site. This will mean delays for motorists using all four arms of the staggered junction here. [5.54, 6.47-6.49]

11.98 Such temporary lights are not inherently unsafe, or indeed that unusual on roads. They are used to facilitate construction, utilities installation or maintenance, road repairs, gulley cleaning amongst many others. Indeed, at the time of one of my site visits there was a four way signalised system in place at Pratts Corner. I am satisfied that the scheme has responded to the concerns of the RSA in relation to the placement of the temporary signals, and while they may not always be present, and I note there is likely to be significant variation day to day in their use, I cannot draw a conclusion that they will be a 'surprise' or be so unexpected as to cause risk in and of themselves. The potential for conflict between site operations and the occasional use of the wedding venue at High Billinghurst Farm, which I note now has temporary approval to increase to 75 events per year, can be addressed through conditions specifying an approved TMP promoting liaison, removal of traffic management at those times and exclusion of HGVs accessing the site during periods of Fridays and the weekends. [5.54, 6.45-6.47, 7.11]

11.99 SCC identify non-compliant driver behaviour or failure of lights as a risk, the latter I do not consider to be an issue; such occurrences exist for the multitude of systems in use and, in this case, banksmen would be in place and could adopt alternatives, such as stop and go boards. Non-compliant behaviour is difficult to assess but I have assumed means the possibility of impatient drivers skipping the red lights, potentially unaware of the activities involving the HGVs, which in certain manoeuvres would have to progress along the Dunsfold Road, back into Dunsfold Common Road in order to make a three point turn before entering High Loxley Road from the west. I note this was a concern in the RSA, which led to a response regarding the placement of the lights to reduce forward visibility of other junctions and assumptions that the way may be clear, as well as alterations to the inter-green periods. [5.54, 6.47]

[117] CD.E18

11.100 Such non-complaint behaviour cannot, in reality be accounted for, but is a risk that potentially exists across all such temporary provisions. Undoubtedly, a driver that can see beyond the lights may be more inclined to ignore the signal, but here, allowing for some future revisions through conditions requiring the finalised TMP, there would be limited visibility, clear signage and banksmen on site. The movements that could trigger significantly long wait times are those of the AILVs, which in themselves are likely to be visible and indicative of the reasoning behind the signal controls. I note concerns that the system would be relatively complicated, that the movements of AILVs relatively unusual and there would be reliance on coordinated communication between HGVs and banksman. While I accept that this is indicative of the poor current alignment of the road for accepting such traffic, it is not in itself a material implication of risk. HGV drivers and banksmen are trained in such approaches, the level of AILVs would be low and temporary signalised junctions are a typical form of road management. AILVs associated with drilling, renewable energy or large construction projects are often managed in similar ways and often in rural sites.

11.101 On balance, I do not consider that there are unacceptable risks associated with the minor widening of the highway, the provision of temporary signage and traffic signals and the use of banksmen for this scheme.

11.102 The further concern related to regular users who may choose, assuming an awareness of the potential for delays, to utilise alternative routes. One of these, Hook House Lane, was included within my site visit. I accept that this road is of narrow width and has poorer forward visibilities than the section of Dunsfold Road which would be affected by the traffic controls. However, I note the appellant's assessments that the delay associated with the temporary signals would represent similar traffic times to the use of such routes. Drivers do prefer to be moving, but local residents, who may be those aware of the occasional delays, are likely to also be aware of the risk of alternative routes, none of which, to my mind, represent obvious alternative routes to the normal use of Dunsfold Road. [6.48]

11.103 Overall, I consider that the proposed traffic management, which can be further assessed under conditions and highway approvals, has been shown to be acceptable in terms of highways safety and the local road network. It would comply in this regard with SMP Policy MC15, which seeks that arrangements for site access and traffic generated by the development would not have any significant adverse impacts on highway safety or the effective operation of the highway network.

Other Matters

11.104 Turning to other matters, I note the concerns of the local councils in relation to effects on Dunsfold Park; from interested parties on the nearby gypsy and traveller community, environmental impacts on ecology, air and groundwater associated with the scheme; and from a number of parties that the junction works would require the use of common land. I also note

the concerns of the local council regarding the financial situation of the operator to complete restoration. [8.58, 9.1]

11.105 In relation to Dunsfold Park, it is a fact that the geological studies suggest that a large area of the potential gas reserve is likely to lie underneath the site of the current aerodrome and potential future garden village. Anecdotally it was claimed that property searches are highlighting the potential well activity and the implication was that this would affect sales or values. In reality, directional drilling for exploration or production is an established approach and the LGD is identified at approximately 3,000 feet, while the secondary target is at approximately 4,000 feet. In absence of any evidence that conventional exploitation could lead to above ground effects at this depth and distance from the well head, I can give little weight to the suggestion that the proposals could affect this development. [7.37, 7.38, 8.58]

11.106 Similarly, having assessed effects on nearer residential receptors, I can see no material harm arising from the proposal on the nearby gypsy and traveller community. [7.39, 8.47, 9.1]

11.107 Turning to environmental impacts, despite arguments put that noise and lighting could affect the local ecology, the site would be located in open fields and, while next to a woodland, this is a managed wood where felling is identified in the near future. I am satisfied that the Ecological Appraisal and associated protected species surveys[118], along with conditions are sufficient to address this matter.

11.108 Other concerns in relation to groundwater and air pollution are matters properly addressed by the Environment Agency under their regulatory regime, which, in particular will have addressed potential emissions. The well design and the drilling operation would be regulated by the Health and Safety Executive (HSE), and I have no evidence that there would be harmful emissions from the well either before or during operations. As set out in the Framework (paragraph 188), where these are subject to separate pollution control regimes it should be assumed that these regimes will operate effectively. Regarding this, I note the appellant's Hydrogeological and Flood Risk Assessment[119] and the issuing of the Environmental Permit for the site[120].

11.109 In relation to the matter of common land, I note the opinions expressed by WBC and set out in letters and responses provided by the owner of Thatched House Farm. It is clear that this has been a matter of concern throughout the application and that there is some confusion and disagreement about the extent of the highway verge associated with the road and the common land. [5.91, 7.9, 7.10, 8.56, 8.89, 8.90]

11.110 This matter did form part of the Highways SoCG, where it was agreed, including by representatives for WBC, that the works fall within the area of the highway rather than common land. The appellant refers to a

[118] CD.A11
[119] CD.A12
[120] CD.G1 - EPR/VP3305PT

Commons Commission decision from 1976 that confirmed that a 3 foot verge was part of land removed from the Register of Common Land Unit 162[121]. I note the plan included here shows a red line area annotated with the text "3'0'' verge" around all 4 arms of the Pratts Corner junction. On the evidence before me, and this is supported by SCC and their HA position, there is a strip of verge associated with the highway and excluded from the common land at that point. I do not therefore consider that the proposed junction alterations conflict with land registered as common land.

11.111 Finally, concerns were raised that the appellant was reliant on speculative exploration but was not financially in a position to progress the scheme and specifically to provide for the restoration, which is central to arguments regarding the short-term reversibility. I must be clear, that I attach no weight to this line of argument. The appellant has a PEDL licence, and they are clearly accepted through that process as a legitimate operator. They have other interests mainly within this country but also overseas. While I note the concerns regarding the delays in the restoration of the Markwells Wood Well Site, this has been completed and in no way serves as compelling evidence that restoration would not take place here. As with any other individual, body or organisation seeking planning consent they would be required to comply with the conditions placed on such a permission. There are enforcement proceedings to ensure that such requirements are met. [7.40 8.83, 8.87]

Overall Planning Balance

11.112 I have set out that, while I have not found harm in transport terms, I consider that the proposal would result in harm to the landscape character and appearance of the area and degrade the qualities of the setting of the AONB. Although I do not find this to be a valued landscape in Framework terms, it is a landscape that is clearly valued by local residents and the associated businesses. It has value too from its function as an AGLV, and as setting to, and buffer on the edge of the AONB. Furthermore, while I have found only limited effects on the AONB itself, it is of high sensitivity and that harm too must be weighed in the balance. However, the wholly reversible nature of the proposals and possible long-term benefits must be weighed against any harm.

11.113 I have found that the temporary period over which there would be activity on the site, the limited period over which the rigs would be present and the proposals and controls to ensure restoration, limit that harm. Nonetheless, I find that there would be adverse impacts contrary to both WLP and SMP policies in that regard. Developments must be considered against their compliance with the development plan unless material considerations suggest otherwise.

11.114 Accordingly, it is necessary to consider the benefits of the proposal, and the compliance with local and national policy and guidance in relation to mineral resources to understand whether the adverse impacts are unacceptable.

[121] CD.J7

11.115 It was acknowledged by the appellant that exploration and appraisal of reserves represents a substantial investment or cost, but some benefits would arise in terms of the economic spend associated with this. I acknowledge that, but am not persuaded that the significant part of this would be realised locally and afford this only limited weight. [6.81]

11.116 However, exploration and appraisal are a necessary part of mineral development, without it, the currently acknowledged benefits of production cannot be realised. As such, some measure of the benefits of production must be aligned with the earlier phases. I note SCC's contention that the appellant should not be able to rely on such benefits whilst also relying on the temporary nature of the proposal to offset harm. I understand this point, but disagree that they should be considered entirely separately. To do so would mean that exploration stages for mineral resources may be rendered unjustifiable and the resources sterilised, contrary to the expectation in the Framework, which still requires that there is positive planning for all three phases of development. [3.9, 5.5, 5.18, 5.92, 6.80]

11.117 It is important to note that there is no presumption in favour of consent for subsequent phases, nor any requirement that the same site used for appraisal should be used for long-term production, were it shown to be viable. Each stage of the process must be considered on its own merits[122] and, as a consequence, the temporary nature of this proposal can be considered but weight also arises from the benefits of gas production as a measure of need.

11.118 Quite clearly, I can understand that many will consider allowing exploration as tantamount to allowing the long-term production on the site. This is not the case and it carries no weight in my recommendation. The planning requirements for each phase, exploration, assessment and production, are considered to be entirely separate and for this site to move into production, it would require a further planning permission, which would be subject to full appraisal based on the prevailing policies at that time.

11.119 As set out in the Background section to this report, this country is actively seeking to substantially reduce the use of hydrocarbons, including fossil gas, with a considerable focus on the move to a net-zero position. Nonetheless, planning policy at present stops short of a moratorium on conventional fossil gas production, although the benefits of such production must now be considered in light of the very substantial reductions, re-alignment of energy sources and the global need to respond to climate change imperatives. [3.10-3.14, 6.77, 7.56]

11.120 The appellant argues that the LGD represents a significant resource that can play a role in the transition to net-zero, and potentially represents the second largest onshore gas deposit in the UK. They estimate it will meet the equivalent domestic and industrial demand of Guildford or Waverley, and, in the most positive, upside prediction, that of both towns. They also argue that the gas would form part of the transition to net-zero

[122] PPG IP27-120-20140316

through the reforming of methane to hydrogen with carbon capture and storage. [5.5, 5.17, 5.21, 5.28, 5.85, 5.86]

11.121 While I note that such 'blue' hydrogen does form part of the planning for future energy needs, the appellant agreed with my questions that the final use of the gas associated with LGD cannot be confirmed at this point. [6.77]

11.122 To my mind, the projected 44-70 bcf[123]represents a locally significant resource, although it would represent a small proportion of the UK's energy demand, even allowing for the significant reductions forecast. The weight to give to such benefits must be tempered by this. Nonetheless, the appellant argues that the security of supply and the offsetting of the need, and carbon implications, of importing gas, particularly LNG, weighs heavily in favour of such domestic sources. [5.17]

11.123 I have noted the arguments of WBC, the Parish Councils and many interested parties, including the Weald Action Group, that the continued extraction of fossil fuels is incompatible with the increasing commitments being made both in the UK and globally, to comply with climate agreements and maintain global temperature rise to 1.5^{o}C. To achieve such a target will require a very substantial change in our energy mix and use, and the reduction in the use of fossil fuels is at the forefront of this change. [7.26-7.30, 8.2-8.7, 8.8-8.13, 8.96-8.100]

11.124 However, current guidance and policy, while acknowledging these changes, forecasts a transition period where fossil gas would still play a part as infrastructure requirements and other energy sources are aligned with a low carbon future. [3.7, 5.24, 5.25]

11.125 The Framework currently emphasises that minerals are essential to provide for the energy the country needs and the economic advantage they deliver. In addition, despite the strong arguments of others, current government policy recognises the continuing need for fossil fuels for many years, albeit at significantly reduced levels, including for natural gas. Under existing policy, the need for future sources of gas has not currently been discounted, rather it is accepted that natural gas will remain part of the energy mix in the UK during the process of transition to a clean energy future, although it is not specific regarding onshore gas deposits or the exploitation of new reserves. [5.27, 8.5]

11.126 As a consequence, there are benefits to the scheme. The exploration and production of gas is, in principle, consistent with and encouraged by current national policies. The appellant has indicated that while the deposit is known to exist, this appraisal phase is necessary to determine if it is viable, and quote the probability of success at between 60-70%.

11.127 Without the exploration phase, it would not be possible to identify the extent and viability of the resource and so achieve the benefits on which national policy still acknowledges great weight to be given.

[123] UKOG internal estimates 43-68 bcf

Therefore, although this proposal would be short-term, and would not, in itself, deliver commercial quantities of gas, nonetheless, there are positive benefits that must accrue from this exploration/appraisal phase. I cannot accord the great weight sought by the Framework for extraction of minerals, but accord significant weight to this exploration and appraisal phase, with a reasonable likelihood of confirming a viable resource for extraction. [5.5, 5.22]

11.128 Finally, the operation in terms of exploration and possible production, would contribute to the economy in terms of jobs and potentially some local spend, albeit I have found the weight to be given to this benefit quite limited.

11.129 Overall, although I have found harm and conflict with SMP Policies, the overall thrust of government policy currently, as well as the vision of the SMP, are supportive of the utilisation of mineral resources within acceptable environmental constraints. The harms I have noted can be tempered by their short-term nature and by mitigation through conditions, specifically those associated with noise, lighting and the coordinated working with neighbouring businesses. As such, the weight I give to the harms, while significant for short periods such as when the drilling rigs are in place, can nonetheless be considered overall as moderate.

11.130 Consequently, I would recommend that on the basis of current policy, the benefits or the proposal would outweigh the harm I have identified and a decision otherwise than in accordance with the development plan is warranted.

Inspector's Recommendations

12.1 Accordingly, for the reasons given above, I recommend, on balance, that the appeal should be allowed.

Mike Robins

INSPECTOR

APPENDIX 1 Appearances at the Inquiry

FOR THE APPELLANT:	
David Elvin QC and Matthew Dale-Harris of Counsel who called:	Instructed by Grant Anderson of Hill Dickinson LLP
Will Gardner, CMLI	Associate Director at EDP
Steven Windass, CEng, FIHE, CIHT	Head of Transport Planning for Local Transport Projects Ltd
Stephen Sanderson, MSc (Petroleum Geology)	Chief Executive of UKOG
Kris Bone, MEng (Petroleum Engineering)	Operations Director of UKOG
Nigel Moore MRTPI	Planning and Environmental Consultant with Zetland Group Limited
FOR SURREY COUNTY COUNCIL:	
Jenny Wigley QC she called:	Instructed by the solicitor for Surrey County Council
Elizabeth Brown BA, Dip LA, CMLI	Associate Director Landscape Architect - Atkins.
Graham Foulkes BA(Hons), MSc, CMILT	Managing Consultant in Transportation - Atkins
Richard Hunt MA, MRTPI	Chartered Town Planner - Atkins
FOR WAVERLEY BOROUGH COUNCIL AND THE PARISH COUNCILS	
Patrick Arthurs He called:	Instructed by the Waverley Borough Council
John-Paul Friend	Director of LVIA Ltd

HND (LGD) BA Hons Dip LA CMLI

Patrick Arthurs BA, MA, MRTPI	Arthurs Planning and Development Ltd

INTERESTED PERSONS:

Kirsty Clough	Weald Action Group
Darcey Finch	Local Resident
Tom Gordon	High Billinghurst Farm
Ashley Herman	Thatched House Farm
Stephen Heywood	Dunsfold Parish Council

APPENDIX 2 Documents submitted during the Inquiry

Ref	Document	Core Document Ref
ID1	Appellant Opening Statement	CD.K1
ID2	SCC Opening Statement	CD.K2
ID3	Rule 6 Party Opening Statement	CD.K3
ID4	Kirsty Clough (WAG)	CD.K4, CD.K4/1, CD.K4/2
ID5	Darcey Finch	CD.K5
ID6	Tom Gordon (High Billinghurst Farm)	CD.K6
ID7	Ashley Herman (Thatched House Farm)	CD.K7
ID8	Final Inquiry Programme 27 July 2021	CD.J1
ID9 - ID163	Consultee responses	CD.L1/1 - CD.L55/2
ID164	Updated link for high resolution images referred to in CD.A27/3	CD.A27/6
ID165	Revised Inquiry Programme 29 July 2021	CD.J1/1
ID166	Stage 1 & 2 Road Safety Audit Report – redacted	CD.E18/1
ID167	Email from Mr Herman (Thatched House Farm) re Common Land dated 2 August 2021 (redacted)	CD.J2 – CD.J2/3
ID168	Email from Mr Gordon (High Billinghurst Farm) re Noise Control and Hours of Operation dated 2 August 2021	CD.J3
ID169	Letter from Climate Change Committee to Kwasi Kwarteng MP dated 31 March 2021	CD.J4
ID170	Draft Section 106 Unilateral Deed	CD.J5
ID171	The COBA 2020 User Manual Part 2 (Chapters 3 to 5)	CD.J6
ID172	High Billinghurst Farm events venue location plan 26 October 2020	CD.E19/1
ID173	Appellant Note on Common Land 4 August 2021 (redacted)	CD.J7
ID174	Hascombe Estate Woodland Felling Submission 4 August 2021	CD.J8
ID175	Inquiry Site Visit Itinerary 12 August 2021 (redacted) & plan	CD.J9 & CD.J9/1
ID176	Appellant Response Dated 12 August 2021 to Hascombe Estate Woodland Felling Submission	CD.J10
ID177	SCC Closing Statement	CD.K8
ID178	Rule 6 Party Closing Statement	CD.K9

ID179	Derbyshire Dales [2010] 1 P. C.R. 19	CD.H4
ID180	Langley Park School [2010] 1 P. C.R. 10	CD.H5
ID181	Mount Cook [2017] P.T.S.R. 1166	CD.H6
ID182	Appellant Closing Statement	CD.K10
ID183	Appellant Partial Costs Application 12 August 2021	CD.J11
ID184	SCC Response to Partial Costs Application	CD.J12
ID185	Revised Conditions 7 and 8 Agreed by SCC and Appellant 11 August 2021	CD.J13
ID186	R v Warwickshire CC Ex p Powergen Plc	CD.H7
ID187	Comments on Inspector's questions re 'Finch' Case	

APPENDIX 3 Core documents

Section A: Planning application documents

CD.A1	Planning Application Cover Letter	
CD.A2/1	Planning Application Forms	26 April 2019
CD.A2/2	Addendum to planning application form_Redacted	20 May 2019
CD.A3	Planning Application Plans (at the date of submission – March 2019)	

Location plans

CD.A3/1	ZG-UKOG-L1-PA-01 Site Location Plan 2500 Scale A2
CD.A3/2	ZG-UKOG-L1-PA-02 Location Plan 10000 Scale A2 (Showing Likely Extent of Sub-Surface Borehole Deviation)

Existing layout plans

CD.A3/3	ZG-UKOG-L1-PA-03 Existing Site Plan Composite 2500 Scale A3
CD.A3/4	ZG-UKOG-L1-PA-04 Existing Site Plan 1 of 3 500 Scale A2 (Well Site - Burchett's SW Corner)
CD.A3/5	ZG-UKOG-L1-PA-05 Existing Site Plan 2 of 3 500 Scale A2 (Burchett's SW Corner - Burchett's NW Corner)
CD.A3/6	ZG-UKOG-L1-PA-06 Existing Site Plan 3 of 3 500 Scale A2 (Burchett's NW Corner - High Loxley Road)

Constructed mode plans

CD.A3/7	ZG-UKOG-L1-PA-07 Existing Sections Plan 500 Scale A2
CD.A3/8	ZG-UKOG-L1-PA-08 Proposed Construction Layout Plan 1 of 4 500 Scale A3 (Well Site)
CD.A3/9	ZG-UKOG-L1-PA-09 Proposed Construction Layout Plan 2 of 4 500 Scale A2 (Well Site - Burchett's SW Corner)
CD.A3/10	ZG-UKOG-L1-PA-10 Proposed Construction Layout Plan 3 of 4 500 Scale A2 (Burchett's SW Corner - Burchett's NW Corner)
CD.A3/11	ZG-UKOG-L1-PA-11 Proposed Construction Layout Plan 4 of 4 500 Scale A2 (Burchett's NW Corner - High Loxley Road)
CD.A3/12	ZG-UKOG-L1-PA-12 Proposed Construction Sections Plan 500 Scale A2

Access arrangements

CD.A3/13	ZG-UKOG-L1-PA-13 Proposed Access Layout Plan High Loxley Road 250 Scale A3
CD.A3/14	ZG-UKOG-L1-PA-14 Proposed Access Layout Plan Pratts Corner 250 Scale A3

Drilling mode plans

CD.A3/15	ZG-UKOG-L1-PA-15 Drilling Mode Layout Plan 500 Scale A3
CD.A3/16	ZG-UKOG-L1-PA-16 Section Through Drilling Mode Layout Plan 500 Scale A3 (BDF Rig 28 - Height 37m)
CD.A3/17	ZG-UKOG-L1-PA-17 Section Through BDF Rig 28 500 Scale A3 (Height 37m)
CD.A3/18	ZG-UKOG-L1-PA-18 Section Through BDF Rig 51 500 Scale A3 (Height 38m)

Testing mode plans

CD.A3/19	ZG-UKOG-L1-PA-19 Initial Flow Testing Mode Layout Plan 500 Scale A3
CD.A3/20	ZG-UKOG-L1-PA-20 Section Through Initial Flow Testing Mode Layout Plan 500 Scale A3
CD.A3/21	G-UKOG-L1-PA-21 Section Through PWWS MORE 475 500 Scale A3 (Height 35m)
CD.A3/22	ZG-UKOG-L1-PA-22 Section Through PWWS IDECO BIR H35 500 Scale A3 (Height 34m)
CD.A3/23	ZG-UKOG-L1-PA-23 Extended Well Testing Mode Layout Plan 500 Scale A3
CD.A3/24	ZG-UKOG-L1-PA-24 Section Through Extended Well Testing Mode 500 Scale A3

Retention mode plans

CD.A3/25	ZG-UKOG-L1-PA-25 Retention Mode Layout Plan 500 Scale A3
CD.A3/26	ZG-UKOG-L1-PA-26 Section Through Retention Mode Layout Plan 500 Scale A3

Boundary treatment plans

CD.A3/27	ZG-UKOG-L1-PA-27 Proposed Well Site Fencing & Gates Section Plan 50 Scale A2
CD.A3/28	ZG-UKOG-L1-PA-28 Proposed Entrance & Fencing Section Plan 50 & 100 Scale A3

Restoration mode plans

CD.A3/29	ZG-UKOG-L1-PA-29 Proposed Restoration Layout Plan 1 of 5 (Well Site)	
CD.A3/30	ZG-UKOG-L1-PA-30 Proposed Restoration Layout Plan 2 of 5 (Well Site - Burchett's SW Corner)	
CD.A3/31	ZG-UKOG-L1-PA-31 Proposed Restoration Layout Plan 3 of 5 (Burchett's SW Corner - Burchett's NW Corner)	
CD.A3/32	ZG-UKOG-L1-PA-32 Proposed Restoration Layout Plan 4 of 5 (Burchett's NW Corner - High Loxley Road)	
CD.A3/33	ZG-UKOG-L1-PA-33 Proposed Restoration Sections Plan 5 of 5 - Restoration of The Well Site	
CD.A3/34	6033.504-REV A Well Site Construction Detail Sheet 2	
CD.A4/1	Statement of Community Involvement Loxley_Part1	19 April 2019
CD.A4/2	Statement of Community Involvement Loxley_Part2	
CD.A4/3	Statement of Community Involvement Loxley_Part3	
CD.A5	Site Identification Report Loxley	19 April 2019
CD.A6	Planning Statement and Environmental Report	May 2019
CD.A7/1	Design Statement_Part1_Redacted	February 2019
CD.A7/2	Statement_Part2_Redacted	
CD.A7/3	Design Statement_Part3	
CD.A8	Air Quality Assessment_Redacted	26 March 2019
CD.A9/01	Landscape & Visual Impact Assessment_Part1	April 2019
CD.A9/02	Landscape & Visual Impact Assessment_Part2	
CD.A9/03	Landscape & Visual Impact Assessment_Part3	
CD.A9/04	Landscape & Visual Impact Assessment_Part4	
CD.A9/05	Landscape & Visual Impact Assessment_Part5	
CD.A9/06	Landscape & Visual Impact Assessment_Part6	
CD.A9/07	Landscape & Visual Impact Assessment_Part7	
CD.A9/08	Landscape & Visual Impact Assessment_Part8	
CD.A9/09	Landscape & Visual Impact Assessment_Part9	
CD.A9/10	Landscape & Visual Impact Assessment_Part10	
CD.A9/11	Landscape & Visual Impact Assessment_Part11	
CD.A9/12	Landscape & Visual Impact Assessment_Part12	
CD.A9/13	Landscape & Visual Impact Assessment_Part13	

CD.A9/14	Landscape & Visual Impact Assessment_Part14	
CD.A9/15	Landscape & Visual Impact Assessment_Part15	
CD.A9/16	Landscape & Visual Impact Assessment_Part16	
CD.A9/17	Landscape & Visual Impact Assessment_Part17	
CD.A10	Noise Impact Assessment	10 April 2019
CD.A11	Ecological Assessment (December 2018-January 2019)	
CD.A11/1	Ecological Impact Assessment	
CD.A11/2	Preliminary Ecological Appraisal	
CD.A11/3	CONFIDENTIAL Badger Survey (not publicly available)	
CD.A11/4	Bat Survey	
CD.A11/5	Dormouse Survey	
CD.A11/6	Great Crested Newt Survey	
CD.A11/7	Reptile Survey	
CD.A12	Hydrogeological & Flood Risk Assessment	April 2019
CD.A13/1	Arboricultural Impact Assessment_Part1	29 March 2019
CD.A13/2	Arboricultural Impact Assessment_Part2	
CD.A14/1	Transport Statement_Part1	April 2019
CD.A14/2	Transport Statement_Part2	
CD.A15	Archaeological & Cultural Heritage Assessment	March 2019
CD.A16/1	Light Impact Assessment_Part1	March 2019
CD.A16/2	Light Impact Assessment_Part2	
CD.A16/3	Light Impact Assessment_Part3	
CD.A16/4	Light Impact Assessment_Part4	
CD.A17	Major Accident & Disaster Assessment	19 April 2019
CD.A18	Waste Management Assessment	19 April 2019

Planning documents submitted during the life of the application

CD.A19	Clarification Statement in response to the removal of NPPF para 209(a)_redacted 10 June 2019
CD.A20/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 4 of 8 - Air Quality Impact_redacted
CD.A20/1	Air Emission: response to consultee comment_Redacted

CD.A21/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 3 of 8 - Ecology_Redacted
CD.A21/1	Ecology: response to consultee comment (letter dated 31 October 2019)_Redacted
CD.A21/2	Appendix A: Outline Landscape, Environment and Biodiversity Restoration and Enhancement Plan_Redacted
CD.A21/3	B: Loxley Wells Site Addendum to the Arboricultural Impact Assessment (October 2019)_Redacted
CD.A22/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 5 of 8 - Geotechnical & Design_Redacted
CD.A22/1	Geotechnical: response to consultee comment (letter dated 31 October 2019)_Redacted
CD.A22/2	Appendix A: Updated Loxley Well Site Planning Statement & Environmental Report 17. Appendix 1: Design Statement - Appendix 3 NAUE Geogrid Design dated 19 September 2019_Redacted
CD.A22/3	Appendix B: Extract from the Loxley Well Site Planning Statement & Environmental Report 18. Appendix 1 Design Statement Appendix 1: Site Investigations (Borehole Location Plan and accompanying logs)
CD.A23/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 6 of 8 - Highways_Redacted
CD.A23/1	Highways: response to consultee comment (letter dated 31 October 2019)_Redacted
CD.A23/2	Appendix A: Loxley Well Site Supplementary Transport Statement dated September 2019
CD.A23/3	Appendix B: Loxley Well Site Framework Construction Traffic Management Plan dated September 2019
CD.A24/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 7 of 8 - Lighting Impacts_Redacted
CD.A24/1	Lighting: response to consultee comment (letter dated 21 October 2019)_Redacted
CD.A24/2	Appendix A: Exploratory Well Site, Dunsfold, Surrey Lighting Assessment dated November 2019
CD.A25	SK-04 rev B: Post-mitigation Scheme of Lighting Layout
CD.A26/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 8 of 8 - Noise Impacts_Redacted
CD.A26/1	Noise: response to consultee comment(letter dated 31 October 2019)_Redacted
CD.A26/2	Appendix A: Addendum to Noise Impact Assessment... dated 6 September 2019 - updated 22 December 2019
CD.A27/0	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 2 of 8 - Landscape & Visual Impact_Redacted

CD.A27/1	Landscape: response to consultee comment (letter dated 31 October 2019)_Redacted
CD.A27/2	Appendix A: photo viewpoint imagery with wireframe (compressed)
CD.A27/3	Email dated 1 November 2019 entitled, Loxley Well Site Application 2019/0072 - Email 2 of 8 - Landscape & Visual Impact containing link to high-resolution renditions Redacted (please note that the link has been updated, but may not work for all users, see CD.A27/6 below)
CD.A27/4	Clarifying email dated 19 November 2019 entitled, Re: Loxley Well Site Application 2019/0072 - Email 2 of 8 – Landscape & Visual Impact_Redacted
CD.A27/5	Further clarifying email dated 19 November 2019 entitled, RE: Loxley Well Site Application 2019/0072 - Email 2 of 8 – Landscape & Visual Impact_Redacted
CD.A27/6 (ID164)	Updated link for high resolution images referred to in CD.A27/3
CD.A28	Boundary Treatment: submission of amended plans (Dec 2019):
CD.A28/8	ZG-UKOG-L1-PA-08 Rev1 Proposed Construction Layout Plan 1 of 4 (Well Site)
CD.A28/9	ZG-UKOG-L1-PA-08 Rev1 Proposed Construction Layout Plan 2 of 4 (Well Site to Burchetts SW Corner) dated December 2019
CD.A28/12	ZG-UKOG-L1-PA-12 Rev1 Proposed Construction Sections dated December 2019
CD.A28/15	ZG-UKOG-L1-PA-15 Rev1 Drilling Mode Layout Plan dated December 2019
CD.A28/16	ZG-UKOG-L1-PA-16 Rev1 Section Through Drilling Mode Layout Plan dated December 2019
CD.A28/19	ZG-UKOG-L1-PA-19 Rev1 Initial Flow Testing Mode Layout Plan dated December 2019
CD.A28/20	ZG-UKOG-L1-PA-20 Rev1 Section Through Initial Flow Testing Mode Layout Plan dated December 2019
CD.A28/23	ZG-UKOG-L1-PA-23 Rev1 Extended Well Testing Mode Layout Plan dated December 2019
CD.A28/24	ZG-UKOG-L1-PA-24 Rev1 Section Through Extended Well Testing Mode dated December 2019
CD.A28/25	ZG-UKOG-L1-PA-25 Rev1 Retention Mode Layout Plan dated December 2019
CD.A28/26	ZG-UKOG-L1-PA-26 Rev1 Section Through Retention Mode Layout Plan dated December 2019
CD.A28/27	ZG-UKOG-L1-PA-27 Rev1 Proposed Well Site Fencing & Gates Section Plan dated December 2019

CD.A29	Groundwater Risk Assessment, Thatched House Farm, Envireau Water dated December 2019 (compressed)
CD.A30/1	Email dated 14 January 2020 entitled, Application SCC Ref: 2019/0072 - Additional Information Consultee Responses 1 - SCC Highways Call for Additional Swept Path Analysis_Redacted
CD.A30/2	Swept Path Analysis of Dunsfold Road bends
CD.A31	Letter dated 6 May 2020 responding to queries regarding the submitted Transport Statement_Redacted
CD.A32/1	Email regarding Highway matters dated 2 Jun 2020, entitled UKOG Planning Application - High Loxley Road, Dunsfold _Redacted
CD.A32/2	Email attachment Loxley FCTMP Appendix 2
CD.A32/3	Email attachment Loxley FCTMP Appendix 3
CD.A32/4	Email attachment Loxley FCTMP Appendix 4
CD.A32/5	Email attachment Loxley Outline Banksmen Method Statement
CD.A32/6	Email attachment Suggested Amendment to Loxley Condition 9
CD.A33/1	Email dated 23 June 2020 entitled UKOG Application - Additional Technical Information_Redacted
CD.A33/2	Vertical Swept Path Analysis_redacted
CD.A34	Letter dated 19 August 2020 comprising new and amended planning conditions for consideration and 17 clarifying statements Redacted
No CD.A35	
CD.A36	Email dated 23 October 2019 entitled, Re: Loxley - Impact of Vibration and Noise _redacted
CD.A37/1	Email dated 30 October 2019 entitled, Loxley Well Site - Wild Bird Seed Mixture_Redacted
CD.A37/2	Wild Bird Seed Mixtures Advisory Sheet England submitted on 30 October 2019
CD.A38	Clarifying Email dated 9 January 2020 entitled, Re: Loxley Well Site: Landscape Consultant Site Visit
CD.A39	Email dated 14 February 2020 entitled, Loxley Well Site - SCC Ref: 2019/0072 - Planning Matters_redacted (Community Benefits, Landscape & Visual Impact and Noise)
CD.A40	Email dated 19 February 2020 entitled, Loxley Well Site - SCC Ref: 2019/0072 - Planning Matters_redacted (Noise and Height of Plant and Machinery)
CD.A41/1	Email dated 24 February 2020 entitled, Re: Loxley: Three Further Questions (Clarification Re Gatehouse, Visual Impact and Tree Line)
CD.A41/2	Photo of Southern Boundary of Well Site Host Field
CD.A41/3	High Billinghurst Farm and Well Site Profile Slides

CD.A42	Email dated 4 March 2020 entitled, Re: Loxley: Three Further Questions_Redacted (Further Clarification re Tree Line)
CD.A43	Email dated 16 March 2020 entitled, Re: Query re Ash Trees Along Northern Boundary_Redacted
CD.A44	Email dated 8 May 2020 entitled, Re: Highways Matters and PreCommencement Conditions_Redacted

Section B - SCC Determination Documents

CD.B1/1	Regulation 6 EIA Screening Opinion Adoption Letter (Dunsfold Well Site) (28-02-19)_Redacted
CD.B1/2	Regulation 6 EIA Screening Opinion Report (Dunsfold Well Site) (2802-19)
CD.B2/1	Regulation 8 EIA Screening Opinion Adoption Letter (Loxley Well Site & Access) (22-07-19)
CD.B2/2	Regulation 8 EIA Screening Opinion Report (Loxley Well Site & Access) (22-07-19)
CD.B3	SCC Planning & Regulatory Committee Report - June 2020
CD.B4	SCC Planning & Regulatory Committee Report Supplementary Update - June 2020
CD.B5	SCC Planning & Regulatory Committee Minutes of the June 2020 Meeting
CD.B6	SCC Planning & Regulatory Committee Report - November 2020
CD.B7	SCC Planning & Regulatory Committee Supplementary Update - November 2020
CD.B8	SCC Planning & Regulatory Committee Minutes of the November 2020 Meeting
CD.B9	SCC Decision Notice WA/2019/0796: refusal of planning permission

Section C - Development plan

CD.C1	Surrey Minerals Plan 2011: Core Strategy Development Plan Document
CD.C2	Waverley Borough Local Plan Part 1: Strategic Policies and Sites, February 2018
CD.C3	Waverley Borough Council Local Plan (Saved Policies) 2002

Section D - Other local plans

CD.D1	Waverley Borough Council Plan Local Plan Part 2: Site Allocations & Development Management Policies (Pre-Submission Document November 2020)
CD.D2	Surrey Hills Area of Outstanding Natural Beauty Management Plan (2020-2025)
CD.D3	Surrey Minerals Plan 2011, Minerals Site Restoration Supplementary Planning Document Parts 1 & 2

Section E - Appeal Documents

CD.E1/1	Appeal Form_Redacted
CD.E1/2	Article 13 Notice - Loxley drilling site Dunsfold
CD.E2/1	Appellant Statement of Case_Redacted
CD.E2/2	Updated Swept Path Analysis_Part1
CD.E2/3	Updated Swept Path Analysis_Part2
CD.E2/4	Updated Swept Path Analysis_Part3
CD.E3	SCC Statement of Case
CD.E4	Statement of Common Ground_Redacted
CD.E4/1	Transport Statement of Common Ground
CD.E4/2	Landscape Statement of Common Ground
CD.E5	Guidelines for Landscape and Visual Impact Assessment (Third Edition) (Landscape Institute/Institute of Environmental Management and Assessment) (2013)
CD.E5/1	Extracts from Guidelines for Landscape and Visual Impact Assessment (Third Edition) (Landscape Institute/Institute of Environmental Management and Assessment) (2013)
CD.E6	Visual Representation of Development Proposals, Technical Guidance Note 06/19, 17 September 2019, The Landscape Institute
CD.E7/1	The Waverley Landscape Review (2014) part 1
CD.E7/2	The Waverley Landscape Review (2014) part 2
CD.E7/3	The Waverley Landscape Review (2014) part 3
CD.E8/1	SCC Landscape Character Assessment (2015) (Waverley report)
CD.E8/2	SCC Landscape Character Assessment (2015) (Waverley map)
CD.E9	Surrey Historic Landscape Characterisation Volume 2: The Historic Landscape Type Descriptions (2001)

CD.E10	The Character of England: Landscape, Wildlife & Natural Features, Natural England
CD.E11	An Approach to Landscape Character Assessment, Natural England (2014).
CD.E12	European Landscape Convention 2000 - European Landscape Convention: Florence, 20 October 2000
CD.E13/1	National Character Area Profile 120 Wealden Sand
CD.E13/2	National Character Area Profile 121 Low Weald
CD.E14	CPRE Tranquillity Mapping 2007
CD.E15	CPRE Tranquillity Mapping - developing a robust methodology for planning support"
CD.E16	Hascombe Estate Consultee Response 24 +31 October 2019
CD.E16/1	Planning Burchetts Felling Application Form 2019 (Redacted)
CD.E16/2	Planning Burchetts Felling Application Map 2019 (Redacted)
CD.E16/3	SCC Ref 2019-0072: Planning Burchetts felling licence 2019 (Redacted)
CD.E17	Secretary of State Negative EIA Screening Direction _Redacted
CD.E18	Stage 1 & 2 Road Safety Audit (Incorporating the Designer's Response)
CD.E18/1 (ID166)	Stage 1 & 2 Road Safety Audit Report - redacted
CD.E19	HBF Events Venue Decision Notice December 2020 (Redacted)
CD.E19/1 (ID172)	HBF events venue location plan 26 October 2020
CD.E20/1	Rule 6 Party (Waverley Borough Council) Statement of Case
CD.E20/2	SoC Appendix 1 WBC letter to SCC Representation on Application 5 August 2019 (redacted)
CD.E20/3	SoC Appendix 2 Dunsfold Residents Representations Letter 11 November 2020 (redacted)
CD.E20/4	SoC Appendix 3 WBC Letter to SCC 19th November 2020 (redacted)
CD.E20/5	SoC Appendix 4 WBC Letter to SCC 25th November 2020 (redacted)
CD.E21	Extract from SCC Executive Committee Minutes, Area of Great Landscape Value (AGLV) Designation (Item 13) - 9 September 2008
CD.E22/1	Appeal Decision APP/R3650/W/17/3180635 dated 13 August 2018 - Land West of Lydia Park
CD.E22/2	Planning Application WA/2017/0176 - Location Plan 8 December 2016 - Land west of Lydia Park
CD.E23	Surrey Hills AONB Areas of Search Natural Beauty Evaluation, Hankinson Duckett Associates, October 2013

CD.E23/1	Extract from Surrey Hills AONB Areas of Search Natural Beauty Evaluation, Hankinson Duckett Associates, October 2013
CD.E23/2	Figure HDA 3: Recommended Additional Areas of AONB, Surrey Hills AONB Areas of Search Natural Beauty Evaluation, Hankinson Duckett Associates, October 2013
CD.E24	Surrey Hills AGLV Review, Chris Burnett Associates, June 2007
CD.E24/1	Extracts from Appendix 2 (Figure 6.1, 6.2 and 6.4) of Surrey Hills AGLV Review, Chris Burnett Associates, June 2007
CD.E25	Part 1 The UK Forestry Standard, The Government's Approach to Sustainable Forestry, Forestry Commission, 2017
CD.E25/1	Part 2 The UK Forestry Standard, The Government's Approach to Sustainable Forestry, Forestry Commission, 2017
CD.E25/2	Part 3 The UK Forestry Standard, The Government's Approach to Sustainable Forestry, Forestry Commission, 2017
CD.E25/3	Part 4 The UK Forestry Standard, The Government's Approach to Sustainable Forestry, Forestry Commission, 2017
CD.E26	A Revision of the Ancient Woodland Inventory for Surrey, Report and Inventory Maps, June 2011
CD.E27	See CD.L47/2
CD.E28	See CD.L47/1
CD.E29	See CD.L47/3
CD.E30	See CD.L47/4
CD.E31	See CD.L47/5
CD.E32	SCC Landscape Consultant's Consultee Response 9 July 2019
CD.E32/1	SCC Landscape Consultant's Consultee Response 9 July 2019 Rev A
CD.E32/2	SCC Landscape Consultant's Consultee Response 22 January 2020
CD.E33	See CD.L40/1
CD.E33/1	See CD.L40/2
CD.E33/2	See CD.L40/3
CD.E34	Residential Visual Amenity Assessment (RVAA), Landscape Institute Technical Guidance Note 2/19, March 2019
CD.E35	Assessing Landscape Value Outside National Designations, Technical Guidance Note 02/21, Landscape Institute 2021

Section F - National planning policy documents

CD.F1/1	National Planning Policy Framework (2019 - now archived)
CD.F1/2	National Planning Policy Framework (2021 - new current)
CD.F2	National Planning Practice Guidance

CD.F3	Overarching National Policy Statement for Energy (EN-1)

Section G - Other Determinations

CD.G1	Environment Agency Permit Notice EPR/VP3305PT for Loxley Well Site

Section H - Legal Authorities

CD.H1	Stroud DC v Secretary of State for Communities and Local Government EWHC 488 (Admin)(169460955.1)
CD.H2	Preston New Road Action Group v Secretary of State for CLG 2018 Env. L.R. 18(169460884.1)
CD.H3	R. (on the application of Finch) v Surrey CC EWHC 3566 (Admin)(169461005.1)
CD.H4 (ID179)	Derbyshire Dales [2010] 1 P. C.R. 19
CD.H5 (ID180)	Langley Park School [2010] 1 P. C.R. 10
CD.H6 (ID181)	Mount Cook [2017] P.T.S.R. 1166
CD.H7 (ID186)	R v Warwickshire CC Ex p Powergen Plc

Section I - Proofs of Evidence and Statements

On behalf of Appellant

CD.I1/1	Planning proof of evidence of Nigel Moore
CD.I1/2	Summary of proof of evidence for Nigel Moore
CD.I2/1	Transport proof of evidence of Steven Windass
CD.I2/2	Summary of proof of evidence for Steven Windass
CD.I3/1	Landscape proof of evidence of Will Gardner
CD.I3/2	Plans to Landscape proof - part 1
CD.I3/3	Plans to Landscape proof - part 2
CD.I3/4	Summary proof of evidence for Will Gardner
CD.I4	Climate Change proof of evidence of Tom Dearing
CD.I5/1	Company proof of evidence of Kris Bone
CD.I5/2	Summary of proof of evidence of Kris Bone
CD.I5/3	Erratum to Kris Bone Proof
CD.I6/1	Company proof of evidence of Stephen Sanderson

CD.I6/2	Summary proof of evidence for Stephen Sanderson.

On behalf of SCC

CD.I7	Planning Proof of Evidence of Richard Hunt
CD.I8	Highways Proof of Evidence of Graham Foulkes
CD.I9/1	Landscape and Visual Matters Proof of Evidence of Liz Brown
CD.I9/2	Landscape and Visual Matters Proof of Evidence Appendix A List of References
CD.I9/3	Landscape and Visual Matters Proof of Evidence Appendix B Evaluation and Assessment Tables
CD.I9/4	Landscape and Visual Matters Proof of Evidence Appendix C Policy Tests
CD.I9/5	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 1 of 12
CD.I9/6	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 2 of 12
CD.I9/7	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 3 of 12
CD.I9/8	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 4 of 12
CD.I9/9	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 5 of 12
CD.I9/10	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 6 of 12
CD.I9/11	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 7 of 12
CD.I9/12	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 8 of 12
CD.I9/13	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 9 of 12
CD.I9/14	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 10 of 12
CD.I9/15	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 11 of 12
CD.I9/16	Landscape and Visual Matters Proof of Evidence Appendix D Figures and Photos Part 12 of 12
CD.I9/17	Landscape and Visual Matters Proof of Evidence Appendix E Glossary
CD.I9/18	Erratum LV Matters PoE App D Figs and Photos Part 2 of 12 (List and SSC 001 - 002_ZTV)
CD.I9/19	Erratum LV Matters PoE App D Figs and Photos Part 3 of 12 (SSC 003 - 004_ZTV)
CD.I9/20	Erratum LV Matters PoE App D Figs and Photos Part 4 of 12 (SSC 005 - 006_ZTV)
CD.I9/21	Erratum LV Matters PoE App D Figs and Photos Part 5 of 12 (SSC 007 - 008_ZTV)

CD.I9/22	Erratum LV Matters PoE App D Figs and Photos Part 6 of 12 (SSC 009 - 010_ZTV)
CD.I9/23	Erratum LV Matters PoE App D Figs and Photos Part 7 of 12 (SSC 011 - 012_ZTV)
CD.I9/24	Erratum LV Matters PoE App D Figs and Photos Part 8 of 12 (SSC 013 - 014_ZTV)
CD.I9/25	Erratum LV Matters PoE App D Figs and Photos Part 9 of 12 (SSC 015 - 016_ZTV)
CD.I9/26	Erratum LV Matters PoE App D Figs and Photos Part 10 of 12 (SSC 017 - 018_ZTV)
CD.I9/27	Erratum LV Matters PoE App D Figs and Photos Part 11 of 12 (SSC 019 - 020_ZTV)

On behalf of Rule 6 party (Waverley Borough Council)

CD.I10/1	Planning Proof of Evidence of Patrick Arthurs
CD.I10/2	Proof of Evidence Appendix 1 WBC letter to SCC Representation on Application 5 August 2019 (redacted)
CD.I10/3	Proof of Evidence Appendix 2 Dunsfold Residents Representations Letter 11 November 2020 (redacted)
CD.I10/4	Proof of Evidence Appendix 3 WBC Letter to SCC 19th November 2020 (redacted)
CD.I10/5	Proof of Evidence Appendix 4 WBC Letter to SCC 25th November 2020 (redacted)
CD.I11	Landscape and Visual Matters Proof of Evidence of John-Paul Friend

Rebuttals on behalf of Appellant

CD.I12	Proof Rebuttal of Steven Windass on transport matters
CD.I13	Proof Rebuttal of Nigel Moore on planning matters
CD.I14/1	Proof Rebuttal of Will Gardner on landscape matters part 1
CD.I14/2	Proof Rebuttal of Will Gardner on landscape matters part 2

Rebuttals on behalf of SCC

CD.I15/1	Proof Rebuttal of Richard Hunt on planning matters
CD.I15/2	Proof Rebuttal of Richard Hunt on planning matters - Appendix 1 front Page
CD.I15/3	Proof Rebuttal of Richard Hunt on planning matters - Appendix 1 Text extract
CD.I15/4	Proof Rebuttal of Richard Hunt on planning matters - Appendix 1 supporting map
CD.I15/5	Proof Rebuttal of Richard Hunt on planning matters - Appendix 2 - SDNPA comment

Section J Documents Produced in the Inquiry

CD.J1 (ID8)	Final Inquiry Programme 27 July 2021 CD.J1/1 (ID165) Revised Inquiry Programme 29 July 2021
CD.J2 (ID167)	Email from Mr Herman (Thatched House Farm) re Common Land dated 2 August 2021 (redacted)
CD.J2/1	Attached Solicitor's letter to Mr Herman dated 24 July 2019 (redacted)
CD.J2/2	Attached Solicitor's letter to Mr Herman dated 16 July 2020 (redacted)
CD.J2/3	Attached Commons Commissioner Decision dated 26 June 1978 (redacted)
CD.J3 (ID168)	Email from Mr Gordon (High Billinghurst Farm) re Noise Control and Hours of Operation dated 2 August 2021
CD.J4 (ID169)	Letter from Climate Change Committee to Kwasi Kwarteng MP dated 31 March 2021
CD.J5 (ID170)	Draft Section 106 Unilateral Deed
CD.J6 (ID171)	The COBA 2020 User Manual Part 2 (Chapters 3 to 5)
CD.J7 (ID173)	Appellant Note on Common Land 4 August 2021 (redacted)
CD.J8 (ID174)	Hascombe Estate Woodland Felling Submission 4 August 2021
CD.J9 (ID175)	Inquiry Site Visit Itinerary 12 August 2021 (Redacted)
CD.J9/1	Inquiry Site Visit Plan 12 August 2021
CD.J10 (ID176)	Appellant Response Dated 12 August 2021 to Hascombe Estate Woodland Felling Submission
CD.J11 (ID183)	Appellant Partial Costs Application 12 August 2021
CD.J12 (ID184)	SCC Response to Partial Costs Application
CD.J13 (ID185)	Revised Conditions 7 and 8 Agreed by SCC and Appellant 11 August 2021

Section K Opening and Closing Statements

Opening Statements

CD.K1 (ID1)	Appellant Opening Statement
CD.K2 (ID2)	SCC Opening Statement

CD.K3 (ID3)	Rule 6 Party Opening Statement

Third Party Written Statements

CD.K4 (ID4)	Kirsty Clough (WAG)
CD.K4/1(ID4/1)	Kirsty Clough (WAG) - North Sea Transitional Deal attachment
CD.K4/2 (ID4/2)	Kirsty Clough (WAG) - Minister letter attachment
CD.K5 (ID5)	Darcey Finch
CD.K6 (ID6)	Tom Gordon (High Billinghurst Farm)
CD.K7 (ID7)	Ashley Herman (Thatched House Farm)

Closing Statements

CD.K8 (ID177)	SCC Closing Statement
CD.K9 (ID178)	Rule 6 Party Closing Statement
CD.K10 (ID182)	Appellant Closing Statement

Section L Consultee Responses (ID9 – ID163)

CD.L1/1	Air Quality Consultant 29 June 2019
CD.L1/2	Air Quality Consultant 31 July 2019
CD.L1/3	Air Quality Consultant 27 November 2019
CD.L2/1	Alford PC 24 June 2019
CD.L2/2	Alford PC Traffic Safety - June 2019
CD.L2/3	Alford PC 9 December 2019
CD.L2/4	Alford PC 15 May 2020
CD.L3/1	Assistant Historic Buildings Officer 23 October 2019
CD.L3/2	Assistant Historic Buildings Officer 22 October 2019
CD.L4	Bramley PC
CD.L5/1	Civil Aviation Authority 7 April 2020
CD.L5/2	Civil Aviation Authority 21 April 2020
CD.L5/3	Civil Aviation Authority 22 April 2020
CD.L5/4	CAA Planning Guidance Aug 2021
CD.L6	Correspondence between the County Planning Authority and the Environmental Health Officer

CD.L7/1	Countryside Access Team (Rights of Way) Interim 24 October 2019
CD.L7/2	Countryside Access Team (Rights of Way) Interim 29 October 2019
CD.L7/3	Countryside Access Team (Rights of Way) 8 November 2019
CD.L8/1	County Arboricultural Officer
CD.L8/2	County Arboricultural Officer multistem calculation attachment
CD.L8/3	County Arboricultural Officer aerial
CD.L9	County Archaeology Officer
CD.L10/1	County Ecologist 9 August 2019
CD.L10/2	County Ecologist 16 December 2019
CD.L10/3	County Ecologist 8 January 2020
CD.L10/4	County Ecologist 6 March 2020
CD.L10/5	County Ecologist 26 March 2020
CD.L10/6	County Ecologist 26 May 2020 (1)
CD.L10/7	County Ecologist 26 May 2020 (2)
CD.L11/1	County Highway Authority 29 July 2019
CD.L11/2	County Highway Authority 20 February 2020
CD.L11/3	County Highway Authority 28 February 2020
CD.L11/4	County Highway Authority 27 April 2020
CD.L11/5	County Highway Authority 7 May 2020 (1)
CD.L11/6	County Highway Authority 7 May 2020 (2)
CD.L11/7	County Highway Authority 11 May 2020 am
CD.L11/8	County Highway Authority 11 May 2020 pm
CD.L11/9	County Highway Authority 11 May 2020 pm attachment
CD.L11/10	County Highway Authority 19 May 2020
CD.L11/11	County Highway Authority 28 May 2020
CD.L11/12	County Highway Authority 23 November 2020
CD.L11/13	County Highway Authority 25 November 2020
CD.L12/1	County Historic Buildings Officer 6 May 2020 (1)
CD.L12/2	County Historic Buildings Officer 6 May 2020 (2)
CD.L13/1	County Restoration and Enhancement Team 7 July 2019
CD.L13/2	County Restoration and Enhancement Team 13 December 2019
CD.L14	CPRE Surrey
CD.L15/1	Cranleigh PC 10 July 2019
CD.L15/2	Cranleigh PC 12 December 2019
CD.L16	Dunsfold Aerodrome Ltd
CD.L17	Dunsfold Airport Ltd
CD.L18/1	Dunsfold PC 18 December 2019
CD.L18/2	Dunsfold PC 26 January 2020
CD.L18/3	Dunsfold PC 22 October 2020

CD.L18/4	Dunsfold PC undated
CD.L19/1	Environment Agency 19 July 2020
CD.L19/2	Environment Agency 7 October 2019
CD.L19/3	Environment Agency 3 January 2020
CD.L19/4	Environment Agency 7 January 2020
CD.L19/5	Environment Agency 9 January 2020
CD.L19/6	Environment Agency 27 January 2020
CD.L19/7	Environment Agency 26 February 2020
CD.L19/8	Environment Agency 5 November 2020
CD.L20	Environmental Assessment Team
CD.L21/1	Environmental Health Officer 31 July 2019
CD.L21/2	Environmental Health Officer 6 December 2019
CD.L21/3	Environmental Health 14 Jan 2020
CD.L22	Forestry Commission
CD.L23	Gatwick Airport
CD.L24/1	Geotechnical consultant 5 July 2019
CD.L24/2	Geotechnical Consultant 22 July 2019
CD.L24/3	Geotechnical Consultant 4 December 2019
CD.L25	Gypsy and Traveller Community response
CD.L26	Hambledon PC
CD.L27/1	Hascombe Estate 31 October 2019
CD.L27/2	Hascombe Estate 8 November 2020 (1)
CD.L27/3	Hascombe Estate 8 November 2020 (2)
CD.L27/4	Hascombe Estate 23 November 2020
CD.L28/1	Health and Safety Executive 9 May 2019 (self-service report)
CD.L28/2	Health and Safety Executive 22 July 2019
CD.L29	Highways info team - common land
CD.L30	Highways 28 October 2019 (re conditions)
CD.L31/1	Highways 28 October 2020 (re applicant's clarification statement of 19 Aug 19)
CD.L31/2	Highways 30 October 2020 (re applicant's clarification statement of 19 Aug 19)
CD.L31/3	Highways 17 November 2020 (re applicant's clarification statement of 19 Aug 19) (unsuitable for HGV signage clarification)
CD.L32/1	Highways 17 November 2020 (re s278) (1)
CD.L32/2	Highways 17 November 2020 (re s278) (2)

CD.L33	Highways 17 November 2020 (re objection)
CD.L34/1	KKWG 7 July 2019
CD.L34/2	KKWG 7 July 2019 (attachment)
CD.L34/3	KKWG 31 August 2019
CD.L34/4	KKWG 31 August 2019 (attachment)
CD.L34/5	KKWG 25 February 2020
CD.L34/6	KKWG 25 February 2020 (first attachment)
CD.L34/7	KKWG 25 February 2020 (second attachment)
CD.L34/8	KKWG undated (objection to officer report)
CD.L35/1	See CD.E32
CD.L35/2	See CD.E32/1
CD.L35/3	See CD.E32/2
CD.L36/1	Lead local flood authority 19 June 2019
CD.L36/2	Lead local flood authority 23 July 2019
CD.L37/1	Lighting consultant 4 July 2019
CD.L37/2	Lighting consultant 25 November 2019
CD.L38	Local Member
CD.L39	National Grid
CD.L40/1	Natural England 3 July 2019
CD.L40/2	Natural England 14 August 2019
CD.L40/3	Natural England 10 December 2019
CD.L41	Noise Consultant and officer
CD.L42	Protect Dunsfold
CD.L43	Protect Dunsfold Ltd and Waverley Friends of the Earth
CD.L44	Public Health England
CD.L45	Public Health Surrey
CD.L46/1	SGN 5 June 2019
CD.L46/2	SGN 21 January 2020
CD.L46/3	SGN Attachment - Dig Safely Measures booklet
CD.L46/4	SGN Attachment - Know what's below booklet
CD.L46/5	SGN Attachment - Valve safety advice
CD.L47/1	Surrey Hills AONB 25 & 29 July 2019
CD.L47/2	Surrey Hill AONB 25 July 2019 attachment
CD.L47/3	Surrey Hills AONB 27 August 2019
CD.L47/4	Surrey Hills AONB 21 November 2019
CD.L47/5	Surrey Hills AONB 3 December 2019

CD.L48/1	Surrey Wildlife Trust 5 July 2019
CD.L48/2	Surrey Wildlife Trust 4 December 2019
CD.L49	Trew Fields
CD.L50/1	Waverley BC 5 August 2019
CD.L50/2	Waverley BC 5 August 2019 (Air Quality review)
CD.L50/3	Waverley BC 5 August 2019 (Arboriculture review)
CD.L50/4	Waverley BC 5 August 2019 (Archaeology and Cultural Heritage Assessment review)
CD.L50/5	Waverley BC 5 August 2019 (Ecology review)
CD.L50/6	Waverley BC 5 August 2019 (Hydrogeology review)
CD.L50/7	Waverley BC 5 August 2019 (LVIA & Lighting review)
CD.L50/8	Waverley BC 5 August 2019 (Major Accidents Disaster Risk review)
CD.L50/9	Waverley BC 5 August 2019 (Noise review)
CD.L50/10	Waverley BC 5 August 2019 (Env report and EIA Screening opinion review)
CD.L50/11	Waverley BC 5 August 2019 (Waste review)
CD.L50/12	Waverley BC 21 January 2020
CD.L50/13	Waverley BC 19 November 2020
CD.L50/14	Waverley BC 25 November 2020
CD.L51/1	Waverley BC Portfolio Holder for Environment and Sustainability 6 August 2019
CD.L51/2	Waverley BC Portfolio Holder for Environment and Sustainability 6 August 2019 (attachment - listening panel summary)
CD.L51/3	Waverley BC Portfolio Holder for Environment and Sustainability 21 January 2020
CD.L51/4	Waverley BC Portfolio Holder for Environment and Sustainability 23 June 2020
CD.L51/5	Waverley BC Portfolio Holder for Environment and Sustainability 23 November 2020
CD.L52/1	Waverley BC - common land
CD.L52/2	Waverley BC - common land - attached map
CD.L52/3	Waverley BC - common land - attached register
CD.L52/4	Waverley BC - common land - Commons Commissioner decision 26 June 1978
CD.L53/1	Waverley Friends of the Earth 31 October 2019
CD.L53/2	Waverley Friends of the Earth undated update
CD.L54/1	Witley PC 25 June 2019
CD.L54/2	Witley PC 3 July 2019
CD.L55/1	Woodland Trust 8 July 2019
CD.L55/2	Woodland Trust November 2019

APPENDIX 4 Recommended conditions should permission be granted

Approved Plans and Drawings

1) The development hereby permitted shall be carried out in all respects in accordance with the following plans/drawings:

DRAWING NO	REV	TITLE	DATE
ZG-UKOG-L1-PA-01	0	Site Location Plan	March 2019
ZG-UKOG-L1-PA-02	0	Location Plan	March 2019
ZG-UKOG-L1-PA-03	0	Existing Site Plan (Composite)	March 2019
ZG-UKOG-L1-PA-04	0	Existing Site Plan 1 of 3 (Well Site to Burchetts SW Corner)	March 2019
ZG-UKOG-L1-PA-05	0	Existing Site Plan 2 of 3 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-06	0	Existing Site Plan 3 of 3 (Burchetts NW Corner to High Loxley Road)	March 2019
ZG-UKOG-L1-PA-07	0	Existing Sections Plan (Well Site)	March 2019
ZG-UKOG-L1-PA-08	1	Proposed Construction Layout Plan 1 of 4 (Well Site)	December 2019
ZG-UKOG-L1-PA-09	1	Proposed Construction Layout Plan 2 of 4 (Well Site to Burchetts SW Corner)	December 2019
ZG-UKOG-L1-PA-10	0	Proposed Construction Layout Plan 3 of 4 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-11	0	Proposed Construction Layout Plan 4 of 4 (Burchetts NW Corner to High Loxley Road)	March 2019
ZG-UKOG-L1-PA-12	1	Proposed Construction Sections Plan	December 2019
ZG-UKOG-L1-PA-13	0	Proposed Access Layout Plan - High Loxley Road	March 2019
ZG-UKOG-L1-PA-14	0	Proposed Access Layout Plan - Pratts Corner	March 2019
ZG-UKOG-L1-PA-15	1	Drilling Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-16	1	Section Through Drilling Mode Layout Plan (BDF Rig 28 - Height 37m)	December 2019
ZG-UKOG-L1-PA-17	0	Section Through BDF Rig 28 Drilling Rig (Height 37m)	March 2019
ZG-UKOG-L1-PA-18	0	Section Through BDF Rig 51 Drilling Rig (Height 38m)	March 2019
ZG-UKOG-L1-PA-19	1	Initial Flow Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-20	1	Section Through Initial Flow Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-21	1	Section Through PWWS MOOR 475 Workover Rig (Height 35m)	May 2019
ZG-UKOG-L1-PA-22	0	Section Through PWWS IDECO BIR H35 Workover Rig (Height 34m)	March 2019
ZG-UKOG-L1-PA-23	1	Extended Well Testing Mode Layout Plan (with Temporary Noise Mitigation)	December 2019
ZG-UKOG-L1-PA-24	1	Section Through Extended Well Testing Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-25	1	Retention Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-26	1	Section Through Retention Mode Layout Plan	December 2019
ZG-UKOG-L1-PA-27	1	Proposed Well Site Fencing & Gates Section Plan	December 2019
ZG-UKOG-L1-PA-28	0	Proposed Entrance Fencing, Gates & Security Cabin Section Plan	March 2019
ZG-UKOG-L1-PA-29	0	Proposed Restoration Layout Plan 1 of 5 (Well Site)	March 2019

ZG-UKOG-L1-PA-30	0	Proposed Restoration Layout Plan 2 of 5 (Well Site to Burchetts SW Corner)	March 2019
ZG-UKOG-L1-PA-31	0	Proposed Restoration Layout Plan 3 of 5 (Burchetts SW Corner to Burchetts NW Corner)	March 2019
ZG-UKOG-L1-PA-32	0	Proposed Restoration Layout Plan 4 of 5 (Burchetts NW Corner to High Loxley Road)	March 2019
ZG-UKOG-L1-PA-33	0	Proposed Restoration Sections Plan 5 of 5 (Well Site)	March 2019
6033.504	A	Wellsite Construction Details Sheet 2	13 February 2019
SK-04	B	Post-mitigation Scheme of Lighting Layout	1 November 2019

2) From the date that any works commence in association with the development hereby permitted until the cessation of the development/completion of the operations to which it refers, a copy of this permission including all documents hereby approved and any documents subsequently approved in accordance with this permission, shall be available to the site manager, and shall be made available to any person(s) given the responsibility for the management or control of operations.

Commencement

3) The development hereby permitted shall be implemented before the expiration of 3 years from the date of this permission. The developer shall notify the County Planning Authority in writing within seven working days of the commencement of the implementation of the planning permission.

Time Limits

4) The development hereby permitted shall be for a limited period only, expiring 3 years from the date of the implementation of the planning permission referred to in Condition 3. By this date, all buildings, plant and machinery (both fixed and otherwise) and any engineering works connected therewith, on or related to the application site (including any hard surface constructed for any purpose), shall be removed from the application site and the site shall be reinstated in accordance with the restoration details set out in Condition 31. Notwithstanding this, any plant or equipment required to make the site safe in accordance with the Oil & Gas Authority general arrangement requirements at the time and agreed with the County Planning Authority may remain in position.

5) Prior written notification of the date of commencement for each phase of development works hereby permitted (Phases 1-4 as described at Section 3 of the Planning Statement and Environmental Report dated 19 April 2019, including workovers and side-tracks) shall be sent in writing to the County Planning Authority not less than seven days before such commencement.

Hours of Operation

6) With the exception of drilling, workovers, extended well tests and short-term testing, no lights shall be illuminated nor shall any operations or activities authorised or required by this permission, take place other than during the hours of:

07:00 to 19:00 hours on Monday to Friday;

09:00 to 13:00 hours on Saturday.

Apart from the exceptions referred to above, there shall be no working at any time on Sundays, Bank Holidays, Public or National Holidays.

Highways, Traffic and Access

7) a. No development shall commence until a scheme has been submitted to and approved by the County Planning Authority (including the entering into of an agreement under s. 278 of the Highways Act 1980) for the carrying out and completion of the proposed access road within the site, including its junction with High Loxley Road, any highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between the site access and the junction of High Loxley Road and Dunsfold Road ("the Initial Highway Works"). The junction of the site and High Loxley Road shall be provided with 2.4m x 70m visibility splays in both the leading and trailing traffic directions in accordance with drawing number LTP/3134/03/05.01 REV B dated 10 October 2018 and, thereafter, the visibility splays shall be kept permanently clear of any obstruction above 0.6m high. Any works to the highway necessary to accommodate the development hereby permitted shall use flush set concrete retainers incorporating a ribbed surface to demarcate the edge of the carriageway.

   b. No development shall commence until an agreement under s.278 of the Highways Act 1980 (in such form as may be agreed with the County highways authority) has been entered into providing for the permanent closure of the site access onto High Loxley Road, the full reinstatement of any curbs and verges, the removal of the highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between the site access and the junction of High Loxley Road and Dunsfold Road and the full reinstatement of the highway, and providing for such works to be undertaken prior to the expiry of the time specified in condition 4 for the duration of the planning permission.

8) No operations associated with the well site compound shall take place unless and until the proposed access road within the site including its junction with High Loxley Road, any highway works at the junction of High Loxley Road and Dunsfold Road and any carriageway widening works on High Loxley Road between the site access and the junction of High Loxley Road and Dunsfold Road have been constructed in accordance with the scheme approved pursuant to condition 7(a). No other development shall begin before the junction works and the new access road within the site have been completed in accordance with the approved scheme**.**

9) Prior to the commencement of the development hereby permitted, a Transport Management Plan, in accordance with the submitted Framework Construction Transport Management Plan (dated September 2019), shall be submitted to and approved in writing by the County Planning Authority. The plan shall cover all phases of the development and include:

   a) Parking for vehicles of site personnel, operatives and visitors;

   b) Loading and unloading of plant and materials;

   c) Storage of plant and materials;

   d) Programme of works for each phase;

e) Provision of boundary hoarding behind any visibility zones;

f) Measures to manage and enforce HGV deliveries during permitted hours of operation and HGV routeing so as to ensure that all heavy goods vehicles access and egress the site to and from the east via the B2130 signalised junction with the A281.

g) Measures to prevent the deposit of materials on the highway;

h) The carrying out of a 'Pre' construction condition survey of the highway with subsequent 'Post' construction condition surveys to be undertaken once every 6 months after the development has commenced:

i) between the site entrance on High Loxley Road and the junction between High Loxley Road and Dunsfold Road; and

ii) the section of Dunsfold Road situated 50 metres either side of the junction between High Loxley Road and Dunsfold Road;

i) On-site turning for construction vehicles;

j) Abnormal Load Traffic Management Plan;

k) Having consulted with High Billinghurst Farm the submission of traffic management measures, by phase, for the cumulative traffic flows generated by the development hereby permitted and High Billinghurst Farm during an 'event' (as defined by Waverley Borough Council Decision Notice WA/2020/0220 dated 26th March 2020). The measures shall be designed to minimise the use of traffic signals or optimise signal operation in the interests of the free flow of traffic within High Loxley Road;

l) Measures for traffic management by phase at the High Loxley Road/Dunsfold Common Road/Dunsfold Road junctions;

m) Measures for traffic management by phase at the junction of the site access track and High Loxley Road; and

n) Final details of the placement, specification and design of all road traffic signage by phase. Only the approved details shall thereafter be implemented, retained and used by each phase whenever operations are undertaken.

o) Details of maintenance and testing of signalling equipment and banksman training

Only the approved details shall be implemented as part of the development.

10) No operations hereby permitted shall commence until a speed limit reduction to 40 mph has been implemented at the following locations:

a) High Loxley Road for a distance of 275m from its junction with Dunsfold Road;

b) Dunsfold Common Road for a distance of 360m from its junction with Dunsfold Road;

c) Dunsfold Road for a distance of 195m to the west of its junction with Dunsfold Common Road;

d) Dunsfold Road for a distance of 399m to the east of its junction with High Loxley Road.

The speed limit reduction shall be implemented and thereafter maintained throughout all phases of the proposed development.

11) There shall be:

a) no more than 20 two-way (10 in - 10 out) HGV movements to or from the site in any one day. The site operator shall maintain accurate records of the number of HGVs accessing and egressing the site daily and shall make these available to the County Planning Authority on request; and

b) no HGV movements to or from the site taking place outside of the hours of 09:00-17:00 Monday-Thursday, 09:00-13:00 on a Friday and a Saturday and all day on Sundays, Bank Holidays, Public or National Holidays.

Noise and Vibration

12) Prior to the commencement of the development hereby permitted, a scheme of noise mitigation shall be submitted to and approved in writing by the County Planning Authority. The mitigation measures will ensure that the noise levels set out in Conditions 14 and 15 are met. The approved mitigation shall be put in place prior to any operations taking place and shall be retained and maintained for the duration of the works.

13) Prior to the commencement of the development hereby permitted, a noise monitoring plan (NMP) shall be submitted to and approved in writing by the County Planning Authority, taking into account the noise limits set out in Conditions 14 and 15. The NMP shall include a methodology for undertaking noise surveys, with the results of the monitoring reported to the County Planning Authority within 14 days of monitoring. Should the site fail to comply with the noise limits, within 14 days of notification of any breach of the noise limits, the applicant shall submit a scheme for the approval in writing by the County Planning Authority to attenuate noise levels to the required level which shall be implemented within 7 days of the County Planning Authority issuing approval for the scheme, or the source of noise shall cease until such a scheme is in place. Noise monitoring shall only be undertaken by those competent to do so (i.e. Member of Associate grade of the Institute of Acoustics).

14) For operations such as site preparation and reinstatement, the level of noise arising from any operation, plant or machinery on the site, when measured at, or recalculated as at, a height of 1.2 metres above ground level and 3.5 metres from the façade of a residential property or other noise sensitive building that faces the site shall not exceed 65 dB L_{Aeq} during any 30-minute period between the hours of 0700 to 1900 Monday to Friday and 0900 to 1300 hours on a Saturday and at no other time. No temporary work causing audible noise at any noise sensitive receptor is permitted at any other time including Sunday, Bank Holiday or National Holiday.

15) For operations other than as set out in Condition 14, including drilling, testing and appraisal, maintenance workover and flaring, the daytime and evening noise levels (0700 hours to 2200 hours Monday to Friday and 0900 hours to 1300 hours Saturdays) shall not exceed 48 dB L_{Aeq}, 30 minutes. At all other times, the noise levels shall not exceed 42 dB L_{Aeq}, 30 minutes. These noise limits apply 3.5 metres from the façade of any affected property.

16) Between the hours of 19:00 to 07:00 inclusive, no tripping shall be undertaken, nor shall casing be cemented except in cases of emergency.

17) All plant and machinery shall be adequately maintained and silenced in accordance with the manufacturer's recommendations at all times.

Lighting

18) The development hereby permitted shall be undertaken in accordance with the measures for mitigating the impact of lighting outlined in Section 7.1 of the submitted Lighting Assessment dated November 2019.

19) Operational lighting shall be installed in accordance with Drawing No SK-04 Rev B Post Mitigation Scheme of Lighting Layout dated 1st November 2019. All lighting required for operations and maintenance will be locally switched and manually operated on an 'as required' basis and luminaires over cabins/stores doors will be controlled by 'presence detection' with a manual override.

20) Obstacle lights shall be placed as close as possible to the top of the drilling rig and workover rig (and any crane deployed in workover activity outside of daylight hours). These obstacle lights must be steady red lights with a minimum intensity of 200 candelas. Lights must be visible from all directions and illuminated at all times. Unserviceable lamps must be replaced as soon as possible after failure and in any event within 24 hours.

Water Environment

21) Prior to the commencement of the development hereby permitted, details of the design of a surface water drainage scheme shall be submitted to and approved in writing by the County Planning Authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, National Planning Policy Framework and Ministerial Statement on SuDS. The required drainage details shall include:

    a) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features including the proposed High Density Polyethylene membrane to be incorporated into the construction of the well site, silt traps and inspection chambers;

    b) Details of how the drainage system will be protected during construction and how run-off (including any pollutants) from the development site will be managed before the drainage system is operational;

    c) Details of how surface water levels within the well site will be monitored and how operations will be managed during periods of saturation;

    d) Details of drainage management responsibilities and maintenance regimes for the drainage system; and

    e) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off-site will be protected.

22) Prior to the commencement of drilling, testing and appraisal, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the County Planning Authority. This must demonstrate that the

approved surface water drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements including surface water attenuation devices/areas, flow restriction devices and outfalls.

Geotechnical Issues

23) The 'Area of hardstanding for access, cabins and car parking' shown on Drawing No: ZG- UKOG-L1-PA-08 Rev 1 Proposed Construction Layout Plan 1 of 4 (Well Site) dated December 2019, shall be retained and maintained for these designated purposes and no HGV parking or storage of consumables, fuel, process chemicals and/or mechanical/electrical plant is permitted in this area.

24) Prior to the commencement of the development hereby permitted, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the County Planning Authority. The plan shall include:

    a) Soil Conservation and Management Plan, for the protection and conservation of excavated material supported by design methodology inclusive of the means of extraction, methods of storage and maintenance of soils in accordance with guidance provided by the Defra 'Code of practice for the sustainable use of soils on construction sites' and the measures adopted for reinstatement and restoration;

    b) Slope Stability Assurance Plan, for the level working platform and the integrity of the impermeable membrane liner supported by methodology inclusive of a timed programme of ground investigations to inform the geotechnical and hydrogeological parameters used in the final design and construction of the proposed earthworks;

    c) Construction Quality Assurance Plan, for the construction of retaining structures (i.e. perimeter bunding and earthworks) and containing structures (i.e. perimeter ditches and the impermeable membrane) inclusive of final design details and methods of membrane sealing (i.e. with drilling cellars, 'rathole' or 'mousehole', pavements, floor slabs and foundations) supported by design methodology and details of any further geotechnical assessments to be performed; and

    d) Construction Quality Monitoring Plan, for the testing, inspection and maintenance of retaining and containing structures together with details of the placement and design of any groundwater monitoring wells to be installed.

25) Prior to the commencement of drilling, testing and appraisal, a Construction Environment Management Plan (CEMP) Verification Report shall be submitted to and approved in writing by the County Planning Authority. The verification report should include:

    a) Details that demonstrate compliance with the CEMP;

    b) Justification for any changes or deviations from the agreed CEMP;

c) The results and location plans of all field and laboratory testing, including certificates of compliance, and inspection records;

d) Post-construction load testing to demonstrate the stability of retaining structures, containing structures and earthworks;

e) Any other site-specific information considered relevant to proving the integrity of the construction works; and

f) Provision of details of any changes including 'as-built' plans and sections of the approved CEMP, as identified under (b) above.

26) Prior to the commencement of the development hereby permitted, a Pre-development Baseline Geochemical Testing Report shall be submitted to and approved in writing by the County Planning Authority. The testing methodology shall comprise as a minimum the following:

a) The collection of soil samples on the exposed soil formation after the well site and access track have been excavated to the final formation level. Sampling of the well site compound will adopt a grid pattern (not greater than 20m spacing) and sampling shall be carried out prior to the laying of the membrane and placement of any crushed rock hardstanding, slabs or foundations;

b) The locations and elevations of the sampling locations shall be recorded accurately;

c) The methodology shall set out the range of potential contaminants to be tested for relevant to the proposed works, test methods, and limits of detection; and

d) Details of the testing laboratory to be used and the accreditation status for each test.

27) Prior to the commencement of restoration works a Post-Development Geochemical Inspection and Testing Report shall be submitted to and approved in writing by the County Planning Authority. The report shall present details of:

a) The results of geochemical analysis of soil samples collected from the exposed soil formations adjacent to the sampling point locations adopted for the Pre-Development Baseline Geochemical Testing Report approved pursuant to Condition 26 after removal of the infrastructure and before the replacement of any restoration soils to allow for independent verification and site inspection prior to restoration if necessary;

b) Comparison of the laboratory results for the 'Pre' and 'Post' development phases; and

c) If contamination is identified, a Contaminated Land Risk Assessment Report inclusive of a strategy for the design and implementation of any remediation required.

28) All excavated topsoil and subsoil shall be permanently retained on the site for subsequent use in restoration. No soils or soil making material for use in the

restoration shall be brought onto the site, unless required by an approved site remediation scheme.

Ecology and Biodiversity

29) Prior to the commencement of the development hereby permitted, an initial Landscape, Environment and Biodiversity Restoration and Enhancement Plan shall be submitted to and approved in writing by the County Planning Authority. The plan shall include:

a) Year 1: Environmental Reinstatement and Enhancement Plan, as recorded within the Loxley Well Site Landscape, Environment and Biodiversity Restoration and Enhancement Plan (Section 2, EDP Report 4788_r002c dated October 2019) inclusive of the replacement of trees and hedgerows removed during construction works, a programme to retain and protect existing trees and hedgerows and a timed programme for the planting of new trees and hedgerows and the creation of new biodiversity habitat; and

b) Precautionary Method Working Statements for great crested newts and reptiles, as recorded within the Loxley Well Site Ecological Impact Assessment (Chapter 6: Mitigation, Aecom Project No. 60555556 dated December 2018).

The approved plan shall be implemented in full and those protection measures that are required to be retained shall be maintained in a functional condition for the duration of the development and any agreed aftercare period.

Archaeology and Heritage

30) Prior to the commencement of the development hereby permitted, a programme of archaeological work in accordance with a Written Scheme of Investigation shall be carried out, submitted to and approved in writing by the County Planning Authority.

Restoration

31) Within 12 months of the implementation of this permission or prior to well site decommissioning (whichever is the sooner) a Final Landscape, Environment and Biodiversity Restoration and Enhancement Plan shall be submitted to the County Planning Authority for approval in writing. The plan shall include:

a) Landscape Restoration, Biodiversity and Environmental Enhancement, as recorded within the Loxley Well Site Landscape, Environment and Biodiversity Restoration and Enhancement Plan (Section 2, EDP Report 4788_r002c dated October 2019) designed to deliver biodiversity and wider environmental net-gain making use of native species and reflecting the historic use of the site as worked agricultural land and forestry;

b) The ecological surveys performed to support the Loxley Well Site Ecological Impact Assessment (Aecom Project No. 60555556 dated December 2018) shall be repeated to establish the ecological baseline required to inform the plan and ensure that there are no adverse impacts on habitats and species;

c) Slope Restoration Plan supported by methodology inclusive of any further ground investigations required to inform the geotechnical and hydrogeological

parameters used in the final design and construction of the earthworks required to restore the site to its pre-development state; and

d) Soil Restoration Plan: inclusive of measures to cultivate and improve the soils prior to re-spreading and restoration and measures to ensure aftercare for a period of 5 years post development completion.

The plan as approved shall be carried out in full and all planting implemented pursuant to this permission shall be maintained in good, healthy condition and be protected from damage for five years from the completion of site restoration. During that period any trees or shrubs which die, or are severely damaged or diseased shall be replaced in the next available planting season with others of a similar size and species.

32) The restored land shall be brought to the required standard for agriculture and woodland use. The applicant shall notify the County Planning Authority in writing within seven days once the planting or seeding has been completed and within one year from the date of notification a meeting shall take place, to be attended by representatives of the applicant, the landowners (or their successors in title) and the County Planning Authority, to monitor the success of the aftercare. Annual meetings will then be arranged and held within the period of five years from the commencement of aftercare.

Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Department for Levelling Up,
Housing & Communities

Our ref: APP/A0665/W/18/3207952

Kirsty Smith (nee Morris)
Senior Paralegal
Planning and Infrastructure Consenting
Eversheds Sutherland

By email only: KirstySmith@eversheds-sutherland.com

7 June 2022

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ISLAND GAS LIMITED
LAND AT ELLESMERE PORT WELLSITE, PORTSIDE NORTH, ELLESMERE PORT, CHESHIRE
APPLICATION REF: 17/03213/MIN

This decision was made by Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Brian Cook BA (Hons) DipTP MRTPI, who held a public local inquiry which opened on 15 January 2019 into your client's appeal against the decision of Cheshire West and Cheshire Council to refuse your client's application for planning permission for mobilisation of well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension, in accordance with application ref: 17/03213, dated 20 July 2017.

2. On 27 June 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal is dismissed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. As set out at IR5-6 public consultation took place on what the appellant considered to be a non-material amendment to the submitted application (IR5) and the responses were taken into account by the Inspector (IR6).

Matters arising since the close of the inquiry

6. While there have been developments in Government policy since the close of inquiry, in particular on net zero, this decision is based on material that was relied on before the Inspector, including the Committee for Climate Change's 2016 Net Zero report. The Secretary of State does not consider the development of Government policy materially affects the decision in this case, or that they necessitate a referral back to parties.

7. On 20 July 2021 a revised National Planning Policy Framework (the Framework) came into force. However, the Secretary of State does not consider that the revised Framework raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. Where paragraph numbers from the IR are referenced in this letter the numbering has been updated to this version.

8. The Secretary of State has received post inquiry correspondence from the parties identified in the Schedule of Representations at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

9. An application for a full award of costs was made by the appellant, Island Gas Ltd against the Council. Similarly, an application for a partial award of costs was made by the Rule 6 Party, Frack Free Ellesmere Port and Upton against the appellant (both referred to at IR2). Both these applications are subject to separate costs reports by the Inspector and decision letters of the Secretary of State.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case the development plan consists of the Cheshire West and Chester Local Plan (Part One) Strategic Policies Local Plan (2015), the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (July 2019) and the saved policies of Cheshire Replacement Minerals Local Plan (1999). The Secretary of State considers that relevant development plan policies include those set out at IR20-37.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') as at July 2021 and associated planning guidance ('the Guidance').

Emerging plan

13. The consultation on the six main themes relating to the emerging plan was completed in September 2021 and the Council is considering its next steps. Given its early stage of progress the emerging plan has not been afforded weight.

Main issues

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR592.

Energy, shale gas and climate change policy

15. The Secretary of State has carefully considered the Inspector's analysis at IR661-746 concerning whether the proposal fails to mitigate and adapt to the effect of climate change and ensuring development makes the best use of the opportunity for renewable energy use and generation. He has considered the proposal against national shale gas policy, including various Written Ministerial Statements (WMS); the November 2019 BEIS WMS (IR8), May 2018 BEIS WMS, May 2019 MHCLG WMS and September 2015 DECC WMS. The WMSs remain extant. In assessing the weight they carry, he has taken into account that specific shale gas policy in the Framework was quashed in 2019 by the Talk Fracking judgment[1], following which paragraph 209(a) of the 2019 version of the NPPF was withdrawn (IR704 refers).

16. On the basis of the evidence put before this inquiry, and for the reasons given at IR690-732, the Secretary of State agrees with the Inspector at IR732 that neither the 2015 nor the 2018 WMSs can be said to reflect the latest climate change science put before the inquiry. The Secretary of State considers that they must therefore, in this case, be read accordingly. He notes that the MacKay and Stone report was published in September 2013 and underpins the 2015 WMS and the 2016 Climate Change Committee ('CCC') reports (IR691) and while the 2018 WMS references the (CCC) report, it too relies on the MacKay and Stone report for evidential justification (all IR691). He has taken into account that scientific information is available that post-dates the MacKay and Stone report and was presented to the Inspector at the inquiry (IR709-716). The Secretary of State further agrees with the Inspector for the reasons given at IR717-727 that the evidence on greenhouse gas (GHG) emissions in this case casts doubt on the extent to which the MacKay and Stone report can be considered consistent with the 2019 CCC net zero report and the latest science that it reports upon (IR727). Overall, based on the evidence before him, the Secretary of State considers that the weight which can be afforded to the 2015 and 2018 WMSs should be reduced. He further considers that while the proposal does draw some support from the element of paragraph 152 of the Framework regarding transition to a low carbon future, the weight attaching to that support should be reduced.

17. The Secretary of State has further considered the Inspector's assessment of the May and November 2019 WMSs at IR733-745. He agrees with the conclusion at IR734 that paragraph 210 of the Framework is not directly relevant to the determination of this appeal. However, as exploration is a necessary precursor of exploitation, and the Secretary of State considers that this paragraph of the Framework does cover shale gas, he considers that paragraph 211 is a material consideration, as is paragraph 209 (differing from the Inspector's view at IR711 and 734). He notes that the November 2019

[1] Claire Stephenson v Secretary of State for Housing and Communities and Local Government [2019] EWHC 519 (Admin)

WMS, which introduced an 'effective moratorium', states that 'the shale gas industry should take the Government's position into account when considering new developments', and considers overall that this WMS is a material consideration in this case, albeit not one which carries more than limited weight.

18. Taking the matters set out in paragraphs 15-17 into account, the Secretary of State considers that on the basis of the evidence put forward in this case, national policy support for the benefits of shale gas exploration in this case should carry no more than moderate weight.

19. He has gone on to consider whether the proposal is in conflict with paragraph 152 of the Framework as a whole. The Secretary of State agrees with the Inspector's reasoning at IR717-726 and IR738, and has taken into account that government legislated to give effect to the headline recommendation that by 2050 emissions of GHGs should be reduced to net-zero (IR729 - The Climate Change Act 2008 (2050 Target Amendment) Order 2019 refers). He agrees with the Inspector that taking into account the unmitigated GHG emissions in this case, and given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. Taking into account his conclusion on the element of paragraph 152 regarding transition to a low carbon future in paragraph 16 above, he considers that the proposal would conflict with Framework paragraph 152 as a whole. For the reasons given at IR746, he agrees with the Inspector that this is a material consideration, albeit one that in his view should carry moderate weight in the planning balance.

20. Turning to local policy, for the reasons given at IR665-683 the Secretary of State agrees with the Inspector that the appellant's interpretation of LP policy STRAT1 should be applied – i.e. that the policy requires the appeal proposal to mitigate GHG emissions so far as practical (IR668). For the reasons given at IR684-688, he further agrees with the Inspector that the gas management techniques to be employed would reduce and thus mitigate the effect of the proposal on climate change, and therefore agrees that there would be no conflict with LP policy STRAT1 in this regard or with ELP policy M4 to the extent that it is considered relevant (IR688).

21. The Secretary of State has gone on to consider the Inspector's assessment against LP policy STRAT1 as a material consideration. For the reasons given at IR689-740 (but excluding the elements where he differs from the Inspector as set out in paragraph 17 above), he agrees with the Inspector that the appeal proposal would give rise to unmitigated GHG emissions of between 3.3 to 21.3 kt CO_2 equivalent although the actual release is more likely to be towards the top end of the range (IR738). He further agrees that this is a material consideration that weighs significantly against the proposal in the planning balance (IR740).

22. For the reason given at IR680-681 the Secretary of State agrees that LP policy ENV7, which is the most relevant policy, supports proposals to exploit the borough's alternative hydrocarbon resources providing there are no unacceptable impacts on range of matters as set out in the policy. LP paragraph 8.67 is clear that shale gas exploitation falls within the scope of the policy and the Secretary of State notes that this was common ground between the parties. He therefore considers that at the local level, the development plan contains permissive policies for the exploration of shale gas, and notes that the Council's

SPD (CD5.5) envisages and provides guidance about exploration for unconventional resources within the Council area with shale gas being specifically mentioned (IR681).

23. The Secretary of State has gone on to consider whether LP policy ENV7is satisfied in practice. He notes that it is common ground between the Council and the appellant that the proposal is in compliance with this policy, while FFEP&U (Frack Free Ellesmere Port and Upton), and by inference the local community, consider that there is conflict primarily with criterion 1 relating to the effect on human health and well-being (IR594-595).

Human health and well-being

24. The Secretary of State has carefully considered the Inspector's analysis of whether the proposal would have an unacceptable effect on human health and well-being (IR596-639). For the reasons given at IR596-599, he agrees with the approach set out by the Inspector in IR599.

25. For the reasons given at IR600-610 the Secretary of State agrees with the Inspector's conclusions in respect of the potential effects that the emissions from the development would have on the health of the local community, and further agrees that there would be no conflict with Local Plan policies ENV7 and SOC5 (IR611) in this regard.

26. The Secretary of State has also carefully considered the analysis at IR613-639 in respect the potential effect that the development would have on the well-being of the local community, including the effect on mental health. He agrees that stress and anxiety are recognised as factors affecting an individual's mental health, and are therefore considerations that fall within the scope of LP policies SOC5 and ENV7 (IR614). He acknowledges that in the light of the evidence considered at IR616-620, the proposed development is perceived as another development being introduced into the area which has already seen more than its fair share of health-affecting industry, and one that has the potential to cause harm to the health and well-being of the local community (IR621). He further acknowledges that this has caused a level of stress and anxiety in the local community (IR621). He agrees with the Inspector that concerns about the effect of 'fracking' activity (albeit this proposal is not for fracking) carry limited weight in this case, and that the matters addressed in IR438-440 should be given no weight (IR622-623).

27. Like the Inspector, the Secretary of State has considered the question of whether the stress and anxiety experienced by the local community is justified. He has taken into account the evidence that has been put forward on this point at IR625-633. However, he does not consider that either perceived past impacts arising from unrelated developments, or the fact that accidents and unexpected incidents do happen, undermines the assumption set out in paragraph 188 of the Framework that pollution control regimes will operate effectively. The Secretary of State has also considered the matters raised at IR562-591, noting that it was agreed that no breach of planning control had occurred (IR573) and that necessary information was before the Council and hence the local community as part of the statutory process of consultation (IR588). He considers that the matters raised are not sufficient to undermine the assumption that the Council's development control processes would work effectively and that the proposal would be delivered in line with the planning permission. In reaching this conclusion he has taken into account the fact that conditions would provide for the establishment of a community

liaison group (IR545-546), and for control of the activity undertaken (IR540-542 and IR544).

28. For the reasons given at IR633-639, the Secretary of State agrees with the Inspector that an unspecified but not insignificant number of individuals will experience stress and anxiety (IR637). He further agrees that the appeal site is embedded in a community that is specifically vulnerable to the adverse health effects that may be caused by stress and anxiety (IR636).

29. Overall the Secretary of State considers that the stress and anxiety felt by the local community is real and understandable, and would have an adverse effect, but considers that it is not justified by the evidence put before this inquiry. He does not consider that the adverse impacts arising from the stress and anxiety associated with this proposal would be so significant as to put the proposal in conflict with LP policies SOC5 and ENV7 in this respect (IR638). However, he considers on the basis of the evidence before the inquiry that these adverse impacts carry moderate weight against the proposal in the particular facts and circumstances of this case.

Other matters

30. The Inspector considers whether the proposed development would have an unacceptable effect on landscape, visual or residential amenity (in so far as it relates to air quality) at IR640-645. For the reasons given the Secretary of State agrees that in the landscape and visual context, there would be no harm caused due to the short duration of the proposal, and no conflict with Local Plan policy ENV7 in this regard or with Local Plan policy ENV2 (IR644). For the reasons given at IR646-657 he further agrees with the Inspector that there would be no policy conflict in respect of the matters of noise (subject to condition), water and highways (IR650, IR657 and IR656 respectively). Air quality has been dealt with at paragraph 25 above. He further agrees for the reasons given at IR658 that (subject to condition) there would be no conflict with LP policies ENV7 or ENV4 in respect of biodiversity and the natural environment.

31. For the reasons given at IR747-759 the Secretary of State agrees the proposal would not conflict with Local Plan policy STRAT4 in respect of the regeneration of Ellesmere Port (IR760). The Secretary of State further agrees with the Inspector's conclusions in respect of IR761-768. Additionally, he further considers, for the reasons given at IR770-771, that the reuse of the existing well pad and other infrastructure would represent a good use of existing development, attracting limited weight, and that limited wight should be afforded to the short term economic benefits.

32. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. In this regard he notes there are two relevant designations for the purposes of HRA located within 2km of the proposed development. The relevant sites are the Mersey Estuary Special Protection Area (SPA) and the Mersey Estuary Ramsar Site (IR Annex D paragraph 5). However, he also considers that an Appropriate Assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) is only required should the appeal be allowed. While the Secretary of State agrees with the assessment and findings in Annex D of the IR, he does, however, not consider that carrying out an Appropriate Assessment would overcome his reasons for dismissing this appeal, and has therefore not proceeded to make an Appropriate Assessment in his role as the Competent Authority on this matter.

Planning conditions

33. The Secretary of State has given consideration to the Inspector's analysis at IR539-560, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

34. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the LP policies discussed above, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

35. In the light of the evidence put forward in this case, and for the reasons set out above, the Secretary of State attaches moderate weight to national policy support for the benefits of shale gas exploration in this case. The short-term economic benefits and reuse of the existing well site each attract limited weight.

36. The Secretary of State considers that the unmitigated proportion of the GHG emissions carries significant weight against the proposal, and the conflict with paragraph 152 of the Framework as a whole also carries moderate weight. He further considers that the harm arising from the adverse effects of stress and anxiety on the local community in the particular circumstances of this case carries moderate weight.

37. Overall the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan – i.e. a refusal of permission.

38. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for mobilisation of well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension at the Ellesmere Port Wellsite, Portside North, Ellesmere Port in accordance with application ref 17/03213/MIN, dated 20 July 2017.

Right to challenge the decision

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

41. A copy of this letter has been sent to Cheshire West and Chester Council and Frack Free Ellesmere Porton & Upton, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

M A Hale

Decision officer

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	**Date**
C Moore	2 Jan 2020
R N Francis	23 Jan 2020
A Cartmell	23 Jan 2020
R J Tacon	11 March 2020
A Cockcroft	12 March 2020
Renie	11 April 2021
J Copeman	10 April 2020
Justin Madders MP	4 February 2020
Justin Madders MP	9 April 2021
Justin Madders MP	10 September 2021

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 6 January 2020

THE TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE WEST AND CHESTER COUNCIL

APPEAL BY

ISLAND GAS LIMITED

File Ref: APP/A0665/W/18/3207952
Ellesmere Port Wellsite, Portside One, Portside North, Ellesmere Port, Cheshire CH65 2HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Island Gas Limited against the decision of Cheshire West & Chester Council.
- The application Ref 17/03213/MIN, dated 20 July 2017, was refused by notice dated 26 January 2018.
- *The development proposed is mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension at the Ellesmere Port Wellsite, Portside North, Ellesmere Port.*

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. Throughout this report where Documents listed in Annex A are referred to the Document number is given in (). Figures in [] are cross references to other paragraphs in the report. Footnotes are limited to legislation, authorities and the like referred to by a party but not included in Annex A.

2. At the Inquiry applications for costs were made by the appellant against the Council and by Frack Free Ellesmere Port & Upton (FFEP&U) against the appellant. These applications are the subject of separate Reports.

3. FFEP&U were granted 'Rule 6' status and appeared as a main party at the Inquiry.

4. The Inquiry sat for 12 days between 15 January and 6 March 2019. In accordance with Rule 17 (2)[1] and with the agreement of the parties an accompanied site visit was not held. In my judgement given the main considerations (see below), such a visit would have been of no assistance. I carried out two separate unaccompanied visits to the area, one the day before the Inquiry opened and another once all the evidence had been heard.

5. Document A1 sets out an alternative approach put forward by the appellant to address an issue that had been raised by the Health and Safety Executive (HSE). In short, the proposal is to relocate two tool stores, which are regarded by HSE as habitable buildings, outwith the relevant safeguarding zone. The purpose of the alternative layout is to obviate the need to notify the Manchester Ship Canal Company Limited of the times of particular events. The appellant carried out a public consultation on what the appellant considered to be a non-material amendment to the submitted application.

6. Responses were received from HSE and Peel Ports Group and these have been taken into account. In the absence of any objection from any party, I have had regard to Document A1 in making the recommendation.

7. The Inquiry was originally expected to last for 6 days. In those circumstances a pre-Inquiry meeting shall be held only if the Inspector considers one to be

[1] The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 SI 2000 No. 1625

necessary. In this case, it was not possible to hold one in any event in the timescale. As is normal in these circumstances, and indeed encouraged by both the Planning Inspectorate and the Planning Bar, I issued a detailed pre-Inquiry note.

8. The purpose of such notes is two-fold. First, it sets out an Inspector's initial understanding of the evidence so far submitted and enables the parties to clarify any points where that is requested by the Inspector or to correct any misunderstandings that the Inspector may have gained. Second, it sets out what seem to the Inspector at that stage to be the main matters on which the Inquiry should focus in the interests of effective use of Inquiry time. This is especially important where a group such as FFEP&U, who may well have limited resources, are playing a full part in the Inquiry.

9. In opening the Council's case, Mr Griffiths raised two points in respect of the pre-Inquiry note. The first concerned what he termed a perception of, rather than an actual, pre-determination of the case arising from some of the content while the second concerned a conflict of interest arising from paragraph 49 of the note. Mr Cannock for the appellant saw no issue arising from either of these matters and indeed returned to address this fully in his closing submissions. Ms Dehon for FFEP&U expressed a 'neutral' view. When pressed as to what she meant by that she confirmed that FFEP&U made no submissions as to either concern but that standing in the shoes of the Council she '*might have shared their sense of alarm*'. As a matter of record, neither the Council nor FFEP&U asked me to recuse myself.

10. I saw no reason to do so and the Inquiry continued.

11. During the Inquiry, the National Planning Policy Framework (Framework) was re-issued. The limited changes in the February 2019 version are not material to my consideration of this appeal.

12. Literally while Mr Cannock was giving his closing submissions on 6 March a judgement[2] was handed down. This is highly material to the determination of this appeal. The judgement concluded by giving the parties to those proceedings an unspecified time to consider the implications of it and either agree, or make further submissions in relation to, the appropriate relief. The parties to this appeal were given sequentially until the 8 April to make any submissions that they considered appropriate in the light of the judgement. Those submissions are Documents C11, A19 and R19 and have been taken into account in preparing this report.

13. It was known that Mr Griffiths would not be available on 6 March to respond on behalf of the Council to the appellant's application for costs. It was therefore agreed that the application, the response and any further response from the appellant would be in writing within the same 8 April timeframe.

14. In the light of all these factors the Inquiry was formally closed in writing on 8 April 2019.

15. Following the close of the Inquiry a number of other material documents were published. These are the report *Net Zero: The UK's contribution to stopping*

[2] Document R18

global warming: Committee on Climate Change (CCC) May 2019 (Document PI1); *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin): Sealed Order and Judge's approved note (Document PI5); Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (Document PI9); The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (Document PI13); the adopted Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies on 18 July 2019 (Document PI18) and the Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy issued on 4 November 2019 (Document PI19). The respective responses by each party are listed in Annex A and have been taken into account.

16. Finally, on 27 June 2019 in exercise of his powers under s79 of the principal Act, the appeal was recovered by the then Secretary of State for his own determination. The reason given was that the appeal involves proposals for exploring and developing shale gas which amount to proposals for development of major importance having more than local significance. As a matter of fact, the proposal is for exploration only, not 'developing' shale gas.

The Site and Surroundings

17. The appeal site lies about 1.85km to the north west of the town centre of Ellesmere Port, some 4km to the west of the Stanlow oil refinery complex and just 0.2km south of the Manchester Ship Canal. The Mersey Estuary Special Area of Conservation, Site of Special Scientific Interest and Ramsar site is approximately 280m to the north east.

18. The appeal site itself is enclosed by a solid fence over 2m in height. It comprises an existing exploration wellsite compound (the EP-1 well) which is currently not in use. How this came into being is set out more fully under Planning History below. The site has a hardcore surface overlaying an impermeable membrane and containment system with an earth bund to the north west perimeter and concrete hardstanding in the centre. A surface water and containment system were installed as part of the wellsite construction.

19. More widely, the appeal site is located within an industrial area close to junction 8 of the M53 motorway from which it is generally accessed before being immediately accessed via a private road. There are now business premises to all sides of the site. On the other side of the motorway are yet more business parks and residential development. A new residential development has been built on land very close to the motorway and, at the time of my site visits, remained under construction. The properties nearest to the site have been completed and are roughly 350m from the EP-1 well.

Planning Policy

The adopted development plan

20. This includes the Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP) (CD5.1), the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (AELP) (PI18) and the Cheshire Replacement Minerals Local Plan (MLP) (CD5.3). When the Inquiry sat and up to July 2019 it also included the saved policies of the Ellesmere Port and Neston Borough Local

Plan (BLP) (CD5.2). These policies are now replaced by the AELP but are still set out below in order that the cases put by the parties can be followed.

Cheshire West and Chester Local Plan (Part One) Strategic Policies

21. LP policy STRAT1 addresses sustainable development. It states that '*proposals that are in accordance with relevant policies in the LP and support the following sustainable development principles will be approved without delay unless material considerations indicate otherwise.*' Eight sustainable development principles are then listed. The first, *mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation* forms the basis of the Council's sole reason for refusing to grant planning permission. LP paragraph 5.19 confirms that the policy provides a framework of locally specific sustainability principles that provide the basis upon which other policies in the development plan as a whole will shape development in the borough over the plan period.

22. The potential for Ellesmere Port to deliver substantial economic growth through the availability of significant sites for industrial, manufacturing and distribution purposes is recognised through LP policy STRAT4. In addition, at least a further 4,800 dwellings are planned to complement the town's role as a key employment location. Three key sites are identified as having considerable potential to achieve future economic growth. The appeal site does not fall within the boundaries of any of them. Reference is made in the explanatory text to the Ellesmere Port Vision and Strategic Regeneration Framework (SRF) (EP19). This document has no statutory planning status although it is a material consideration.

23. The LP policy of most direct relevance to the appeal proposal is LP policy ENV7. This is entitled 'alternative energy supplies' and explicitly includes within its scope proposals to exploit the borough's alternative hydrocarbon resources. It is in two parts. First it is supportive of renewable and low carbon proposals that would have no unacceptable impacts on the bulleted criteria, some of which are also the subject of other LP policies. Second, as set out in LP paragraph 8.67, it permits proposals to exploit the borough's alternative hydrocarbon resources (which are neither renewable nor low carbon) where any adverse impacts of doing so can be managed. It is confirmed that such proposals will be supported in accordance with the criteria listed in the policy itself and all other policies within the LP.

24. The criteria referred to are landscape, visual or residential amenity; noise, air, water, highways or health; biodiversity, the natural or historic environment; and radar, telecommunications or the safety of aircraft operations. For a proposal to be supported there must be no unacceptable impacts on any of these matters. It is common ground that the appeal proposal would have no impact on the historic environment, radar, telecommunications or the safety of aircraft operations.

25. Some of the other criteria are subject of further LP policies.

26. Health and well-being are addressed by LP policy SOC5. This is in two parts. First, in order to meet the health and well-being needs of the borough's residents, proposals that provide, support, consider or promote one or more of the seven elements listed will be supported. As the appeal proposal does not aim to provide such elements, it is only the second part of the policy that is relevant.

This confirms that development that would give rise to significant adverse impacts on health and quality of life (eg. soil, noise, water, air or light pollution and land stability, etc.) including residential amenity, will not be allowed. This is therefore relevant to elements of both the first and second criteria within LP policy ENV7 set out above.

27. The protection of water quality is the subject of LP policy ENV1; landscape character and distinctiveness are addressed by LP policy ENV2; while biodiversity and the natural environment are protected by LP policy ENV4.

28. FFEP&U refer to LP policy ENV9, minerals supply and safeguarding. However, the preamble to the policy makes clear that it relates to the provision of an adequate, steady and sustainable supply of sand, gravel, salt and brine in the context of the sub-national guidelines for aggregate land-won sand and gravel before setting out how this will be achieved. The policy is not therefore relevant to this appeal proposal.

Ellesmere Port and Neston Borough Local Plan

29. The appeal site is included within the boundaries of the 'Portside, Ellesmere Port' allocation in BLP policy EMP1. Proposals for particular sites will be judged against four criteria to assess their suitability. These include no unacceptable detrimental impacts on sensitive locations in the vicinity (examples are listed) arising from the appearance of the development or its potential for pollution or noise generation; no unacceptable detraction from visual amenity; satisfactory accommodation of traffic generated on the surrounding highway network; and that the appearance and type of development is consistent with the surrounding development where appropriate.

30. BLP policy ENV11 addresses the visual appearance of the M53/Shropshire Union Canal Corridor within which the appeal site lies. The explanatory text states that the Council is seeking to upgrade the visual appearance of the Corridor as a key element of the development of the Mersey Forest in Ellesmere Port. Development proposals that do not secure a positive net environmental improvement will not be permitted.

Cheshire Replacement Minerals Local Plan

31. Of those saved policies that are relevant to the appeal proposal, MLP policy 9 sets out an extensive list of topics that should be addressed in planning applications for exploration for and/or winning and working of minerals and MLP policy 12 sets out the matters that the Council will seek to control by conditions. Respectively, MLP policy 15 seeks to avoid any unacceptable impact on the landscape, policy 16 addresses the impacts of any associated plant and machinery while MLP policy 17 requires appropriate screening of the development from public view and the avoidance of an unacceptable impact on the visual amenities of sensitive properties. MLP policy 37 sets out the hours of operation that will, other than in specific circumstances warranting an exception, be permitted.

Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies

32. At the date when the Inquiry was closed the Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies (ELP) (CD5.4) had reached the stage where the Council was working on the detailed wording of each of the

main modifications necessary following the hearing sessions of the local plan examination. At that date, public consultation on the proposed main modifications had not taken place and the appointed Inspector had not reported on the examination. On 18 July 2019 the ELP was adopted (AELP) (PI18) was adopted; it is those plan policies that are referred to below.

33. AELP policy EP1 supports development proposals that are in line with relevant development plan policies and consistent with the principles set out in the policy which is aimed at delivering LP policy STRAT4. Principle 5 refers to the regeneration of previously developed land for a range of uses, particularly to support new housing, while principle 7 requires that development does not give rise to significant adverse impact on air quality in line with AELP policy DM31. That policy references back to LP policy SOC5.

34. AELP policy EP2 allocates specific sites in accordance with LP policy STRAT4; the appeal site is not allocated. This policy replaces BLP policy EMP1.

35. AELP policy M3 addresses proposals for mineral development generally while AELP policy M4 deals specifically with proposals for all stages of oil and gas development. There are general criteria to be met and specific ones for each of the three stages (exploration, appraisal and production). Both policies reference LP policies ENV7 and SOC5 in particular. While the criteria are developed in more detail in both AELP policies, the essence of the requirements set out in the primary LP policy remains the same.

36. The AELP includes many development management policies many of which are of some relevance although each derives at least in part from a LP policy and while the detail may be enhanced, the substance is the same. Particular reference is made by FFEP&U to AELP policy DM33 which addresses new and extensions to hazardous installations and AELP policy DM43 which addresses water quality, supply and treatment.

Supplementary planning policy

37. In May 2017 the Council adopted a Supplementary Planning Document: Oil and Gas Exploration, Production and Distribution (SPD) (CD5.5). This sets out the approach that the Council will take when dealing with applications and explains its expectations of prospective developers. In section 5 the wide range of key issues that are to be satisfactorily addressed are set out. Particularly relevant to this appeal proposal are noise, air quality, surface and ground water protection, flaring, landscape and visual impacts, traffic and transport, nature conservation, economic impact and health impact.

Planning History

38. The Ellesmere Port wellsite was constructed in 2011 under a planning permission granted on 15 January 2010. The permission (CD1.1) allows the *drilling of two exploratory boreholes for coal bed methane appraisal and production. The installation of wells, production and power generating facilities and the extraction of coal bed methane and the subsequent restoration of the site*. One of the approved drawings entitled Indicative Well Profile shows a well with a total vertical depth of circa 900m. The well itself was drilled in 2014. Prior to this an exhibition was held to explain the proposal to the public and an information brochure was produced (CD1.8).

The Proposals

39. The proposal would entail re-entering the existing EP-1 well to carry out flow testing to determine whether hydrocarbon production can be established from the Pentre Chert formation. No drilling, deepening of EP-1 or any hydraulic fracturing (or other stimulation) is proposed. The proposal would comprise four stages as follows.

40. Stage 1 would be the mobilisation of the well test equipment including the workover rig (up to 33m in height) and the installation of supporting infrastructure. This would include: office accommodation; fluid storage tanks; choke manifold; bath heater; three-phase test separator and shrouded flare (up to 12.2m high); and mobile lighting columns (up to 9m high). This stage would take 7 days to complete on the basis of 12 hour working days from 07.00 to 19.00 hours.

41. Well completion and drill stem test (DST) would comprise stage 2. This would involve the installation of down-hole equipment using the workover rig in order to allow hydrocarbons to flow from the Pentre Chert formation into the well. As set out briefly above, the purpose is to obtain a greater understanding of the formation properties and to determine if the formations are capable of producing commercial quantities of hydrocarbons.

42. A DST is a standard oilfield practice short duration test to provide an initial analysis of hydrocarbon composition and flow characteristics. If it is concluded that composition, flow rates and pressures are favourable for further analysis a longer term testing programme (extended well test (EWT)) would be undertaken.

43. To establish connectivity between the Pentre Chert formation and the wellbore, perforations would be made through the wellbore casing and cement surrounding the casing. Once debris had been circulated to the surface and the Pentre Chert formation isolated from the remaining section of the wellbore above that formation, the target formation would then be 'flowed', meaning that gas present in the formation would be allowed to flow to the surface.

44. To re-establish the natural flow of the gas in the formation a dilute acid (most commonly hydrochloric acid) at 15% concentration with water would be applied to the near wellbore through perforations. The dilute acid would dissolve calcitic sediments trapped within the formation to enable the natural flow of natural gas. The process, known as 'acid wash' would be undertaken to clean out the natural fracture network and re-instate natural permeability. Pressure may need to be applied to the acid in order for it to penetrate debris from previous drilling operations (known as 'acid squeeze').

45. Having established a flow of natural gas, fluids from the wellbore would be brought to the surface. Most would be separated out and stored for sale or safe disposal off-site as appropriate. Any natural gas would be diverted to a shrouded ground flare onsite for flaring.

46. Stage 2 would be expected to last for 14 days within a 28 day period. The workover rig and associated equipment would then be removed over a further 7 day period. If insufficient gas were extracted to justify further testing, the well would be suspended. However, if successful the EWT would commence.

47. The EWT represents stage 3 and amounts to a more comprehensive analysis of the flow characteristics of the hydrocarbons over an extended period using much of the DST equipment. Once flow rates and pressure of the natural gas have stabilised the shrouded ground flare would be replaced by an 8.2m high enclosed ground flare. This stage would be expected to last for 60 days on the basis of 24 hour working.

48. Well suspension and demobilisation together comprise stage 4. Well suspension would involve setting a bridge plug to isolate the hydrocarbon bearing formation and the installation of a circulating string. On the basis of 24 hour working this would take 2 days. This would follow the completion of either an unsuccessful DST or the EWT stage. Demobilisation would see the removal of all remaining equipment over a 7 day period working 12 hour days.

49. Final restoration of the site would be in accordance with the previously approved scheme (CD2.27).

The cases made

50. For the reasons set out above [12 and 15] the cases made by the main parties were presented in several stages. First, following completion of the oral evidence, each advocate made their closing submissions at the final hearing sessions of the Inquiry. Second, although responses to the *Stephenson* judgement were made in sequence, those further legal submissions in response to the publication of the various material documents referred to [15] were requested by the same date for all parties. In some cases, while not invited, rebuttal comment was made on another party's earlier submissions in respect of another of the documents.

51. In order to reflect how each party considered that their own and the other cases were affected by the content of the various newly available documents, the cases are set out below as they were made at each stage. Inevitably, some of the points made in one submission are superseded by other, later, points prompted by the publication of subsequent documents on which comment was invited. Nevertheless, the submissions are recorded as they were made at the time to present the Secretary of State with a complete picture of the way the evidence has evolved over the period during which the appeal has been and is still being considered. However, by the time responses PI20, PI21 and PI22 were made, there was a good deal of repetition of the central points of the respective cases. In the interests of brevity, these points are not set out yet again under those headings.

52. Included in the cases are references to ELP policies, most notably in the discussion of the regeneration of the area and LP policy STRAT4. These are retained but my conclusions are set out in the context of the relevant AELP policies which are the subject of the further submissions PI20, PI21 and PI22.

53. The cases are set out below in the order in which the evidence was heard rather than the order in which the closing submissions were given; at that point FFEP&U were followed by the Council, then the appellant.

54. All three parties made detailed submissions on the case law relating to the relationship between the planning and the regulatory regimes. These are set out in the closing submissions (FFEP&U, R21 paragraphs 75 to 66; the Council, C12

paragraphs 11 to 16; the appellant, A21 paragraphs 73 to 75). The summary case law points made do not differ in substance and are not therefore set out below. Instead, the points that each consider of relevance to the determination of this appeal are set out.

55. It might also be noted that it is the appellant's submission that in this section of the Council's closing submissions [63 to 65] the appellant's case has been mischaracterised. Indeed, the appellant says that it has simply not asserted that the grant of a Permit can be construed as an approval of a planning permission in accordance with LP policy STRAT1 [339].

56. Finally, Ms Dehon was unable to be present for the discussion on the conditions that should be imposed in the event of planning permission being granted. FFEP&U's position on conditions and the legal basis for them is set out in the closing submissions (R21 paragraphs 111 to 125). Those paragraphs are not summarised under the case for FFEP&U below but all of the points put have been taken into account in the report on conditions [539 to 560].

The Case for Cheshire West and Chester Council

Closing submissions

57. The case put by the Council is set out in the closing submissions of Mr Griffiths (C12). The text can be read in full but numerous additional points were made as the submissions were read out. The following summarises both the written text and the additional points.

Introduction

58. This Inquiry is about the effects of shale gas exploration on climate change. In cross examination Mr Adams agreed that the description by the Institute of Public Policy Research that climate change is a '*crisis facing up to the age of environmental breakdown*' (C4) was the case not only for his industry but generally in the field of human activities.

59. The Institute concludes that '*mainstream political and policy debates failed to recognise that human impacts on the environment have reached a critical stage, potentially eroding the conditions upon which socioeconomic stability is possible*.' Its view is that policy makers and politicians are not adequately recognising, let alone responding to, the catastrophic threat posed by environmental change.

60. The Council's central submission is that the planning system, applying normal land use principles, should recognise this threat by refusing to grant planning permission for the proposed exploration for shale gas development.

61. In the Council's submission the decision maker needs to consider and decide on various matters of law and fact which arise out of the refusal to grant planning permission for the appellant's exploration activities. Certain preliminary but fundamental matters of approach need to be clarified and considered. These are:
    i) the extent to which, if at all, the Council has to take into account the grant of an Environmental Permit to the appellant for carrying out certain operations which form part of the exploration activities.
    ii) the relationship between central government policy and the policies of the adopted Local Plan.

iii) the status of the Paris Agreement.

iv) the relevance of local public opinion to the decision making process. Can the Secretary of State ignore local public opinion on the basis that central government policy is generally supportive of shale gas exploration and production?

v) the relevance and weight to be attached to scientific evidence which arguably runs counter to central government policy and guidance currently in existence.

62. These are addressed in the following.

Environmental permits

63. Blurring the distinction between regulatory and planning matters can lead to errors of law, irrational judgement and implausible reasoning. The regulatory body looks at operations from a different perspective and vantage point to the planning authority. Even though what is proposed may be permissible in regulatory terms, that does not amount to a land use finding of acceptability in planning terms.

64. This can be illustrated by the fact that an Environmental Permit relating to the flaring of emissions is wholly different from a grant of planning permission for the exploration of shale gas. The land use considerations of granting a planning permission for shale gas development are totally distinguishable from the granting of an Environmental Permit dealing with emissions of natural gas including methane as a consequence of the development being carried out. That is why the grant of an Environmental Permit cannot be construed as an approval of a planning permission which is in accordance with LP policy STRAT1.

65. The matters within LP policy STRAT1 [21] have to be evaluated as a matter of judgement by the Council as planning authority. The grant of an Environmental Permit follows from an assessment made by the Environment Agency (EA) of factors relevant to the grant of the Permit in terms of operational matters. It does not amount to a finding that the conversion of methane into carbon dioxide as part of the process of exploration is sustainable development and does not adversely have an impact on climate change. If it did, that would mean that the EA was the sole and determinative arbiter of what was in this case the sole reason for refusing planning permission. Furthermore, the levels of emissions compatible with climate change are matters solely vested in the local planning authority which must exercise judgement in accordance with the development plan and all other material considerations.

The appellant's case

66. The appellant has not lead any scientific evidence to rebut that of the Council and FFEP&U. The response by Mr Adams was that it was not needed as government's policy supported it and an Environmental Permit had been granted and the mitigation proposal had been accepted by the EA as Best Available Technique (BAT) (in fact this is not correct as to the DST stage). But in any event, what the appellant has completely misunderstood is that the use of BAT is not the yardstick of what is acceptable in planning terms.

67. Witnesses for the appellant accepted that the regulatory regime did not deal with the impact of the development after the regulatory controls had been

implemented. The issue does not turn therefore on whether flaring accorded with BAT but on whether, notwithstanding that it may be, the effect of methane emissions into the atmosphere would have a significantly adverse effect on climate change. The appellant has simply not grappled with that.

68. Indeed, it seems now to be common ground between the parties from the estimates set out in the agreed tables (C6). The agreed range of emissions that may result from the exploration stage is critical and indeed determinative evidence for a number of reasons.

69. On all the estimates it is clear that there will be the release of methane emissions into the atmosphere which, when converted to CO_2 by flaring, will have a deleterious effect on climate change.

70. The appellant accepts by way of admission that the EA had before it incorrect information as to the level of emissions that would be generated by the development. This is a highly material fact. Mr Foster in cross examination suggested that the appellant was to go back to the EA to correct this error. But for the purpose of this Inquiry, this is too late. To say that the appellant would go back to the EA after an Inquiry is over is obviously a recognition of a major deficiency in the appellant's case, especially bearing in mind the great weight it attached to the EA's grant of the permit and its failure to object to the proposed development.

71. The reality is that the appellant's Environmental Risk Assessment (CD1.9g) contained mistaken evidence as to the emissions that will result from the exploration stage. The EA would, therefore have been working on the premise that these emissions were low and could be discounted.

72. They would have been looking at the matter in the way it was set out by Mr Foster (APP/JF/2 paragraph 8.9) where he says;

> *Paragraph 11 of CW&CC's SSoC (CD4.4) sets out paragraph 49 of the 2016 CCC (CD8.1) which makes reference to emissions from exploration being generally small but it should not be taken as a given, especially for extended well tests. It states that appropriate mitigation techniques from exploration are generally small, the thrust of the matter is whether 'appropriate mitigation techniques' have been employed 'where practical'*.

73. The EA therefore granted the Permit on the basis of a false premise. This fact is at the heart of the Council's case. This flaw only came to light as a result of the research by the Council's witnesses. It is a micro level factor which requires the decision maker to reach his determination not on the broader contextual basis of shale gas development and its impact on climate change but on the basis of empirical evidence which establishes a fundamental flaw in the appellant's case.

74. It was only in the appellant's response to Dr Balcombe's paper (C3) that it was acknowledged '*there is an error in the GWP calculation, having used a default value emission for production gas flaring, rather than the default values for well testing*' (paragraph 2.2 A4).

75. In evidence now is a range of potential GHG emissions (C6). Whichever range is adopted the conclusion is as set out (C6 paragraph 13):

> *It remains clear that the climate impacts associated with well testing are materially large, as well as being highly uncertain. The differences between*

emissions estimated by IGas in the environmental risk assessment and those presented here is also large and shows that emissions have up to now been mistakenly underestimated.

76. Dr Balcombe concludes (C3 paragraph 6):

> *The effect on the climate of these additional emissions that are not currently accounted for is equivalent to 0.7 – 5.4 kt CO_2eq. using a global warming potential (GWP) of 36. This is equivalent to a single modern passenger car (121 gCO_2/km) travelling up to 54 million km, equivalent to driving around the Earth's circumference 1,111 times, or driving to the moon and back 58 times.*

77. This is simply the effect of additional emissions not currently accounted for. The impact of total emissions is significantly greater (C3 and C6). Total emissions agreed between parties equate to 4 – 10.8 kt CO_2eq. using a GWP factor of 36, 3.3 – 7.6 using a GWP factor of 21 and 6.1 – 21.3 using a factor of 87.

78. These have been placed in context (C6 paragraph 5) and are not disputed by the appellant:

> *To place these values in context, the estimated total annual GHG emissions from industry and commercial activities within the Cheshire West and Chester local authority in 2016 was 1,099 ktCO_2. Total GHG emissions are up to 1% of annual regional industrial emissions using a GWP of 36, or 2% with a GWP of 87. It is the equivalent of adding 7,100 new cars on the road per year (13,000 with a GWP of 87). This is equivalent to a single modern passenger car (121 gCO_2/km) travelling up to 89 million km, equivalent to driving around the Earth's circumference 2,200 times, or driving to the moon and back 116 times*.

79. Dr Balcombe characterises these emissions as 'large' and notes that it is not just flaring but that methane emissions are also likely to occur via vents and fugitive emissions not previously accounted for (C6 paragraph 8). In his expert view there is also a risk of lower efficiency flaring due to uncertainty of both gas flow rate and the gas composition (C6 paragraph 8).

80. As Dr Balcombe explains the use of different GWP values has a large impact on results. Several GWP values for methane have been used, some of which are significantly out-of-date. The value of 21 used by the appellant is based on a 13 year-old UN Intergovernmental Panel on Climate Change (IPCC) third assessment report. This value has been updated twice to 36 in the IPCC fifth assessment report. This represents the average climate forcing of methane over 100 years so as to make the climate change comparison linked to CO_2 which remains in the atmosphere for hundreds of years.

81. FFEP&U also present a higher value of 87 which is based on the most recent IPCC report. This reflects the significant additional harm caused by methane in the short term (as it is a short-lived climate pollutant) as well as being a long-term climate change factor (C6 paragraph 12).

82. What is undisputed by the appellant is that the EA in acting pursuant to a flawed Environmental Risk Assessment failed to take into account highly relevant material as to the likely extent of emissions attributable to the proposed development.

83. Dr Balcombe concludes (C6 paragraph 13):

> *It remains clear that the climate impacts associated with well testing are materially large, as well as being highly uncertain. The difference between*

emissions estimated by IGas in the environmental risk assessment and those presented here is also large and shows that emissions have up to now been mistakenly underestimated.

84. This conclusion is supported by the distinguished scientists called by FFEP&U. It has not been rebutted by the appellant and, indeed, there has been no attempt to do so.

85. In fairness none of the witnesses called by the appellant claimed to be qualified to express an opinion on these matters. Ms Hawkins agreed in cross examination that the EA did not set standards for climate change and were not making determinations in relation to climate change in the grant of Environmental Permits. The EA was not looking at the impact of emissions that remained after the adoption of BAT.

86. It was clear from Mr Foster's evidence that he and the whole of the appellant team was proceeding on the basis that the emissions from the exploration stage are 'generally small'. That was the context in which the appropriate mitigation techniques were considered both by the appellant and the EA. Neither assessed the necessary mitigation techniques or their practicality against a backcloth of emissions being high and uncertain.

87. We now know that the EA and the Council officers were proceeding on the basis of a flawed premise (that emissions were low). Members were not aware of the relevant scientific facts and the discrepancy between assumption and actuality as to the exploration stage in terms of emissions. They cannot be criticised for failing to take into account something that they did not know about. It cannot be excluded that limited resources did not allow them to obtain their own scientific evidence.

88. Circumstances have now changed with the evidence that has been put before the Inquiry. This shows Members' intuitive view to have been correct.

89. Mr Adams agreed in cross examination that the EA decision to issue the permit is not conclusive and determinative in this case. He also agreed that scientific evidence is relevant to the decision maker's consideration of the issues and that the evidence of Drs Balcombe and Broderick in particular was relevant. He also agreed that the Paris Agreement was a material consideration.

90. What in the Council's submission is the syllogistic and illogical nature of the appellant's case is illustrated by what Mr Adams accepted in cross examination are essentially non sequiturs. He accepted that the flawed reasoning in this part of his evidence could not stand.

91. The first is that because government's position is that exploration for domestic supplies of gas is of national importance and that therefore great weight should be given to it, it follows that the inevitable land use planning consequences of exploration are accepted (APP/DA/2 paragraph 3.55).

92. As a matter of planning approach it does not follow at all; that is simply analytically wrong. In other words you cannot jump to the conclusion that planning permission should be granted simply on the basis that government policy generally supports shale gas development and that the environmental impact of that development (including climate change) is accepted.

93. As a matter of planning guidance, there should be a balancing exercise in which some considerations, like the development plan, are given great weight as a matter of law with others being material because they are relevant to the impact of the development on the use of land.

94. In the Council's submission what has to be looked at is the relationship between two potentially conflicting matters of national importance. By way of analogy, if a shale gas proposal was to be located within a national park any national interest that there may be in the development of the shale gas industry would have to be balanced against another public interest, namely, the protection of the national park as laid down in the statute. The balancing of two national interests is a difficult and complex exercise but it is not one that can be circumvented by attaching greater weight to one national interest from the weight you attach to another national interest.

95. The appellant's case is that overriding weight should be attached to shale gas development ignoring the fact that protection of the environment from climate change is, itself, a national interest recognised both nationally and internationally by the Climate Change Act 2008, the Paris Agreement and the national energy policy statement of May 2018.

96. The second is the reasoning drawn from government intentions to treat certain shale exploration development as permitted development (APP/DA/2 paragraph 3.42). In cross examination he rightly accepted that the potentiality of exploratory development being considered as permitted development was not, even if factually correct, a matter which coupled with the granting of the necessary relevant consents from the regulators resulted in the conclusion that shale gas development was acceptable to government in terms of its environmental effects. It is this type of simplistic reasoning which results in superficially attractive arguments being adopted at a cost to the environment that future generations will condemn.

97. As has been pointed out, and the Council adopts this as part of the submissions, '*there is a contradiction between the warnings of environmental scientists and the actions of politicians*' (C4). It is that apparent contradiction with which this Inquiry (and now the Secretary of State) has to grapple. It is not eradicated by regarding government policy on shale gas development as the indicator of government's policy on climate change. The two issues should not be conflated (which is what the appellant has sought to persuade the Inspector to do). The conflation of issues is invariably the hallmark of irrationality and implausibility.

Climate change as a national interest

98. Section 10(2)(b) of the Climate Change Act 2008 is set out in full (C12 paragraph 49). At the forefront of the matters to be taken into account by the CCC are (a) scientific knowledge about climate change and (b) technology relevant to climate change. Also relevant are (g) differences in circumstances between the four UK countries and (h) circumstances at European and international level.

99. It is the Council's submission that these matters must also be taken into account in reaching a decision on this appeal. As a matter of law that must mean they are not only material considerations to be taken into account in the matter of a consideration of a planning application, but their importance is enshrined in statute and accordingly great weight must be attached to them by the decision

maker in circumstances where climate change is relied upon as a reason for refusal.

100. Section 10(2) of the Climate Change Act 2008 specifically incorporates as matters to be taken into account at (h) circumstances at European and international level. That, in the Council's submission, incorporates both the Paris Agreement and Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (15 January 2008). In that sense the factors are legally binding as a material consideration on the decision maker when considering an appeal of this kind. They are considerations of a normative form and are binding. The Paris Agreement is a legal instrument whose provisions are legally binding on the UK government, it having been ratified as a treaty in November 2016. In our submission, the legal character of a norm differs from whether the norm is justiciable. The legally binding character of the norm does not depend on whether there is any court or tribunal with jurisdiction to apply it. Furthermore, the concept of a legally binding character is distinct from enforcement. As with justiciability, enforcement is not a necessary condition for an instrument or norm to be legally binding. If a norm is created through a recognised law-making process then it is legally binding whether or not there are any specific sanctions for violations. That is the case with the Paris Agreement. It creates legal norms within the community of its signatories and binding as norms in domestic circumstances on ratification by government.

101. The most recent national energy policy statement says, among other things, that '*the UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations.*'

102. Reference is made to the work of Prof. A L Hart although that has not been produced in evidence (C12 paragraph 53). From our experience of international legal agreements as opposed to domestic agreements, most international legal agreements provide no mechanism for judicial application and little enforcement. But that does not mean that they do not apply and are not legally binding on the decision maker. We do not accept, therefore, as a matter of law that the Paris Agreement ratified by the UK government is not a weighty material factor in considering the impact of the proposed development. It self-evidently is one. It would be legalistic pedantry if the view was taken that the contents of the agreement should not be given a normative legal force in the consideration of this appeal.

The Paris Agreement (EP46)

103. This contains some highly relevant provisions which, individually and collectively, show that as far as the UK government is concerned, climate change considerations are to be characterised as a weighty public interest norm which should be applied in the balancing exercise of shale gas development and climate change mitigation.

104. While several matters within the Paris Agreement are set out (C12 paragraph 56), the most important for the purposes of the determination of this appeal is the recognition of the need for an effective and progressive response to the urgent threat of climate change on the basis of the '*best available scientific knowledge*' (emphasis added) Article 4 specifically refers to '*reach global peaking*

of greenhouse gasses as soon as possible' and to '*undertake rapid reductions thereafter*' in '*accordance with best available science*.'

105. Article 6(4) establishes a mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development. Its aim is:

i) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;

ii) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;

iii) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and

iv) To deliver an overall mitigation in global emissions."

106. In the context of the IPCC report (EP10) and various other recent reports (C12 paragraph 57) the importance of the Paris Agreement cannot be underestimated.

Directive 2008/1/EC (15 January 2008)

107. This focusses on GHG emissions and other pollutants and is of limited assistance to the determination of this appeal save for the preamble to paragraph 24. Emphasising the importance of public participation in the taking of decisions on these matters it states:

> *Effective public participation in the taking of decisions should enable the public to express, and the decision maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken*.

108. The Council relies on this to establish the principle that the opinions and concerns of the public in the decision making process are relevant. We see no reason to limit that right of effective public participation to pollutant emissions and not to apply it to the opinions and concerns of the public in relation to climate change. In other words, the concerns of the public are material considerations.

Mitigation technologies

109. The most recent energy policy statement (the 2018 Written Ministerial Statement (WMS) - APP/DA/3 Appendix 14) refers to innovative technology such as carbon capture usage and storage as having the potential to decarbonise this (shale gas) energy supply and prolong its role in the future energy mix. It is not saying that *per se* shale gas development is acceptable. It goes on to say:

> *Our current import mix via pipelines from Norway and Continental Europe and LNG terminals that can source gas from around the world, provides us with stable and secure supplies. However, we believe that it is right to utilise our domestic gas resource to the maximum extent and exploring further the potential for onshore gas production from shale rock formations in the UK, where it is economically efficient, and where environmental impacts are robustly regulated*.

110. The explicit and clear inference from the final sentence is that when looking at the prospect of shale gas exploration, the environmental impacts of the exploration are factors which have to be taken into account. The premise of the potential for onshore gas production is that it is '*robustly regulated*.'

111. The Council's case, as developed by Dr Balcombe and indeed Dr Broderick, is that currently the best available techniques still do not reduce the methane levels to an acceptable level in climate change terms and the residual impact after complying with the existing regulatory regime is not low but high. Their evidence, especially that of Dr Broderick on this point, reinforces the Secretary of State's focus in this statement on '*potential*.'

112. When referring to the benefits of shale gas potential the statement says:

> *We also believe that further development of onshore gas resources has the potential to deliver sustainable economic benefits to the UK economy and for local communities where supplies are located by creating thousands of new jobs directly in extraction, local support services, and the rest of the supply chain. A potential new shale gas exploration and production sector in the shale basins of England could provide a new economic driver. We also see an opportunity to work with industry on innovation to create a "UK model' – the world's most environmentally robust onshore shale gas sector – and to explore opportunities from this model, a core theme of our modern industrial strategy.*

113. However, in essence, the document is saying that the UK model has yet to be created. The indisputable fact is that we have not reached the stage in this country where the adverse environmental impacts of shale gas development have been reduced to an acceptable level in climate terms. Although the technology to achieve that reduction is being looked at, it has not yet been designed and implemented. That is the thrust of the appellant's case - carbon capture usage and storage it says has not been satisfactorily used in practice and that Dr Broderick's evidence in particular where he points to the prospect of using that technology is unrealistic. The appellant does not seem to be able to see that on its own case it is saying, '*we have not yet developed a robust means of limiting the effect of shale gas development on the environment.*' That is why the appellant has constantly said that shale gas development will inevitably cause these emissions – effectively that is the price we have to pay. That approach is entirely inconsistent, the Council submits, with government policy as evidenced by the statement of the two Secretaries of State.

114. It is understood that although there is a need for a shale gas regulator to be appointed, that has not yet happened (C1). The recognised need for one is however indicative of government's concern that current arrangements are complex and not always transparent.

115. The Council does not dispute that government considers shale gas development to be of national importance. However, it seems to the Council that government also makes it very clear that as a matter of principle it should not go ahead irrespective of its impact on the environment.

116. Dr Broderick refers to various negative emissions technologies (CC4 paragraph 20) as still being in development; this mirrors the view of the Secretaries of State set out above. While he supports such technical research and development, there is wide recognition that the efficacy and global rollout of it is highly speculative. His view is there is a '*non-trivial risk of failing to deliver at, or even*

approaching the scales typically assumed.' It is that assumption that he says, '*unreasonably lends support for continued and long-term use of gas and oil whilst effectively closing down more challenging but essential debates over supply and demand for fossil fuels, lifestyle changes and deeper penetration of a genuinely decarbonised energy supply*' (CC4 paragraph 20).

117. He advocated '*an urgent programme to phase out existing natural gas and other fossil fuel use across the EU*.' In his view, this was an imperative of any scientifically informed and equity-based policies designed to deliver on the Paris Agreement. His view of mitigation in LP policy STRAT1 was that it should be interpreted in relation to compatibility with achieving the objectives of the Paris Agreement and for this to be the relevant standard (CC4 paragraph 21).

118. It is plain from the minutes of the Committee meeting (CD2.25) that the international legislative context and the Paris Agreement was explained to the Members. In approaching their task, they would therefore have been aware that the Paris Agreement was implemented '*to reflect equity and the principle of common but differentiated responsibilities*' and that developed countries should, '*continue taking the lead by undertaking economy-wide absolute emission targets*.'

119. The Council submits, therefore, that mitigation, in the circumstances of this case and as relied upon by the Council in its reason for refusal, has two equally applicable connotations. Firstly, mitigation in the broader sense relating to the achievement of the objectives of the Paris Agreement. We submit this is a legally binding obligation as opposed to a legally enforceable obligation which the decision maker should take into account in considering the application for planning permission. Secondly, there is mitigation in the technical sense as expounded by Dr Balcombe in relation to the failure to use technology to reduce carbon emissions to an acceptable level in planning terms. On both of these grounds the appeal should be dismissed.

Conclusions

120. We accept that the latest energy policy statement (APP/DA/3 Appendix 14) says that shale gas development is of national importance. It is characterised in that way because of the benefits of mineral extraction, including to the economy. But that does not mean that the impact of shale gas development on climate change should not also be given great weight as a legally binding material consideration, not just of national but worldwide importance. As the Secretaries of States' ministerial statement says, applications must be assessed having regard to their context.

121. Shale gas development is treated by the present Government (at January 2019) as relevant to our economy and as a modern industrial strategy. Climate change is relevant to the future of our planet and mankind. In the balancing exercise of one national interest (our present economy) against another national interest (climate change) an objective evaluation by an informed and rational decision maker of what should be afforded greater weight is required. There can be no doubt that until a robust regulatory regime is in place the technology available to halt the march of climate change to the abyss of self-destruction predicted by the vast majority of scientists worldwide, planning authorities should apply the precautionary principle to the control of development of this kind.

There is no legitimate justification for not acting in this way. There is nothing inconsistent with that proposition in government policy or the development plan.

122. The joint statement by both Secretaries of State in May 2018 stated, '*the UK must have safe, secure and affordable supplies of energy with carbon emission levels that are consistent with the carbon budgets defined in the Climate Change Act and our international obligations*.' In this case, the Council found (entirely reasonably) that having regard to the Paris Agreement, the Climate Change Act 2008 and LP policy STRAT1, the proposed development should be refused. The Council found it was not in accordance with national policy or in accordance with an international Treaty ratified by the UK government and that the development was unacceptable in land use terms. The appellant's case is a weak one. It rests on a fundamentally flawed argument, the premise of which is that government policy supports shale gas development, the necessary regulatory permits are in place, and that concludes its case. That is simply wrong (as was accepted by Mr Adams in cross examination). Government policy does not support shale gas development unless there is a robust regulatory regime in place and the technology exists to decarbonise this energy supply and prolong its role in the energy mix.

123. On the basis of the evidence before the Inquiry those condition precedents for shale gas development have not been satisfied. That does not mean that will always be the case. Science and technology make huge advances mainly for the benefit of mankind. Currently, shale gas development is not safe. It is not consistent with the carbon budgets defined in the Climate Change Act 2008 or our international obligations. The likelihood is that one day, perhaps not so far distant, shale gas development will be acceptable. But we should be vigilant as a society and so should the planning system, to ensure that in pursuit of that goal we do not end up contributing to the demise of our planet. If that is an alarmist submission then so be it. It is made on the basis of the best available science and a sensible reading of government policy and an international Treaty, a highly relevant LP policy and by giving due and proper regard to the weight to be attached to the justifiable concerns of the public, the residents of Chester and Cheshire West and the Members of the Council's Planning Committee.

Stephenson[3] (R18) – Legal submissions (C11)

124. The Council's comments are embedded within its response to the appellant's application for costs. Essentially, two points are made.

125. First, with reference to paragraph 73 of the judgement, it is noted that the Council's approach (namely, that the planning system exists to identify a decision that best fits the balance of considerations where policies within local and national policy documents pull in different directions) is endorsed. That is the approach that should be taken in this case and not the simplistic one put forward by the appellant that government policy supports shale gas therefore it is assumed the inevitable environmental consequences are accepted.

126. Second, it is noted that Dove J found that Framework paragraph 209(a) was unlawful. It cannot therefore be relied upon in the determination of this appeal.

[3] *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

Net Zero: The UK's contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI3)

127. The Council's broad submission is that the net zero report deals with matters of great materiality to the determination of the appeal, especially in relation to matters of national interest which should be taken into account in the analysis of government's current energy policy and its compatibility with the Paris Agreement and other binding international obligations on policy commitments concerning climate change. The report strongly reinforces the evidence given to this Inquiry by Drs Balcombe and Broderick on behalf of the Council and indeed the evidence of Professor Anderson on behalf of FFEP&U.

128. Several quotes from the Foreword to the report are included in the Council's submissions. Among these are that the extensive evidence presented to the CCC resulted in a '*new understanding of the potential to achieve deep emissions reduction in the UK*' and that a reduction to net zero GHG emissions by 2050 is necessary, feasible and cost effective. Importantly, Lord Deben concluded his foreword by saying, '*We must now increase our ambition to tackle climate change. The science demands it; the evidence is before you; we must start at once; there is no time to lose.*'

129. In terms of the specifics, especially in relation to the calculation of CO_2 and methane resulting from exploration where shale gas is concerned as calculated by Dr Paul Balcombe and supported by Professor Anderson on behalf of FFEP&U, it is to be noted that the net zero report points to the importance of the net zero target, '*UK emissions now constitute only a small proportion of the global total, but those who say the UK's actions no longer matter are wrong. Every tonne of carbon counts, wherever it is emitted'* (emphasis added)."

130. The case put against the development by the Council and FFEP&U cannot be dismissed on the basis of economic viability. The report shows that what is necessary to halt the march of climate change can be achieved without interfering with industrial enterprise and achievable financial aims.

131. The net zero target is consistent with the requirements of the Paris Agreement and sets the standard for the EU and other developed countries. That is what the net zero report says is its importance and it reflects the meaning of the stipulation of highest possible ambition in the Paris Agreement.

132. The net zero target for 2050 is a response to the latest climate science and meets our legal obligations under the Paris Agreement and reflected in other international obligations we have entered into;

    i) It would constitute the UK's 'highest possible ambition', as called for by Article 4 of the Paris Agreement. The CCC do not currently consider it credible to aim to reach net-zero emissions earlier than 2050.

    ii) It goes beyond the reduction needed globally to hold the expected rise in global average temperature to well below 2°C and beyond the Paris Agreement's goal to achieve a balance between global sources and sinks of greenhouse gas emissions in the second half of the century.

    iii) If replicated across the world, and coupled with ambitious near-term reductions in emissions, it would deliver a greater than 50% chance of limiting the temperature increase to 1.5°C.

133. The UK government is already committed to net zero GHG emissions. The question is "by when"? The answer provided by the CCC is 2050. This is a conclusion drawn from a wide consultation exercise and the compilation of an extensive evidence base.

134. In the context of the appeal proposal it is to be noted, especially in relation to the conversion of methane into CO_2, the report emphasises that all GHGs contribute to climate change, not just CO_2 and, therefore, there should be a substantial reduction of short lived gasses like methane which should be stabilised.

135. The recommendation in Chapter 8 of the net zero report is that the UK should set a net zero target to cover all GHGs, including CO_2 and methane. It makes clear at page 50, net zero emissions for all GHGs would reflect the requirement in Article 4 of the Paris Agreement. In the appeal proposal it is the burning or flaring of methane which results in the emission of CO_2 into the atmosphere. Hence the net zero CO_2 reduction would in any event, result in this application for planning permission being in breach of Article 4 of the Paris Agreement. That in itself is a justifiable ground for refusal.

136. The recommendations in the net zero report endorse the premise of the Council's closing submissions that this appeal should be dismissed because it is contrary not only to the terms of the Paris Agreement but is incompatible with best scientific evidence.

137. The Council referenced section 10(2)(b) of the Climate Change Act 2008 [98 and 99]. The net zero report, its recommendations and targets are based on the following principles as to the approach that should adopted:

i) Any target must be scientifically robust and recognise the need for urgency that was clearly emphasised by the IPCC.

ii) Targets should be aligned to the UK's international commitments, including through the Paris Agreement. That implies a need to reflect both the UK's capability and considerations of equity.

iii) To limit the effects of climate change on the UK and the world, global emissions must fall. UK action should support increasing global action.

iv) Targets should be realistic. Therefore, it is also vital to identify what can be feasibly delivered in the UK at an acceptable cost (in the long run and during the transition) and alongside other government objectives.

138. The Council refers to the release of methane into the atmosphere which, when converted to CO_2 by flaring, will have a deleterious effect on climate change [69] and to the fact that it was admitted that incorrect information had been given to the EA [70]. The Council's estimates of GHG emissions [72 to 80] should be read in conjunction with pages 58 and 59 of the net zero report. Those passages wholly support the Council's case that the impact of CO_2 emissions at the exploration stage will have a seriously damaging effect on climate change. That means that any addition to emissions of CO_2, and certainly at the level calculated by Dr Balcombe, will significantly add to higher levels of warming and increase the probability rates of warming given in the net zero report.

139. The Council's further submissions in the light of the above are set out in full (PI3 paragraphs 28 to 34). Dr Balcombe's calculation of the tonnage of CO_2

anticipated as a consequence of the appeal proposal must be assessed for its significance on the basis of the net zero report's finding based on current scientific evidence that every tonne of CO_2 causes approximately the same increase in the long-term global average temperature no matter where or when it is emitted.

140. The GHG emissions from the development cannot be dismissed as just a drop in the ocean. Every tonne of CO_2 released into the atmosphere by the flaring of the methane is adding to the cumulative emissions of CO_2 that have been a major factor in causing global warming.

141. These are matters that should be given significant weight and provide scientific support and justification for the Council's reason for refusal. This is not just a precautionary approach but a rational decision based on cogent and probative evidence and having regard to scientific fact that harm will be caused by allowing development of this kind to go ahead.

142. Urgent actions are needed to cut emissions. The net zero report emphasises that the "business as usual" approach cannot continue. Mitigation of global emissions is vital and is a requirement of the Paris Agreement. The Council stressed in Closing Submissions, this is not a voluntary process but arises out of the UK signing up to a Treaty ratified by Parliament and acknowledged as an international obligation.

143. In common with FFEP&U, the Council argues that it is necessary also to have regard to sustainable development goals which are specifically referred to by the CCC as sitting alongside international efforts to combat climate change. There are 17 agreed by governments, including the UK, prior to the Paris Agreement. They include ending poverty in all its forms, zero global hunger and affordable and clean energy for all. Governments were aiming to achieve the sustainable development goals by 2030. There is a correlation between climate change objectives and the aims for sustainable development goals. Many are directly or indirectly affected by the state of the global climate system. Increases in climate risks are expected to fall predominantly on the most vulnerable parts of society. Keeping warming to lower levels would, therefore, help efforts to achieve the sustainable development goals.

144. In conclusion, the Council's further submission is that the net zero report wholly supports the Council's case. The net zero objective makes it clear that the Council was acting in a responsible and reasonable way in reaching its conclusion and that subsequent evidence, including this Report, confirms the need for robust decision making and the strengthening of policies aimed at reducing the impact of GHG emissions and especially CO_2. That is what the Council sought to do in refusing planning permission for the proposed development.

Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI7)

145. No weight at all can be given to the policy expressed in Framework paragraph 209(a) as it has been quashed. There has been no Order directing that a further consultation exercise should be carried out in order to adopt a new policy, nor is there at the time of the consideration of this appeal a new policy to which regard can be had. On that basis there is no policy justification in the Framework for

attaching any weight to the alleged benefits of onshore oil and gas development including unconventional hydrocarbons.

146. The relationship between Framework paragraphs 148 and 209(a) was described in the appellant's Closing Submissions as '*complementary, not mutually exclusive*.' As a result of the quashing of Framework paragraph 209(a), Framework paragraph 148 is now free-standing and not complementary to paragraph 209(a). The policy framework, therefore, now is solely focused on the transition to a low carbon future in a changing climate and plans should take a proactive approach to mitigating and adapting to climate change. Plans should take into account the long-term implications identified in Framework paragraph 148, including the Climate Change Act 2008.

147. As a result, therefore, of the quashing, the policy thrust is wholly and exclusively supportive of the transition to a low carbon future. In our submission, that mirrors the recommendations in the CCC's net zero report (PI1).

148. It is instructive to consider the quashing of Framework paragraph 209(a) in the light of the net zero report which urged government to adopt the '*highest possible ambition*' in the Paris Agreement. In the Council's further submissions (PI3 paragraph 8) reference was made to the fact that net zero requires '*an integrated set of policies throughout the UK which makes the most of the attributes of each of the UK nations*.'

149. Mr Justice Dove, by excising Framework paragraph 209(a), has left Framework paragraph 148 as the relevant operative policy. He has removed any inconsistency in policy statement by government. Government has not replaced Framework paragraph 209(a) or made it clear its intention is to carry out a further consultation exercise on a replacement new policy. That being the case the appeal proposal is wholly inconsistent with Framework paragraph 148. The appellant cannot rely upon a national policy in support of its proposals for exploratory shale gas development. The policy framework has now radically changed and the Council's case is entirely consistent with the Framework and in particular Framework paragraph 148.

Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) – Legal submissions (PI11)

150. Nothing in the WMS conflicts with the Council's earlier submissions.

151. With great respect to the Parliamentary Under Secretary for State, his statement seems to be a misconceived attempt to circumvent the major problems caused by Mr Justice Dove's Judgment. Its timing is indicative of an attempt to interfere with the decision making process relating to the current appeal. A specific policy relating to the shale gas development has been quashed and, therefore, cannot be relied upon by the Inspector or the Secretary of State.

152. The attempt by way of Ministerial Statement to avoid the consequences of the Court's Judgment is, in the Council's submission, ultra vires and unlawful. Furthermore, it is trite law that as a matter of interpretation, a specific policy dealing with a specific form of development outweighs a general policy dealing with a broad category of uses. The general reliance upon government's support for the extraction of mineral resources of local and national importance does not mean that notwithstanding the quashing of policy of Framework paragraph

209(a), the determination of this appeal can take into account the substance of that paragraph through the backdoor by way of a general Ministerial Statement.

153. That policy in the Framework specifically prescribed that Mineral Planning Authorities should recognise the benefits of onshore oil and gas development including unconventional hydrocarbons. That policy no longer exists and no replacement policy has been introduced to fill the policy void. The WMS cannot lawfully, and does not as a matter of fact, change that position. Framework Policy 209(a) has gone and has not been replaced; it cannot be relied upon.

The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI15)

154. In laying the Statutory Instrument before Parliament, the Secretary of State for Business and Energy characterised it as a '*defining decision of our generation in fulfilling our responsibility to the next generation*.' He further added that it was a landmark proposal and that the new target was, feasible and deliverable. He also made it clear that the '*Government today is accepting the recommendations of the Committee on Climate Change*.' In terms of government's policy on climate change, the position now is that the most recent CCC Report on the net zero objective is accepted and is enshrined in legislation which will be legally binding on decision makers.

155. The appeal proposal must therefore be considered in the light of the amendment to the Climate Change Act 2008 to make the net zero emissions objective a binding legal obligation and the Secretary of State's acceptance of the CCC's Report. The Council's previous submissions [127 to 144] are now fundamentally reinforced by the Secretary of State's statement to the House on 12 June 2019.

Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI21)

The Local Plan Part Two (PI18)

156. This Plan was not drafted to take into account the most recent national policy statements or other international guidance from advisory bodies relating to climate change. However, policy M4(2) is a specific policy which now provides the justification and additional ground for refusal to that contained in LP policy STRAT1. The material part of the policy states:

> *gas emissions from exploration, appraisal or production operations and from associated transport methods are controlled and minimised using the best available technology. Gas emissions must not have a significant detrimental impact on air quality, residential amenity or the environment, in line with Local Plan (Part One) policy SOC 5*

157. The evidence of the Council's expert witnesses established that the gas emissions from exploration would not be controlled and minimised using BAT. Furthermore, contrary to policy M4 the emissions would have a significant detrimental impact on air quality and the environment. It is, therefore, the Council's submission that the exploration proposals are additionally in breach of the relevant policy contained in the most recently adopted Plan.

The Written Statement (PI19)

158. Up to and including paragraph 9 of the further submissions reference is made and conclusions are drawn from a government publication that is not in evidence and upon which comment was not invited. That publication, in effect, leads to the final paragraph of the Written Statement which amounts to confirmation that the Government does not intend to change the statutory planning process for shale gas development at this time. The Council's case is that the appellant claimed the consultation proposal to bring shale gas exploration within permitted development demonstrated that the Government viewed shale gas exploration as not harmful to the environment and as having no adverse impact on climate change. With reference to various paragraphs of the consultation response document, the Council argues that this position is now untenable.

159. The full submission document (PI21) is available to be read but, apart from noting that the Written Statement places an effective moratorium on further hydraulic fracturing consents, no material observations have been made on the document (PI19) upon which views were invited.

The Case for Frack Free Ellesmere Port & Upton

Closing submissions

160. Ms Dehon did not depart significantly from her written closing submissions (R21). The following sets out the main points made at the close of the Inquiry hearing sessions.

Introduction

161. On a site 320m from local residences and 50m from local businesses, the appeal proposal is not sustainable. Its impact in terms of GHG emissions, its negative air quality impacts, negative public health impacts, the social and economic harm it will cause, the risks it poses to nearby residents and businesses and the way in which it undermines the regeneration vision for Ellesmere Port and its historic Waterfront mean that it is not sustainable development, and it is in breach of two key local strategic polices: LP policies STRAT1 and STRAT4. It is also in breach of LP policies SOC5 on health and well-being; ENV7 on alternative energy supplies; ENV1 on water management; ENV4 on biodiversity and ENV9 on mineral development.

Preliminary matters

The scheme description

162. The description of the scheme proposal set out in the summary details above requires reference to be made to documents extrinsic to the planning permission in order to understand what hydrocarbons were '*encountered during the drilling of EP1*'. It is unclear to any reader of the description what those hydrocarbons were or where to find out that information. No explanatory document is incorporated by reference. That is contrary to the commentary in the Encyclopedia of Planning Law and Practice and the case law cited therein both of which FFEP&U rely upon.

163. The description is also highly confusing. If a reader reasonably referred to the previous planning permission for '*drilling of the EP-1 well*', in order to understand

what hydrocarbons may have been '*encountered*', the reader would find an explicit reference to EP1 having been drilled '*for coal bed methane appraisal and production*'. A reasonable reader might then think the appeal application refers to that hydrocarbon (thus making the whole application entirely redundant).

164. There would be no difficulty with specifying shale gas, given that is the hydrocarbon which, on the appellant's evidence, its operation aims to test. That fluids would also flow as part of the testing does not change the fact that the appellant's application is aimed at, and designed to, test for shale gas. Furthermore, the fluids referred to in the Scheme Description Submissions (A5) as a reason for the reference to shale gas being imprecise would also not be captured in the term hydrocarbon – demonstrating that the possibility of fluids flowing is a non-issue. Similarly, the possibility of other hydrocarbons flowing during the testing would not make a description specifying shale gas imprecise, given that is the gas at which the testing will at all times be aimed.

165. FFEP&U's proposed scheme description is:
"Mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite and re-enter the existing well to perform a workover, drill stem test and extended well test for shale gas, followed by well suspension and site restoration."

166. The appellant suggests:

"Mobilise well test equipment, including a workover rig and associated equipment, to the existing wellsite and re-enter the existing well to perform a workover, drill stem test and extended well test for hydrocarbons from within the Pentre Chert formation, followed by well suspension and site restoration."

167. FFEP&U submits that its description is preferable, both for the reasons given above and because, as became clear from Mr Grayson's evidence, the extent of any rock formation described as Pentre Chert is disputed. On the evidence of the Lithology Log, as put to Mr Foster, it is not a feature of the geology. If the appellant's formulation is preferred, then the reference to Pentre Chert should be replaced by Middle Bowland Shale – Mr Foster confirmed that is the description given in the independently produced Lithology Log for the relevant zone of interest – '*from 1,795mMD to 1,849mMD, with the primary interval being between 1,846mMD and 1,849mMD*.' (CD1.9a)

The nature of the proposed development

168. FFEP&U is content that the scheme description does not need to specify the extraction method as this can and should be the subject of a condition in the event of planning permission being granted.

169. FFEP&U also accepts in the light of the clarification by the EA (A2) that the extraction method will not amount to matrix acidisation. FFEP&U is content to proceed at the Inquiry on the basis that the method to be used comprises an acid wash and an acid squeeze as described by Mr Foster (APP/JF/2).

Sustainable development and lack of compliance with LP policies STRAT1 and STRAT4

170. In short, the appeal proposal is simply in the wrong location. Therefore, it is not sustainable development and planning permission should be refused.

171. In oral evidence Prof. Watterson expressed surprise that the location was proposed for such a development. He would not normally expect to see testing like this in a town area with a large population.

172. He had good reason to do so. The comparative images (R9) make it clear how very different this site is in terms of proximity to neighbouring businesses and residences and its position on the cul de sac, compared to the development relied on by Mr Foster in his responses to the Inspector on this matter. The objection to Mr Foster's comparison is not a quibble with his suggested distances – he is allowed a margin in his top-of-the-head estimates. The objection is that the comparison was proffered at all as a reliable one, given the comparator well is surrounded by fields on three sides and is at the end of the cul de sac (rather than neighbouring businesses being at the end of the cul de sac, with the well-site hemming them in).

173. Mr Watson draws attention to the particularities of the location that make the development unsustainable (EPP01). It is:

i) within 100 metres of 9 industrial units;
ii) 150 metres from the M53, the major link from Birkenhead to the rest of the UK;
iii) 200 metres from an explosives store (exact location not known for security reasons);
iv) 250 metres from the epicentre of an earth tremor registering M1.6 in 1992;
v) 250 metres from the Manchester Ship Canal which is used to carry petroleum and hazardous chemicals to the Stanlow petrochemical complex;
vi) 270 metres from one of the most important wildfowl overwintering sites in the UK which is classed as a SSSI / RAMSAR / SPA site, with cross national boundary implications;
vii) 320 metres from a high-density residential area, which could be developed to within 250m of the well;
viii) on the edge of the Rossmore Ward which is within the 5% most deprived wards in the country (2015 HM Gov. Indices of Multiple Deprivation);
ix) 800 metres from a children's play centre;
x) 860 metres from the closest of two large residential homes for the elderly, including highly vulnerable poor mobility people;
xi) 1 km from several schools.
xii) 1 km from a hotel / tourist attraction complex.
xiii) 1 km from Rivacre Brook. This brook is addressed in the evidence of Mr Grayson.
xiv) 1.2 km from an existing Air Quality Management Area running through the town centre.
xv) 1.7 km from the centre of Ellesmere Port.
xvi) 5,000 residences within a 2km radius. A zone that many Australian states would class as a "buffer zone" between wells and residences / public buildings, and which the USA emergency services would evacuate in the event of a well blowout.

xvii) 3.3 km from water extraction points identified as for human consumption.

xviii) 4.5 km from a nuclear site which has strict seismic criteria in its nuclear licence.

xix) Above the Sherwood Aquifer

174. Some of the elements that make this unsustainable are based on impacts discussed later, particularly the potential geological and groundwater impacts to which the precautionary principle must apply.

175. But others stand on their own – in particular, the proximity to neighbouring businesses and residences. For a very long time, assessments in relation to the proposed development by the appellant were carried out on the basis that it was 600m away from residential development (CD 2.4 pages 8, 16, 18, 33, 35 and 40); sensitive receptor report (CD 1.9(d)); the air quality report (CD 1.9f page 5). The EA in its permitting decision states the nearest residences were around 500m away (CD 2.13 page 9). The EA appears to have carried out at least some of its assessment on the basis that the nearest residences were around 745m away[4]. The very near neighbouring businesses are not referred to.

176. As Mr Foster accepted, the risk of an incident occurring on the site can never be zero, even if it is the best regulated site. This was vividly illustrated to the local community in August last year (2018) when an explosion occurred in a chemical plant on the same site at the Stanlow Oil Refinery – thankfully located much further from sensitive receptors. There remains a residual risk of blowout or fire, which could affect neighbours or could, via a gas plume, impact on receptors up to 800m away, depending on wind direction (this would encompass the children's play area and a residential home for the elderly).

177. The statutory requirements and duties placed upon the police, the fire and rescue service and local authorities in respect of emergency plans are set out (R21 paragraph 21). These are looking more broadly to the wider impact on the nearest vulnerable receptors than the COMAH site-specific emergency plans referred to by Mr Foster in evidence.

178. There is a clear difficulty in crafting such an emergency plan given the position of the site on the cul de sac. But in any event, it appears from the FOI responses to FFEP&U that neither the Police nor the Fire Service has been involved in the creation of an emergency plan for the site.

179. The appellant has not attempted to quantify the residual risk in its evidence; only to suggest it is very small. Mr Watson has provided clear evidence on risk and its consequences (EPP01 paragraph 6.6). It must be remembered that in terms of unconventional gas exploration, the UK industry is immature and only a handful of wells have been drilled.

180. Even if the risk is taken to be low, or very low, the other vector in the assessment is the potential significance of the impact. As Mr Foster's evidence shows, the harm that could potentially be caused could be serious.

[4] The reference given for this statement is "EA 29". This is not an Inquiry document and this distance is not referred to in CD2.13

181. The site was chosen by the then developer in 2009 for a number of reasons, one of which was the location '*remote from surrounding residential properties*' (CD1.5 paragraph 10.4). That has changed irrevocably and the location is no longer sustainable.

182. The site was also chosen prior to the November 2011 SRF [22]. This aims to change fundamentally the perception of Ellesmere Port. It envisages the site as part of the Waterfront development. This is in line with LP policy STRAT4's ambitions for Ellesmere Port – which is a mixed use community, where substantial economic growth is delivered through industrial, manufacturing and distribution sites (not minerals extraction, as Mr Adams accepted).

183. The LP endorsed the SRF, stating that LP policy STRAT4 '*supports the ambitions of*' the Vision document (CD5.1 paragraph 5.31). It is not just another piece of evidence supporting the local plan. It is a document explicitly referenced in the first paragraph of reasoned justification under LP policy STRAT4, with the wording carefully showing that **the policy** supports the ambitions of the SRF.

184. So too the ELP which refers to the SRF in the Ellesmere Port section (CD5.4 paragraph 3.4). It too states that '***the policies*** *in this section … support the local regeneration initiatives*' in the SRF (emphasis added).

185. FFEP&U evidence is that the appeal proposal is ill suited to the regeneration vision in planning terms. Not only because it could prevent regeneration of the site and surrounds for a number of years (whether exploration is successful or not), but also because of the knock-on effect on surrounding sites – developers may not be keen to bring forward their regeneration schemes in proximity to a shale gas well, particularly given the perceptions that surround such development.

186. The appellant has sought to undermine the SRF and during Ms Copley's evidence introduced the Peel Holdings Supplementary Response dated May 2014 (A6). While, as Peel requested, the site was not allocated, as Mr Adams accepted, not all sites within a regeneration vision need to be allocated for that vision to carry planning weight or to be taken forward.

187. The chronology is also important. The Peel response did not prevent the SRF from being explicitly referenced in the ELP now going through examination with the draft main modifications making no amendment. It is not Peel's views that take precedence, despite Mr Adams' reasoning back from the developer's position to what the regeneration vision should be. It is the democratically elected council and the examined development plan, LP and ELP, which support the SRF, that take precedence.

188. The proposed development thus does not comply with LP policy STRAT4. It would undermine the perceptual shift so desperately needed for Ellesmere Port and wanted by the community and the Council.

<u>*Climate change and lack of compliance with LP policy STRAT1*</u>

Legal submission on planning and climate change

189. Climate change is a material consideration in all planning decisions – accepted by the appellant – and nothing in the assessment by other regulators, such as

the EA, has addressed the climate change impact of the GHG emissions that will be produced by the proposed development.

190. Decisions concerning exploration for hydrocarbons, such as for shale gas, are not exempted. Indeed, the adverse effect of GHG emissions caused by open cast coal mining have recently been accepted by the High Court to be a relevant material consideration in the grant of planning permission for such a minerals development (R17). Although decided on 'reasons' neither the Court nor any of the parties suggested that GHG emissions were not a relevant and material consideration.

191. The relevance of GHG emissions and climate change impact to every planning permission is in line with the statutory obligations on government, under the Climate Change Act 2008 (legislation referred to in the Framework), including to remain within the carbon budgets, and with the requirements set out by the IPCC (EP10).

192. Framework paragraph 148 provides that the planning system, which obviously includes decision making, should '*shape places in ways that contribute to a* ***radical reduction in greenhouse gas emissions***' (emphasis added).

193. In submissions to the court in the *Stephenson* case (R18), the position of the Secretary of State was that local decisions are the point at which the Secretary of State will consider developments since the last policy statements. The decision-maker must evaluate the up-to-date evidence, including any updated science that post-dates the Framework, and make the decision accordingly – the Framework '*cannot dictate to the plan-maker and the decision-maker*'[5].

194. Mr Adams accepted that the re-issue of the Framework in February 2019 did not represent government's planning policy updated in the light of the IPCC report. Therefore, it is for the decision maker to take into account the latest climate position as set out in the IPCC report which post-dates all relevant policy statements on shale gas. This justifies greater weight being given to policies addressing climate change and GHG emissions than was previously the case.

195. So too does the Secretary of State's submission to the High Court in *HJ Banks* (R17 paragraph 3) that he has begun to give greater weight to the impact of GHG emissions than had previously been the case. That submission was made on instruction from the Secretary of State and so represents the stated position of the then Government. Although the Judge did not accept that change in position explained all of the Secretary of State's reasoning in refusing HJ Banks' appeal (R17 paragraph 106), he did accept that the Secretary of State was entitled to adopt a deliberately different approach from previous decisions (R17 paragraph 121), so long as his reasons are clear. What is indisputable is that the Secretary of State, openly and robustly through David Elvin QC and his submissions to the High Court, heralded his intention to give greater weight to the impact of GHG emissions than was previously the case. That is highly relevant to this decision.

196. In light of the case law, the proposed development does not get a "GHG pass" because GHG emissions are "inevitable".

[5] The source for this submission was given by Ms Dehon as the Drill or Drop web site, 20 December 2018

FFEP&U case on climate change

197. Simply put, the appeal proposal will cause GHG emissions, from the flaring of the gas, from cold venting (CD 1.9k page 12), from tank venting (CD 2.12 page 14) and from traffic emissions. While traffic emissions may be part of every development, the traffic impact of this development is significant (3,144 two-way traffic movements over the 104 proposed working days, 572 of which will be HGV movements) (APP/KEH/4 paragraph 2.3.27) and will sit alongside the direct release of methane emissions from fossil fuel being brought out of the ground and burned (or in some circumstances cold vented). This makes the proposed development very different from other forms of development and more impactful.

198. The GHG emissions caused by the proposed development will persist for a very long time in the atmosphere. They will impact on the ability of the UK to achieve the radical reductions needed to avoid the extremely serious impacts of warming above 1.5°C.

199. In planning terms, those GHG emission impacts mean that planning permission should be refused under LP policy STRAT1. The proposed development is not sustainable development in climate change terms. It does not meet the environmental objective of LP policy STRAT1 and it does not mitigate and adapt to the effects of climate change. Mr Adams attempted to narrow the meaning of LP policy STRAT1 so that a development which undertakes as much "mitigation" – ie reduction of - GHG emissions as possible must be taken to comply with STRAT 1. That is not so. Planning permission can be refused under LP policy STRAT1 if the residual emissions, after all possible steps to reduce GHG emissions have been designed into a development, are unacceptably high. That is the meaning of mitigating the effects of climate change. The LP makes this clear, albeit in a slightly unexpected place (CD5.1 paragraph 8.56). Mr Adams accepted this when it was put to him directly.

200. Furthermore, in planning terms the IPCC Report [EP 10] and the science that sits behind it means that more weight must be given by planning decision-makers to the policies requiring control or limiting of GHG emissions and the policies addressing climate change, in particular Framework paragraph 148 [192].

201. That impacts on the planning balance. While weight can and must still be given to government policy on minerals extraction and on the need for shale gas (even though those policies all predate the IPCC Report), even greater weight must be given to the policies preventing climate change.

202. The appellant's approach in policy terms in trying to narrow the meaning of Framework paragraph 148 by reading it "in light of" Framework paragraph 209(a), so that they sit together, is simply wrong. Planning policies often pull in different directions. The answer is not to read one set of policies down in light of the other. The answer has always been that the decision-maker must weigh the various policies in light of the evidence before him and come to a conclusion as to which bears the greater weight.

203. Given the existential threat of climate change, given the IPCC's warnings of the need for immediate action to stay within 1.5 degrees of warming (we have 11 years in which to act), it is the policies that seek to address climate change and limit GHG emissions that must be given the greatest weight.

204. Prof. Anderson's evidence is that the UK is not on track to meet either the fourth or fifth carbon budgets and the IPCC report (EP10) shows that every GHG emission release is important and impactful. Prof. Anderson explains that we are already at 1 to 1.1 degrees above pre-industrial levels and that if this is to be held at the 1.5 degrees advocated by the IPCC, the available carbon budget is incredibly small. Every additional GHG emission molecule subtracts from that available budget. There is therefore little emissions space as recognised by government in Michael Gove's speech (EPP7 appendix).

205. Also relevant to the weight to be given to limiting GHG emissions is the CCC Report (CD 8.1). This also justifies significant weight being given to planning policies preventing GHG emissions and the harmful GHG impact of the appeal proposal. Although the appellant contends that the three tests in the CCC report have been met, FFEP&U contends the opposite, Prof. Anderson stating that the third is not met.

206. The appellant tries to minimise the importance of the CCC report in two ways.

207. First, the appellant contends that the three tests in the Report do not apply to exploration. Prof Anderson's view is that is not correct. The Report is not using "production" as some term of art. It uses "production" to mean '*getting the gas out of the ground*'. Exploration is part of that and so is included within the three tests. The appellant's approach '*is taking the technical language too far*.' The CCC Report explicitly says it cannot be assumed that emissions from exploration will be low. It is unreasonable to assume the CCC is not interested in exploration emissions and intended to exclude them from the three tests.

208. Second the appellant contends that the CCC's response to the "uncertainties" around the GHG impact of exploration is for that exploration to be carried out and monitored. This was based on a sentence in the conclusions and recommendations (CD8.1 page 69). Prof Anderson's response on this was clear. While some uncertainty will be overcome through exploration, the other key part of the uncertainty – fugitive emissions – will not. The appellant's approach is to take a single sentence out from a complex issue. Prof Anderson knows both the individuals on the CCC and the CCC's work well and his conclusion was that the appellant's approach '*is not a fair reflection of their view*'.

209. It must be recalled that when Prof Anderson gave his evidence, it was at a time that the appellant had not carried out any GHG emissions calculations. Based on Dr Balcombe's calculations, an estimate of 17000 tonnes CO_{2eq}, Prof Anderson likened this to the equivalent to all of the gas use over a full year of all the houses in Chester. Or a typical saloon car being driven around the world 3.5 times or 170 times to the moon.

210. There is now before the inquiry a range of emissions, updated in light of the appellant discovering that it had been mistaken in the information on emissions it provided to the EA. The range that FFEP&U asks particularly to be considered is a minimum of 6,143.57 tonnes CO_{2eq} and a maximum of 21,345.69 tonnes. That is calculated in light of the IPCC Report on the basis of a GWP of 20 years. The urgency of the need to address climate change justifies this choice of GWP.

211. Every emission emitted by the appeal development, as Prof Anderson commented, is one that cannot be emitted by a school or a hospital or any other development if we are to stay within our carbon budget.

Unacceptable impacts

The Permit solves all the problems – "other regulators", permits and the planning system

212. Mr Adams accepted in cross-examination that the Environmental Permit is not determinative of the planning matters and the grant of the permit is not conclusive of whether the proposed development is acceptable in planning terms.

213. There are two relevant matters of discretion which apply to planning decision making which encompass material considerations that are also touched on by other regulatory regimes.

214. First, case law, the Framework and the Planning Practice Guidance all confirm that a decision maker may assume that separate pollution control regimes will operate effectively. This is not, however, an irrebuttable presumption. It is an assumption. There will be circumstances in which that assumption cannot properly be made and the case law recognises that there must be evidence to justify the assumption being made (R13 paragraphs 100-101; R14 paragraphs 52-53). Ultimately, Mr Adams accepted that and agreed that the use of the word "must" in his proof (APP/DA/2 paragraph 2.16) was wrong.

215. Second, a planning decision-maker may, in the exercise of his '*discretion consider that matters of regulatory control could be left to the statutory regulatory authorities to consider*': (R13 paragraph 100). This is a particular aspect of the assumption in the foregoing paragraph – that unresolved issues; or issues that have not yet arisen, can be left for other regulators to address. Again, there must be evidence to justify this assumption – the decision-maker cannot simply abdicate his responsibility to the other regulatory body.

216. Accordingly, where there is evidence that a regulatory decision is not based on up-to-date evidence or has not taken a relevant matter into account, the planning decision maker cannot make the assumption that it has been dealt with by the other regulatory regime and is required to address the relevant material consideration through the planning regime. This is not improper, or a "duplication" of control, as the appellant wrongly suggests. It would in fact be an error of law in those circumstances to assume that another regulatory regime has addressed a material consideration where there is positive evidence that is not the case.

217. The appellant's case is, however, shot through with Mr Adams' mistaken approach to the assumption about the regulatory regime. Throughout, the appellant's answer to FFEP&U's evidence has been that it must be assumed the permit solves the problem. But it does not.

Air quality and public health impacts

218. The appellant accepts that air quality impacts and public health impacts are material planning considerations. In contrast to FFEP&U, who called two witnesses with public health expertise, the appellant called none, Ms Hawkins accepting that she had no such expertise.

219. It is not the case that simply because the EA has undertaken an assessment and referred to health impacts, that dictates the outcome in planning terms. This

is particularly so when the EA's assessment was carried out before various relevant changes, such as closer sensitive receptors being near the site.

220. Prof. Watterson takes a properly cautious approach seeking to have as a complete a data set as possible to know the risks and make the requisite assessment. His analysis of data supplied by the appellant drew out a number of flaws in the assessments. The EA in its permitting decision requested further information from the appellant and concluded in the end the proposal was low risk from an air quality perspective, with a number of caveats. Prof Watterson's view is that at the time the EA's approach to the proposal was reasonable, but with the changes to the location that have taken place – the residential and business receptors now closer to the site – that has changed. Accordingly, the assumption that the regulator's assessment can be relied on to address air quality impact and thus public health impact cannot be made.

221. Ms Hawkins' evidence before the Inquiry does not fill the gap to show that there will not be public health impacts based on air quality (EPP/11R paragraphs 5.1-7.2)

222. Furthermore, Prof Watterson highlights lacunae in the assessment, including a failure to deal with the link between GHG emissions and air quality impact. The latest independent peer reviewed evidence indicates clearly that unconventional gas extraction does create poor air quality (EPP2 paragraph 6.8). Bodies such as the World Health Organisation have been unequivocal about the public health toll due to poor air quality from GHG emissions. Dr Saunders also speaks to the public health impact of climate change (EPP2 paragraph 11). At the very least, Ms Hawkins should have considered the air quality impact from these GHG emissions. Furthermore, air quality impact from the diesel emissions have not been considered.

223. It is also the case that EA's permit variation decision was not a public health impact assessment nor did it consider a wider environmental health impact assessment of the proposal. As the Inspector pointed out in his questions, the document (CD 2.13) shows that the Department for Public Health and Public Health England did not respond to the EA's consultation on the permit variation.

224. Prof Watterson and Dr Saunders both emphasise another aspect, specific to this site, which has not been taken into account by the appellant: the Indices of Deprivation 2015 – Hotspots of Deprivation in Cheshire West and Chester (EP21 and EP22) show that two of the wards closest to this proposal, Rossmore and Ellesmere Port Town, include populations that are ranked amongst the 10% most deprived nationally. The proportion of Rossmore, Ellesmere Port and Netherpool wards populations in the most deprived quintile of deprivation nationally are 100%, c. 85% and c. 55% respectively. Standardised mortality ratios in these wards are 53%, 42% and 24% higher than England respectively. There is evidence that deprived communities are disproportionately exposed and vulnerable to the effects of exposure to environmental pollution including traffic related impacts on air quality. Even small levels of exposure can impact negatively on such communities.

225. In light of this expert evidence on public health, the appellant simply cannot show that it complies with LP policies SOC5 and ENV7.

Geology

226. The precautionary principle was articulated by the CJEU[6] as follows:

> *Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the real likelihood of harm to public health persists should the risks materialise, the precautionary principle justifies the adoption of restrictive measures, provided they are non-discriminatory and objective.* (paragraph 61)

227. Again, while FFEP&U has called evidence from two expert geologists, the appellant has called none.

228. Prof Smythe's evidence can essentially be summarised in two key points.

229. First, the geological information provided by the appellant to the EA does not correspond to geology at the wellsite. It was taken from an area 8km to the east near Ince Marshes. The appellant accepts that the geology reflects the position 8km to the east. Mr Foster sought to justify this because the geological information produced in relation to the site itself is of poor quality – the poor quality of the information concerning the seismic lines near the site was something Prof Smythe also highlighted. Mr Foster contended that it was acceptable in the circumstances to use the information from 8km away. However, it should be emphasised that nowhere in the documents provided to the EA was it made clear that was what was being done, nor is any explanation proffered.

230. Instead, Prof Smythe's view of the information provided to the EA was that it removed relevant scales, cut off most of the aquifer and put in what purported to be the EP-1 well at the right hand side of the diagram. His view was that the provision of information from 8km away, and the way it was presented, was unacceptable.

231. Second, Prof Smythe was able to study the geological survey maps which he obtained from a number of sources, as well as looking at the appellant's geological information from the seismic lines near the well. Prof Smythe's view is the that geology is '*littered with faults*'. He made the best he could of the appellant's information and, although it was poor, it is clear that the geology around the wellsite is cut up by dozens of faults, a number of which were shown at depth (EPP6 paragraphs 4.7.1-4.7.8; 4.8.1-4.9.8 and examination in chief). In his view, the well is intersected by at least one fault.

232. The upshot of Prof Smythe's evidence is that it cannot be assumed that because the EA considered the geological data there is no risk of seismicity and no risk to groundwater. At present, the expert evidence before the Inquiry is that it is impossible to determine with certainty the existence or extent of the alleged risk to seismicity and groundwater because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted.

233. There is also a real likelihood of harm to public health which persists should the risks materialise. Prof Smythe's gives very detailed evidence on the potential conduits for contamination (EPP6 paragraphs 3.1.1-3.6.3). He was not seriously

[6] *Afton Chemical Ltd v Secretary of State for Transport* [2011] 1 CMLR 16

challenged on that evidence. His evidence shows that risks to air and groundwater from hydrocarbon seepages are real. Accordingly, based on the precautionary principle, planning permission should not be granted.

234. Mr Grayson's analysis supports the evidence on seismic risk. His particular expertise however is in relation to hydrogen sulphide (H_2S). Referring to his own research paper (EPP5 Appendix 1) he explained why he was concerned about the presence of H_2S on the appeal site despite none having been detected. That too is a basis for exercising the precautionary principle.

235. In light of LP policy ENV1 and the requirement to protect and enhance water quality, and against the background of the precautionary principle, the potential for impact on the aquifer also provides a reason to dismiss the appeal.

Public perception and social harm

236. Neither of these two distinct aspects of impact fall within the purview of the EA.

237. The Court of Appeal (R15) held that:

i) Public concern, in particular the public's perception of risk to their health and their safety inherent in a proposed development, is a material planning consideration (paragraphs 179-180);

ii) It is a '*material error of law*' that '*genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal*' (paragraph 183 per Hutchison LJ).

238. The appellant's contention that the public concern in relation to the proposed development is objectively unjustified and so cannot form the basis for refusal of planning permission is legally unfounded and plainly wrong.

239. There is clear evidence before the Inquiry that there are widespread, genuinely held fears on the part of the local community that the development represents a risk to their health and to their safety. FFEP&U says that these fears are objectively justified. Dr Szolucha's evidence on this in evidence in chief was:

> *The assertion of the appellant that residents' fears are based on misinformation or irrational fears rather than scientific uncertainty is just factually incorrect. It contradicts the social science literature. That shows clearly and repeatedly that opposition cannot be explained by a lack of awareness on the part of local residents. Research consistently found residents well informed and with a good lay understanding. The objective basis for residents' concerns are the prevailing scientific uncertainties.*

240. This is not an ignorant or an ill-informed community. They have long experience of the impacts of industry. They have access to, and have accessed, information on the impacts of shale gas exploration within a residential community, even when regulated. They have read the science. They have a wealth of information about the public health impacts of climate change, to which this development unquestionably will contribute – again, they have read the science. These genuinely held and entirely justified concerns, in and of themselves, are a reason to refuse planning permission. FFEP&U invites significant weight be given to this.

241. However, if it is considered that some of the fears are not objectively justified in that, for example, they are based on concerns about fracking, that does not

mean the fears are irrelevant. It does not even mean that they are deserving of less weight. In light of *Newport* (R15) these fears too provide a reason for refusing planning permission.

242. Turning to social harm, the expert sociological evidence of Dr Szolucha is that the grant of planning permission for the proposed development would cause social harm. This harm would amount to a "collective trauma", which would negatively impact on the community, its social cohesion and its health. It can be classed as '*a local stressor that causes anxiety, fear, stress and fatigue*.' (EPP4 paragraph 5.5).

243. In her oral evidence Dr Szolucha explained her research methodology, including that the sample size and sampling method through referrals are recognised in social science as the proper way to investigate the potential social harm of the proposed development when no previous data exists. She was not improperly fishing in a self-selected pool – in terms of the social science, her fishing method was impeccable.

244. FFEP&U therefore invites the decision maker to accept her evidence.

245. Ellesmere Port is already a socially vulnerable area. The town consistently ranks among the most deprived areas in Cheshire West and Chester across a number of deprivation factors. Over 80% of Ellesmere Port Town (ward) residents live in areas of multiple deprivation (compared to approximately 20% for England and less than 20% for the borough of Cheshire West and Chester). Residents who are poorer, suffering from health problems, unhappy and opposed to the proposed development may experience its impacts more intensely than others. Labelling those experiences as non-significant may lead to the deepening of unequal distribution of impacts among different groups in society (EPP4 paragraph 5.2). Accordingly, the specific characteristics of the local community make the social harm caused by granting planning permission more acute.

246. Her evidence on the significance of the social harm was that it would be '*present at both individual and collective level*' and has '*the potential to be irreversible in social terms*', at least for a significant period of time – for example, in the damage done to the relationship between the local community and police force.

247. In planning terms this social harm is relevant in two ways.

248. First, it goes to sustainability. Framework paragraph 8 in terms recognises the social objective of sustainable development and that proposals should support strong, vibrant and healthy communities. On Dr Szolucha's evidence this proposed development will do the antithesis.

249. Second, it goes to the public health impact of the proposed development and compliance with LP policies SOC5 and ENV7.

250. The appellant objects to social harm as a basis for refusing planning permission – without any of its own expert sociological evidence – primarily because it sees the harms as flowing from the development being for fossil fuel or concerned with shale gas, and the appellant cannot help that.

251. However, FFEP&U contends that it could have. In the way it interacted with the community (right from 2014), in the information it provided, in what FFEP&U

characterise as its high-handed approach, in its resort to injunctions, the appellant made a series of decisions that caused and then exacerbated the community's lack of trust. This contributed significantly to the social harm which the development would cause.

252. This pattern has continued by the appellant stating a number of times at the Inquiry that it drilled the EP-1 well in 2014 responsibly in light of the information it provided to the Council and the EA and the '*community information*'. It is plain on its face that the Community Information Ellesmere Port Exploration Well brochure (CD1.8) was designed to give the impression that the appellant's primary objective was drilling a Coal Bed Methane well and for Coal Bed Methane. This was in July 2014, well after the appellant had articulated in January 2014 a very different objective to the Council (CD1.7) and the EA (CD1.6 page 6).

253. In oral evidence Mr Foster insisted that a thin line on one schematic (CD1.8 "Schematic Coal Bed Methane Well") would have informed the public of the intention to drill into and test the shale for shale gas. But he did finally accept that a reasonable member of the public looking at the brochure would have come away with the impression that the appellant was going to drill for Coal Bed Methane. FFEP&U contends that public trust in the appellant plummeted when it emerged that the well had been drilled into the shale with the express purpose of testing for shale gas.

254. Similarly, the appellant told the EA when it applied for the permit variation that it had permission "to drill a borehole for **hydrocarbon** exploration" (CD1.6 page 3 section 2.1) (emphasis added). Mr Foster accepted that was not the full story and it certainly was not the actual wording of the planning permission.

255. Stepping back, what makes this proposal different from other proposals is that it is planned to be situated in the heart of an already vulnerable community, in the context of a complete breakdown in trust between that community and the developer, based on the developer's behaviour, and where the expert evidence shows a grant of planning permission would lead to social harm and a public health impact.

256. It is lawful for this to be taken into account in assessing compliance with LP policies SOC5 and ENV7.

257. It is also the right time for social harm properly to be dealt with as a material planning consideration – especially as the appellant accepts it can be such a consideration. The planning process is not just about allowing the community to come and air its views at Inquiry, important though that is. It is not about recording those views, important though that is too. It is about actually addressing in the decision on sustainability and health impacts, the social harm that underlies and animates those views and the future social harm that would, on expert evidence, flow from the grant of planning permission.

The planning balance

258. The proposed development does not comply with the development plan so planning permission should be refused unless material considerations indicate otherwise.

259. They do not. FFEP&U acknowledges that there is support in national policy both for minerals development and for shale gas exploration, including the

"national need" for such exploration. These policies must be applied and given weight. But, in light of the IPCC Report, even greater weight must be given to the adverse climate change impact of the proposed development and to Framework paragraph 148.

260. The harms in terms of air quality impacts, uncertainty around the geology and the groundwater position, social harm and public concern weigh heavily in the balance. The appellant attempts to avoid this through Mr Adams' evidence, suggesting that because exploration for domestic gas supplies is of national importance and great weight, the inevitable land use consequences of the development are acceptable (APP/DA/2 paragraph 3.55). Mr Adams accepted that is a non-sequitur. He accepted it is for the decision maker to make his own judgment on the actual impacts of the proposed development and to give them such weight as is appropriate. In FFEP&U's submissions, they properly attract significant weight.

261. As against this, the benefits are minimal. All benefits linked to production must be ignored – the appellant accepts this. Mr Adams sought to smuggle something of those benefits back in by relying on the "intangible economic benefit" of the data obtained via exploration. Being "intangible", the benefit is unquantifiable. But more importantly, this is primarily an economic benefit to the appellant; to IGas, and as such should carry minimal, weight.

262. Mr Adams attempted in his evidence to widen out the "intangible economic benefit" by suggesting that it is the financial benefit to "UK Plc" from the data obtained by IGas and from knowing about whether the site can be exploited. But in truth that is simply the policy benefit inherent in the "national need" for shale, which already takes into account that type of economic argument. There should not be double counting of benefit by giving Mr Adams' "intangible economic benefit" weight in the planning balance separately from that given by the 2018 WMS.

263. FFEP&U contend that any employment benefits from the development would not be drawn from the local community but acknowledges that if any were (if evidenced by the appellant) some limited weight should be afforded to this in the balance.

264. Nevertheless, material considerations therefore firmly weigh against the proposed development.

Habitats – People over Wind

265. FFEP&U made a legal submission about the implications of *People over Wind* (A16) for the Competent Authority. As the Secretary of State is now the Competent Authority these matters are addressed in Annex D. The appellant's view was given in closing submissions [455].

Conclusion

266. The local community has said a resounding no to the proposed development. Its opposition is not ill-informed or ignorant or knee-jerk, as some have attempted to characterise it. FFEP&U's expert witnesses have shown that the proposed development is simply in the wrong place and, in light of its adverse impacts, is not acceptable in planning terms. It is in breach of two key local strategic polices: LP policies STRAT1 and STRAT4. It is also in breach of LP

policies SOC5 on health and well-being; ENV7 on alternative energy supplies; ENV1 on water management; ENV4 on biodiversity (until a lawful Appropriate Assessment (AA) says otherwise) and ENV9 on mineral development (as the proposed development is not sustainable). Material considerations do not require planning permission to be granted despite lack of compliance with the development plan.

267. The decision maker is invited to dismiss the appeal.

Stephenson[7] (R18) – Legal submissions (R19)

268. In essence, paragraphs 1 to 16 inclusive set out what FFEP&U consider the key points from the judgement. Paragraphs 17 to 22, summarised below, assess the implications for the appeal.

269. The primary impact is that no weight can now be safely given to Framework paragraph 209(a). That policy was adopted using an unlawful process and as a result of an unlawful failure to take into account relevant considerations. Even though Framework paragraph 209(a) has not formally been quashed, it would plainly not be safe to place any weight on that policy in light of the very full reasons given by Dove J.

270. A secondary impact is that little weight can be given to the 2015 WMS and the 2018 WMS (referred to by the appellant as the "National Energy Policy"). The Judge was clear that the 2018 WMS was adopted without considering the updated scientific evidence that was obviously relevant when a similar policy was adopted through Framework paragraph 209(a) – expressing support for shale gas as a result of energy security and transition to a low carbon economy. The 2018 WMS is therefore infected with the same flaw as Framework paragraph 209(a). In FFEP&U's submission it would be legally unsound to give weight to the 2018 WMS.

271. Little weight can be afforded to the 2015 WMS, given that there is obviously relevant later scientific evidence which undermines the basis on which it was made. Furthermore, Dove J held that later scientific evidence and the requirements in Framework paragraphs 148 and 149 to secure radical reductions in GHG emissions could properly be weighed against any 'in principle' support for shale gas extraction and could justify departure from that 'in principle' support. FFEP&U has put before the Inquiry relevant later scientific evidence, in the form of the IPCC Report and Prof. Anderson's evidence, including the scientific paper on fugitive emissions (EP43), referred to in EPP7 paragraph 3.9 and Prof. Anderson's evidence that shale gas does not support secure energy supply (EPP7 paragraphs 3.10-3.15).

272. Turning to the impact of the Judgement on the submissions made by the parties:

i) It supports FFEP&U's submissions concerning the proper approach to planning policy and climate change (R21 paragraphs 34-41).

ii) It supports FFEP&U's submissions concerning weight (R21 paragraphs 45 to 47).

[7] *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

iii) In light of the Judgement, the appellant's submissions are incorrect and cannot stand (A21 paragraphs 138 to 140). As a matter of law it was simply incorrect for the appellant to suggest that Framework paragraph 148 should be read in a way that was "complementary" to Framework paragraph 209(a) and the 2018 WMS. The submissions of the Secretary of State and the decision of Dove J show that contention to be hopelessly flawed (R18 paragraphs 71 to 73);

iv) The same flaw means that appellant's submissions cannot stand (A21 paragraph 152). Not the Framework, nor the 2018 WMS, nor any other 'in principle' support for shale gas development means that '*the Government considers the impact of GHG emissions is outweighed by the need for gas*', as suggested by the appellant. Had that been the case, Ground 2 of the challenge would have succeeded. Rather, the various planning policies pull in different directions (R19 paragraph 73) and it is the decision maker's task, based on the up-to-date scientific evidence before him, to determine whether the proposed development would have a deleterious impact on GHG emissions and so should be refused planning permission (R19 paragraph 71).

v) The same flaw infects the appellant's submissions about how to read LP policies STRAT1 and ENV7, such that A21 paragraph 113 no longer stands;

vi) The appellant's submissions based on the 2018 WMS and Framework paragraph 209(a) cannot stand (A21 paragraphs 36 to 41). In particular, the suggestion that the then Government's "direction of travel" is inevitably continued support for on-shore shale gas extraction is no longer safe, given the Mobbs Report and the Talk Fracking consultation response specifically attacked that direction of travel and it is clear from the Judgment that the Secretary of State has not in fact given any substantive consideration to the up-to-date scientific evidence undermining that direction of travel. It is simply not known, and cannot be known, what government's considered response will be when it engages with the up-to-date scientific evidence.

273. The Judgment therefore removes two important limbs of the appellant's case in favour of grant of planning permission: it removes the recent 'in principle' policy support for shale gas development in the Framework and in the 2018 WMS (or National Energy Policy) and it removes the contention that LP policies STRAT1, ENV7 and Framework paragraphs 148 and 149 have to be read in a way that is complementary to the 'in principle' support for shale gas development.

274. In conclusion, the Judgement supports and strengthens the FFEP&U case that the proposed development should be refused because it is contrary to LP policy STRAT1 and Framework paragraph 148. It also supports and strengthens the FFEP&U case that significant weight can be given in the planning balance to policies that seek to address climate change and limit GHG emissions, given the relevant up-to-date scientific evidence.

Net Zero: The UK's contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI4)

275. The CCC gave increased weighting to methane emissions as recommended by the IPCC. Accordingly, in the GHG emissions spreadsheet agreed by the parties

(C6), the appellant's GWP of 21 is clearly not the correct approach and the IPCC's weighting of 87 is preferable.

276. FFEP&U therefore wishes to revise paragraph 55 of its closing submissions [210] and the range given and asks that it be found that the development proposed will produce 21,345.69 tonnes of $CO_{2eq.}$

277. The CCC report removes three foundations of the appellant's case.

278. First is the case that on climate change, neither government's nor the CCC's position in terms of climate change policy and GHG reduction target has shifted since the Paris Agreement (A21 paragraphs 123 to 124, 149 and 152 to 156). This strand of argument is removed by the clear position of the CCC that the target should change; the Secretary of State is obliged to take this advice into account.

279. Second, in attempting to dilute the evidence of Prof. Anderson regarding the IPCC report, the appellant contended that government's response to the scientific evidence in the IPCC's Report was "highly uncertain" and reliant on "multi-factorial issues" which the CCC's advice would have to take into account, including economic, fiscal and social circumstances, energy policy and the differences between England, Scotland and Wales (A21 paragraphs 145 to 149 and 153). In fact, the CCC's report has taken all those factors into account and has recommended a considerable tightening of the target for England, less so for Wales but more so for Scotland.

280. Third, the appellant's assertion (which is not accepted) that the 2016 CCC report and government response to it strongly support the appeal proposal can no longer stand as a matter of simple maths. Both were based on a target of 80% reduction in GHG emissions by 2050 and carbon budgets based on that target. A move to 100% reduction renders government response out-of-date and it can no longer be asserted that the three tests are being or can be met by shale gas development.

281. In contrast, the net zero report is wholly in line with Prof. Anderson's oral evidence and that in his written evidence (EPP7 paragraphs 2.15 to 2.16 and EPP14R paragraph 1.4). In summary the net zero report advises:

i) Power sector decarbonisation is a key near-term action to put the UK on track to net-zero GHG emissions by 2050. This means phasing out of gas for domestic heating and electricity generation.

ii) Nowhere does the CCC mention any bridging for gas. Instead it recommends moving to renewable energy for electricity generation and/or alternative fuels such as hydrogen.

282. This resonates with Prof. Anderson's evidence that every release of GHG emissions is important and impactful and that the release of same from the appeal development is unjustified. The high degree of certainty that the recommended target will be adopted weighs strongly against the grant of planning permission.

283. The CCC explicitly recognises that action needs to be taken across government if the net-zero target is to be achieved. Planning decisions are no exception. CCC recognises that not all GHG emissions can or will fall to zero in any industry. This puts significant additional pressure on high-carbon energy sources to go to

zero carbon, and as such places a huge additional risk on any new high carbon energy investment, such as shale gas, rapidly becoming a stranded asset. As the net-zero report states the impact of emissions cutting '*can culminate in a tipping point, where incumbent technologies and networks become redundant. Embracing the transition too late risks exposure to stranded or devalued assets*.' The proposed development for fossil fuel exploration, without carbon capture and storage (a technology that is still a long way off) will result in the unabated release of over 21,345.69 tonnes of CO_{2eq} into the atmosphere. It therefore falls outwith any potential residual role for gas plus carbon capture and storage in the 2020s.

284. FFEP&U contend that the net zero report strengthens the case made in respect of conflict with LP policy STRAT1 and supports its submissions on the greater weight that should be given to national and local policies addressing climate change and GHG emissions than was previously the case such that they outweigh the pre-net zero report policies supporting shale gas exploration.

Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI8)

285. In confirming that Framework paragraph 209(a) is quashed, no weight can now be given to it; this is common ground. No mandatory order was made requiring a fresh consultation exercise or the publication of a new policy. Either, in addition to not replacing the quashed paragraph, are options open to the Secretary of State.

286. It is clear from the judgement that the Mobbs report and other evidence brought by the claimant was obviously material (R18 paragraphs 63 to 68). Any contention that the 2018 WMS somehow now carries the weight previously attributed to the quashed paragraph because it reflects long standing government policy is wrong because it is the fact that it is 'longstanding' that is the flaw.

287. Dove J sets out the link between the 2015 WMS, the 2018 WMS and Framework paragraph 209(a). He also sets out the Secretary of State's own evidence that this "longstanding" policy has remained unchanged because the officials in the Department's shale policy team did not review the detailed evidence provided to them on whether the evidence base for the 2015 WMS had changed (R18 paragraphs 25-26; 51 and 63-68). The detailed evidence showed that the evidence base, in particular the evidence for the MacKay and Stone Report, was out of date and that there was new relevant evidence on climate change impact. The Secretary of State promulgated the 2018 WMS "prior to examining or evaluating" that evidence (R18 paragraph 51).

288. FFEP&U therefore submit that weight cannot be safely placed upon the 2018 WMS or the 2015 WMS to the extent that any is claimed by the appellant. FFEP&U also notes the decision of the UK Parliament to declare a climate emergency on 1 May 2019 and a similar decision by the Council on 21 May which carries a presumption against the development of fossil fuel industries.

Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) – Legal submissions (PI12)

289. In this document, the 2019 WMS, other Framework paragraphs concerning mineral resources are emphasised.

290. Framework paragraph 204(a) concerns plan-making, not decision-taking. It is reflected in LP policy ENV7 and evidence and submissions have been made about the appeal proposal's compliance, or lack of, with that policy.

291. Framework paragraph 205 requires great weight to be given to the benefits of minerals extraction to the economy. Importantly, mineral extraction *per se* is not given great weight; it is the benefits flowing from extraction. The appeal proposal is for exploration, not production. There would be minimal economic benefit from the proposed exploration.

292. Framework paragraph 209(b) emphasises the clear distinction between exploration and production, reinforcing the above points.

293. The 2019 WMS states that the 2015 WMS and the 2018 WMS '*remain unchanged and extant*' and that they '*should be afforded appropriate weight as determined by the decision maker*.' The 2019 WMS does not develop the policy position on onshore shale gas development in light of the *Stephenson* judgement; it simply reiterates the policy position before it was 'cut and paste' into the now quashed Framework paragraph 209(a) (R18 paragraph 25).

294. As a result, the 2019 WMS does not address the substance of the points made by FFEP&U concerning the impact of the judgement on the 2015 and 2018 WMS [287]. It does not address the fact that the 2018 WMS simply reiterated the 2015 WMS, without taking into account the "obviously material" scientific evidence showing that the evidence base for the 2015 WMS's approach to supporting onshore shale gas development has changed.

295. The 2019 WMS does not purport to take the up-to-date scientific evidence into account or to assess the cogency of the 2018 WMS, having regard to that evidence. It is not the Secretary of State's considered response in light of the new scientific evidence, but it is a reiteration of the 2018 WMS. This must perforce, affect the weight to be given to the 2019 WMS, and concomitantly to the 2015 and 2018 WMS.

296. This should be taken into account when assessing the weight to be given to the 2019 WMS and the 2018 WMS. Minimal weight can be attributed to the 2018 WMS, as the High Court has held that it was promulgated without reference to "obviously material" scientific evidence.

297. Furthermore, the 2019 WMS does not seek to dilute the clear findings in the Judgment that it is open to decision takers to depart from the 'in principle' support for shale gas development in the 2018 WMS, '*on the basis of the requirement, for instance in paragraphs 148 and 149 of the Framework in particular, for the planning system to take decisions which support reductions in greenhouse gas emissions and plan proactively for climate change*.' (R18 paragraph 71). The Secretary of State submitted to the court that it was open to participants to provide decision-makers with evidence which showed the deleterious impact on GHG emissions of the proposed development, and that this

could be taken into account in order to depart from the 'in principle' support (R18 paragraph 71).

298. In this case therefore, if it is considered that the 2015, 2018 and 2019 WMSs provide 'in principle' support for the appeal proposal, then this should be departed from and greater weight should be afforded to the policies preventing climate change on the basis of the clear scientific evidence put before the Inquiry and referenced above.

The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI16)

299. The binding requirement on government to reduce GHG emissions, which is directly material to planning decision making, will this month be tightened significantly. This is highly material to the determination of the appeal:

i) The tightening of the 2050 target makes it more clear that the proposed development does not comply with LP policy STRAT1, as the "residual" GHG emissions from the proposed development will be unacceptably high;

ii) The binding requirements of section 1 of the Climate Change Act 2008 will have been tightened when government is presently on course to miss both the fourth and fifth carbon budgets (devised to achieve a 20% lower target); and

iii) The tightening of the target informs the weight to be given to Framework paragraph 148 – the requirement for the planning system to shape places in ways that contribute to a radical reduction in GHG emissions is not observed by granting permission for the proposed development.

300. Given that Framework paragraph 209(a) has been quashed and section 1(1) of the Climate Change Act 2008 has been amended the plainly correct approach, commended by FFEP&U throughout, is to given even greater weight to policies preventing climate change than to those which support mineral and shale gas development.

Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI22)

The Local Plan Part two (PI18)

301. As an adopted local plan, it now carries full weight. Such weight must now be given to the non-compliance with AELP policies DM33 and DM43.

302. AELP policy EP1 delineates a settlement boundary for Ellesmere Port and provides, amongst other things, that delivery of LP policy STRAT4 will be achieved by regeneration of previously developed land for a range of uses, particularly to support new housing development. The appeal proposal does not comply with this policy. Significant weight should be afforded to this lack of compliance given the serious need for regeneration of Ellesmere Port.

303. AELP paragraph 3.8 refers to the SRF relied upon by FFEP&U. Although the appellant tried to diminish the importance and relevance of the SRF it is now referred to in the adopted AELP.

304. Quoting various paragraphs of a recent Court of Appeal judgement[8] FFEP&U argue that the appellant's closing submissions (A21 paragraphs 245 to 252) are wrong as a matter of law. The SRF cannot effectively be ignored and little weight given to it because it was not a policy document or referred to in the text of a policy. FFEP&U closing submissions (R21 paragraphs 26 to 32) are therefore reiterated.

305. The main modification to ELP policy M4 which is included in the adopted wording of the policy is not relevant to the assessment by Ms Copley that the appeal proposal fails to comply with this policy. The examining Inspector's report makes clear that development must comply with both this policy and LP policy STRAT1 in relation to '*mitigate and adapt to the effects of climate change*' and so cross reference to the LP policy was not required.

The Written Statement (PI19)

306. The opening section of the Written Statement must be read in the light of the CCC's net zero report (PI1 pages 149, 221 and 252) which make clear that the CCC's prediction about the future of gas consumption, based on its use to produce hydrogen, refers to the use of natural gas with carbon capture and storage. The Written Statement should not and cannot properly be read as providing support for natural gas development now without carbon capture and storage.

307. FFEP&U anticipate (correctly) that since the appeal proposal does not involve hydraulic fracturing, the appellant will submit that the Written Statement is irrelevant. FFEP&U does not agree and sets out why (PI22 paragraphs 15 and 16). However, in my view, this is new evidence upon which the appellant has not had a chance to comment and is, moreover, evidence that is, in part, from 2014 and was therefore available when the Inquiry was held; it could have been put before it for testing.

The Case for Island Gas Limited

Closing submissions

308. Mr Cannock did not depart significantly from his written closing submissions (A21). The following is a summary of the main points of the appellant's case at the close of the Inquiry hearing sessions.

Assessment of the case for the Council

309. None of the witnesses for the Council had any understanding of the basis on which planning permission had been refused. In truth, the Council's case has changed beyond recognition over time. That betrays a fundamental lack of merit in the refusal.

310. Planning permission was refused contrary to the unequivocal recommendation of the professional Officers. There was no objection from any statutory

[8] 8.*Gladman Developments Ltd v Canterbury City Council* [2019] PTSR 1714, [2019] EWCA Civ 669,

consultee. The Committee Report (CD2.23) therefore provides no basis for the refusal of consent.

311. The appellant sought clarification of the reason for refusal but received no response prior to the first statement of case (SOC). This document (CD4.2) prepared by consultants on behalf of and approved by the Council raised new policy conflicts for the first time and made other assertions by way of the requested clarification that were subsequently not relied upon or were just wrong. Furthermore, there is no reference to the CCC Report (2016) (CD8.1), the IPCC Report (2018) (EP10) and/or any request for further information on the mitigation of emissions of methane, which now (apparently) form a central part of the Council's decision.

312. The Supplementary SOC (CD4.4) does not supersede the SOC (Mr Vallelly in cross examination). Included in it are the following statements:

i) *The reason for refusal is, "fail to mitigate and adapt to the effects of climate change and fail to make the best use of opportunities for renewable energy use and generation." Clearly, this reason requires an explanation from the Appellant as to the steps it has taken to mitigate and adapt to the effects of climate change*.

ii) *Various other alternative interpretations of the reason for refusal are given under the consideration of STRAT1 but what really is the issue is whether the Appellant is proposing to employ the appropriate mitigation techniques for shale gas exploration* (emphasis added).

313. It is therefore beyond doubt that the "real issue" (in the sole reason for refusal) is whether the appellant has proposed appropriate mitigation techniques for shale gas exploration. All of the other points raised variously by the witnesses or SOC fall outside the resolved position of the Council.

314. Indeed, Mr Vallelly is unequivocal (in his written and oral evidence) that:

i) His evidence reflects the resolved position of the Council

ii) National Planning Policy supports the UK shale gas industry

iii) On the face of it, a properly designed well flow testing proposal with adequately proposed mitigation would be development plan compliant

iv) If there is emissions' mitigation so far as practical the proposal complies with the Development Plan

v) In line with national guidance, such proposals should normally be granted planning permission

vi) The Council were not fully informed on the nature of the proposals, specifically in respect of GHG mitigation techniques

vii) If the Inspector concludes that adequate information has been submitted regarding mitigation techniques, planning permission should be granted

315. It follows that significant parts of the evidence of Drs Balcombe and Broderick are irreconcilably inconsistent with: the resolved position of the Council; the evidence of Mr Vallelly; and extant local and national planning and energy policy. It is entirely unclear how or why the Council has called witnesses whose evidence conflicts. However, where they conflict, it is the position of Mr Vallelly which should prevail, as it is his evidence which is consistent with the reason for refusal

and the Supplementary SOC and which specifically takes account of the other two witnesses and applies it against the statutory test.

316. Furthermore, Mr Vallelly confirms that elected Members were advised to balance the role of the statutory planning process against their democratic role of representing the local community. The views of local people were significant in the Members' discharge of their democratic function. However, a decision in accordance with s38(6) of the Act is the application of a legal test, not a democratic decision notwithstanding that it is taken by democratically elected councillors. In the appellant's submission the Council refused planning permission on a flawed legal basis.

Development plan policy

317. All agree that LP policy ENV7 (CD5.1) provides 'in principle' support for the appeal proposal provided there is no unacceptable impact on the four criteria within it [24]. It is common ground with the Council that there is no such impact (CD9.1, para 6.1).

318. Although adopted in 2015 and consistent with the Framework published in 2012, the Council acknowledges that LP policy ENV7 remains consistent with both national energy policy of May 2018 (APP/DA/3 Appendix 14) and the Framework published in July 2018.

319. The latter post-dates the Climate Change Act 2008 (CD7.4), the Paris Agreement 2016 (EP46), the CCC report (CD8.1) and the government response (APP/DA/3 Appendix 32) 2016 and national energy policy 2018 (APP/DA/3 Appendix 14). Although subject to legal challenge Framework paragraphs 203 and 209a provide further continued support for exploration of on-shore shale gas.

320. For the Council Mr Vallelly accepted that full weight must attach to LP policy ENV7 since it was consistent with Framework paragraph 209a and national energy policy and was not 'out of date' in Framework terms. He further accepted that provided appropriate mitigation techniques are secured planning permission should normally be granted for a development such as that proposed.

321. It follows therefore that great weight should be attached to the appeal proposal's compliance with LP policy ENV7.

322. The relevant part of LP policy STRAT1 (CD5.1) requires all development proposals to '*mitigate and adapt to the effects of climate change*'. LP policy STRAT 1 must, therefore, be interpreted and applied in a manner which is consistent and appropriate to all forms of development. Mr Vallelly agreed with this and that LP policy STRAT1 applies to all development proposals. He accepted that it cannot rationally be applied in a manner that renders LP policy ENV7 incapable of compliance.

323. He also agreed that, if there are land use planning impacts which are the inevitable consequence of on-shore gas exploration (such as emissions), LP policy STRAT1 cannot be applied to refuse consent, given the strong 'in principle' support for exploration in LP policy ENV 7. The policies cannot be objectively interpreted to be mutually exclusive.

324. Mr Vallelly is completely clear in cross examination that he interprets and applies LP policy STRAT1 to require emissions from the exploration to be

mitigated, so far as practical (applying BAT). This is entirely consistent with his written evidence that a properly designed well flow testing proposal with adequately proposed mitigation would be development plan compliant (CC1, paragraph 6.5).

325. There is, therefore, common ground between the Council (CC1 paragraphs 4.25 and 4.30) and the appellant (APP/JF/2, paragraph 8.16) that LP policy STRAT1 requires this proposal to mitigate emissions so far as practical (applying BAT). That interpretation is entirely in accordance with national energy policy, national planning policy (extant at the time of adoption), the SPD, the CCC Report (properly read and understood) and United Kingdom Onshore Oil and Gas (UKOOG) Guidelines.

326. It was conceded by Dr Balcombe that the focus of the CCC report and the government response is the production phase of shale gas, not the exploration phase. Insofar as the CCC report carries weight since it is neither policy nor guidance, its information about the exploration phase is limited:

i) Exploration emissions are generally small, relating to transporting the seismic equipment and drilling the exploration well;

ii) Small volumes of gas may be generated during the development of the well, most of which is likely, at a minimum to be burned in a flare;

iii) There is, however, little information available on emissions associated with exploration. Most studies either ignore this phase or assume the emissions are negligible;

iv) However, the CCC Report does not suggest a moratorium on exploration or production, given the absence of such information. Rather, the Report concludes and recommends that "uncertainty" "can only be resolved via exploratory drilling" (CD8.1 page 69 paragraph 1). The government response states that exploration is required to determine both the size of a UK shale industry and its associated emissions footprint (APP/DA/3 Appendix 32 page 3 at (ix));

v) It should not be taken as a given that emissions from exploration will be low, especially for an EWT;

vi) Appropriate mitigation techniques should be employed where practical.

327. It is precisely because it cannot be assumed that exploration emissions will be low that there is a requirement for appropriate mitigation techniques.

328. The CCC Report therefore supports the agreed position of the Council and the appellant that the proposal should be considered to be acceptable provided appropriate mitigation techniques are employed where practical.

329. The three tests within the CCC report do not apply to the exploration phase but to extraction on a significant scale; this means the production phase. While test 1 applies to emissions, these are the emissions from well development, production and decommissioning, not exploration. In any event, all test 1 requires (when it is read fairly and in full) is that emissions are strictly limited, tightly regulated and closely monitored. There can be no dispute that this proposal will be tightly regulated by the EA and monitored in accordance with the Permit consistent with the Framework and Planning Practice Guidance. The emissions are limited so far as reasonably practical. There is compliance with the first test. Tests 2 and 3 do not apply to this proposal.

330. Accordingly, so far as relevant, the CCC Report supports the approach of the appellant in respect of the exploratory phase. This is expressly confirmed by government's response to it (APP/DA/3 Appendix 32).

331. The SPD (CD5.5) is supplemental to LP policies STRAT1 and ENV7 (paragraph 2.3). It requires sufficient information, in the light of discussions with Officers (paragraph 1.4). Gas should be utilised '*where possible*' (paragraph 5.9). This is, of course, consistent with the commercial operator's own self-interest. Flaring or venting should be kept to the minimum that is '*technically, economically and environmentally justified*' (paragraph 5.9). Proposals for the disposal of waste gasses will be assessed by the EA (paragraph 5.9). The SPD could not be clearer.

332. Both Dr Balcombe and Mr Vallelly agree that this means that emissions by flaring should be minimised, applying BAT.

333. It is recognised that the 'green completions' approach to emissions minimisation will not always be practical at the exploration/appraisal phase of a development, where '*flaring of natural gas should be the preferred option, minimising venting of hydrocarbons wherever practicable*.' (APP/JF/3 Appendix 20).

334. Consistent with the CCC Report, the SPD and UKOOG Guidelines, LP policy STRAT1 is therefore requiring this development to minimise emissions, so far as practical, consistent with BAT. If the proposal complies with BAT, the proposal complies with the development plan and planning permission should be granted. This is the agreed position of Mr Vallelly and the appellant (CC1 paragraphs 6.5 and 6.6).

335. It follows from the above that there is a single point in dispute between the Council and the appellant: whether this proposal minimises emissions, so far as reasonably practical, applying BAT. The principle of the development is clearly acceptable to the Council, as it is supported in LP policy ENV7.

The permit regime

336. Framework paragraph 183 provides that the focus of planning decisions should be on whether the proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.

337. The position is further set out clearly in national energy policy (APP/DA/3 Appendix 14) and Planning Practice Guidance Minerals (CD6.1b, paragraph 112). This approach reflects longstanding national policy which has been the subject of judicial scrutiny. The correct legal approach, established in a line of authorities beginning with the *Gateshead* case (A12), was analysed by Gilbart J in *R (Balcombe Frack Free v West Sussex CC* [2014] EWHC 4108 (Admin). Gilbart J held inter alia that:

> *In my judgment there is ample authority to the effect that the Planning Authority may in the exercise of its discretion consider that matters of regulatory control could be left to the statutory regulatory authorities to consider* (A9 paragraph 100).

338. The appellant therefore submits that it is beyond dispute that the issue of whether the development applies appropriate mitigation, so far as reasonably practical, in accordance with BAT, is a matter for the EA and which the EA have determined.

339. That does not mean (in the way the Council has mischaracterised the appellant's case) that the Council/Secretary of State is '*obliged as a matter of law*' to leave such matters to the EA (C12, paragraph 12). It does not mean that the '*only possible option available to an Inspector was to leave everything to that regime*' (per Harrison C12, paragraph 14). Rather, it means that significant weight should attach to the conclusion of the statutory regulator, to which the Council was a consultee, especially in the absence of any robust evidence to the contrary. The appellant has simply not asserted that the grant of a Permit can be construed as an approval of a planning permission in accordance with LP policy STRAT1 (C12, paragraphs 7 and 9).

340. The permit application (CD1.9) is for the incineration of waste by flaring. The Waste Management Plan (CD1.9e paragraph 8.3) provides a justification for the incineration of methane by flare, in preference to cold venting. Harnessing the gas for alternative use is not considered to be BAT because it is not practical. It is not feasible to capture/harness the gas because this is inconsistent with the exploratory nature of the DST and EWT, which require a free flow of gas. This is not an issue of cost (as Dr Balcombe accepted, contrary to his written evidence). The Flare Technical Document also considers BAT for the disposal of gas (CD 1.9k section 5 page 12). It also addresses which flare constitutes BAT for the DST and EWT (section 8.2.1 *et seq*).

341. Both documents were the subject of public consultation. The Council was a consultee and specifically responded to the consultation (CD 2.13 page 9). It is quite clear that the Council accepted that flaring was BAT and that the EA was the competent decision maker. That is consistent with the Committee Report (CD2.23).

342. In specific answer to consultation responses, the EA conclude (CD 2.13, page 11(6)):

i) Flaring has been assessed by the EA;

ii) The proposed flaring activities conform to BAT, as set out in EA onshore oil and gas sector guidance;

iii) At present "green completions" are not considered BAT for this activity.

343. Mr Vallelly conceded that:

i) Members were specifically aware that the issue of emission controls had been dealt with by the Permit;

ii) Members were advised that issues relating to licenses and the EA/HSE were outside the remit of this planning decision;

iii) He had no criticism of the advice of Officers, which he commended as a comprehensive and professional piece of work;

iv) At the time of the determination there was no objection from the EA based on the proposed mitigation of emissions or at all;

v) He had not made any reference to the EA's statutory powers and responsibilities and/or its role in decision making;

vi) He had not "engaged at all" with Framework paragraph 183, the Planning Practice Guidance, the SPD, the CCC Report, the government response and the national energy policy, all of which stress the role of regulation in decision making.

344. He also agreed that he had made no reference at all to:

i) The application for the EA permit (CD 1.9);

ii) The process and operating techniques controlled by the Permit (CD 2.12);

iii) The process of consultation on the permit application (consistent with the Environmental Permitting Regulations);

iv) The consultation response of the Council to the Permit application, which did not contest the proposition that the proposed mitigation of emissions was a matter for the EA's determination (see CD 2.13);

v) The EA's consideration of the Permit application (CD 2.12 and 2.13);

vi) The EA's conclusion that the proposed flaring was considered to constitute BAT, applying EA sector Guidance (CD 2.13 pages 2 and 11/12);

vii) The consented operating technique is secured by the Permit (CD 2.12);

viii) The proposed monitoring of emissions (CD 2.12).

345. He therefore conceded that the matter of whether emissions had been adequately mitigated by BAT was a matter which had been addressed by the Permit, without any criticism or comment from the Council. It follows that the Inspector (and now also the Secretary of State) may (not must) consider that matters of regulatory control could be left to the statutory regulatory authorities to consider (per Gilbart J in A9).

Inadequacy of information

346. A central criticism is that the appellant failed to submit sufficient evidence to show that adequate mitigation of emissions had been provided, so far as practicable. Mr Vallelly asserts that planning permission was refused because Members:

i) were aware of the various policy and technical issues and decided in this case that the absence of information in relation to mitigation details warranted refusal of the proposals (CC1, paragraph 2.18);

ii) were not satisfied with the lack of detail within the application proposals specifically in relation to emissions mitigation associated with the exploration phase (CC1, paragraph 2.19).

347. While the basis for the refusal is therefore clear, it has is no evidential foundation as Mr Vallelly conceded in cross examination. Specifically, at the time of the of the refusal:

i) The EA Permit had been submitted;

ii) The Permit Application appended the Waste Management Plan and Flare Technical Document (CD 1.9);

iii) Those documents provided information on the mitigation proposals and why they constituted BAT;

iv) That information was advertised in accordance with the Environmental Permitting Regulations;

v) The Council had no criticism on the publicity and consultation;

vi) The Council were specifically aware of the content of the Permit application;

vii) The Council responded to the application criticising some of the submitted evidence (regarding the Air Quality Assessment);

viii) The Council passed no comment on the adequacy of information regarding the proposed emissions mitigation and whether it comprised BAT;

ix) Accordingly, if Members wanted information on the mitigation proposals, it had already been provided to the Council and was publicly available to them.

348. He accepted that there were no outstanding requests for information from any Council officer or statutory consultee. He therefore conceded that Members refused planning permission because they wanted further information:

i) On a matter within the statutory remit of the EA;

ii) On a matter controlled by the Permit;

iii) Which they had never asked to see;

iv) Which was publicly available; and

v) On which the MPA had actually commented.

349. He conceded that there was not a respectable basis for the refusal. That is the definition of unreasonable behaviour given in the Planning Practice Guidance.

Proposed mitigation of emissions

350. During cross examination of the Council's witnesses, none of whom are experts in flaring or reservoir or petroleum engineering, it emerged that the sole issue between the Council and the appellant is whether flaring during the EWT phase minimises the emissions of gas so far as reasonably practical.

351. Notwithstanding what is said in the Supplementary SOC about a range of techniques for such minimisation (all of which are dismissed by Mr Foster with the evidential reasons for doing so being given (APP/JF/2, paragraph 8.54 *et seq*), the Council's position in evidence is that gas capture, the sole technique promoted as a means of mitigation, is feasible (CC2, paragraph 5.4.5).

352. The note (C2) produced by Dr Balcombe explains the different uses of the term "capture". It provides (literally) no technical explanation of how free flowing gas may be captured in the EWT.

353. In contrast the uncontested (indeed unquestioned) evidence of the appellant is that:

i) There are 2 forms of gas capture (a) export to the national grid via pipeline and (b) connection to a tanker and export to the grid;

ii) Neither technique is feasible nor safe;

iii) Before the gas can be used, there is a requirement for the characteristics of the gas to be known. Such characteristics include the gas composition, calorific values, flow rates, pressures and

moisture content. Such information is simply not known until flow rates and pressures have stabilised. Indeed, this is the whole point of the DST and EWT;

iv) The proposition that such untested gas would be allowed into the national grid is risible (and Dr Balcombe did not suggest the contrary);

v) Capturing the gas in a storage tanker would not be safe and would require very frequent interruptions to the flow, which is wholly inconsistent with the proposed exploration. It would preclude the necessary information being obtained from the exploratory phase.

vi) It is for this reason that the appellant, EA, SPD and UKOOG all understand that it is not BAT at the EWT phase.

354. Indeed, it appears from the Council's closing submissions (C12, paragraph 65) that the point has been conceded since it is now asserted that carbon capture usage and storage is "unrealistic". Contrary to the evidence of the Council it is now asserted that there is no acceptable mitigation. That is wholly inconsistent with the evidence of Mr Vallelly. There is no evidential basis for the reason for refusal at all.

355. It follows that it is beyond dispute that the appellant has mitigated the emissions so far as reasonably practical, applying BAT. This is the conclusion of the EA and (in this regard) there is no criticism of their conclusion from the Council.

356. Further or alternatively, even if Dr Balcombe is correct, there is no basis for a refusal. He considers there is a better scheme of mitigation. If so, this could be secured by a negatively worded scheme condition. This is an issue which was simply not considered by the Members of the Planning Committee, Dr Balcombe or Mr Vallelly. On this basis alone, the refusal is unreasonable. However, for the avoidance of doubt, the appellant rejects the imposition of a condition because it has mitigated emissions, so far as reasonably practical. The condition would do nothing beyond further delay and frustrate the development.

357. It follows that (applying the evidence of Mr Vallelly) the proposal complies with the development plan. Adequate information has been submitted and planning permission should be granted.

Calculation of GHG emissions

358. It is acknowledged that there was an error in the calculation of the GHG emissions (A4). Applying the EA's standard methodology, the GWP of emissions was underestimated (3.929 ktCO2e instead of 4.131 ktCO2e). That is an error of 4.8%.

359. Nothing turns on this miscalculation. The impact on the climate will, of course, be different depending on the range selected (and no party suggests anything other than a range is appropriate). However, it is not suggested that anything turns on the precise figure, as Dr Balcombe considered the impact to be significant on his figures or even on the basis of half of them.

360. Rather, the Council submit that the miscalculation means that reliance cannot be placed on the EA's conclusion that the proposal does constitutes BAT. Neither the appellant nor the EA had ever assessed the necessary mitigation techniques and the practicality of those techniques available against a backcloth of the

emissions being high and uncertain (C12, paragraph 37). That submission is flawed.

361. As Mr Foster explained in oral evidence without contradiction, gas capture and storage has been rejected because it is not feasible or safe. That conclusion is not influenced by the residual amount of the emissions. It is a function of the nature of the exploratory process. He was explicit that the conclusion on BAT does not change because of the miscalculation. There is no evidence to the contrary. Total emissions are inherently uncertain, given the nature of the exploration. They vary between 3.3-7.6 ktCO2e using a GWP of 21 and 410.8 using a GWP of 36. The emissions set out in the environmental risk assessment (CD 1.9) are therefore within the agreed range using the EA's standard GWP (which is to be preferred). Dr Balcombe's statement does not explain how/why the proposed mitigation may change based on the different ranges.

Emissions impact on the climate

362. The Council argue that there is a further interpretation of LP policy STRAT1 which requires '*mitigation in the broader sense relating to the achievement of the objectives of the Paris Agreement*' (C12, paragraph 71). This argument is based upon the evidence given by Dr Broderick which states (CC4 paragraph references given):

i) Any addition of carbon dioxide to the atmosphere causes an additional warming effect. Hence temperature stabilisation necessitates "net zero emissions" (8);

ii) That is net zero emissions from any source i.e. from all development (cross examination of Dr Broderick);

iii) There is limited empirical data available in the scientific literature that isolates emissions associated with exploration (11);

iv) Any release from a well site ought to be balanced by a reduction from another source (13);

v) There is no practical mechanism whereby this development can offset (cross examination of Dr Broderick);

vi) Any source of emissions (from any development) must presently be assumed to directly contribute to climate change and not be offset (13);

vii) An urgent programme to phase out existing natural gas and other fossil fuel across the EU is an imperative of any scientifically informed and equity-based policy to deliver on the Paris Agreement (22);

viii) It follows that: if there is an imperative not to consent new natural gas production, there is an imperative not to consent new natural gas exploration.

363. This part of the Council's case contains a number of fundamental weaknesses.

364. Firstly, neither Dr Broderick nor Mr Vallelly knew whether this line of argument formed any part of the Members' reasoning. It is not set out in the reasons for refusal, which makes no reference to "net zero emissions". It is not set out in the SOC or Supplementary SOC. Further, this is not a policy interpretation which applied to any other development, let alone all development, in the application of LP policy STRAT1.

365. Secondly, it is irreconcilably inconsistent with Mr Vallelly's policy interpretation (as the policy planner) that this proposal can comply with LP policy STRAT1 and the development plan, provided there is mitigation, so far as reasonably practical (CC1, paragraph 6.5).

366. Thirdly, it renders LP policy ENV7 otiose. If LP policy STRAT1 means that there is an imperative not to consent new onshore exploration, LP policy ENV7 becomes incapable of compliance. That is an irrational objective interpretation of LP policy ENV7 and contrary to the evidence of Mr Vallelly.

367. Fourthly, Dr Broderick's evidence (like that of Prof Anderson for FFEP&U) is irreconcilably inconsistent with national energy policy and the Framework which provide strong support for onshore gas exploration, in the light of the Paris Agreement. He accepted this expressly in cross examination.

368. Finally, the Council's submissions (and those of FFEP&U) fail to understand and apply the correct statutory and policy background.

369. The statutory background given by Climate Change Act 2008 (CD7.4) and the Paris Agreement (EP46) is set out in factual terms at A21 paragraphs 116 to 122 and is not repeated here.

370. The Paris Agreement does not impose a legally binding target on each specific contracting party to achieve any specified temperature level by 2050 (per Supperstone J in A10, paragraph 30). Rather, it contains an ambition: to "pursue efforts" to limit temperature increases to 1.5°C above preindustrial levels.

371. In response to the Paris Agreement, the CCC advised (in Oct 2016) that no change should be made to the 2050 target at this time (CD8.1, paragraph 11).

372. Factual points are made about the CCC report (CD8.1) in A21 paragraphs 125 to 127 including further reference to the three tests [329]. If, however, the three tests are met, the CCC conclude that onshore petroleum production is compatible with UK climate targets (CD8.1, page 69).

373. Objectors have made no meaningful reference to government's statutory response to the CCC Report.

374. The Infrastructure Act 2015 requires government to seek advice from the CCC on the impact of combustion of, and fugitive emissions from, petroleum obtained through onshore activity. Under the Act, the Secretary of State is required to lay the CCC report before Parliament with either: (a) regulations to provide for the right to use deep level land to cease to have effect; or (b) a report explaining the reasons for not laying such regulations (points (i) and (ii) on page 2). This government response explains why regulations are not required (APP/DA/3 Appendix 32).

375. In the light of the CCC Report, the government's statutory response provides among other things:

i) Government is committed to taking action on climate change by reducing GHG emissions and making the transition to a clean, low carbon economy;

ii) The successful transition to that low-carbon economy requires clean, safe and secure supplies of natural gas in the coming years;

iii) In electricity generation, government believes that shale gas can be a bridge while the UK phases out old coal generation and develops energy efficient renewables and nuclear;

iv) There are potential economic benefits in a new industry (64,000 jobs), which would benefit from 50 years' worth of experience and skills developing oil and gas in the UK;

v) The shale gas resource in the Bowland-Hodder basin could be 23.2 to 64.6 trillion cubic metres. Government does not yet know how much can be extracted technically or economically;

vi) Government therefore believes there is a clear need to explore and test our shale resources. Government agrees with the CCC that uncertainty exists and that exploration is required to determine the potential of both the size of a UK shale industry and its emissions footprint;

vii) Government agrees that: '*appropriate emissions mitigation techniques should be employed where practical*' during the exploration phase;

viii) Government welcomes the CCC's primary conclusion that shale gas development at scale, i.e. at production stage, is compatible with carbon budgets if 3 tests are met;

ix) Government believes that the strong regulatory framework for shale gas development, plus the determined efforts of the UK to meet its carbon budgets, means that the 3 tests will be met.

376. It is quite clear, therefore, that in the light of the Climate Change Act 2008, the Paris Agreement and the CCC report (on which significant reliance is now placed by the Council), government strongly supported the exploration of shale gas resources. The response to uncertainty over emissions was not a moratorium. Rather, such uncertainty was to be addressed by exploration and monitoring (as provided by this proposal).

377. The CCC Report and the government's response therefore strongly support the proposal.

378. The national energy policy (2018 WMS) (APP/DA/3 Appendix 14) is dated May 2018. It is clearly up-to-date and post-dates: the Climate Change Act (2008), the Paris Agreement (2015), the CCC Report (2016) and the government's response (2016).

379. It provides a balanced approach to energy policy. It states that:

> *The UK must have safe, secure and affordable supplies of energy with carbon emissions levels <u>that are consistent with the carbon budgets defined in our CCA and our international obligations</u>. We believe that gas has a key part to play in meeting these objectives both currently and in the future …(*emphasis added*).*

380. It recognises that Gas still makes up around a third of our current energy usage and every scenario proposed by the CCC setting out how the UK could meet its legally binding 2050 emissions reduction target includes demand for natural gas.

381. It considers that it is right to use domestic gas resources to the maximum extent and to explore the potential for onshore gas production from shale rock formations in the UK, where it is economically efficient and robustly regulated.

382. It provides that "great weight" should be given to the benefits of mineral extraction. This expressly includes exploration. In so doing, government expressly takes account of carbon emission levels, the Climate Change Act and the Paris Agreement.

383. Framework paragraph 148 supports the transition to a low carbon future in a changing climate. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures, including the Climate Change Act 2008 (Framework paragraph 149).

384. The Framework also specifically recognises the benefits of onshore gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy. Mineral Planning Authorities are therefore required to put in place policies to facilitate their exploration and extraction (Framework paragraph 209(a)).

385. Reading Framework paragraphs 148, 209 and the 2018 WMS together, it is beyond dispute that government considers that onshore development supports the transition to a low carbon economy in a changing climate, in the light of the Climate Change Act 2008. To suggest that onshore development of gas is inconsistent with the Climate Change Act 2008 and Paris Agreement renders Framework paragraph 209 otiose, which is an irrational interpretation of the Framework. Government sees Framework paragraphs 148 and 209 as complementary, not mutually exclusive. That is the only objective interpretation which is consistent with the Framework as a whole and the 2018 WMS which immediately preceded the Framework.

386. The IPCC Report (EP10) is directed towards national policy makers (cross examination of Prof Anderson). It will, therefore, inform emerging policy, as part of a balanced approach to energy policy (together with issues such as affordability, security of supply and economic growth). The appellant does not contest the content of the IPCC Report. Accordingly, there has been no need to call a witness to address issues of climate change.

387. The appellant's case in anticipation of the government response to the IPCC report which is to be informed by the further CCC report requested by the then Minister in October 2018 can be read in full (A21 paragraphs 142 to 150). However, since the CCC report (PI1) was published in May 2019 and the appellant's response is set out below [470 to 482], the anticipatory case made is not set out here. However, what amounts to the conclusion on this section of the case follows.

388. The appellant does not contest evidence on climate science. Hence, it has not called any witnesses on this evidence. It does not contest the conclusions of the IPCC Report. It does not deny that the proposal will generate GHG emissions. It does not dispute that the Paris Agreement is a material consideration.

389. Rather, the appellant submits that government has specifically balanced the competing policy imperatives of (i) security of energy supply, affordability and economic growth; and (ii) mitigation of climate change in the formulation of national energy policy and the Framework (and also LP policy ENV7). Government strongly supports the exploration of onshore gas, in the light of the

Paris Agreement. Reading the Framework and national energy policy as a whole, it is quite clear that government considers the impact of GHG emissions is outweighed by the need for gas. Indeed, this is consistent with the grant of consent at Preston New Road and other sites. That same balanced approach should be applied in the determination of this appeal (whether the impact to the climate is considered under LP policy STRAT1 (Dr Broderick) or as a material consideration (FFEP&U).

390. The IPCC Report post-dates the development plan, national energy policy and the Framework. It adds to our scientific knowledge. However, it is but one consideration in the formulation of future carbon budgets. Security of supply, affordability and economic growth are also inputs into a balanced consideration of future policy and future carbon budgets. Until the statutory process is concluded, we do not know the future policy position. In the meantime, this proposal should be determined in accordance with current policy.

391. Further, the CCC's new power scenarios for 2030 all predict a significant demand for gas. In the Fifth Carbon Budget, the 100gCO2/kWh power band for 2030 expects a significant need for gas (see CCC Reducing UK Emissions 2018 Progress Report for Parliament June 2018 – Dr Broderick Appendix 19 at page 70). Even in the 50g CO_2/kWh scenario (the Paris Agreement's 1.5 degree ambition) there remains a significant use of gas. Such a scenario is, however, much more strict than the current legal target set out in the Climate Change Act 2008. It nonetheless budgets for the use of gas (Mr Adams evidence in chief).

392. Finally, that reality is acknowledged by Dr Balcombe. He considers that, given North Sea production is set to reduce and UK gas demand is set to remain relatively stable, the UK may rely more heavily on imported natural gas (CC2, paragraph 6.2.6). He accepts that imports of liquified natural gas (LNG) may have a "significantly" higher GHG emission profile than domestic gas due to the energy intensity associated with liquefying natural gas to -160 C. Typically 10% of the natural gas product may be burnt as fuel to drive the liquefaction process (CC2, paragraph 6.2.6). He therefore considers that:

> *If best available techniques are utilised for UK shale gas production, processing and delivery, shale may exhibit lower emissions than from LNG imports. From previous work, unconventional (and conventional) piped supply chains could exhibit approximately half of the supply chain emissions associated with LNG … Thus, if domestic shale gas results in avoiding the import of higher emission-natural gas, then this would contribute to limiting emissions growth in the UK …* (CC2, paragraph 6.2.7)

393. In all the circumstances, therefore, the appellant submits that, whilst the development would result in the inevitable release of GHG emissions, such emissions have been minimised by the use of BAT. The level of such emissions is no more than you would anticipate on any exploratory well (Mr Foster evidence in chief). The level of emissions is considerably lower (in all scenarios) than consented at Preston New Road (Mr Foster evidence in chief and re-examination). Mindful of such emissions and international obligations, government strongly supports the development of exploratory wells. There can be no doubt that gas will continue to be a vital resource in all future scenarios and domestic gas can replace imported LNG, having a benefit in terms of emissions and security of supply. In all the circumstances, therefore, consent should be granted.

The Council's closing submissions

394. A number of submissions were made that are either departures from the Council's own evidence and policy or straight forward misrepresentations of national policy.

395. It is not the case that government does not support shale gas until a '*robust regulatory regime is in place*' (C12, paragraphs 73 and 74). The CCC and national energy policy are expressly clear that there is robust regulation on which reliance can be placed. Shale gas is not considered premature, pending a Shale Regulator, and no witness has suggested the contrary.

396. It is not the case that government does not support shale gas until the technology exists to decarbonise this energy supply (C12, paragraph 74). National energy policy does not require net zero emissions. Government supports the exploration for gas, provided it demonstrates BAT. That is why Preston New Road and other sites have been consented, expressly in accordance with the Framework and national energy policy. This submission is simply untrue.

397. Equally, it is not government's position that shale gas is not "safe" (C12, paragraph 75).

Assessment of the additional points made by FFEP&U

398. FFEP&U take a number of points in addition to those already covered above. However, there is no objection to the appeal proposal in respect of any of them by the Council or any statutory consultee. The appellant submits that significant weight should be attributed to this level of agreement on these matters.

The extant planning permission

399. The planning history of the site is set out above [38]. Although various criticisms have been levelled by FFEP&U and others in respect of the validity of the permission and/or whether there has been a breach of planning control, by the close of the Inquiry hearing sessions FFEP&U accepted that the EP-1 well had been drilled in accordance with the planning permission and associated conditions.

400. Nonetheless, Mr Watson asserts (contrary to the evidence above) that there was a lack of transparency towards the public. However, he fails to identify any statutory or planning policy requirement for consultation/exhibitions with the public once planning permission and permits (all of which required advertisement and public consultation) have been undertaken.

401. Further, he conceded in cross examination that the myriad Regulators are specifically required to regulate the development in the public's interest. Finally, the public exhibition was entirely voluntary. It post-dated the consents of the well depth from the EA, HSE and Oil and Gas Authority (OGA), when the proposed well-depth had been the subject of consultation. Indeed, the exhibition expressly explains: (i) the nature of the proposed exploratory drilling; (ii) with a schematic showing an indicative exploratory well of 5,000-10,000 feet depth; and (iii) a Coal Bed Methane schematic showing an indicative depth of 10,000 feet penetrating the shale (CD 1.8). There is no conceivable lack of transparency and no evidential basis for any lack of trust.

The proposed development

402. The development proposed is described above [39 to 49]. Contrary to the repeated assertions and concerns of local residents by the end of the Inquiry hearing sessions it was common ground between the three main parties that the proposal did NOT entail hydraulic fracturing nor matrix acidisation.

403. The Environmental Permit simply does not allow hydraulic fracturing to take place.

404. The process outlined above [44] does not amount to matrix acidisation, a fact expressly confirmed by the EA (A2). The process is materially different to matrix acidisation because it does not target the geological formation (a point FFEP&U have repeatedly failed to grasp). Indeed, unlike matrix acidisation it is considered to be *de minimis* by the EA because there is no likelihood of any impact to groundwater (or anything else). The only permitted chemical is PROTEKT – 7HCL with inhibitors. This is a 7% HCL solution. At a maximum of 95m3, this is 6.65m3 of acid, hence the EA considering it to be acceptable and *de minimis*. The spent acid returns at close to neutral pH.

Sub surface issues

405. The evidence of Prof Smythe and Mr Grayson is based on two flawed understandings about the nature of the appeal proposal and the responsibilities of the various regulators. However, Prof. Smythe accepted in cross examination that Protekt 7 HCL was a 7% HCL solution which was normal for an acid wash. He expressly agreed with the EA's position (A2) that matrix acidisation is neither proposed nor permitted. His concerns were largely based on an understanding that stimulation of the formation would occur when this is not, in fact, correct.

406. A similar misunderstanding underpins Mr Grayson's concerns about seismic impact; there will be none because the formation is not to be stimulated.

407. Impacts to groundwater are for the EA. They and United Utilities who are responsible for the aquifer take no issue on this matter. Furthermore, the concerns expressed by FFEP&U fail to take into account that the EP-1 well has already been drilled and its continuing integrity demonstrated to the responsible regulators.

408. FFEP&U also misrepresents the way that risk (in this case primarily from an escape of Hydrogen Sulphide-H_2S) is managed. No on-shore well could ever be 100% risk free. However, HSE are responsible for the enforcement of legislation concerning well design and construction. Before design and construction, operators must assess and take account of the geological strata and fluids within them (Planning Practice Guidance Minerals, paragraph 112). This is not, therefore, a matter to consider at this stage of the process. The well has been constructed without incident and the HSE do not object to this proposal.

409. In any event, H_2S is a very well known issue to operators and regulators. When the EP-1 well was drilled, no H_2S was encountered. Further, no anhydrite was encountered. This is consistent with the IM-1 well at Ince Marsh. The well was drilled with an alarm set at 5ppm (15 mins). Staff were trained to deal with any occurrence. The exploration will be similarly monitored and controlled. If the exposure limit is met, the well operation will cease and cannot recommence without the agreement of the EA. There is, therefore, no evidential basis for a

concern. Further, the presence of H_2S is not, in any event, a rare occurrence or one which precludes onshore operation. It is a risk which must be managed. It is not, however, a risk which is likely to be encountered at this site.

Public health

410. The appellant does not dispute that local residents have concerns over the health impacts of the development. However, there is no robust policy or evidential basis for them.

411. LP policy ENV7 supports the principle of development unless there is an "unacceptable impact" on health. LP policy SOC5 provides that development which gives rise to significant adverse impacts on health will be refused. It follows that there must be evidence of a "significant adverse health impact" to be unacceptable.

412. It is therefore of central importance that FFEP&U are not making a positive case. Neither of FFEP&U's witnesses positively assert that there will be a significant adverse impact on health. Rather, they seek only to question the robustness of the appellant's assessment.

413. Dr Saunders identifies that there are a number of potential sources of health impact (EPP3, paragraph 2.5). However, there is no issue raised about the health impact from: (a) odour; (b) the proposed lighting; (c) noise and/or (d) dust. Rather, he accepted that the sole public health concern arose from air quality (including from road traffic).

Air quality

414. Turning then to air quality, by virtue of LP policy SOC5 the proposal is acceptable unless there is a significant adverse impact to health as a result of a deterioration in air quality.

415. Framework paragraph 181 requires that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones and the cumulative impacts from individual sites in local areas.

416. Accordingly, neither local nor national policy requires there to be "no impact" on air quality. It is not premised on the basis that there is "no safe limit of exposure" to certain pollutants. Rather, policy requires there to be compliance with relevant limit values and/or national objectives for pollutants. This is because (the uncontested evidence of Ms Hawkins) such emission limits protect the health of the young, sick, old and vulnerable, even in deprived areas. The setting of the emission limits embody a precautionary approach (Ms Hawkins in re-examination). If the emission limits are met, the impact to the health of vulnerable people in deprived areas is acceptable and they do not suffer any "disproportionate impact" as asserted by FFEP&U.

417. Ultimately, the parties agree that the air quality impacts of the following are irrelevant: (i) hydraulic fracturing; (ii) matrix acidisation; and (iii) production impacts. Accordingly, it must be conceded that those (significant) parts of Prof Watterson's evidence, which addressed such impacts, are simply irrelevant.

418. Further, there is not (and nor has there ever been) any criticism of the methodology, applying the Planning Practice Guidance and Institute of Air Quality Management methodology, which is agreed by the EA and the Council.

419. The EA control emissions to air (Planning Practice Guidance Minerals, paragraph 110). The flaring or venting of gas produced as part of the exploratory phase will be regulated by the EA (Planning Practice Guidance Minerals, paragraph 112). The conclusions of the EA on any assessment of emissions to air as part of its decision to issue the Environmental Permit is therefore a material consideration of significant weight (evidence in chief of Ms Hawkins).

420. It is, however, accepted by the appellant that it is appropriate for the Council to reconsider the assessment if there has been a material change in circumstances since the EA's assessment. In this case, residential properties have moved from 500m to 350m. It was, therefore, appropriate for the Council to reconsider the significance (if any) of this change; this is precisely what the Council did.

421. The application for the permit variation was supported by several documents including the Air Quality Monitoring Report (CD1.9 Appendix 5) and the Flare Technical Document (CD1.9 Appendix 2). In response to the consultation that the EA is required to undertake the Council's Environmental Protection Team raised the issue of the proximity of residential properties. It did not raise a similar concern in respect of industrial premises which were far closer.

422. The EA permit was granted because (at the time of the determination) properties were 500m away (impacts were insignificant) and it was anticipated that the exploratory phase would have been completed before properties with planning permission but still to be constructed moved closer. It is, therefore, appropriate to reconsider this issue because (as a matter of fact) properties are now closer.

423. The EA does, however, specifically endorse the appellant's assessment in a number of regards: (i) the use of wind data from John Lennon Airport; (ii) the acid used and inhibitors have been fully defined; (iii) the use of benzene as a proxy for all PAH's; (iv) using benzene as a proxy is a worst case assumption (CD 2.13 pages 9-12). There is no reason to revisit such conclusions. On the contrary, Prof Watterson accepts that the EA approach at this stage was "reasonable" (EPP2, paragraph 7.6.6).

424. The sole issue is the proximity of residential developments. However, even this needs to be reconsidered in the context of the Air Quality impacts on industrial premises at 5m being found to be acceptable (Ms Hawkins evidence in chief).

425. Naturally, the Council raised the same issue when the planning application was submitted because the same air quality assessment reports were provided as part of the planning application (CD2.4 Appendix 11) as had been provided to the EA. A further technical memorandum (CD2.21) was provided in response which satisfied the professional officer in respect of the impact on the more proximate residential properties.

426. There is, therefore, a powerful consensus of professional evidence between the appellant's three sets of independent air quality experts, the EA, the Council's Environmental Protection Team and its Planning Officers and the Planning Committee. This is a consideration of very significant weight.

427. For the purposes of the appeal Inquiry Ms Hawkins prepared a further air quality assessment (APP/KEH/3, Appendix 1), the contents of which are summarised by Mr Cannock (A21, paragraphs 210 to 219). This evidence was not challenged. It demonstrates objectively that there would be no material adverse impact on air quality. There is therefore no evidential basis for a health concern and the proposal complies with policy.

428. Similarly, there is no evidential basis for an objection based on particulates from road vehicles, as the EA concluded without criticism. FFEP&U's case that there would be is irreconcilably inconsistent with its desire for comprehensive regeneration of the local area. If the site was comprehensively redeveloped, the HGV movements of such a mammoth construction task would dwarf the proposed HGV movements of this temporary use. Similarly, any employment re-use/redevelopment of the site/local area adjacent to the M53 would generate many more movements. Yet, FFEP&U have no concern about such particulate emissions from the comprehensive redevelopment.

429. There is, therefore, no objective evidence of any health impact. Accordingly, there is no requirement for any further bespoke health impact. Indeed, the Council's position is that one is not required, even in the light of FFEP&U's concerns.

Public perception/fear

430. The well-known and relevant case law is reviewed in bulleted detail (A21, paragraph 229). On analysis of those cases, the appellant's position is that public concerns and fears, even if shown to be baseless, are a material consideration but that, if not justified, they cannot be conclusive. The appellant simply submits (on the evidence of this case) that very limited weight should attach to the claimed fear/anxiety caused by this development.

431. This sets the context for the evidence of Dr Szolucha at the end of a section on residents' views about the effect that the proposed development would have that:

> *The local community therefore has legitimate reasons to consider that this development may involve fracking. This amplifies distrust of the Appellant and creates a local perception that the company is going to use hydraulic fracturing but is trying to avoid fracking regulations* (EPP4, paragraph 4.36).

432. This analysis is hopelessly flawed. It is now common ground with FFEP&U that this proposal does not constitute hydraulic fracturing. It has never comprised hydraulic fracturing and hydraulic fracturing has never been 'removed' as asserted. It would be in breach of the planning permission and/or permit. This is not, and never has been, in dispute. Accordingly, the local community do not have any "legitimate" (or objective) basis for their concerns.

433. Because they are baseless, perceived risks can only be afforded very limited weight (Mr Adams evidence in chief). The source of the contention that the proposal comprises hydraulic fracturing is from other objectors (such as Friends

of the Earth). It cannot be rational that fears founded on false assertions from objectors justifies refusal. That would be an entirely self-serving proposition that is likely to lead to all controversial developments being refused (as per *Gateshead* (A12)). This situation bears no resemblance to the *Newport* decision (A14).

434. Finally, there is no evidence of fears being caused by the proposed operating technique. The proposed acid wash/squeeze is deemed to be *de minimis*. It has been used on thousands of water wells up and down the country without complaint. No-one has expressed a fear (or the perception of a fear) based on this proposed technique, which is secured by the permit.

Social harm

435. This is a separate but related aspect of stress and anxiety over the development proposed which FFEP&U considers not to have been properly considered by the appellant, the Council in the widest sense and statutory consultees. There are five points taken none of which have any merit and, as such, they do not weigh materially in the balance at all.

436. First, the appellant is criticised for providing no compensatory mechanisms to address the negative visual impressions and the historic impressions of the area. (EPP4 paragraph 3.13). However, there is no material adverse impact from the development compared with the lawful base line and this proposal is not responsible for any historic impressions. Furthermore, there is no policy basis for such compensation and Dr Szolucha could not identify in cross examination what such compensatory provision would be.

437. Second, even though the Council is content that the consultation carried out by the appellant was adequate, it is asserted that it fell short of the expectations regarding community consultation (EPP4 paragraph 3.20). The appellant has no control over the expectations of the public and cannot be judged against them.

438. Third, FFEP&U asserts that involvement in the planning process causes stress (EPP4 paragraph 4.19) and resentment if appeals succeed (EPP4 paragraph 4.24), as a result of a breach of local democracy. However, this is no more than a criticism of the statutory planning system, which is not up for review.

439. Fourth, FFEP&U considers that distrust of the Police and government are material considerations (EPP4 paragraph 4.24). The authority for that proposition is not provided. However, it is denied that the regulation of the use of land in the public interest by the Police and government, in accordance with extant planning permissions and statute, can rationally form the basis of an objection.

440. Finally, there is an assertion (EPP4 paragraph 4.25) that the relationship between the appellant and local residents is likely to sow the seeds for a wider social conflict, once the operations commence. This cannot be the basis of an objection. The development will not proceed unless planning permission and relevant permits are obtained. At that stage, the development is deemed to be in the public interest. Local residents may persist in their disagreement. They can demonstrate lawfully against the proposal. On that basis, there is no reason for any conflict. However, objectors cannot rationally rely on the stress caused by any such demonstration, as this is a self-serving analysis which pulls itself up

by its own bootstraps. Further, reliance cannot be placed on the implied threat of an unlawful demonstration, resulting in conflict with the Police. This would result in planning anarchy, as unlawful demonstrations were staged, simply to support the contention that permission should be refused because of "social harm".

Regeneration

441. There is no planning policy or evidential basis for the alleged unacceptable impact on regeneration (on the site or in the local area).

442. The SRF was published in November 2011 (EP19). As Ms Copley conceded: there was no formal consultation, no opportunity for objections, no opportunity for objections to be independently determined and it was not the subject of Sustainability Appraisal or Strategic Environmental Assessment. It does not form part of the development plan (EP19 page 3) and is not a supplementary planning document. It is not a policy document at all as Ms Copley conceded.

443. The appeal site and adjacent dockland/industrial areas form part of site 8 (Waterfront) in the Strategic Framework for the Town (page 7).

444. The SRF pre-dates the adoption of the LP and is part of the LP evidence base. Although referred to in the policy justification (CD5.1 paragraph 5.9), it is not part of the LP or part of any LP policy. It has not been assessed through the Strategic Environmental Assessment process (CD5.1 paragraph 5.11).

445. The appeal site does not form part of a strategic allocation. There is no reference in LP policy STRAT4 to the site being developed/safeguarded for housing (or anything else). There is no policy support for the SRF. Further, Ms Copley could not identify any part of the policy with which there is conflict. So far as relevant (on Ms Copley's evidence), the policy seeks to maintain a portfolio of employment land and premises available within Ellesmere Port to meet a range of sizes and types of business needs to 2030. That is not a regeneration policy. Further, there is no conceivable conflict with it. The site and surrounding areas are occupied. If planning permission is granted for the appeal development, there will be no impact on the portfolio of employment land and premises (and Ms Copley does not argue the contrary).

446. The site is currently allocated as BLP policy EMP 1. However, that allocation will be superseded by the adoption of the ELP. The SRF is (again) referred to in the policy justification to the (CD5.4 paragraph 3.4) where it states that the policies in this section support the regeneration initiatives in the SRF. However, none of the policies in the section make any reference to the development of site 8 (Waterfront). There is no policy support for the relevant part of the SRF (Mr Adamas re-examination). Indeed, Ms Copley conceded:

i) The site is not allocated in the ELP (A3);

ii) It is not allocated because the SRF is not being progressed;

iii) There is no site specific policy in the ELP which reflects the SRF.

447. The reasons for this are quite clearly set out by the landowner, Peel Holdings, in a representation to the LP examination Inspector (A6). In short, it was said the (then) recent success of the port operation at Ellesmere Port docks now means that it is no longer viable or possible for Peel to continue to propose the redevelopment of the docks for mixed use (the Ellesmere Quays scheme).

Instead, regeneration at the docks would be by continued improvement as a port facility as part of the Ocean Gateway.

448. Ms Copley accepted that since the SRF was published there had been no activity such as land assembly or relocation of existing businesses which would enable it to be implemented. The contention that a Compulsory Purchase Order could be promoted and confirmed to support a non-statutory SRF with no prospects of progress and no policy foundation is absurd.

449. Even if all the necessary elements could be put in place to develop the appeal site for housing in accordance with the SRF Mr Adams in re-examination estimated that it would take at least five years before development could commence. The reality is that the appeal development could take place for its 18 week duration at any point within that five year window and have no possible effect on any regeneration.

450. It should also be noted that not a single regeneration partner (the SRF being a partner document) has objected to the appeal proposal; this includes the landowner and the Council as a local planning authority.

451. There is therefore no credible impact to regeneration to weigh in the planning balance.

Landscape and visual impact

452. The landscape context for the appeal site is set out above[17 to 19], as is the planning history of the EP-1 well site development [38]. This forms the baseline against which the impacts of this proposal (so far as relevant to this Inquiry) fall to be considered. In that context, it becomes plain that claimed unacceptable landscape and visual impacts cannot be reasonably countenanced. Indeed, it is difficult to conceive of a more appropriate site in character, transport and noise terms, especially given that the well was drilled without complaint.

453. A landscape and visual appraisal was appended to the SOC (CD4.1 Appendix C). It concludes that no notable landscape or visual effects would result. This is due, most notably, to the industrialised nature of the context, the presence of similar structures as proposed and the very short duration of the impact.

454. This assessment has not been the subject of any reference (much less critique) from Ms Copley and FFEP&U. There is no contrary assessment. It is unanswerably correct. There is no conceivable conflict with policy. Indeed, there is no reference to landscape and visual impact in the FFEP&U Closing Submission.

Biodiversity

455. The sole issue in this respect is whether or not there is a requirement for an AA in the light of the *People over Wind/Sweetman* judgement[9] (A16). The appellant submits that (without prejudice to its primary case) an AA should be undertaken to avoid a meritless statutory challenge in the event of planning approval being given. A 'shadow' AA has been undertaken (APP/KBH/2, Appendix 1). It concludes that the proposed development will not have an

[9] *People over Wind & Sweetman v Coillte Teoranta* (C-323/17) [2018] Env LR 31

adverse impact on the integrity (etc) of the SPA/SSSI/RAMSAR site. Natural England (NE) agree (A7).

Sustainable location

456. Mr Watson provides a long list of site characteristics but, on examination, none suggest that the site is not sustainably located.

Conclusion

457. The appeal scheme complies with the development plan and material considerations (such as the Framework, Planning Practice Guidance and national energy policy) further support the grant of consent.

458. The appellant therefore submits that planning permission should be granted subject to conditions.

Stephenson[10] (R18) – Legal submissions (A19)

459. The appellant's submissions respond (in the normal course of allowing an appellant the final right of reply) to those made earlier by the Council and FFEP&U. Paragraphs 6 to 22 inclusive set out in summary form the findings of Dove J in respect of each of the four grounds. The fact that there was no challenge to national energy policy contained in either the 2015 WMS or the 2018 WMS is recorded as is the fact that, at the date of the response, no formal Order had been issued. The implications of the judgement for the determination of the appeal are set out in paragraphs 23 to 43 inclusive.

460. The judgement does not impact on the weight that should be afforded to the development plan in this case, nor does it affect the interpretation and application of LP policies ENV7 and STRAT1. There is therefore no material impact on the central part of the appellant's case contrary to the submissions on *Stephenson* of FFEP&U.

461. In the light of the judgement the appellant agrees with FFEP&U that weight cannot now be afforded to Framework paragraph 209(a) even though (at this stage) it had not been formally quashed (that was done later when the Order (PI5) was issued). However, substantial weight can still be afforded to Framework paragraphs 203, 204(a) and 205 to which the claim was not directed.

462. The development plan therefore remains consistent with national policy which continues to: (i) support the best use of mineral resources to meet identified energy needs in the national interest and (b) attach significant weight to the benefits of such mineral extraction.

463. In that context and in response to the submissions of FFEP&U (R19 paragraphs 20(c) and (d)):

i) The appellant's Closing at paragraph 138 remains valid. It acknowledges the requirement to plan positively to meet climate change issues (Framework paragraphs 148 and 149). The Judgment does not change this (R19, paragraph 20(c));

[10] *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)

ii) The appellant's Closing at paragraphs 38 and 39 refers to Framework 209(a). For the reasons given above, no weight should be afforded (now) to that aspect of the Framework;

iii) The appellant's Closing at paragraph 140 sought to apply the Framework as a whole, in a manner which rendered it internally consistent. Given that Framework 209(a) should be afforded no weight, that submission can no longer be made (R19 paragraph 20(c)). It is not however accepted that this materially impacts on the appellant's case as a whole, for the reasons set out in full in the Closing (R19 paragraph 21). The Framework must nonetheless be read as a whole, taking account of Framework paragraphs 203, 204, 205 and 148, which is the appellant's approach;

iv) The Judgment has held that government did not take into account relevant technical evidence in the adoption of Framework 209(a). The appellant does not, therefore, submit that government specifically balanced the benefits of exploration against the impact of the climate in the formulation and adoption of Framework 209(a). However, it remains the case that: (i) the Council and government strongly support the exploration for onshore gas (in LP policy ENV7 and the WMS respectively); and (ii) in granting consent for the Preston New Road exploration, the Secretary of State considered that the benefits of shale gas exploration outweighed the impacts on climate change. The appellant's Closing at paragraph 152 needs to be read in that light (R19 paragraph 20(d));

v) However, it remains the case that the Framework post-dates the Climate Change Act 2008, Paris Agreement (2016), the CCC Report and government's response (2016) as a matter of fact (R19 paragraph 20(f)). In that context, it remains correct (appellant Closing at paragraph 39) that: (i) it is essential that there is a supply of minerals to provide the energy the country needs (Framework paragraph 203); (ii) it is a fundamental principle that minerals can only be worked where they are found. Best use needs to be made of them (Framework paragraph 203); (iii) great weight should be given to the benefits of mineral extraction (Framework paragraph 205).

464. No reliance was placed on the 2015 WMS by the appellant in closing submissions. It is uncontroversial that such as the Paris Agreement, the CCC report and the government response all post-date the 2015 WMS but the judgement does not affect the weight to be attached to it. In any event, it has been updated by the 2018 WMS.

465. This was not the subject of the legal challenge and, contrary to the submissions of FFEP&U (R19 paragraphs 18 and 19), it must as a matter of law remain a material consideration with weight being for the decision maker.

466. Substantial weight should be afforded to the 2018 WMS:

i) It provides that the UK must have safe, secure and affordable supplies of energy, with carbon emission levels that are consistent with existing carbon budgets (defined in the Climate Change Act 2008 and international obligations). Such national energy policy imperatives remain unchanged by the judgment, which does not address them at all;

ii) In the light of the Climate Change Act 2008 and the Paris Agreement (2016), government considers that gas has a key part to play in meeting such objectives (currently and in the future). That is because (as the WMS recognises): (i) gas still makes up around a third of our current energy usage; and (ii) in every scenario proposed by the CCC - setting out how the UK could meet its legally binding 2050 emissions reduction targets – includes demand for natural gas. Such are matters of judgment based on objective analysis. They are addressed in the evidence of Mr Adams and the appellant's Closing. They are not addressed in the judgment at all and remain unchanged by it;

iii) Government also considers that further development of onshore gas resources has the potential to deliver substantial economic benefits to the UK economy. But to achieve such benefits (strongly supported in all iterations of the Framework), government recognises that they must work with responsible companies prepared to invest in exploration, to test the size and value of the potential reserves and to ensure that our planning and regulatory systems work appropriately. Again: such matters are not addressed in the judgment at all and remain unchanged by it;

iv) Government considers that this country has '*world class regulation*' to ensure that shale gas exploration can happen '*safely*'. That is not addressed in the judgment and remains unchanged by it;

v) Government expects mineral planning authorities to give great weight to the benefits of mineral extraction. That remains part of the Framework which was not the subject of challenge. It remains national energy policy.

467. The 2018 WMS relies on longstanding national energy policy imperatives such as security of supply, affordability and economic growth. It expressly recognises our national and international commitments in respect of climate change. However, it also recognises the reality of the current energy market, which is heavily reliant on gas both now and in the foreseeable future (applying current CCC scenarios). Such material considerations are not (even arguably) reduced in weight due to this judgment.

468. The CCC may revise its position in the light of more recent scientific data. However, as explained in detail in Closing (A21 paragraph 116 *et seq*), there is a clear statutory framework for the CCC to consider and report upon a wide range of factors (A21 paragraph 143). The outcome of this process is uncertain and cannot be anticipated by this Inquiry. Strong support for this approach is provided by the approach of the Inspector and Secretary of State at Preston New Road, summarised by Dove J (R18 paragraph 12).

469. In all the circumstances, therefore, the 2018 WMS is a material consideration of significant weight, which further supports this proposal's compliance with the development plan.

Net Zero: The UK's contribution to stopping global warming Committee on Climate Change (PI1) – Legal submissions (PI2)

470. The appellant's submissions are set out in section 2 of PI2. Paragraphs 2.1 to 2.3 inclusive set out the context in which the CCC net zero report was requested while paragraph 2.4 sets out what the report has been prepared to achieve. This

is to make recommendations for a new emissions target for the UK, having regard to the latest scientific evidence on climate change. The CCC Report seeks to advise the UK government to put policies in place, as well as legislation where appropriate, in order to reduce GHG emissions in the UK as a contribution to global climate change.

471. The net zero report:

i) Demonstrates that there remains a continuing need for onshore gas extraction;

ii) Does not direct decision makers to apply different statutory or planning principles and/or tests to those stipulated within the CCC's March 2016 report (CD8.1); and

iii) Recognises that the offshoring industry, such as oil and gas production and exploration, is not constructive for domestic energy production, the UK economy or global emissions (i.e. such as the importation of LNG).

472. The ultimate recommendation of the report is for a new target for the UK of net-zero GHG emissions by 2050.

473. Reviewing what the net zero report says about fuel sources to achieve this target and the continuing role to be played by gas, the UK therefore has a choice. It can produce the resources needed to meet the energy demand of a net-zero economy domestically, or it can choose to import these resources, with consequent concerns over security of supply.

474. It should therefore be a priority for the UK to meet the UK's recognised natural gas demand from the sources with the lowest pre-combustion emission footprint. Drawing on the findings in the 2016 CCC report (CD8.1) this would be UK shale which would offer at least a 50% pre-combustion emission saving over LNG and long distance pipeline and reduce the carbon footprint of the fuels the UK consumes.

475. Under international carbon accounting rules, carbon emissions are accounted within the territory they originate. This system effectively means that any territorial increases in domestic pre-combustion emissions (e.g. by reducing the UK's import dependency), the UK's emissions would be marginally increased. By comparison, the UK could perversely reduce its emissions by importing all of its oil and gas despite the same level of consumption.

476. The CCC Report acknowledged that this system creates an incentive to import goods into the UK, including oil and gas. However, the CCC states very clearly as follows (PI1 first bullet point on page 106):

> *The design of the policy framework to reduce UK industry emissions must ensure it does not drive industry overseas, which would not help to reduce global emissions, and be damaging to the UK economy*.

477. In addition to the details set out above in relation to pre-combustion emission gas sources, it is clear that the CCC recognises that an offshoring of oil and gas production is not constructive for domestic energy production. It is also clear that the only conclusion to be drawn in this regard is that it should be a priority for the UK to source that natural gas from the sources with the lowest pre-combustion emission footprint. Otherwise, the CCC's recommendation to not

offshore the UK's emissions cannot be met. This, of necessity, requires the consent of exploration development as a necessary precursor to (i) understanding the nature and size of any resource and (ii) production.

478. The net zero report raises implications for cumulative import dependency. Oil and gas are critical to the UK, with 75% of UK final energy demand sourced from oil and gas, and natural gas providing 87.5% of the annual heat and power demand of a typical home.

479. Under one of the National Grid's Climate Change Act compliant scenarios (APP/DA/3, Appendix 22), there is a forecast gas demand of 60bcm in 2050 which is similar to the net zero 2050 demand forecast by the CCC. Under the National Grid community renewables scenario, UK gas demand was forecast to be 30bcm by 2050. Under these two scenarios, UK natural gas cumulative import dependency from 2020 - 2050 ranges from 1150bcm to 1450bcm. The appellant understands that UKOOG (the industry trade association) expects the UK's cumulative gas import dependency from 2020-2050 stipulated in the CCC Report to fall within this range (1150-1450bcm i.e. 12,650TWh to 15,950TWh).

480. Assuming the UK meets its strict carbon net-zero target out to 2050, without increased domestic natural gas exploration and production – the UK would find itself locked into reliance on more carbon intensive imports, such as LNG and long-distance pipeline. This would represent an offshoring of the UK's environmental responsibility and economic opportunity, with consequent risks for security of supply.

481. Section 3 refers to the 2016 CCC report (CD8.1) and notes that the net zero report does not identify any amendment to or revocation of the CCC's comments in the 2016 report advising in respect of the need for exploration, which states:

> *In order to start to ascertain the UK reserve, a period of exploration would be required to find the most productive areas in the shale formation. … If flow-rate levels consistent with commercial exploitation can be established over a number of exploration wells the industry might then move on to development well drilling and the production phase of operations.*

482. In conclusion, while the CCC net zero report provides a recommendation to the UK government in light of the most up-to-date scientific evidence, the legislative and policy position in respect of the determination of the appeal remains as at the time the Inquiry was heard. As such, the appellant's evidence to the Inquiry, as formally tested by way of cross examination, remains correct in respect of the approach to be taken to consideration of the proposal against the relevant national and local policy frameworks.

Stephenson: Sealed Order and Judge's approved note (PI5) – Legal submissions (PI6)

483. The practical effect of the case has already been addressed in the legal submissions above [459 to 469]. No further submissions were made.

Written Statement by Lord Bourne of Aberystwyth (HLWS1549) (PI9) – Legal submissions (PI10)

484. The appellant considers that the 2019 WMS (PI9) is clear and straightforward and requires little in the way of explanation. The following points are made, if only to set out the true context in which the 2019 WMS was made.

485. It is correct that Framework paragraph 204(a) relates to plan making and requires authorities to plan for mineral extraction of local and national importance (which expressly includes oil and gas (including conventional and unconventional hydrocarbons)). It is in this context that LP policy ENV7 was adopted. This policy provides clear 'in principle' support for the proposed development. This was agreed by the Council. There is no dispute that LP policy ENV7 is up-to-date and consistent with the Framework. The appellant is quite clear that it has demonstrated compliance with this policy such that if the development were determined in accordance with the development plan, permission should be granted. This has been the straightforward and primary position of the appellant throughout the appeal and has not changed as a result of either the *Stephenson* case or the 2019 WMS. It is, in fact, the Council and FFEP&U that must cast around for other material considerations to overcome what is a straightforward conclusion.

486. In this regard, the 2019 WMS could not be more clear. The 2015 and 2018 WMS remain material considerations, which further support LP policy ENV7 and the development. Consistent with that, the Government '*remain committed to the safe and sustainable exploration and development of our onshore shale gas resources*' (emphasis added). The successive 2015, 2018 and 2019 WMS are material considerations of significant weight which further support the development.

487. Framework paragraph 205 requires great weight to be given to the benefits of minerals extraction (which includes both exploration and production). It is quite absurd to suggest that this requires a decision maker to close their mind to the purpose behind exploration. This would be to ignore the obvious fact that there cannot be production without exploration. Indeed, government has been explicit in numerous publications that exploration is required in order to understand the viability and size of the resource. Exploration is always a logical pre-cursor to production. Decisions of the Secretary of State have understood this. If the alleged lack of support for exploration was correct, then production would be impossible and the policy would be self-defeating. The policy does not require evidence that benefits arise directly and immediately from a particular scheme, rather it is the benefits of mineral extraction (including to the economy) which must be recognised. It is entirely proper for the decision maker to recognise that the benefit of exploration is that it allows production to follow, with all the consequent benefits that then flow. There is nothing to support the submission that such factors must or even should be ignored.

488. With regard to the purpose of Framework paragraph 209(b), the appellant would firstly note the full text, which requires authorities to '*distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production)*' (emphasis added). That is precisely what this Council has done in LP policy ENV7. This is hardly support for ignoring the wider benefits of production. Rather, it recognises the significantly different stages of the process from a land use planning perspective, requiring appropriate policy for each stage. That is consistent with the approach in the CCC Report 2016 (CD8.1).

489. The 2019 WMS represents a clear and up-to-date position of government policy and expressly states that the 2015 and 2018 WMS remain extant as material considerations. They were simply not the subject of challenge. The fact

that the court found that '*obviously material*' submissions were not taken into account as part of a consultation exercise for the revised Framework does not speak to the veracity or quality of such material. As the appellant pointed out in evidence, there are a range of factors required to be balanced in the formulation of energy policy which certainly does not need to be recast every time there is a suggestion of some new scientific information. It would seem that (again) FFEP&U asks that less weight be attached to extant government policy, which expresses itself to be a material consideration of significant weight, and to second guess what policy makers may do in the future. This submission is, in the view of the appellant, completely untenable, for the reasons previously discussed.

490. Fundamentally however, the appellant remains of the view that the Framework must be read to be internally consistent, where possible. If it were the case that the inevitable GHG emissions from exploration should weigh so heavily against such development that it should not proceed, then that would defeat the clearly stated objective of government energy policy.

491. Thus the appellant reaffirms its position that not only does the proposal comply with the expressly supportive development plan policy, but also government policy. The Council and FFEP&U have not identified any other material considerations that indicate that permission should be withheld.

The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056 (PI13) – Legal submissions (PI14)

492. The parties have already commented on the net zero report (PI11) and the appellant has made clear that the proposal to reach a net zero target by 2050 is entirely consistent with domestic oil and gas production for the reasons set out above [470 to 482]. The Council and FFEP&U continuously mischaracterise the net zero report as being inconsistent with this form of development, which is patently wrong. As such the appellant considers that the Government's statement and the draft order (subsequently confirmed) do not in any way affect the conclusion that the proposed development is in accordance with the development plan and national policy and that there are no other material considerations that suggest that permission should be withheld.

Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (PI18) & Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy (PI19): Legal submissions (PI20)

The Local Plan Part Two (PI18)

493. In short, the appellant submits that all of the material main modifications to the ELP prior to adoption were anticipated in the evidence considered before the Inquiry was closed. The modifications only go to strengthen the development plan support for the appeal proposal. All that has changed is the weight that should be given to those policies, increasing from 'significant' to 'full'.

The Written Statement (PI19)

494. After summarising the principal points set out in the Written Statement the appellant concludes that it only goes to support the case made by recognising the importance and value of securing a domestic supply of natural gas. The appeal

proposal does not involve the use of hydraulic fracturing and as such the effective moratorium placed on this type of exploration technique, which may be removed if evidence is provided to address current concerns, has no relevance to the decision making process for this appeal.

The Cases made by the Interested Persons

495. In total, some 30 people spoke during the first Friday morning of the Inquiry which was set aside for interested persons to make their oral contributions. I am indebted to Joanne Spark of FFEP&U for all the work she did to organise the speakers who, for the most part, read from prepared statements and, again for the most part, avoided duplication of points already made.

496. The statements, which are referenced where available at the end of the summary, are listed in Annex A and can be read in full. Below therefore is a summary of the main points made in the order in which they were given. A fuller summary is given for those who did not have a prepared statement or who departed significantly from the one listed in Annex A. In all cases the full statement has been taken into account in forming my conclusions.

497. ***Chris Matheson MP*** represents the City of Chester. On the basis of his experience the appellant company does not conduct itself in a way that can be considered trustworthy. This is relevant to the decision on this appeal because it affects the view to be taken about any promises that might be made with regard to mitigation of health, safety and economic risks to local residents. He made three points.

498. First, to overrule the locally taken decision would be an affront to democracy itself.

499. Second, the scientific consensus set out in the IPCC October 2018 report is that there are 12 years to keep global warming to a maximum of 1.5ºC. The continued burning of fossil fuels is not consistent with this objective and approving this planning application will not contribute to meeting these targets. This links directly to an impact on climate change in the Framework.

500. Third, GHG emissions and a negative impact on local air quality will impact on public health. The proposal will also affect plans to bring forward development of the Ellesmere Port area and undoubtedly cause economic harm and put nearby residents and businesses at risk. (IP1)

501. ***Justin Madders MP*** represents Ellesmere Port and Neston and made three points. First was a similar local democracy point to that of Mr Matheson. Second was a concern about the impact on the new housing that was being built a few hundred metres from the appeal site. He feared that the construction of this needed housing may come to a halt if the appeal development went ahead. Finally, and most importantly, he was concerned about the impact that the development would have on climate change given the CO_2 emissions that would be released to atmosphere. The CCC had already found that unconventional gas exploitation could be inconsistent with climate change objectives.

502. ***Mike Amesbury MP*** represents Weaver Vale. He made the same local democracy point as his parliamentary colleagues while recognising that it may not be a material consideration for the Inquiry. He also endorsed the comments of Mr Madders regarding the potential impact on local housing development. He

raised similar concerns to Mr Matheson regarding the appellant's failure to offer sufficient guarantees regarding the safety of the processes that would be employed or even enough information about what those processes would actually entail.

503. His principal points related to the effect that there would continue to be on the natural environment as a result of climate change, the desire of his constituents to see the area develop through the provision of clean and innovative low carbon technology and the air quality of the area. In all three areas shale gas exploration does not represent the type of future that those he represents hope for. (IP2)

504. ***Police and Crime Commissioner for Cheshire*** David Keane was unable to attend due to a long-standing prior commitment and his statement was read on his behalf by Matthew Walton. His main concern related to the potential impact on public resources, particularly police resources, should the development proceed. He referred to the costs and police numbers required in connection with the Upton operation and the effect that had on other police priorities both in Cheshire and neighbouring areas even though the protest was predominantly peaceful and described as good natured. His concern was whether Cheshire Police could substantially resource a similar type of situation given the pressures already placed on daily policing demand. (IP3)

505. ***Councillor Matt Bryan*** represents the Upton by Chester ward. He referred to the fact that the EP-1 well was drilled 1000m deeper than permitted and a statement about this by the Council's Environment cabinet Member. He had been informed by the head of planning that it would not be expedient to take action. While this may not be a material consideration it goes some way to show why the local community does not trust the appellant. This in turn leads to stress and anxiety which is a material consideration, especially as the appellant must deal with such technical issues as methane emissions.

506. He also stated that the shale gas industry was simply not compatible with our Paris Agreement climate change obligations or the warning from the IPCC [see 499 above]. (IP4)

507. ***Councillor Pat Merrick*** represents Rossmore ward in which the appeal site lies. Cllr Merrick was raised in Ellesmere Port and considers that it was time that the town stopped being a convenient dumping ground for polluting industry. The Stanlow oil refinery had raised fears at the time that the area would suffer from pollution and the local Primary Healthcare Trust is aware that breathing problems such as asthma are more prevalent than elsewhere. While not opposed to the exploitation of shale gas 'in principle' it should be in the USA and Australia rather than in the UK where space is so limited.

508. ***Councillor Ben Powell*** represents Blacon ward. His concern is for the detrimental effect that the development would have on future business investment in the area. He considers that the need for the appellant, HSE and the Manchester Ship Canal Company to reach an agreement in connection with drilling activities and simultaneous handling of explosives is evidence of effectively declaring an exclusion zone for growth in the docks area of Ellesmere Port. This would put at risk the creation of many more jobs than would be provided by the development. (IP5)

509. ***Councillor Jill Holbrook*** spoke as a local resident, not as an elected representative. She made similar points to those of others regarding local democracy and the impact that there would be on families in Ellesmere Port. She emphasised that public opinion was a material consideration.

510. ***Barbara Gegg*** argued that the appeal proposal could adversely affect the health of those already in an area of multiple deprivation and existing ill health. Heavy industry already affects the area adversely through light pollution and poor air quality to which daytime black smoke contributes. The appeal proposal will only make this situation worse for people in an already polluted area. (IP6)

511. ***Felicity Dowling*** raised the prospect of ground instability being caused by the drilling activities as had been experienced at Preston New Road. This had potential implications for both the Ellesmere Canal, which would be vulnerable to tremor, and to a pipeline serving airports in the region. She made similar points to others regarding the effects that there would be on health, particularly that of children, who had seen instances of asthma increase considerably over the years. (IP7)

512. ***Anthony Walsh*** is a retried headteacher resident in Ellesmere Port for 40 years. His main objection to the appeal proposal is that it is incompatible with the need to reduce our dependence on fossil fuels in order to address the consequences of runaway climate change. Additional points are the effect that the development would have on regeneration plans for the town and the proximity to the new residential developments on the sites of former employment sites and at the National Waterways museum. A further concern is the effects on health and mobility of residents arising from the increase in lorry and tanker movements. Health effects on the young from vehicle pollutants are a particular concern. Finally, there seems to be ambiguity about the type of acid to be used to frack the gas and there is also the risk of explosive events due to hydrogen sulphide. Each poses a risk to local residents. (IP8)

513. ***Chris Hesketh*** is a spokesperson for Frack Free Dudleston and gave evidence about events leading to a similar planning application by the appellant company in this appeal being withdrawn before determination of that appeal. (IP9)

514. ***Helen Rimmer*** is the North West Campaigner for Friends of the Earth. She made similar points to others about the air quality impacts of vehicle movements, the effect that there would be on the regeneration of the area, the incompatibility of high carbon fossil fuel development with climate change targets and the lack of transparency in the planning application documents about the way that the gas in the rock will be flowed. (IP10)

515. ***Peter Benson*** is the Secretary of the Chester and District Friends of the Earth and made the case that the time for action on climate change is now and that decision makers would be judged harshly in less than 12 years' time if rules and regulations were simply quoted and excuses made for why nothing else could be done. (IP11)

516. ***James Cameron*** is a resident of Chester with 50 years' experience as an architect working in environmental design and urban renewal. He acknowledges that his concerns regarding noise emissions can be controlled by conditions. While he makes similar points to others about the effect on the regeneration of the area, his case is that the appellant is disingenuous to claim that it is only a

short-term development. It has already been there for nine years and, if the appeal proposal is approved, could be re-suspended or brought to production under the original planning permission for another 25 years. (IP12)

517. ***Dr John Tacon*** spoke on behalf of Chester World Development Forum and is a former employee of the EA North West Region, retiring in November 2010. He made five points. Point one repeats the climate change concerns raised by many others. Point two expresses views about fracking and distrust of government policy which are not material to this appeal. Point three concerns the way the EA regulates processes controlled by an Environmental Permit. His evidence is that, in essence, it relies on self-monitoring through adoption of an agreed process management system. A breach of a permit condition, such as an uncontrolled release of gas, would have to be reported to the EA within a specified period. Failure to report the breach rather than the release itself would be grounds for sanction by the EA. This enables the EA's small number of inspectors to prioritise high risk activities. Actual inspections on sites are rare and control relies on generally annual submission of data from the process management system. Point four gives a view about staff numbers at the EA in the period after he had retired. Point five explains the permanent risk to the aquifer that could be caused by fracking anywhere in the UK with its fractured geology. (IP13)

518. ***Paul Bowers*** is a member of Cheshire West and Chester Green party. He raised similar points to others about the need to avoid catastrophic levels of climate change, the proximity of the proposed development to housing, the significantly poorer levels of health experienced by the local population and the various damaging effects of emissions from the development and associated traffic to which poorer people are more susceptible and the damaging physical and mental health effects of continual lighting, noise and dust from an additional source of heavy industry. His view is that the proposed development is simply too great a risk to establish so close to communities already sensitized to the adverse cumulative effects of heavy industry and environmental contamination. (IP14)

519. ***Phil Coombe*** is a founder member of FFEP&U. He spoke about the surveys that were carried out on behalf of FFEP&U of residents in the affected local communities, businesses within a 500m radius of the appeal site and those living in the new housing on the other side of the M53. In short, the surveys found that very few people had been made aware of the proposed development. He also referred to what he described as the poorly publicised and poorly attended event held by the appellant in July 2017. His conclusion was that the appellant has been totally disingenuous and disrespectful in failing to engage and inform the local community and businesses of Ellesmere Port. (IP15)

520. ***Tim Budd*** has lived in Ellesmere Port for 24 years, about half a mile from the appeal site. He expressed the same view as others that the area had simply had enough industry. People of the town work in the industries and therefore know about the mistakes that have been made and the corners that have been cut. While commitments can be made, no-one can really predict what the health effects will be or how lives will be affected. This increases stress and anxiety.

521. ***Jackie Mayers*** has lived in Ellesmere Port for about six years in a new-build home. It was only after moving in that she became aware of the extent of the pollution in the area. Some days the smells are horrendous and not long after

black liquid spots would be found on the car, windows and children's climbing frame and garden furniture. This comes from Stanlow when the wind is in a certain direction. She was told it was nothing to worry about and received £50 compensation and had her car cleaned. She also referred to the recent fire at Stanlow, which from a video she had seen was terrifying for the employees, chemical weapons being incinerated at the Veolia plant and nuclear submarine dismantling at Capenhurst. (IP16)

522. ***Linda Shuttleworth*** pointed out that there were no local residents speaking in favour of the development. Instead, there has been a huge response from the local community against the proposal which will cause pollution, disruption and contributes to potentially catastrophic climate warming and climate instability. (IP17)

523. ***Drew Bellis*** lives in Ince where the appellant has also drilled a well. He referred to the boiling frog fable likening the frog to humanity and the boiling water to climate change. In summary, he argued that burning fossil fuels is archaic and that if something had to be burnt for fuel, it should be hydrogen. He referred to plans to build a hydrogen production facility in Cheshire. (IP18)

524. ***Pam Bellis*** is of the view that the appellant would not be devoting the resources to this application and appeal process purely for exploration and therefore has the clear intention to apply for shale gas production in future. That is the basis on which she objects to the appeal proposal. The prime reason for that objection is that at this crucial time for climate change we should no longer be seeking to extract fossil fuels. Similar points to those of others about the need to uphold local democracy were made. (IP19)

525. ***Alan Scott*** raised very similar points on the proximity of the appeal site to housing, schools and the town centre and the serious medical problems caused by shale gas exploration to those made by others. He too expressed the view that allowing the appeal would cause stress, fear and anxiety throughout the community. (IP20)

526. ***Fiona Jackson*** has lived in the Ellesmere Port area for over 30 years and is now resident in Ince where the appellant has also drilled a well; a development about which she was completely unaware. She attended a consultation event arranged by the appellant but, being dissatisfied with the answers given, undertook her own research. On the basis of that she discovered that the EP-1 well was drilled 1000m deeper than permitted and that a connector pipe to a storage tank at the site had bolts missing and was held in place by gaffer tape (source BBC report in 2014). This eroded her faith in this industry. She also expressed concerns about the health impacts of gas drilling on surrounding local communities and noted that the area has the highest rate of asthma in the UK and is in the top eight cancer hot spots. She expressed anxiety about the constant incremental industrialisation of the countryside around Ince and stated that Ellesmere Port has become a dumping ground for the petrochemical industry.

527. She also read out a short statement from her 11 year-old daughter expressing her fears for the future of the planet, the health of her friends with asthma and the world that she and her children will be living in. (IP21)

528. ***Catherine Green*** referred to the need for action on climate change and the fact that planning law was not keeping up with the imperatives for action now.

529. ***Stephen Savory*** is a retired architect, resident of Chester and voluntary Director of Chester Community Energy Limited which aims to develop and facilitate renewable energy schemes in Chester and surrounds. He argued that in the context of the need to address climate change an increase in emissions, even at testing and exploration, becomes part of the wider problem. Alternatives are available and should be pursued in accordance with the development plan. (IP22)

530. ***Fiona Leslie*** still has family living in Ellesmere Port. She referred to a meeting she attended at Capenhurst in 2005. In a presentation about cancer and leukaemia hot spots associated with nuclear plants it was said that such a direct connection was not demonstrable at Capenhurst given the many other sources of pollutants in the Ellesmere Port area (such as the petro-chemical industries). It was not possible to say that the nuclear activity at Capenhurst was the primary cause of the many cancers in the Ellesmere Port area. Her point was that while she exercised her choice when returning to the area not to live again in Ellesmere Port, many do not have that choice and are unable to move away. It is not therefore appropriate to start yet another dirty industrial activity such as that proposed. (IP23)

531. ***Gazer Frackman*** made a series of points that related to his experience of protesting against the Preston New Road development and the need for monitoring of air quality and rapid responses by the regulators.

532. ***Thomasine Buckeridge*** gave a detailed account of her long-standing personal health circumstances which, when they began, her GP had confirmed were linked to the climate and environment of the area (Ellesmere Port) to which she had moved less than a year previously. She also gave evidence about the many issues at Stanlow including the recent fire and explosion referred to by several others. In common with several others, she considers all these factors contribute to the anxiety that local people feel about the introduction of the appeal proposal into this environment. Her view is that those who can afford to leave the area will do so which, in itself, would have an effect on employment and the economy. (IP24)

Written Representations

533. The Planning Inspectorate received 16 representations before the Inquiry opened and a further four before it closed (I1 to I4). Some people sent more than one representation. In the main, they drew attention to what the authors see as the adverse effects of the shale gas industry on climate change, air quality and thus the health of the surrounding population, the noise environment and water quality. Further points were made about what amounts to a democratic deficit since the locally elected Council has already refused the application which should therefore be the end of the matter.

534. Specific reference was made several times to a recent fire at 'Essar' noting that very little information about it had been made public. Concern was raised about the sense of considering fracking close to an oil refinery, a fertiliser factory and an incinerator.

535. Further specific queries were raised about the validity of the planning application at appeal and the implementation of the 2010 planning permission given the depth of the EP-1 well actually drilled was nearly 2000m rather than the c900m permitted [38].

536. A GP working in the area for over 29 years referred to serious public health issues arising from the release in 2000 of a highly toxic and carcinogenic substance that was discovered to be leaching through the porous sandstone strata with the source being an ICI legacy site. Over 1000 patients required screening and monitoring for signs of respiratory and cancer, principally renal, effects. This added to the extraordinarily high pre-existing cancer morbidity and mortality rates in the area. The point made was that however well regulated, the appeal proposal could lead to similar releases through faults in the strata in an area already heavily industrialised where pollution abounds both in the ground and the air. Often the effects will only present later but will impact on the health of the local population (I1).

537. Another GP working in the same area for a similar length of time recorded her experience of increased respiratory illnesses and the high incidence locally of respiratory and cardiovascular disease. She noted that it is now '*widely accepted*' that poor air quality contributes to physical ill health and that the site at Ellesmere Port will provide a cocktail of emissions to vulnerable members of the population. She also referred to the significant effects on mental health arising from poor sleep and poor concentration arising from light and noise pollution. She raised the recent explosion at the oil refinery noting that this was a cause of concern and anxiety to local residents and asked how much worse that would be if there were unconventional gas extraction wells nearby (I2).

538. At planning application consultation stage the Council received some 1411 representations and a petition with 1044 signatures. These are summarised in the officer report to the Council's committee (CD.2.23) under the headings:

i) Procedural matters
ii) Ecological concerns
iii) Air quality and pollution concerns
iv) Noise impacts
v) Highway concerns
vi) Climate change and long-term effects
vii) Other matters

Conditions

539. The conditions that should be imposed if the Secretary of State allows the appeal and grants planning permission were discussed at a round table session towards the end of the Inquiry. In the main, the Council and the appellant were agreed as to the conditions that should be imposed. FFEP&U however were not. Amended wording was suggested for several and a large number of additional conditions were proposed. These and the appellant's comments upon them are set out in the document (R3) which formed the basis of the discussion. The conditions are discussed below by the number given in the document, and broadly in the order in which they appear therein, in the light of the tests set out in the Planning Practice Guidance. Where a condition is proposed to be included its number as it appears in Annex C is given in bold.

540. Before that however it has been a consistent feature of the FFEP&U case that the appellant should be transparent about the nature of the development for which planning permission is being sought and that this should be clearly reflected in the scheme description in the planning application. FFEP&U therefore put forward an alternative scheme description.

541. This is set out together with the appellant's response (A5). In short, the appellant does not accept FFEP&U's suggestion but would accept an amendment which would limit the formation that could be tested for hydrocarbons to the Pentre Chert.

542. There is a considerable body of case law on the way that planning permissions should be interpreted, especially the relationship between the scheme description and the conditions subsequently imposed. In my view therefore the correct way to address the concern of FFEP&U, which the appellant clearly appreciates, is through the imposition of an appropriately worded condition (proposed condition **3**) rather than an amendment to the scheme description.

543. There are a number of draft conditions which all parties agree are required and which meet all of the relevant tests. These are number 1 (**1)** (statutory commencement period); numbers 7 (**7**), 8 (**8**) and 11 (**9**) which control the heights of the shrouded ground flare, the enclosed ground flare and the workover rig respectively; number 12 (**10**) (prior approval of any lighting); number 13 (**11**) (routing of construction traffic as per the approved plan); and number 14 (**12**) (noise levels not to be exceeded). Draft condition 15 (**13**) is also agreed save for the FFEP&U suggested addition of making noise monitoring results available also to the community liaison group [see paragraph 546 below]. All are required to control the effect that the development would have on the visual amenity and living conditions of the occupiers and users of buildings in the vicinity of the appeal site. A further condition (proposed condition **2**) listing the approved plans would also be required in the interests of clarity and to enable any departure to be investigated as a potential breach of planning control. Included in the list are the revised plans discussed above for the reasons set out there [5].

544. Draft condition 2 (**3**) seeks to ensure that no stimulation of the formation takes place, which is the consistent position of the appellant [402 to 404]. Although the appellant argued that such a condition would duplicate the conditions of the Environmental Permit, I agree with FFEP&U that this could be varied at a later date. The appellant nevertheless confirmed that if the draft condition was deemed to be necessary, the proposed FFEP&U wording would be acceptable. While the appellant questioned the competence of the Council to monitor the condition, that does not mean it is unenforceable and it is for the Council, which raised no objection to the condition, to ensure compliance, taking advice as necessary.

545. It is normal practice in my experience for a community liaison group to be established in association with mineral working sites. Where, as here, there are likely to be many contentious issues to discuss and community confidence to build it is important that one is established with the terms of reference agreed and the group operational before the development takes place. Draft condition 3 is therefore required but the wording put forward by FFEP&U incorporates elements such as frequency of meetings that are more appropriate for the terms

of reference. Proposed condition **5** therefore follows the wording in another appeal decision (R5).

546. Having established a community liaison group through proposed condition **5**, FFEP&U then propose a number of other draft conditions requiring various matters to be reported to it at specified stages or time periods. These are draft conditions 4, 9, 10, and 18. There is an immediate problem with the wording of each since what is required is the provision of monitoring outcomes to a body (the community liaison group) with no powers of enforcement. While this could be remedied by requiring submission to the local planning authority, compliance would be secured simply by the provision of some data. There is no indication of how that data would be used in monitoring of the development by the Council. The draft conditions therefore serve no purpose that is related to the development and should not be imposed. Reporting of such data to the community liaison group could nevertheless be included within the terms of reference if all agreed this was appropriate.

547. There is a further difficulty with draft condition 10. Such a condition presupposes that such a GHG reduction plan is practicable in this instance. It is the appellant's case that it is not [353]. This is not therefore a reasonable condition since it goes to the heart of whether planning permission should be granted in any event.

548. Draft condition 5 as agreed by the appellant and the Council would ensure that the various stages of the development would not exceed the time periods set for them in the planning statement (CD2.4) that accompanied the planning application unless in the interests of specified factors. There is however no requirement for the appellant to notify the Council of any delays that do occur and thus of a potential breach of the condition. The additional wording suggested by FFEP&U is therefore not unreasonable although for the reasons set out above [546], it is not appropriate to require reporting to the community liaison group. Proposed condition **6** also includes a period (7 days) within which any delay must be reported.

549. Draft condition 6 does not meet the tests set out. Proposed condition **3** will ensure that stimulation of the formation does not take place which is the primary purpose of FFEP&U in suggesting this draft condition. It is therefore unnecessary and duplicates the requirements of the Environmental Permit. In requiring the use of a specific, named, commercial product which may not be available when development takes place it is also unreasonable.

550. Draft condition 16 does not seek the imposition of an odour monitoring scheme, just a scheme for responding to any complaints received. This is unnecessary since such mechanisms already exist within the environmental health regulation regime.

551. In contrast, proposed condition **14** requires the submission and approval prior to the commencement of the development of an air quality monitoring plan, the parameters of which are set out in the condition. This is required in the interests of the health and well-being of the local community and meets all the necessary tests.

552. While the sentiment that underlies draft condition 19 is understood, the wording is imprecise and the actions of the drivers of vehicles parked beyond the

site boundaries would not be under the control of the appellant. The draft condition is therefore unenforceable.

553. There is no evidence that either of draft conditions 20 and 21 are necessary since these are matters dealt with by the EA. In any event, the draft wording simply requires sampling to be taken at defined intervals (draft condition 20) and information to be provided and records to be kept (draft condition 21). There would be no outcome from a failure to comply or any action to be taken as a result of the information gathered. Neither therefore serves any purpose related to the development.

554. Draft condition 22 (**15**) requires the containers in which any solids extracted from the well are stored to be covered so as to prevent materials being carried outside the site by the wind or surface water flow. That is a reasonable condition given the proximity of the appeal site to other business and residential occupiers.

555. The reason provided by FFEP&U for the imposition of draft condition 23 demonstrates why it is unnecessary. The emergency plan sought must be in place before development commences in order to comply with the quoted regulations.

556. Draft condition 24 would require, in effect, the appellant to satisfy the Council that it had third party liability insurance in place. That is unreasonable in my view.

557. It is essential that the restoration of the site is secured and draft condition 25 (**16**) secures this. There is no reason why a restoration scheme different to that approved under the extant planning permission should be imposed and the condition does not seek to do so. However, the appeal proposal is an entirely different scheme and there is no justification in requiring the same 25 year restoration period. This is acknowledged by the appellant in the revised wording put forward and which is included in the proposed condition.

558. Draft condition 26 seeks the imposition of a 25 year aftercare plan to include monitoring of various aspects such as groundwater quality and fugitive methane emissions. As set out above [49] final restoration would be in accordance with the same scheme as already approved under the extant planning permission. It is a simple scheme requiring the removal of all fixtures and equipment (including below ground), the removal of all surface stabilising materials, the retention of all translocated grassland and new hedgerows and the spreading of the retained topsoil across the previously surfaced areas followed by seeding with grass. No aftercare scheme was previously specified. The Planning Practice Guidance[11] advises that aftercare conditions can only be imposed where the land is to be used for agriculture, forestry or amenity purposes following mineral development. Since that is not the case here (and indeed would run counter to the case that FFEP&U makes that the development proposal would frustrate the economic regeneration of the area including the appeal site) such a condition would not be appropriate.

559. Finally, draft condition 27 seeks the provision of a bond or other financial guarantee in the event of the applicant company ceasing to trade prior to the end

[11] Paragraph: 052 Reference ID: 27-052-20140306

of the restoration and aftercare period. There is no evidence that any of the exceptional circumstances set out in the Planning Practice Guidance[12] apply in this case.

560. Where I considered that the wording of some of the pre-commencement conditions should be amended these were sent to the appellant in accordance with the statute. The wording which is set out in Annex C was formally agreed in writing by email dated 6 March 2019 (A22).

Conclusions

561. Throughout my conclusions, numbers in [] are references to other paragraphs in my report. Those in () are to the parts of the documentary or oral evidence upon which my conclusion is based or the inference is drawn.

Preliminary matters

562. FFEP&U and the local community have raised two preliminary matters which are addressed in turn below. I believe that both matters were addressed during the Inquiry and that the clarity sought by the local community and FFEP&U was given as a result of the evidence produced and examined through the appeal and Inquiry process. However, the Secretary of State may conclude that the appeal and Inquiry process was required to provide that clarity and that this does raise the issue of transparency which the appellant tacitly acknowledges [401]. In turn, that goes, in my view, to one of the main considerations that I have identified [592 1(a)(i)].

The extant planning permission

563. The appeal proposal relies upon the existing EP-1 well which would be re-entered [39]. Representations were made that either the extant planning permission was invalid or that in carrying out the development permitted by it there had been a breach of planning control [535]. This point is maintained in the evidence of FFEP&U (EPP01 paragraphs 2.2 to 2.7) although not pursued in the closing submissions as noted by the appellant [399].

564. It is quite clear from the description of the proposal for which planning permission was granted in January 2010 that the sole focus of the development, including the drilling of the exploratory boreholes, was the appraisal and production of Coal Bed Methane [38].

565. The planning permission is subject to 13 conditions (CD1.1). However, none explicitly require the development to be carried out as described. Instead, condition 3 requires the development to be carried out in strict accordance with the documents there listed. These include the planning application, the planning statement and the approved drawings.

566. The key drawing in this context is 62096/006 (wrongly listed as 62098/006 in the planning permission certificate). The drawing title is 'Indicative Well Profile' and it shows a 'mother bore' and a 'lateral bore' with a total vertical depth (TVD) for the two of 900m.

[12] Paragraph: 048 Reference ID: 27-048-20140306

567. The submitted planning statement (CD1.5-5 paragraph 9.3.1) confirms that the vertical boreholes are for the appraisal stage and the lateral/near horizontal boreholes will be drilled for the extraction phase. It says that during the appraisal stage boreholes will be drilled to an estimated minimum depth of '…*circa 900m total vertical depth*.' (CD1.5-5 paragraph 9.3.6). However, elsewhere (CD1.5-5 paragraph 10.5) it says:

> *The proposed …location has been selected to be within an area where the coal has not previously been mined. By drilling into this fault-block the unmined coals should be encountered at depths in excess of 900m TVD where the gas contents are likely to be at commercial levels…'*

568. Taken at face value, that appears to confirm that it is only the coal measures that are to be appraised (indeed, that is said to be why the location was selected) while recognising that these may be encountered below a depth of 900m.

569. Prior to drilling the EP-1 well in 2014 the appellant held an exhibition on 10 July 2014 for the local community and produced an information brochure (CD1.8). Its title is 'Community Information Ellesmere Port Exploration Well'. It includes information about the company (IGas Energy Plc), what it does, where it operates and how sites are selected. Specific information about the proposed Ellesmere Port operations is set out. The primary objective of the Ellesmere Port well is said to be to identify the resource potential including Coal Bed Methane in the underlying rock formations. In cross examination Mr Foster for the appellant accepted that a reasonable person reading the information brochure would assume that the well was being drilled to explore for Coal Bed Methane [253].

570. It is however clear from earlier correspondence to the Council (in January 2014) (APP/DA/3 Appendix 40) that this was not the purpose for which the well would be drilled. Instead, one well only would be drilled with the aim of providing, in combination with data from the company's well at Ince Marsh in the adjoining Petroleum Exploration and Development Licence area, a better understanding of the geological structures of the area. It is explicitly stated that the Bowland shale would be penetrated where it exists.

571. The EP-1 well was drilled to a depth of nearly 2000m and therefore into the Bowland shale (CD2.23 paragraph 6.9 and EPP01 paragraph 2.6). The Council carried out a monitoring visit on 3 December 2014 and confirmed compliance with all relevant conditions of the planning permission, including condition 3 (APP/DA/3 Appendix 41).

572. The report to Members considering the appeal application addressed the concerns expressed by the local community that the depth of the well drilled was a breach of planning control. It concluded (CD2.23 paragraph 6.12):

> *It is therefore considered that the well as constructed to a depth of 1949m has been done so in accordance with approvals from the (named regulators). Although the previously approved planning application shows an indicative depth of 900m this was a minimum for the planning application with the final drill depth consented by the OGA. It is not part of the planning approval process to confirm and approve the final well depth.*

573. It is apparent that some of this detailed information only came to the attention of the local community as a result of the appeal planning application documents (EPP01 paragraph 2.6) and the Inquiry itself. As a result, FFEP&U accepted by the end of the Inquiry hearing sessions that there had not been a breach of

planning control [399]. It was also common ground that the Secretary of State has no power to review the Council's decision through an appeal made under s78 of the Act. That power is only available if the local planning authority has issued a notice under s172 and an appeal has been made under s174 (emphasis added).

574. Nevertheless, there appears to be a clear difference between the information made available to the public and the information given to the Council about the intent of the appellant in drilling the EP-1 well.

575. In my judgement, it is reasonable for the local community to conclude that the appellant has not been transparent about the purpose for which the EP-1 well was drilled.

The scheme description and the nature of the proposed development

576. On the first of these points, FFEP&U argue that the scheme description lacks clarity and is therefore confusing; an alternative wording is put forward [162 to 167]. As set out in the immediately preceding paragraphs [563 to 575] what is, on its face, a precise scheme description in the extant planning permission did not prevent the drilling of the EP-1 well pursuant to that permission being for an explicitly different purpose as advised to the Council but not the local community. For the reasons set out above [540 to 542] I therefore recommend that, in the event of planning permission being granted, this issue be dealt with by way of a suitably worded condition rather than a change to the scheme description.

577. On the second point, FFEP&U accepted that, by the end of the Inquiry hearing sessions, it was clear that the appeal proposal would not involve the fracturing of the formation through the use of an acid process [169].

578. However, it is again my judgement that this only became clear through the Inquiry process since the planning application documents are not, in my view, transparent on this point (emphasis added).

579. The appellant's position is clear [402 to 404] and best captured by the assertion that '*the process outlined above [44] does not amount to matrix acidisation, a fact expressly confirmed by the EA* (A2)' [404]. The difficulty with that approach however is that Document A2 was only produced during the Inquiry and following a request from the appellant to the EA for site-specific clarification.

580. Applications for planning permission and a variation to the then existing Environmental Permit were made in parallel. By the time the Council determined the appeal application the Permit variation had been approved and issued by the EA (CD2.12). There are however what the local community consider apparent inconsistencies between the two applications (EPP01 section 2 in particular).

581. In the planning statement (CD2.4) the only time 'acid' is mentioned is at paragraph 6.2.4 in the context of re-establishing the natural flow of the formation fluids, including any gas. It says that this will be achieved by applying a dilute acid, most commonly (but by implication or omission not exclusively) hydrochloric acid (HCl), at 15% concentration with water to the near wellbore formation through perforations. This is said to be standard oilfield practice but that practice is not explained.

582. However, the contemporaneous Permit variation document (CD1.9i) makes clear that it is only a proprietary HCl at a concentration of 5-8% that is permitted together with named inhibitors at 2-4%. There is therefore an apparent difference between the two applications which has been interpreted by the local community as a lack of transparency on the part of the appellant, especially concerning the type of acid to be used and its strength (EPP01).

583. Permit applications are subject to consultation. The points raised and the EA response to each are set out in the decision document (CD2.13). The consistent response of the EA to the various queries raised is that 'fracking' is not allowed as part of the permitted activities, the injection of fluids into the ground is limited to acid wash and acid squeeze activities which must conform to the *de-minimis* test set out in the EA Guidance.

584. That Guidance is included in the appellant's evidence (APP/JF/3 Appendix 4). Among other things it sets out the different types of acidisation and explains whether or not the EA considers each to be a well stimulation method. In short, the EA considers acid wash NOT to be a stimulation method, matrix acidisation TO be a form of stimulation and fracture acidisation/acid fracturing TO be a form of stimulation (emphasis added). It also explains that 'acid squeeze' is a term used in industry when the intention is for the acid not to travel far from the well into the geological formation. However, it does not say whether or not this is considered to be a form of stimulation. It simply notes that the processes at work are exactly the same as those in the other three and that it may result in the opening up of new fractures although these will be very small and close to the well.

585. It was common ground between FFEP&U and the appellant during the cross examination of Prof. Smythe that this Guidance was not particularly helpful and that it was better to characterise the processes as acid wash, matrix acidisation and acid fracturing; only the first would not involve stimulation of the target formation.

586. FFEP&U witnesses had difficulty accepting that the appeal proposal would not involve stimulation of the target formation. In oral evidence their view was that the volumes of acid to be used are inconsistent with a simple acid wash and are more appropriate to matrix acidisation and thus a stimulation of the formation with all the consequences that, in their view, could flow from that.

587. However, as set out above [579] during the Inquiry the EA produced a site-specific clarification of the Environmental Permit variation (A2). In summary, this confirms, first, that the permitted activities do not include hydraulic fracturing or other groundwater activities and, second, that the EA does not consider the proposed acid wash and squeeze described in the Waste Management Plan (CD1.9e section 7.1.3) to constitute matrix acidization. Under the terms of the Permit the operator is legally required to follow the Waste Management Plan.

588. The appellant's position is that the information required to understand all this was before the EA as part of the Permit variation application. Moreover, it did not need to be submitted in detail to the Council as part of the planning application since these were all matters that would be controlled by the EA. Nevertheless, the Council, and for that matter the local community, would have

been aware of these documents through the statutory process of consultation on any Permit application.

589. That may well be correct as a matter of fact. However, it means those wishing to fully understand the nature of the planning application and the potential impact upon them could not do so from the planning application alone; it required somewhat of a paper chase.

590. In my judgement, that amounts to a lack of transparency on the part of the appellant through the planning application process.

Summary

591. In summary, I consider there has been a lack of transparency on the part of the appellant about the drilling of the EP-1 well and the nature of the appeal proposal. In light of this, comments made by the elected representatives of the local community about the confidence that can be had in the way the appeal proposal would be taken forward [497] carry considerable weight in my view.

Main considerations

592. Having considered all the evidence and submissions I believe the main issues (as they were then) identified in my opening of the Inquiry should be reframed. I therefore consider the main considerations for the Secretary of State's determination of the appeal are:

(a) Whether the proposed development would have an unacceptable effect on:

(i) Human health and well-being;

(ii) Landscape, visual or residential amenity;

(iii) Noise, air, water, highways;

(iv) Biodiversity and the natural environment.

(b) Whether the proposal fails to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation;

(c) The effect the development would have on the regeneration of Ellesmere Port.

593. While the sole reason for the Council's refusal to grant planning permission for the appeal proposal identifies a conflict with LP policy STRAT1, it is LP policy ENV7 that sets out the development plan policy for the type of development proposed [23]. This is therefore the first main consideration with the four bullets of the policy that remain in contention [24] forming the sub-considerations. The alleged conflict with LP policy STRAT1 forms main consideration (b). The reason for recovery of the appeal is given above [16]. Consideration of the matters raised falls within the scope of main consideration (b).

<u>Main consideration (a): compliance with LP policy ENV7</u>

594. It is common ground between the Council and the appellant that LP policy ENV7 is a policy relevant for the determination of the appeal (CD9.1 paragraph 4.2). It is also common ground between those two parties that compliance with LP policy ENV7 is not a matter in dispute between them (CD1.9 paragraph 5.1) and that there would be no unacceptable impact on any of the criteria listed

(CD1.9 paragraph 6.1). In oral evidence, Mr Vallelly accepted that provided appropriate mitigation techniques are secured, planning permission should normally be granted for a development such as that proposed [320]. In closing submissions, the Council made no reference at all to LP policy ENV7.

595. The substantive case made against the proposal on grounds of conflict with LP policy ENV7 was made explicitly by FFEP&U and, by inference, by those in the local community. That conflict falls mainly to be considered against the criteria set out in the policy and listed above as sub considerations of this main consideration. Each is dealt with in turn although very little evidence was submitted in relation to criteria (ii), (iii) and (iv) and virtually no reference was made to these matters by FFEP&U in closing submissions; the case made relates almost solely to criterion (i).

Main consideration (a) (i): Whether the proposed development would have an unacceptable effect on human health and well-being

596. By way of introduction to this sub issue, within LP policy ENV7 'health' is among those matters within the second bullet upon which a proposed development must not have an unacceptable impact. The policy also requires development proposals to be in accordance with all other policies within the LP which, in this context, brings LP policy SOC5 into play. This policy addresses '*health and well-being*' of '*our residents*', the relevant part of it confirming that development giving rise to significant adverse impacts on health and quality of life will not be allowed [26].

597. The written justification for LP policy ENV7 does not explain what would constitute an unacceptable impact on health although drawing LP policy SOC5 into the assessment suggests it would be one that was '*significant adverse*'. That is also the interpretation of the appellant [411]. LP policy SOC5 does not explain whether those impacts are to be considered at the individual, community or some other level on the spectrum between the two. However, the use of the term '*our residents*' in the preamble and the focus of some of the criteria indicates that it is well below the whole community level. While '*adverse*' can be a matter of assessment against defined standards or levels, the term '*significant*' will, in the absence of any other definition, be a matter of judgement.

598. The supporting text to the LP policy SOC5 (CD5.1 paragraph 7.29) does recognise that health and well-being is closely linked to deprivation, with areas of significant deprivation having residents with poorer health and well-being. It continues to explain how the Council will work to improve matters; this will include help to deliver physical improvements to the neighbourhoods themselves.

599. In my judgement therefore, there are two aspects to this sub consideration; the effects that the emissions from the development would have on the health of the local community and the effect that the development would have on the well-being of the local community, including the effect on mental health.

600. Turning to the first of these, it should be noted that FFEP&U did not make a case that the proposed development would conflict with LP policies ENV7 and SOC5 on this matter [412]. Instead, FFEP&U placed the onus on the appellant to show compliance with these two policies, arguing that it could not [225].

601. In connection with the extraction of hydrocarbons, it is the role of the EA to protect water resources (including groundwater aquifers); to ensure appropriate treatment and disposal of mining waste and emissions to air and ensure suitable treatment and manage any naturally occurring radioactive materials [419]. However, that is the limit of its remit and the notification by the EA to the appellant that the Permit variation was complete and that the EA was '…*satisfied that you can continue to carry out your activities in accordance with the variation, without harm to the environment or human health*' (CD2.12) must be seen in that context.

602. Mainly at issue is whether that was a legitimate conclusion for the EA to draw in November 2017 when the Permit variation was issued and whether it remains a conclusion that the Secretary of State may rely upon in reviewing this sub consideration.

603. The Permit variation application was accompanied by a suit of technical documents [421], some of which were also submitted to the Council with the planning application.

604. Among the consultation responses received by the EA was one from the Council's Environmental Protection Team to the effect that what were shown on the map within the Environmental Risk Assessment as industrial areas 3 and 4 were, in fact, areas with planning permission for residential development as part of mixed-use schemes. The EA was advised that the relevant risk assessments should therefore be reappraised to see if the outcome changes.

605. The EA did not consider this necessary. Its response (CD2.13, page 9) appears to assume that the short-duration activity that was the subject of the Permit variation application would be completed before the consented residential development took place. That is also the clear understanding of the appellant [422]. In addition, the appellant notes that the EA endorsed a number of the elements underpinning the assessment [423].

606. In any event, the Council raised this issue with the appellant prior to the determination of the application. In response, a Technical Memorandum (CD2.21) was issued. Based on this further information the Council's Environmental Protection Officer advised that, regarding air quality, the development would be acceptable if subject to detailed regulatory controls under the Permit and the planning permission conditions (CD3.1d). It is clear however, that the short-duration of the proposed development, and the DST phase in particular, was highly material to this conclusion.

607. For the Inquiry the appellant prepared a supplementary air quality assessment of the flare emissions (APP/KEH/3 Appendix KEH1). The emission limit values used protect the health of the young, sick, old and vulnerable even in deprived areas such as those in the vicinity of the appeal site [416].

608. In addition to assessing the effects on the more recently identified residential receptors certain modifications were also made to the model. However, the essential conclusions remained the same [427]. In summary, these are that for the DST flare long-term concentrations of NO_2, benzene, 1,3 butadiene and butane and short-term concentrations of NO_2, benzene and butane would be negligible at all modelled human health receptors for all three modelled gas feed scenarios. For the DST flare the potential short-term process contribution of

CO[13] under all modelled scenarios would be well below the relevant statutory Air Quality Assessment Level (AQAL) for both residential and industrial receptors. Similar conclusions were reached at all modelled human health receptors in respect of the same short-and long-term concentrations of the named emissions for the EWT flare.

609. These conclusions were not seriously challenged by either the Council or FFEP&U [427]. Nevertheless, the appellant confirmed in oral evidence that this new modelling output had not been submitted to the EA for assessment. The strict position therefore is that the issued Permit variation was based on what the EA were aware was an incorrect identification of, and therefore assessment of the potential impacts upon, the nearest residential receptors. However, given the robust conclusions of the latest analysis prepared by the appellant, it seems highly unlikely to me that the EA would come to a significantly different conclusion with regard to the effect of the development on human health.

610. Emissions from vehicles associated with the development proposal were similarly considered and no evidential basis for an objection put forward [428].

611. I therefore consider that with regard to the first aspect of this sub consideration there would be no conflict with LP policies ENV7 and SOC5.

612. I turn now to the second aspect, namely, the effect that the development would have on the well-being of the local community, including the effect on mental health.

613. The appellant recognises and acknowledges the evidence that fear/anxiety is claimed by some to be caused by the proposed development [430] and that the social harm argued in the evidence of FFEP&U is a separate but related aspect of stress and anxiety over the appeal proposal [435].

614. Stress and anxiety are recognised as factors affecting an individual's mental health. It is therefore a consideration that falls within the scope of LP policies SOC5 and ENV7 as contended by FFEP&U [256].

615. This is a complex matter but can, I believe, be distilled to three questions. First, why has the appeal proposal given rise to stress in the local community, second, is it justified and, third, would there be an actual rather than a perceived health and well-being impact? I shall address these in turn dealing first with the question 'why has the appeal proposal given rise to stress in the local community?'.

616. Ellesmere Port is a heavily industrialised area. The most obvious industrial developments when passing through the area on the M53 are the Stanlow petrochemical complex (EPP01 paragraph 3.2) and the Vauxhall Motors plant. There is also a uranium enrichment facility at Capenhurst, built in the 1950s just to the south of the town where a facility had been developed recently to reprocess low-grade uranium waste and where there were also plans to build a nuclear reactor decommissioning facility (EPP01 paragraph 3.3). Evidence was also given by others about an energy-from-waste plant operated by Veolia

[13] In respect of health impact it is the carbon that is not fully converted to carbon dioxide and is therefore present in exhaust gases that is relevant (APP/KEH/3 Appendix KEH1, paragraph 4.1.2)

between Stanlow and the appeal site [521] which I saw on my unaccompanied tour of the area.

617. Some of those who gave either oral or written evidence spoke to experiences of cancers and respiratory health issues of family members who had lived and worked in the area and their experiences of the rise in cases of asthma in children over the course of their careers in local education [507, 511, 518, 526, 530]. A local GP also referred to the high local incidence of respiratory and cardiovascular disease [537] and (I2).

618. Another local GP gave written evidence of what he termed a local health disaster in 2000 in what, from his letter, would appear to be the Runcorn area in association with a legacy ICI site. In short, he stated that a highly toxic and carcinogenic solvent was found to be leaching through the sandstone strata. The clean-up operation required properties to be demolished as uninhabitable and over 1000 people to be screened and monitored for signs of respiratory problems and, mainly renal, cancer (I1).

619. There were also references to some specific incidents associated with the Stanlow complex, some of which are air quality issues. These included incidences of black smoke issuing from the complex during the daytime [510] and black liquid spots being deposited over the windows of houses and external property such as garden furniture, children's play equipment and cars. Evidence was given of compensation payments in the amount of £50 and cars being cleaned [521]. To my mind, these are very visible indications of what could be interpreted as an air quality issue. Furthermore, several references were made to an explosion and fire at the complex in the summer of 2018 [532]. While there was no evidence that any residents had to be evacuated from their homes, the '*thick black smoke*' could be seen for several miles (EPP01 Appendix 1).

620. Although no specific evidence was given on this point, it would be reasonable to assume that, given their nature, the highly specialised industries in the area referred to are strictly regulated by the appropriate body to the standards that are from time-to-time in force. Nevertheless, this evidence suggests that some in the community see a clear link between the nature of the industry in the area and the poor quality of the health of some residents. The local community is well aware of the poor quality health experienced generally and the level of deprivation recorded [245]. Views were expressed that the area had now had at least its fair share of such developments [507, 520, 526, 530]; in evidence FFEP&U referred to the concept of 'sacrifice zones' (EPP4 paragraph 4.10).

621. The proposed development is, in my judgement of the evidence, perceived as another development being introduced into the area which has already seen more than its fair share of health-affecting industry [eg. 518, 520, 526, 530] and one that has the potential to cause harm to the health and well-being of the local community. To answer my first question, it is why the prospect of the appeal proposal taking place has caused a level of stress and anxiety in the local community about the effect that it will have. That stress and anxiety is location specific.

622. Before turning to my second question, I acknowledge that genuinely held concerns have also been expressed about the effect of 'fracking' activity (even though FFEP&U accept that the proposal is not such a development [169]) on both the environment and climate change [240]. However, such concerns are

generalised in nature rather than specific to the appeal proposal in this location. I therefore believe that they should be afforded limited weight in the context of the two LP policies under consideration.

623. For the reasons given by the appellant [438 to 440] I also consider that no weight should be given to the matters referred to therein and identified by the research undertaken by FFEP&U. These are matters that could be prayed as stressors in connection with any development proposal that gave rise to objections locally. To afford them any weight in this case would be to indicate that they could be raised to frustrate any development.

624. Having set out why I consider that stress and anxiety has been caused in the local community by the appeal proposal, the second question posed is 'is that stress and anxiety justified?'. I believe that it is for several reasons.

625. First, if the development proceeds it will be regulated by the EA and others. However, as I have assumed in the absence of any evidence to the contrary [620], the industries that are perceived by the local community to have caused the health issues presented by residents in the area will also have been subject to regulation.

626. Moreover, oral and written evidence was given by a former employee of the EA who retired some eight years ago [517]. He explained how the EA regulates activities that are subject to an Environmental Permit. He explained that, in essence, it relied on self-monitoring and that it would be the failure to report an uncontrolled release of gas that would be grounds for sanction rather than the release itself. The inference to be drawn from this evidence is that the Permit does not of itself prevent the unauthorised release of substances, it simply imposes penalties if they occur, are identified and reported. Any health effects that might arise from an unauthorised release would therefore not necessarily be prevented. This evidence was not challenged by the appellant.

627. In my view it is, to an extent, corroborated by the Permit variation application documents. The accompanying Environmental Risk Assessment (CD19.g) is set out in tabular form with columns listing the hazard, pathway, receptor, risk management method, probability of exposure, consequences and overall risk.

628. In the table 'assessment of fugitive emissions risks' in most cases the risk is assessed as 'low if management techniques, planning and procedures are followed.' The consequences of what would be an unplanned exposure are generally identified as a nuisance or complaints although the non-odorous nature of volatile organic compounds is noted which raises the question of how such a fugitive release would be noticed.

629. The Secretary of State will be mindful that Framework paragraph 183 advises that planning decisions should assume that pollution control regimes will operate effectively. Nevertheless, on the basis of what they perceive to be their local experience when presumably those regimes have so operated, it is not unreasonable, in my view, for local people to be concerned about the practical application of those controls if and when the appeal development takes place.

630. Second, there is the risk of an escape of H_2S (EPP05 section 6) and the consequences that could flow from that (EPP01 paragraphs 6.4 and 6.5). The appellant addresses this comprehensively [408 and 409]. However, read fairly,

this is an acknowledgement that a risk does exist which must (and would be) managed.

631. This is an issue that will be addressed by the appropriate regulators at the appropriate time [555]. The case put by FFEP&U [178] must be seen in that context. I therefore give very little weight to the concern expressed by FFEP&U as a matter in its own right. However, as the recent event at Stanlow demonstrated, accidents and unexpected (rather than unforeseen) incidents do happen which the appellant accepted [176]. While the consequences can be planned for as far as practicable, the evidence of local people is that they are nevertheless deeply concerning when they do. In my view, concern that, however unlikely, such an event may occur at the appeal site is not irrational and adds to the stress and anxiety that is apparent from the evidence.

632. Finally, there is the issue of transparency that I have addressed under 'preliminary matters' above and which FFEP&U characterised as the appellant's high-handed approach [251]. Put simply, the local community does not trust the appellant to do what it says. In my view and for the reasons set out [562 to 591] that is not an irrational or unreasonable conclusion to draw. Equally it is not irrational or unreasonable to be concerned that the development may not proceed as the appellant says it will. That concern manifests itself as stress and anxiety in some individuals.

633. Turning finally to the third question, 'would there be an actual rather than a perceived health and well-being impact?', it is common ground between the appellant [430] and FFEP&U [237] that, either way, this is a material consideration in the determination of this appeal. However, for there to be a policy conflict it must, in my understanding, amount to an actual harm [596].

634. My understanding of LP policy SOC5 is that a significant adverse impact on some residents is sufficient to cause a conflict with the policy [597]. I acknowledge that this was not a matter expressly addressed by the advocates and that the interpretation of policy may ultimately be a matter for the courts. Nevertheless, that is the interpretation that I commend to the Secretary of State.

635. It was the oral evidence of the appellant that most proposals such as that which is the subject of this appeal are in the open countryside. FFEP&U gave evidence that the area around the site had become more developed since the extant planning permission was approved in 2010 (EPP01 section 4). In answer to my question, Mr Foster could not readily identify an existing exploration or production well in a similar location so proximate to residential and business premises. For FFEP&U Prof. Waterson expressed surprise that such a location could be considered [171 and 172].

636. The general health and deprivation conditions in the local area and the way in which these can exacerbate the impact of particular factors such as psychosocial stresses on health conditions such as cardiovascular health was not the focus of the appellant's challenge to the evidence given by Prof. Waterson and, particularly, by Dr Saunders. The evidence shows therefore that the appeal site is embedded within a community [245] that is specifically vulnerable to the adverse health effects that may be caused by stress and anxiety. Locally undertaken research evidence from FFEP&U [243] indicates that this is felt by a wider group than simply those who have actively campaigned against the development.

637. In my judgement, the totality of the evidence is that an unspecified but not insignificant number of individuals will experience stress and anxiety about the way the development will proceed and the consequences for them and the local area if it does. The health effect would be exacerbated by the social conditions and deprivation in the local area as set out in the evidence of Prof. Waterson and Dr Saunders and summarised in closing submissions [245]. This would amount to a conflict with LP policy SOC5 and thus a conflict with LP policy ENV7.

638. My conclusion on this sub issue as a whole therefore is that the proposal would not deliver any physical improvement to the neighbourhood itself and that it would cause an actual adverse impact on the health and well-being of some residents in the local community. For those individuals the adverse impact would be significant. I therefore conclude that the proposal would conflict with LP policies SOC5 and ENV7 in this regard.

639. I would emphasise that this conclusion has been reached on the evidence of the effects of this proposal in this location within this particular community with its specific characteristics of health and deprivation and in the light of the relationship that has developed between the local community and the appellant. It is therefore a highly case-sensitive conclusion.

Main consideration (a) (ii): Whether the proposed development would have an unacceptable effect on landscape, visual or residential amenity

640. The appeal site is located within an industrial landscape. Tall structures abound, most frequently associated with the Stanlow complex in the form of emissions stacks and flares of various designs.

641. The appeal site is enclosed by a solid fence over 2m in height. From close views this would screen most of the surface level infrastructure to be provided. The closest residential properties are within a new estate on the other side of the M53 motorway to the appeal site. The development was still under construction early in 2019 when I made my site visits [4]. The dwellings closest to the motorway were separated from it by a field. Along that common boundary and so between the houses and the motorway was a high, close-boarded timber fence. At this point the motorway is slightly elevated and there was good tree screening to both sides of it which would be very effective when in full leaf. I could discern no visual relationship whatsoever between the appeal site and the nearest dwellings.

642. During the development it would be the tallest structures only that would be visible from beyond the site boundaries. As I understand it, the structures would be in place for a maximum of 104 days (mobilisation-7 days; well completion and DST-14 days within a 28 day operational period; EWT-60 days; well suspension-2 days; demobilisation-7 days) [40, 46 to 48].

643. The tallest structure would be the workover rig at a height of some 33m. This would be in place for the whole of the operational period. During the DST phase there would be the shrouded ground flare at a height of 12.2m. The shorter enclosed ground flare (8.2m) would be in place during the much longer duration EWT phase [40]. None would be uncharacteristic in the local context.

644. In the landscape and visual context of the development there would be no harm caused by the short duration development proposed. There would

therefore be no conflict with LP policy ENV7 in this regard or with LP policy ENV2 which deals specifically with landscape since, in my judgement, the development does take full account of the characteristics of the site, its relationship with its surroundings and views into and over the site.

645. The case made by FFEP&U in respect of residential amenity relates, as I understand it, to air quality and traffic. The first has been addressed within the assessment of the preceding sub issue and, to the extent that traffic embraces aspects other than the effect of diesel emissions and therefore also air quality, those issues are addressed under 'highways' below.

Main consideration (a) (iii): noise, air, water, highways

646. These four matters are listed in a single bullet within LP policy ENV7. Issues relating to air, which is taken to mean air quality, have already been addressed.

647. The issue of noise was the subject of an unchallenged proof of evidence submitted by the appellant (APP/SS/2). This gives details of a comprehensive noise assessment carried out in accordance with current guidelines.

648. It notes that the close-boarded fence between the new residential development to the other side of the M53 and the motorway itself to which I have already referred [641] was, in fact, required by a condition on the planning permission for that development to provide an acoustic barrier. Two of the selected noise monitoring locations chosen were within this new residential area.

649. In short, the assessment concurs with the view of the Council's Environmental Protection Officer that the primary impacts will stem from flaring during the DST phase (CD3.1d). There would be no discernible impact from traffic noise for residential receptors whose noise environment is dominated by the M53 traffic. More local effects of traffic noise must be seen in the context of the industrial setting of the proposed development.

650. The Council's view was that subject to an appropriate condition, the wording of which was agreed by all parties [543], there would be no policy conflict on noise. On the evidence before me I agree with that assessment.

651. There is a dispute between FFEP&U and the appellant about the effect that the development would have on the water environment. There are, in my judgement, two aspects to FFEP&U's concern.

652. The first concerns the perceived seismic effects that the development would have on the strata, potentially creating new pathways for pollution of the water environment. I believe this concern arises principally because of FFEP&U's contention that the development would involve stimulation of the target formation. However, in closing submissions FFEP&U accepted that this would not be the case [169]. Furthermore, since the well has already been drilled and constructed, further stimulation of the strata would arise only from processes which FFEP&U now accept are not permitted. I do not believe therefore that this concern is well-founded.

653. The second arises from a dispute about the geology of the area and the information that was provided to the EA at Permit variation application stage. FFEP&U therefore consider that a precautionary approach should be taken to the

EA statement (CD2.12) that the activities can be carried out without harm to the environment [229 to 232].

654. Several of the consultation responses to the Permit variation application made similar points to the EA in relation to the outcome for the water environment (CD2.13). The EA responses fall into two main categories. First, that the development proposed does not involve and would not be permitted to undertake matrix acidisation or any other form of hydraulic fracturing. Any risk from increased seismicity is therefore considered to be negligible. Second, in response to a specific comment that the precautionary principle should be adopted on grounds of risk to groundwater the EA stated '*the applicant has demonstrated that the site surfacing and well construction is sufficient to protect groundwater and surface water receptors. The risk to these receptors is therefore negligible*.' (CD2.13 page 13). The appellant makes essentially the same point [407].

655. The EA has access to its own geological data, geologists and hydrogeologists. If the geological data provided by the appellant had been seriously at odds with that held by the EA it would have been raised at application stage; the evidence is that it was not. The Secretary of State may therefore accept the EA's conclusion regarding any effect that there would be on the water environment.

656. Finally, I turn to highways. The Council's highways officer advised that the higher level of vehicle movements during site setup and demobilisation would be noticeable but would not give rise to a severe detrimental impact and would be absorbed into the wider highway network (CD3.1c). Routeing of construction traffic would be subject to a condition agreed by all parties [543] which would ensure that no traffic passed through any residential area. The Council's highway officer concluded that there were therefore no objections to the development on highway grounds and no evidence has been put forward to cause me to recommend that the Secretary of State comes to a different view.

657. For all the above reasons there would be no conflict with LP policy ENV7 or LP policy ENV1 insofar as it is relevant in respect of the water environment on this sub consideration of main consideration (a).

Main consideration (a) (iv): Whether the proposed development would have an unacceptable effect on biodiversity and the natural environment

658. While some of those making written and oral representations raised general concerns on this ground [503 and 538], no evidence was produced by FFEP&U to dispute that of the appellant or the conclusion of the Council's Biodiversity Officer (3.1b) that subject to suggested condition 6 [543] the development would not conflict with this aspect of LP policy ENV7 or LP policy ENV4.

659. Legal submissions were made regarding the effect of *People over Wind* (A16). While this falls under this heading, it is addressed at Annex D [265].

Conclusion on main consideration (a)

660. I conclude that the proposal would not conflict with policy on any of sub considerations (a) (ii) to (a) (iv). However, for the reasons set out under the first of the sub considerations (effect on human health and well-being) I conclude that the proposal would conflict with LP policies SOC5 and thus ENV7.

Main consideration (b): whether the proposal fails to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation

Background

661. The wording of this main consideration is taken directly and fully from the decision notice (CD2.26). It is the reason why the Council considered the appeal proposal to be contrary to the provisions of LP policy STRAT1. It is the sole reason why planning permission for the development proposed was refused.

662. Officers' recommendation to the Council's Planning Committee was that planning permission should be granted subject to conditions (CD2.23). The proposal was assessed against LP policy STRAT1 under the heading 'Climate Change'. No conflict with the policy was identified.

663. It appears from the initial SOC (CD4.2) and the correspondence trail between the appellant and the Council (APP/DA/3 Appendices 25 to 28 inclusive) that officers and those appointed to present the Council's case have found it difficult to articulate the reasons why the Committee came to this conclusion. It was confirmed in oral evidence that the Committee Members had not been approached to assist the preparation of the Council's case. No Council officer gave evidence.

664. It was however finally confirmed in the Supplementary SOC that '…*what really is the issue is whether the appellant is proposing to employ the appropriate mitigation techniques for shale gas exploration*…' (CD4.4, paragraph 5).

Interpretation of LP policy STRAT1

665. The parties take different positions on the interpretation of the policy.

666. The Council's position at the Inquiry is encapsulated towards the end of the closing submissions [119]. The Council's position is that the term 'mitigate' within the policy [21] has both a broad meaning relating to legally binding obligations in international treaties and a technical meaning relating to the (failed in this case) use of technology to reduce carbon emissions to an acceptable level in planning terms.

667. The position of FFEP&U is that the policy requires all GHG emissions to be taken into account, including those that remain after as much mitigation – or reduction – as possible has taken place. FFEP&U argues that planning permission can be refused under LP policy STRAT1 if the residual emissions, after all possible steps to reduce GHG emissions have been designed into a development, are unacceptably high [199].

668. The appellant accepts that there will be residual GHG emissions as a result of the development taking place [393]. However, the interpretation the appellant gives to LP policy STRAT1 is set out above [322 to 325]. In summary, it is that the policy requires the appeal proposal to mitigate GHG emissions so far as practical. That is a narrower interpretation than both FFEP&U or the Council gave in closing submissions although the Secretary of State will note the appellant's view that this was also the understanding of the Council's planning witness expressed in cross examination [325].

669. The Secretary of State will need to come to a view on the way the policy should be interpreted since it influences whether the wider cases made on climate change, international treaties and obligations and national energy policy fall to be considered in relation to the policy itself or as material considerations having determined the matter against policy. My conclusion is that the appellant's interpretation is correct for the following reasons.

670. The LP contains 16 strategic objectives. SO14 aims to mitigate and adapt to the effects of climate change by addressing flood risk and water management and supporting the development of new buildings and infrastructure that are resilient, resistant and adapted to the effects of climate change. SO15 aims to take action on climate change by promoting energy efficiency and energy generation from low carbon and renewable resources. In my judgement both draw explicitly upon chapter 10 of the Framework of 2012, '*meeting the challenge of climate change, flooding and coastal change*'. It is that Framework that the LP would have been found to be consistent with on examination prior to adoption.

671. The subject matter of LP policy STRAT1 is sustainable development. It sets out eight sustainable development principles. Proposals in accordance with and supporting them will be approved without delay unless material considerations indicate otherwise. The first principle is '*mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation*'. This appears to combine strategic objectives SO14 and SO15 without giving any further policy guidance as to how they are to be achieved. It is this principle with which the appeal proposal would conflict in the Council's view.

672. The written justification for the policy does not explain any of the eight sustainable development principles in any further detail. It does explain that the policy reflects the presumption in favour of sustainable development seen as the golden thread in the Framework 2012. This role of giving local expression to the overall presumption in favour of sustainable development is reiterated in the officers' report to Committee (CD2.23, paragraph 6.67). The LP written justification also states that it provides a framework of locally specific sustainability principles establishing the basis upon which other policies in the adopted and emerging development plan will shape development (CD5.1 paragraph 5.19).

673. This overarching nature of the policy is confirmed in the LP monitoring framework (CD5.1 page 220). The appellant is therefore correct in my view to say that all development proposals must be assessed against this policy [322] if it is to be used in development management as the Council and FFEP&U contend. In fact, there are no indicators or targets for the monitoring of LP policy STRAT1. Instead, it is to be monitored through the implementation and monitoring of other LP policies.

674. During cross examination of Mr Adams, Ms Dehon referred to the explanation of '*mitigate and adapt to the effects of climate change*' given in the LP (CD5.1 paragraph 8.56). However, this is part of the written justification for LP policy ENV6 which addresses high quality design and sustainable construction; paragraph 8.56 references the sustainable construction aspects of the policy. As she said in her closing submissions, it would be unexpected to find an

explanation for the interpretation of one policy under another policy dealing with an entirely different subject matter [199].

675. Nevertheless, LP paragraph 8.56 does say that mitigation relates to the causes of climate change and is primarily addressed through the control of GHGs and carbon dioxide in particular. It further explains that adaptation relates to the consequences of climate change and is primarily addressed through design, behavioural changes and land use controls.

676. Drs Broderick and Balcombe gave evidence for the Council as climate science experts as did Prof. Anderson for FFEP&U. Both of the Council's experts gave their interpretation of what 'mitigation' means with respect to LP policy STRAT1. In summary, Dr Broderick's view (which was the evidence also of Prof. Anderson [204]) was that the global carbon budget now available if the global temperature rise is to be limited to 1.5^{0}C above pre-industrial levels is very small. It was his evidence that, if the implications of the Paris Agreement and the IPCC SR1.5 report (EP10) are to be met within the UK, an urgent programme to phase out existing natural gas and other fossil fuel use is an imperative [117]. Furthermore, with stricter carbon budgets, the UK must plan for a larger proportion of known natural gas reserves not to be produced.

677. In short therefore, his interpretation of 'mitigation' in this context is compatibility with these international obligations. The proposed development, which as previously noted [668] the appellant accepts would add GHG emissions to the atmosphere, would be incompatible with achieving these objectives.

678. Dr Balcombe took a different and contrary view. His evidence was that mitigation was possible [352 and 356] and Mr Vallelly for the Council gave evidence that with adequate proposed mitigation the appeal proposal could be development plan compliant [324 and 334]. However, Dr Balcombe's mitigation method, carbon capture and storage, would, for the reasons explained by the appellant [353], be impracticable for this development. In short, it would require interruption of the gas flow which would effectively negate the purpose of the application.

679. Although the evidence of the Council regarding the way LP policy STRAT1 should be interpreted is inconsistent, in practice it amounts to the same outcome; applications such as the appeal proposal could never be compliant with LP policy STRAT1. That amounts to a moratorium on this type of development proposal within the Council area.

680. I do not believe that interpretation can be correct. First, LP policy ENV7, which is the most relevant policy, supports proposals to exploit the borough's alternative hydrocarbon resources subject to various criteria being met [23]. LP paragraph 8.67 is clear that shale gas exploitation falls within the scope of the policy; this was common ground. While policies in a development plan can and frequently do pull in different directions, one cannot operate such as to render another otiose [366].

681. Second, the Council's SPD (CD5.5) envisages and provides guidance about exploration for unconventional resources within the Council area with shale gas being specifically mentioned (emphasis added). Development like the appeal proposal is therefore envisaged and supported subject to various criteria being met [37].

682. What LP policy STRAT1 means for the determination of this appeal may ultimately be a matter for the court. In circumstances where the interpretation is unclear the court often gives to language and words their everyday meaning. The on-line Oxford Dictionary defines 'mitigation' as '*The action of reducing the severity, seriousness, or painfulness of something*' and, by coincidence, gives as an example sentence '*the identification and mitigation of pollution*.' (emphasis added).

683. That is the interpretation given by the appellant. Although she did not agree with the point being advanced by the witness, 'reduction' is also the meaning given to the term by Ms Dehon for FFEP&U [199] and is the one that I commend to the Secretary of State.

Assessment against this interpretation of LP policy STRAT1

684. In my view, the planning statement (CD2.4) gives only limited information about the purpose and the implications for climate change of using the two different ground flares at the DST and EWT stages of the proposed exploration. Much greater information was provided to the EA when seeking the Permit variation. This includes the Waste Management Plan (CD1.9e), the Environmental Risk Assessment (CD1.9g) and the Flare Technical Document (CD1.9k). These set out in some detail why flaring the natural gas at both exploration stages (DST and EWT) is considered to be BAT. Included in the Waste Management Plan are the different techniques considered for the disposal of natural gas having due regard to the hierarchy of waste management [340].

685. The Environmental Permit Decision Reasoning document (CD2.13) explains why the EA agrees that, in the particular circumstances of the DST and the EWT, the proposed use of the two different types of ground flare are considered to be BAT in accordance with EA published guidance [344 (vi)].

686. It appears from the totality of the documentation that the GWP of the gas management techniques is a consideration even if it is not the determining factor in the EA assessment. Disposal of the natural gas by flaring reduces the amount that would vent directly to atmosphere. It thus achieves some mitigation (as defined) of the effects on climate change.

687. During the Inquiry the appellant volunteered the information that there had been an error of calculation in one of the tables in the Environmental Risk Assessment submitted to the EA [358]. While this has an impact on the residual gas venting to atmosphere and thus the release of GHG emissions, it does not impact the assessment of BAT as I understand it.

688. In my judgement, the appellant has shown that the gas management techniques to be employed would reduce and thus mitigate the effect of the proposal on climate change. The reason for refusal as now framed by the Council cannot be sustained and there would therefore be no conflict with LP policy STRAT1 in this regard or with ELP policy M4 to the extent that it is considered relevant [305] given what is said in ELP paragraph 9.53. This makes it clear that '*issues such as climate change*' are addressed by other policies in the development plan and, since the development plan must be read as a whole, this, and other issues similarly addressed, are not considered specifically within ELP policy M4.

Further assessment against LP policy STRAT1 or as a material consideration

689. As pointed out above [669], the Secretary of State may agree with both the Council and FFEP&U that the correct interpretation of LP policy STRAT1 requires a wider consideration of the effect that the development would have on climate change matters. The following sets out my conclusion on that consideration. Even if the Secretary of State agrees with the appellant's and my interpretation of the policy this nevertheless becomes an important material consideration in this appeal. Indeed, my understanding of the evidence is that any development for shale gas exploration will cause GHG emissions since, as the appellant explains [353], it is not technically feasible to reduce those emissions to zero at the exploration stage. This consideration is therefore highly relevant to the reason for the appeal being recovered [16] as it is applicable at more than the local level.

690. Several documents have been submitted in evidence that are material to this consideration. Of equal importance to their content is the timing and sequence of their publication and the extent to which reliance is placed upon the conclusions of commissioned reports and studies in policy statements. This section of my conclusions addresses the weight that the Secretary of State can, in my view, now give to the three WMSs issued in 2015, 2018 and 2019.

691. The MacKay and Stone report (CD8.2) was requested by the Secretary of State for the Department of Energy and Climate Change in December 2012. It was published in September 2013. The study was to gather available evidence on the potential GHG emissions from production of shale gas in the UK and the compatibility of future production and use of shale gas in the UK with climate change targets. The study reports on all phases of shale gas production and its subsequent use.

692. It examines local GHG emissions associated with shale gas exploration and production and notes that the carbon footprint includes carbon dioxide and methane. The GWP of methane used is 25 which is said to be consistent with the agreement of the UN Framework Convention on Climate Change to adopt the IPCC 2007 fourth assessment report (CD8.2 page 3, paragraph 2 and footnote 1). The equivalent GWP today would be 36 [80] or, if the 20 year time horizon is used rather than 100 years, 87 [210]. All three of these are higher than the GWP of 21 used by the EA and adopted by the appellant [358].

693. The report makes clear that there is considerable uncertainty about outcomes in the UK because of a lack of data. Introducing 'estimated shale gas carbon footprint for the UK', the following is representative (CD8.2 paragraph 63):

> *The following section combines the evidence from available sources to estimate the credible range of potential GHG emissions from the production of shale gas in the UK. The results carry significant uncertainties because of the limits to available evidence and the lack of data for the UK.*

694. The conclusions and recommendations note that there had, at that time, been no production of shale gas in the UK and only limited exploration and that there was almost no data on fugitive GHG emissions from shale gas operations in the UK (CD8.2 paragraph 104). Studies in the United States were therefore used and caution was advised in extrapolating results to the UK where actual emissions would be dictated by local circumstances (CD8.2 paragraph 105). Nevertheless, the conclusion was drawn that with the right safeguards in place,

the net effect on UK GHG emissions from shale gas production in the UK would be relatively small (CD8.2 paragraph 106) (emphasis added).

695. The basis for this conclusion was that the potential increase in cumulative emissions (CD8.2 paragraph 107) could be counteracted by equivalent and additional emission-reduction measures made somewhere in the world. This would be achieved through measures such as carbon capture and storage and carbon off setting. The assumption was that these and other measures would lead to fossil fuels that would have otherwise been exploited remaining in the ground. Without these policies new fossil fuel exploitation would likely lead to an increase in cumulative carbon emissions and the risk of climate change (CD8.2 paragraph 108).

696. The appellant did not rely upon the 2015 WMS in closing submissions [464]. Nevertheless, it is an important document in the sequence. It explains in the section 'the national need to explore the UK's shale gas and oil resources'

> *but we need gas - the cleanest of all fossil fuels – to support our climate change target by providing flexibility while we do that and help us to reduce the use of high-carbon coal* (APP/DA/3 Appendix 12).

697. Of relevance to this consideration is the further statement in the same section that shale gas:

> *can create a bridge while we develop renewable energy, improve energy efficiency and build new nuclear generating capacity. Studies have shown that the carbon footprint of electricity from UK shale gas would be likely to be significantly less than unabated coal and also lower than imported Liquified Natural Gas*.

698. Footnote 9 confirms the '*studies*' referenced is in fact only the MacKay and Stone report[14].

699. In March 2016 the CCC issued its report on the compatibility of UK onshore petroleum with meeting the UK's carbon budgets (CD8.1). The Foreword confirms that the report is the first the CCC has issued under the Infrastructure Act 2015 which allows for a more in-depth consideration than previous CCC assessments on emissions attached to shale gas. The context was the then 2050 emissions reduction target of 80%.

700. The assessment was that exploiting shale gas by fracking on a significant scale would not be compatible with UK climate targets unless three tests were met (CD8.2 page 69). In my judgement the three tests were not intended to apply to the exploration phase but, as the appellant contends [329], to the production phase. However, material to the determination of this appeal was the statement that exploration emissions are generally small although it was noted that little information was available on emissions associated with exploration. The acknowledged source for these statements is the MacKay and Stone report. It also said that most studies analysing the GHG emissions from exploiting onshore petroleum either ignore this phase or assume the emissions are negligible. It

[14] While the footnote references are included in the text submitted in evidence, the extract provided by Mr Adams excludes the actual references. The content of footnote 9 was identified from the document available on the Parliament UK web site

cautioned that this should not be taken as a given, especially for any EWT phase (CD8.1 page 49).

701. In the conclusions and recommendations it was noted that the prospects for a domestic onshore petroleum industry were currently highly uncertain with that uncertainty only resolvable via exploratory drilling (CD8.1 page 69).

702. Government's statutory response to the CCC 2016 report was issued in July 2016 (APP/DA/3 Appendix 32). The appellant summarised some of these [375]. As set out by the appellant, numbers (vi) and (vii) are both taken from response (ix). Also included within response (ix) (but not set out by the appellant) is the statement that '*the CCC report states that emissions associated with exploration are "generally small"*'.

703. The 2018 WMS (APP/DA/3 Appendix 14) was issued in May 2018 shortly before the Framework was published in July. Under 'energy policy' it emphasises the role that gas must play in every scenario set out by the CCC [380] and under 'planning', in effect, anticipates Framework paragraph 209(a).

704. Framework paragraph 209(a) has been quashed (PI5). The judgement (R18) is highly material to this part of my conclusions. In the following, paragraph references are to those in the judgement of Dove J.

705. At paragraph 7 is the factual finding that it is the Mackay and Stone report that provides support for the implicit conclusions in the 2015 WMS that the use of shale gas would be consistent with government's targets for climate change and GHG emissions. Specific reference to the MacKay and Stone report is again referenced within the government response to the CCC 2016 report in relation to life cycle emissions from UK shale and meeting the test set by CCC (paragraph 10). At paragraph 21 points raised at consultation on the draft Framework by Talk Fracking are set out. In particular, what were claimed to be changes in the state of scientific knowledge about the impact of fracking on climate change since 2015 (essentially 'the Mobbs Report') were summarised.

706. On behalf of the Secretary of State it was stated that in relation to Framework paragraph 209(a) it was purely and simply an exercise of copying across the 2015 WMS. That was being done without any intention to revisit or re-examine the validity of the policy (paragraph 45). At paragraph 51 Dove J concluded that:

> *…in fact there was no interest in reviewing or re-evaluating the substance of the policy of the 2015 WMS, or listening to any consultation engaged with the merits of the policy or the evidential and scientific issues associated with it. After all, the Defendant jointly engaged in the promulgation of the 2018 WMS prior to examining or evaluating the consultation responses in relation to the revised Framework (albeit shortly after the consultation period had closed).*

707. At paragraph 67 Dove J concluded:

> *What appears clear on the evidence is that the material from Talk Fracking, and in particular their scientific evidence as described in their consultation response, was never in fact considered relevant or taken into account, although on the basis of my conclusions as to what the reasonable member of the public would have concluded as to the nature and scope of the consultation, this material was relevant to the decision which was advertised, which included the substance and merits of the policy. On this basis it clearly was obviously material on the basis*

that it was capable of having a direct bearing upon a key element of the evidence base for the proposed policy and its relationship to climate change effects. As is clear from what is set out above, on the particular facts of this case the MacKay and Stone Report was an important piece of evidence justifying the validity of the policy in the 2015 WMS, and the need to avoid adverse consequences for climate change were an important aspect of whether or not to adopt the policy. Indeed, (the Secretary of State) did not contend to the contrary and indicated in his submissions that the (Secretary of State) would be engaging with this scientific debate at a time when the substance of the policy in question was being considered.

708. This was also the Secretary of State's position in another case, *H J Banks* (R17) [195].

709. In my view four material conclusions flow from the all the above [691 to 707]. First, the MacKay and Stone report underpins the 2015 WMS. Second, it also underpins the material conclusions in the CCC 2016 report which, in itself, was prepared in the context of a 2050 emissions reduction target of 80%. Third, while the 2018 WMS references the CCC report, in all material respects it too relies on the MacKay and Stone report for evidential justification. Finally, although other scientific information is available that post-dates the MacKay and Stone report that has not been reviewed or considered by government in relation to any implications for the interaction between its shale gas policy and its climate change policy [see also 287].

710. Before Dove J the Secretary of State submitted that:

> *… in the context of individual decisions by plan makers or decision takers it would be open to depart from the 'in principle' support for fracking provided by paragraph 209(a) on the basis of the requirement, for instance in paragraphs 148 and 149 of the Framework in particular, for the planning system to take decisions which support reductions in greenhouse gas emissions and plan proactively for climate change. Thus, he submitted that in the context of individual decisions it would be open for the Claimant and other participants to place before the decision maker material like the Mobbs Report which supported the contention that shale gas extraction would have a deleterious impact on greenhouse gas emissions, and these could be weighed against the 'in principle' support contained in paragraph 209(a) of the Framework*. (R18 paragraph 71)

711. In this case the submitted material is the IPCC SR1.5 report, the CCC report (PI1) requested by the governments of the UK, Scotland and Wales to provide updated advice on their long-term emissions targets, including the possibility of setting a new 'net-zero' target and government response to it (PI13) and the unmitigated GHG emissions that would be caused by the appeal development. In any event, the 'in principle' support formerly provided by Framework paragraph 209(a) no longer stands to be weighed against this evidence.

712. The IPCC SR1.5 report (EP10) post-dates the MacKay and Stone report, the 2015 WMS, the 2016 CCC report and the 2018 WMS [194]. It reflects the expert panel's view of the latest science and conveys messages about the threat to the planet from climate change which require urgent action [203 and 204]. The UK, Scottish and Welsh governments confirm that '*this report deepens the scientific evidence base on the implications of pursuing efforts to limit global warming to 1.5 degrees above pre-industrial levels, as set out in the Paris Agreement*' (EPP7

Appendix 1). Both the UK Parliament and the Council have subsequently declared climate emergencies [288].

713. The request to the CCC for its advice was made pursuant to the Climate Change Act 2008, not the Infrastructure Act 2015 (EPP7 Appendix 1). It was requested in the form of an update to advice provided in October 2016 as part of a previous CCC report on UK climate action following the Paris Agreement. As far as I am aware, that report has not been submitted in evidence and, from the date, must be different to the 2016 CCC report (CD8.1) published earlier in 2016. The letter requests that the report provide evidence on, among other things, how reductions in line with the recommendations made might be delivered in key sectors of the economy.

714. The key recommendation in the CCC net zero report (PI1) is that by 2050 emissions of GHGs should be reduced to net-zero thus ending the UK's contribution to global warming. It confirms that a net-zero GHG target for 2050 will deliver on the commitment that the UK made by signing the Paris Agreement. It is achievable with known technologies, alongside improvements in people's lives, and within the expected economic cost that Parliament accepted when it legislated the existing 2050 target for an 80% reduction from 1990 (PI1 executive summary page 1).

715. On 12 June 2019 a draft SI was laid before parliament to amend s1(1) of the Climate Change Act 2008 and substitute '100%' for '80%'. It came into force on 27 June 2019 (PI13). The net zero target is a response to the latest science [132] which the appellant acknowledges [482]. There is no evidence that government has made any other response to the CCC's net zero report or that it intends to do so.

716. A further key point in the CCC's net zero report is the advice that every tonne of carbon counts [129]. This is important evidence in the light of the conclusions of the MacKay and Stone report [700] which underpins the 2016 CCC report, the government response and the policy set out in the 2015 and 2018 WMSs [709].

717. The appellant's evidence is that GHG emissions would still be inevitable as a result of the development [393]. The scale, expressed as ranges, of those emissions during the exploration phase has been agreed between the parties and is set out (A8). The Council includes commentary on those agreed figures (C6) to which the appellant does not agree. In short, the appellant does not agree to those paragraphs that characterise the agreed GHG emissions as 'large' and uncertain (C6 paragraphs 4 and 13) and that which gives some comparatives for context (C6 paragraph 5).

718. The range agreed is 3.3 to 21.3 kt CO_2 equivalent [361]. Previous estimates made by the appellant are now higher due to the increased contribution from methane emissions (C6 paragraph 8). The risk of lower efficiency flaring given uncertainty about both gas flow rates and gas composition also has an effect (C6 paragraph 8). The Council's top end figure is also reduced. This is due to revised (higher) EWT flaring efficiency and lower maximum flow rate of gas during the EWT phase (C6 paragraph 9).

719. However, by far the greatest influencer on the agreed ranges is the GWP factor applied to methane emissions. The appellant used a GWP of 21, the Council a GWP of 36 and FFEP&U a GWP of 87 (C6 paragraph 10).

720. The value of 21 is that used by the EA and is based on the IPCC third assessment report. This is agreed to be 13 years old and has been updated twice to 36 (C6 paragraph 11). This is the value preferred by the Council and is the figure in the IPCC fifth assessment report from 2013. This figure represents the average climate forcing of methane over 100 years compared to CO_2. FFEP&U prefer the value of 87 which is the average climate forcing of methane over 20 years and is also based on the latest IPCC report. Justification for this value is that it reflects the additional harm caused by methane in the short term as it is a short-lived climate pollutant (C6 paragraph 12).

721. In my judgement, there appears to be no continuing justification for using a GWP factor that has been updated twice by the body generating it. On a conservative basis, I consider that for the purposes of this appeal, the Council's use of the GWP factor of 36 has merit although an equally strong case could be made for the 87 value.

722. There was no evidence that a carbon budget had been set at the Council or regional level. No direct judgement is possible therefore about how much of a local carbon budget the development would take up.

723. Various comparators have been provided (for example C6 paragraph 5). These are not however meaningful in the local context in my view. Perhaps more meaningful is the comparison with total annual emissions from industry and commercial activities in the Council area in 2016. The top end of the range would be some 1% of those emissions at a GWP factor of 36 and 2% at FFEP&U's preferred 87 (C6 paragraph 5).

724. I also drew the parties' attention to the Council's Carbon Management Plan 2016-2020 (EP24). This sets out how the Council plans to reduce its own annual CO_2 equivalent emissions by 30% over a five-year period to April 2020 from 45.5 kt CO_2 equivalent to 31.8 kt CO_2 equivalent. That is an aspirational saving of some 13.7 kt each year. On the Council's range, the proposed development would represent a once-only 'use' of between 29% and 79% of the Council's aspirational annual saving in about 100 days. On FFEP&U's preferred value the 'use' would be significantly greater in the 100 day period of the development.

725. The Council characterises the residual GHG emissions that would be released from the development as 'large' although that description is disputed by the appellant [717]. The appellant also says that it would be considerably lower than that consented by the Secretary of State elsewhere [393].

726. How the agreed amount, which I consider more likely to be at the top end of the range given the GWP value that should be applied, is characterised is less important than the fact that it will occur at all. The CCC statement that during exploration assumptions about GHG emissions from exploiting onshore petroleum either ignore this phase or assume the emissions are negligible [700] does not appear to be supported now by the evidence and there is no evidence that the GHG emissions would be off set elsewhere; a key assumption underpinning the MacKay and Stone report findings [695].

727. In my judgement this casts doubt on the extent to which the MacKay and Stone report can be considered consistent with the 2019 CCC net zero report and the latest science that it reports upon.

728. Drawing all this together allows a conclusion on the weight that can properly be afforded to the 2015 and 2018 WMSs.

729. The latest science put in evidence to the Inquiry is that associated with the IPCC SR1.5 report. Government responded to this report in the same month that it was published requesting the advice of the CCC. The CCC reported in May the following year (2019) and the next month government legislated to give effect to the headline recommendation that by 2050 emissions of GHGs should be reduced to net-zero. That establishes a wholly different context to that in which the CCC prepared its 2016 onshore petroleum sector specific report (CD8.1).

730. Furthermore, as just set out, the assumptions about GHG emissions during the exploration phase that underpin the MacKay and Stone report and thus the 2016 CCC report [726] must be seen in the context of the 2019 CCC net zero report statement that every tonne of carbon emitted counts towards global warming.

731. In quashing the national planning policy as it related to the facilitation of exploration and extraction of unconventional hydrocarbons (Framework paragraph 209(a)), Dove J in *Stephenson* established the clear evidential link between the 2015 WMS and the MacKay and Stone report. The same link is present between the 2016 CCC report and MacKay and Stone while Dove J also established that there was no review or consideration of the more up-to-date science before the 2018 WMS was issued.

732. It follows therefore that neither WMS can be said to reflect the latest climate change science put before the Inquiry. In my view, the weight that can be afforded to either is therefore limited.

733. The 2019 WMS (PI9), which from the text would seem to be the response to the quashing of Framework paragraph 209(a), refers to Framework paragraphs 203 to 205 and the remainder of Framework paragraph 209 having established that hydrocarbon development (including unconventional oil and gas) are considered to be a mineral resource. As a recent statement of government policy it should be afforded significant weight.

734. For the reasons given by FFEP&U neither Framework paragraphs 204 or 205 appear to be directly relevant to the determination of this appeal [290 and 291]. Even if that is wrong, LP policy ENV7 addresses the matters set out in both and the appeal proposal has been assessed against these under the first main consideration.

735. For the same reasons, Framework paragraph 209(b), being the only criterion of those listed of relevance to the determination of this appeal, is addressed through assessment of the appeal proposal against LP policy ENV7 under the first main consideration.

736. The 2019 WMS goes on to confirm that the 2015 and 2018 WMSs remain unchanged and extant and that the associated Planning Practice Guidance is unaffected by the judgement. The next paragraph states the obvious point that these remain material considerations in decision taking with the appropriate weighting to be determined by the decision maker. In this case that is the Secretary of State, but I have set out above the reasons why I consider limited weight may be afforded to them.

737. It is not clear how the statement in the final substantive paragraph of the 2019 WMS, which confirms that government remains committed to the safe and sustainable exploration and development of onshore shale gas resources, is intended to be taken into account in plan making and decision taking. My understanding is that government has not requested from CCC any review of its specific on shore petroleum report (CD8.1) in the light of the latest scientific evidence, the CCC's net zero report or the amendment to the Climate Change Act 2008 to implement its headline recommendation. There is therefore no evidence that the stated commitment is informed by a review or consideration of the latest climate change science.

738. To conclude this further assessment, the evidence is that the appeal proposal would give rise to unmitigated GHG emissions of between 3.3 to 21.3 kt CO_2 equivalent although the actual release is more likely to be towards the top end of the range in my view. Given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. The proposed development would therefore conflict with Framework paragraph 148.

739. The proposal may well be supported by the 2018 WMS as the appellant contends [469] and, although the appellant does not rely upon it, by the 2015 WMS too. However, in my view, limited weight may be given to these WMSs. Since Framework paragraph 209(a) has been quashed there is no shale gas policy within the Framework to set against the climate change policy in Framework paragraph 148. For the reasons set out more particularly by the Council [151 to 153] the 2019 WMS does not amount to such a policy.

740. Therefore, if the Secretary of State takes the same view as the Council and FFEP&U about the way that LP policy STRAT1 should be interpreted, the appeal proposal would be contrary to the LP policy in this regard (and to AELP policy M4 to the extent that it is considered relevant [688]). If however the interpretation of the appellant (which I commend) is preferred, the conclusion of the further assessment is a material consideration that weighs significantly against the development in the planning balance.

741. Before setting out my overall conclusion on this main consideration it is necessary to consider the Written Statement made in the House on 4 November 2019 (PI19).

742. It was made by the Secretary of State for Business, Energy and Industrial Strategy. Only the final paragraph is made jointly with the Secretary of State for Housing, Communities and Local Government. There, it is confirmed that following consideration of the response to the consultation, the Government will '*not be taking forward proposed planning reforms in relation to shale gas*'.

743. The Council argues [158] that this makes the appellant's contention that for the government to consider exploratory development as potentially capable of being considered as permitted development, suggests that it is of the view that the inevitable environmental impacts (including climate change impacts) of such development are not likely to be significant and that the existing consents from the three regulators (the EA, the HSE and the OGA) are sufficient to control potential environmental effects to an acceptable level (APP/DA/2 paragraph 3.42) untenable. I do not think the Council's argument holds. For the appellant, Mr

Adams was expressing an inference which he drew from the fact that the formal consultation was being held. The fact that government does not intend now to implement the changes to statute consulted upon does not, in my view, undermine the inference he drew. In any event, having considered what the Council say is a concession during cross examination [96], no reference to this point was made in the appellant's closing submissions.

744. The Written Statement was clearly prompted by events during Cuadrilla's operations at Preston New Road and the subsequent report by the Oil and Gas Authority. The new evidence submitted by FFEP&U [307] is a paper on the likely impact of fracking in Lancashire on seismicity by Prof. Smythe and the volumes of fluids used by Cuadrilla at the site. It is stated that '*the volume of fluid proposed to be used by the appellant is significantly above those which triggered seismic events at Preston New Road*' (PI22 paragraph 17). Notwithstanding that it is repeated that '*the proposed development is not hydraulic fracturing*' the clear inference that the Secretary of State is, in my view, being invited to draw is that the appeal development will stimulate the formation at the acid volumes to be employed.

745. That is an unreasonable proposition to put after the Inquiry has closed having accepted that the appeal proposal does not involve matrix acidisation and thus stimulation of the formation [169]. The appeal proposal would not involve hydraulic fracturing, it would not require a Hydraulic Fracturing Consent and so is unaffected by the "effective moratorium" on same announced in the Written Statement. The appellant is therefore correct in my judgement that the Written Statement has no relevance to the Secretary of State's decision on this appeal [494].

Overall conclusion on this main consideration

746. On this main consideration my conclusion, which I commend to the Secretary of State, is that the appeal proposal would mitigate the effects of climate change as far as is practicable and would thus not conflict with the relevant development plan policy [688]. However, the unmitigated GHG emissions, which the appellant acknowledges would be inevitable from this, and, as I understand it, any, shale gas exploration proposal, would be contrary to Framework paragraph 148. This is a material consideration of significant weight in the planning balance [738 to 740].

Main consideration (c): the effect the development would have on the regeneration of Ellesmere Port.

747. In November 2011 the Ellesmere Port Development Board (EPDB) published the SRF (EP19). The EPDB was brought together by the Council and appears to comprise (unnamed) key organisations and individuals across public, private, voluntary and community sectors with an interest in and a passion for Ellesmere Port.

748. The SRF is owned by the EPDB and supported by, among others, the Council (EP19 page 2). It explicitly states that it does not replace or supersede the statutory development plan (EP19 page 3).

749. The appeal site falls within area 8 of the SRF. This is identified as an area for residential projects. The supporting text for LP policy STRAT4 confirms that the

policy supports the ambitions of the SRF (CD5.1 paragraph 5.31). It does this in part through the specific allocations in LP policy STRAT4 and through more locally specific policies and proposals in the AELP (PI18 section 3).

750. The appeal site is not listed in LP policy STRAT4 for development. Although it was allocated for employment development in the BLP it is not now allocated for that use in the AELP (PI18 Interactive Plan). It is unallocated land.

751. The position of the landowner, Peel Investments (North) Limited as presented to the LP examination Inspector in May 2014 has been set out (A6). Put simply, in that document the landowner does not currently see the future for this land being residential development. Instead, it sees a very positive and productive future ahead as a continually improving port facility. It also stated that '…*commercially now the Docks are very successful and the redevelopment of the Docks is not a viable option. Regeneration has and is being achieved at the Docks through more intensive port use rather than the site's overall redevelopment for other uses*.' There is no evidence of any change in the landowner's position [447].

752. FFEP&U referred to the SRF as not just another piece of evidence supporting the local plan [183]. However, it has no formal development plan status and has not been subject to any public consultation or independent scrutiny as would be the case with, for example, a neighbourhood plan [22 and 442].

753. However, following the formal inclusion of the AELP within the Council's development plan, the appellant's assertion that there is no policy support for the relevant part of the SRF [446] is challenged by FFEP&U citing recent and relevant case law [304].

754. AELP paragraphs 3.1 explains the strategic context given by LP policy STRAT4 while paragraphs 3.2 and 3.3 address employment and housing respectively. The SRF is then referred to in the next paragraph thus:

> *The policies in this section <u>also</u> support local regeneration initiatives in the Ellesmere Port Vision and Strategic Regeneration Framework (2011) and Ellesmere Port town centre improvements; supporting strong connections and linkages with the town centre, physical and landscape improvements along key routes such as the M53 and canal corridors, and the regeneration of previously developed sites and a central hub with public realm enhancements*. (PI18 paragraph 3.4, emphasis added)

755. In my view, the word 'also' is used to show those elements of the SRF that are taken forward in the AELP.

756. This is reinforced by those further AELP paragraphs where the SRF is actually mentioned. In most cases this is in connection with unlocking the potential of the area through the development of a public services hub (PI18 paragraph 3.8); a stronger network of pedestrian and cycle routes linking different parts of the town and new development areas (PI18 paragraph 3.9); and the provision of green infrastructure (PI18 paragraph 3.38).

757. In any event, however the SRF should be viewed in relation to the AELP, to conflict with LP policy STRAT4 as contended by FFEP&U, there must be evidence that the appeal development would prejudice the regeneration of Ellesmere Port. In my view, there is none. In fact, the evidence is to the contrary.

758. I have already referred to development in the immediate area that has taken place since the extant planning permission was granted (paragraph 635). In addition, mixed use planning permissions have been implemented on the other side of the M53 as also referred to above [19 and 641]. This, along with the landowner's evidence of future intentions, tends to show that the existing well development has had very little, if any, impact on development in the area coming forward.

759. In my judgement, the contention that shale gas development would have a negative effect on regeneration efforts in Ellesmere Port is unsupported by any evidence, even setting aside that the appeal proposal is for exploration only, not production. Indeed, in his evidence in chief Mr Plunket told Ms Dehon that the 18 week period of the appeal development would not make too much difference to the issues he identified, namely, that business would not re-locate to Ellesmere Port if it is not an attractive location and that development, including, importantly, sustainable development, would go elsewhere (EPP8(S) paragraphs 9 to 12). It was the longer-term development associated with what he identified as step 3 (production), that would be for 18 years, that he considered would have that effect. That is not the development proposal before the Secretary of State.

760. In my view, this is all evidence which leads to a conclusion on this main consideration that there would be no conflict with LP policy STRAT4 either in relation to the appeal site itself or the wider area.

Other matters

Local democracy

761. This matter has been raised in evidence by FFEP&U [246 and 438] and by several of those from the local community, including the three MPs, who gave oral evidence [498, 501, 502, 509 and 524]. I deal with it in some detail as it is material to my recommendation to the Secretary of State in respect of the appellant's application for an award of costs against the Council.

762. At the core of this point is the contention that the local planning authority has refused the planning application in line with the wishes of local people and that should be the end of the matter. To then allow the appeal would be a denial of or an affront to local democracy. Furthermore, the feelings of anger or powerlessness that would result would lead to distrust of the police and government sowing the seeds for wider social conflict once the development begins.

763. My reading of the Police and Crime Commissioner's letter (IP3) is that he shares this latter concern. He drew attention to the resource required to police what he called the 'Upton operation' in 2016, despite that being predominantly peaceful and good-natured. If it had not been, he advised that the costs incurred by the public purse and the diversion of officers from other duties could have been much more substantial. He expressed his concern about the likely implications for both the priorities and the budget of Cheshire Police if the development went ahead. He concluded '*I have great concern whether Cheshire Police could substantially resource this type of situation given the pressures already placed on daily policing demand*.'

764. The Secretary of State will know that Framework Chapter 3 makes clear that the planning system should be genuinely plan-led. It says that up-to-date plans provide a positive vision for the future of an area and a platform for local people to shape their surroundings. The preparation of local plans by the local planning authority involves the local community at every stage. The adopted development plan is therefore the expression of how the local community wishes to see its area develop. Framework paragraph 47 confirms and restates the planning law position that applications for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise.

765. It is not unusual for planning applications for all kinds of significant or unusual development to attract opposition which is often expressed through representations to the local planning authority and, sometimes, through public meetings and demonstrations and the establishment, as in this case, of single-issue groups formed to oppose the development proposed (Mr Watson evidence in chief). Support for such schemes is rarely expressed on the same scale or in the same way but may nevertheless be reflected in the development plan. Where such opposition raises planning matters these must of course be weighed by the planning authority and the decision maker. They may lead to a conclusion that the development would not accord with the development plan in the first place or they may amount to a material consideration that outweighs compliance with development plan policy.

766. If planning permission is refused there is a right of appeal and the Secretary of State or (if the appeal is transferred) an Inspector determines the matter afresh. If the appeal is allowed that is simply the outcome of the legal planning process operating in this country; it is not a denial of local democracy. If the appeal is dismissed, that would indicate that those opposing the project had sound planning reasons for doing so.

767. I believe no weight therefore should be given to any contention that this appeal should be dismissed simply because not to do so would be somehow undemocratic. For that to form any part of the reason to dismiss the appeal would, I believe, be unlawful although it would be for the Secretary of State to be satisfied about that.

768. I also consider no weight should be given to the implication of the Police and Crime Commissioner's statement that the outcome of the appeal should be influenced by the unsustainable pressures that would be placed on his resources by enabling two groups (the appellant and any protesters) to go about their lawful activity. This could apply to any development proposal that was likely to attract opposition at the site. The appellant's position on this matter in response to the evidence of FFEP&U [440] must be correct.

Benefits of the proposed development

769. The appellant identifies very few benefits arising from the development beyond those which flow from government energy and planning policy [463, 466 and 487]. These have been addressed above under the 'Further assessment against LP policy STRAT1 or as a material consideration' heading and, of course, the specific national planning policy as it related to shale gas expressed through Framework paragraph 209(a) which has now been quashed.

770. A benefit of the proposal to which I attribute some weight is the existing well pad and other surface infrastructure and the fact that the exploratory well has already been drilled. This offers the chance to explore the shale gas potential of one part of Petroleum Exploration and Development Licence area 184 without the need to create a further well site (APP/DA/2 paragraph 2.8). This would represent a good use of existing development.

771. The appellant fairly does not seek to overstate the economic benefits of what would be a short duration development [261]. Furthermore, the distinction is drawn between the limited duration exploration stage and the production stage, when any economic benefits could be expected to be more substantial and sustained. There would, nevertheless, be likely to be some short-term employment opportunities locally and an injection of money into the local economy through various contractors and other service providers engaged in the set-up and demobilisation phases. Like FFEP&U, I therefore give limited weight to these short-term economic benefits [263].

Other development plan policies

772. The appellant has provided an assessment of the proposal against all relevant adopted and (then) emerging development plan policies and national planning policy (APP/DA/3 Appendix 1). In the main, these policies have been considered above either in the context of LP policies ENV7, STRAT1 and STRAT4 or when considering the conditions that may be imposed in the event of planning permission being granted with respect to the saved MLP policies [31].

773. Except for those policies that have already been the subject of my conclusions, the appellant's assessment was not challenged. The Secretary of State can therefore rely on the appellant's analysis where necessary to do so.

Overall conclusions and the planning balance

774. For the reasons set out above, I consider that the development proposed would conflict with LP policies ENV7 and SOC5 on the grounds of the effect that there would be on the health and well-being of some residents in the local community [638 and 660].

775. If the Secretary of State agrees with the interpretation of LP policy STRAT1 advanced by the Council and FFEP&U there would also be a conflict with this policy [740].

776. Either or both conclusions would mean that the presumption in favour of sustainable development contained within Framework paragraph 11 does not therefore apply.

777. The development proposed should therefore be refused in accordance with the policies of the development plan unless material considerations indicate otherwise.

778. In favour of the development are two factors. First, would be the use of an existing well pad and other surface infrastructure to which some weight should be given [770]. Second, there would be some short-term economic benefits that I have found and to which limited weight would be appropriate [771].

779. Exploration is required to inform national energy policy. In that sense, the appeal proposal would be consistent with national energy policy as set out in the 2015 and 2018 WMSs (to the extent that they are materially different) and the response to the 2016 CCC report (APP/DA/3 Appendix 32) although for the reasons set out above, I consider that limited weight only can be given to these policy documents at this time [728 to 732].

780. Set against this should be the residual GHG emissions that the evidence concludes would be produced by the development. If the Secretary of State comes to the view that LP policy STRAT1 should be interpreted in the way advanced by the appellant (with which I agree [679 to 683]), this is a material consideration to which significant weight should be given [740].

781. Moreover, the development would not contribute directly to radical reductions in GHG emissions; it would have the opposite effect. It would therefore be inconsistent with Framework paragraph 148 which, as a very recent expression of government policy, attracts great weight [738]. For the reasons given, I conclude that the 2019 WMS does not amount to a policy that can be set against that Framework paragraph in the way that the now quashed Framework paragraph 209(a) would have been [733 to 739].

782. At best therefore the material considerations balance one another out although, in my view, those against the development (residual GHG emissions - if not found to be a conflict with development plan policy in any event - and inconsistency with Framework paragraph 148) substantially outweigh those in favour (use of the well pad, limited short-term economic benefits and informing future energy policy through exploration).

783. Material considerations do not therefore indicate that the appeal should be determined other than in accordance with the policies of the development plan. The appeal should therefore be dismissed.

Recommendation

784. I recommend that the appeal be dismissed.

785. If the Secretary of State is minded to disagree with my recommendation, Annex C lists the conditions that I consider should be attached to any planning permission granted.

786. However, if the Secretary of State is so minded there are two matters that will need to be addressed. In the light of my recommendation it has not been necessary for me to conclude on either in my report.

787. First, the Council has made legal submissions regarding government's obligations under the Paris Agreement as an international treaty [98 to 102]. The appellant has countered that government has been 'mindful' of those obligations in developing energy policy [393]. This is a legal matter for the Secretary of State to determine but in my view the appellant is correct that the obligations identified by the Council will have already been taken into account in the formulation of national policy.

788. Second, as Competent Authority, the Secretary of State would have to address the issues raised by the *People over Wind/Sweetman* judgement (A16). These

are addressed very briefly above [265 and 455] with further advice to the Secretary of State set out in Annex D.

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Robert Griffiths QC Nicola Strachan of counsel	Instructed by Pamela Chesterman, Solicitor for the Council
They called	
Conor Vallelly BA (Hons) MTCP MRTPI	Associate Planner GVA HOW Planning
Dr Paul Balcombe MEng PhD CEng MIChemE	Research Fellow Imperial College London
Dr John Broderick BA MSc PhD	Lecturer University of Manchester Tyndall Centre for Climate Change

FOR THE APPELLANT:

Giles Cannock QC	Instructed by Peter Nesbit, Eversheds Sutherland (International) LLP
He called	
David Adams MA MRTPI	Director, AXIS
Jonathan Foster	Managing Director Zetland Group Limited
Katrina Hawkins BSc (Hons) MSc	Chairman Smith Grant LLP

FOR FRACK FREE ELLESMERE PORT AND UPTON:

Estelle Dehon of counsel	Instructed under direct access by Frack Free Ellesmere Port and Upton
She called	
Dr Anna Szolucha MA (Hons) PhD	Research Fellow Northumbria University
Prof. Andrew Watterson PhD CFIOSH	Fellow Collegium Ramazzini, Stirling University
Colin Watson B.ENG C.ENG MIET	FFEP&U member
David Plunket MSc	Retired local government research and statistics manager
Dr Patrick Saunders FRCP FFPH	Consultant in Public Health and Visiting Professor in Public Health, University of Staffordshire
Jackie Copley BA (Hons) MA MRTPI PgCert	Planning consultant
Prof. David Smythe BSc PhD	Emeritus Professor of Geophysics, University of Glasgow
Robin Grayson MSc	Senior Consultant geology and environment
Prof. Kevin Anderson PhD CEng FIMechE	Deputy Director of the Tyndall Centre for Climate Change Research

INTERESTED PERSONS:

Where marked * a statement was read out and is included as numbered (IPn) in the appeal documents. These are available as hard copy only.

*Chris Matheson MP IP1	MP for City of Chester
Justin Madders MP	MP for Ellesmere Port and Neston
*Mike Amesbury MP IP2	MP for Weaver Vale
*David Keane IP3	Police & Crime Commissioner for Cheshire
*Matt Bryan IP4	Councillor for Upton by Chester ward
Pat Merrick	Councillor for Rossmore ward
*Ben Powell IP5	Councillor for Blacon ward
Jill Holbrook	Councillor but speaking as a local resident
*Mrs Barbara Gegg IP6	Local resident
*Felicity Dowling IP7	Local resident
*Anthony Walsh IP8	Local resident
*Chris Hesketh IP9	Frack Free Dudleston
*Helen Rimmer IP10	Friends of the Earth
*Peter Benson IP11	Chester and District Friends of the Earth
*James Cameron IP12	Local resident
*Dr John Tacon IP13	Local resident
*Paul Bowers IP14	Cheshire West and Chester Green Party
*Phil Coombe IP15	Local resident
Tim Budd	Local resident
*Jackie Mayers IP16	Local resident
*Linda Shuttleworth IP17	Local resident
*Drew Bellis IP18	Local resident
*Pam Bellis IP19	Local resident
*Alan Scott IP20	Local resident
*Fiona Jackson IP21	Local resident
Catherine Green	Local resident
*Stephen Savory IP22	Local resident
*Fiona Leslie IP23	Local resident
Gayzer Frackman	Local resident
*Thomasine Buckeridge IP24	Local resident

ANNEX A

Where a document is only available in hard copy, the document number is in **bold**

DOCUMENTS

CORE DOCUMENTS

CD1.1	EP-1 Extant Planning Permission 09/02169/MIN dated 15 January 2010
CD1.2	Discharge of Conditions Approvals to EP-1 Extant Planning Permission 09/02169/MIN relating to both 2011 (see CD1.3) and 2014 (see CD1.4) applications
CD1.3	Application for discharge of planning conditions 6, 7, 8, 9, 10, 12 and 13 of permission 09/02169/MIN (2011)
CD1.4	Application for discharge of schemes relating to planning conditions 6, 10 and 12 of permission 09/02169/MIN (2014)
CD1.5	Application documentation submitted in support of extant planning permission 09/02169/MIN (2009)

CD1.6 Application documentation submitted in support of application for Environmental Permit (2014)
CD1.7 E-mail to the Council dated 10 January 2014 regarding intentions to drill
CD1.8 Community Information for Public Exhibition in July 2014
CD1.9 Application documentation submitted in support of application for Environmental Permit Variation (2017) (see CD2.12 for copy of varied Permit)
CD2.1 Screening Opinion issued by Cheshire West and Chester Council ("the Council") dated 21 July 2017
CD2.2 Application Covering Letter to the Council dated 21 July 2017
CD2.3 Completed Application Form dated 20 July 2017
CD2.4 Planning Statement dated July 2017 including plans and documents
CD2.5 Site Location Plan (Drawing No. ZG-IGAS-EP-PA-02) submitted to the Council separately on 21 July 2017
CD2.6 E-mail to the Appellant from the Council dated 24 July 2017 with queries regarding well depth
CD2.7 E-mail to the Council from the Appellant dated 14 August 2017 attaching letter responding to well depth queries
CD2.8 E-mail to the Council from the Appellant dated 18 August 2017 attaching exchange of correspondence with Natural England dated 10 December 2009
CD2.9 E-mail to the Appellant from the Council dated 29 September 2017 with query relating to noise assessment
CD2.10 E-mail to the Council from the Appellant dated 24 October 2017 attaching: a Supplementary Noise Report; and Report to Information Habitats Regulation Assessment Screening in response to comments from Natural England and the Council
CD2.11 E-mail to the Appellant from the Council dated 8 November 2017 regarding clarification requested by the Biodiversity Officer on the Phase I Habitat Map
CD2.12 E-mail to the Council from the Appellant dated 14 November 2017 attaching a copy of the Environmental Permit for the Ellesmere Port Wellsite issued on 10 November 2017
CD2.13 Environmental Permit Variation Decision Reasoning dated 10 November 2017
CD2.14 E-mail to the Council from the Appellant dated 15 November 2017 responding to query raised by the Biodiversity Officer on the Phase 1 Habitat Map
CD2.15 E-mail to the Council from the Appellant dated 17 November 2017 responding to comments received by United Utilities
CD2.16 E-mail to the Appellant from the Council dated 4 January 2018 regarding query on rigs/high equipment
CD2.17 E-mail to the Council from the Appellant dated 4 January 2018 responding to query regarding rigs/high equipment
CD2.18 E-mail to the Appellant from the Council dated 5 January 2018 raising queries in relation to the Air Quality Impact Assessment
CD2.19 E-mail to all parties from the Department for Communities and Local Government dated 5 January 2018 attaching the Secretary of State's Screening Direction
CD2.20

	E-mail to the Appellant from the Council dated 8 January 2018 raising further queries in relation to the Air Quality Impact
CD2.21	Assessment
	E-mail to the Council from the Appellant dated 17 January 2018 attaching: a Technical Memorandum providing clarification on the
CD2.22	Air Quality Impact Assessment
	E-mail to the Council from the Appellant dated 23 January 2018 with an update for Members in relation to the pre-application
CD2.23	consultation undertaken
CD2.24	Officer Report for the Committee Meeting on 25 January 2018
	Addendum to the Officer Report for the Committee Meeting on 25
CD2.25	January 2018 (dated 24 January 2018)
CD2.26	Minutes of the Committee Meeting held on 25 January 2018
CD2.27	Decision Notice dated 26 January 2018
	Approved Restoration Scheme (drawing number RSK/M/P660249/02/01/01 Rev 04) pursuant to 11/01541/DIS
CD2.19	E-mail to all parties from the Department for Communities and Local Government dated 5 January 2018 attaching the Secretary of State's Screening Direction
CD2.20	E-mail to the Appellant from the Council dated 8 January 2018 raising further queries in relation to the Air Quality Impact Assessment
CD2.21	E-mail to the Council from the Appellant dated 17 January 2018 attaching: a Technical Memorandum providing clarification on the Air Quality Impact Assessment
CD2.22	E-mail to the Council from the Appellant dated 23 January 2018 with an update for Members in relation to the pre-application consultation undertaken
CD2.23	Officer Report for the Committee Meeting on 25 January 2018
CD2.24	Addendum to the Officer Report for the Committee Meeting on 25 January 2018 (dated 24 January 2018)
CD2.25	Minutes of the Committee Meeting held on 25 January 2018
CD2.26	Decision Notice dated 26 January 2018
CD2.27	Approved Restoration Scheme (drawing number RSK/M/P660249/02/01/01 Rev 04) pursuant to 11/01541/DIS
CD3.1	Consultation Responses to Application Documentation, including:
	3.1a Campaign for the Protection of Rural England (3 November 2017)
	3.1b CWACC Biodiversity Team (4 January 2018)
	3.1c CWACC Highways (13 September 2017)
	3.1d CWACC Portside Environmental Protection Team (23 January 2018)
	3.1e Environment Agency (25 August 2017)
	3.1f Friends of the Earth (28 August 2017)
	3.1g Health & Safety Executive (22 September 2017)
	3.1h Health & Safety Executive (Explosives) (4 December 2017)
	3.1i Health & Safety Executive (Explosives) (22 January 2018)
	3.1j Natural England (14 September 2017)
	3.1k Natural England (2 October 2017)
	3.1l Natural England (4 December 2017)
	3.1m Peel Ports Group (22 January 2018)
	3.1n United Utilities (2 November 2017)

3.1o United Utilities (5 February 2018)

CD3.2 Third Party Representations comprising an objection petition of 184 people, 1,595 objections of which 1,172 proforma style and 3 letters of support (provided in separate folders)

CD3.3 Third Party Responses to the appeal

CD4.1 Statement of Case of the Appellant and Appendices, including:
4.1a Proposed Planning Conditions
4.1b Planning Policy Appraisal
4.1c Expert Statement on Landscape and Visual
4.1d Expert Statement on Ecology
4.1e Expert Statement on Noise
4.1f Expert Statement on Air Quality
4.1g Expert Statement on Cultural Heritage
4.1h Appellant's List of Supporting Documents comprising the appeal

CD4.2 Statement of Case of the Council and Appendices, including:
4.2a Unconventional Gas and Oil Extraction Working Group Final Report of September 2015
4.2b Methane Emissions Article

CD4.3 Statement of Case of Frack Free Ellesmere Port and Upton

CD4.4 Supplementary Statement of Case of the Council

CD5.1 Cheshire West and Chester Local Plan (Part One) Strategic Policies (adopted 29 January 2015)

CD5.2 Saved Policies of the Ellesmere Port and Neston Borough Local Plan (adopted 15 January 2002)

CD5.3 Saved Policies of the Cheshire Replacement Minerals Local Plan (adopted 1999)

CD5.4 Emerging: Submission Version – Chester West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (March 2018)

CD5.5 Oil and Gas Exploration, Production and Distribution SPD (adopted 5 May 2017)

CD6.1 National Planning Practice Guidance (online resource so not provided in hard copy)

CD6.2 National Planning Policy Framework (24 July 2018)

CD7.1 Air Quality Standards Regulations 2010 [available electronically only]

CD7.2 Borehole Sites and Operations Regulations 1995 [available electronically only]

CD7.3 Civil Contingencies Act 2004 [available electronically only]

CD7.4 Climate Change Act 2008 [available electronically only]

CD7.5 European Union (Withdrawal) Act 2018 [Extract – Section 16] [available electronically only, save for extract provided in hard copy]

CD7.6 Planning and Compulsory Purchase Act 2004 [Extract – Section 38] [available electronically only, save for extract provided in hard copy]

CD7.7 Pollution Prevention and Control Act 1999 [available electronically only]

CD7.8 Radioactive Substances Act 1993 [available electronically only]

CD7.9 Town and Country Planning (Environmental Impact Assessment) Regulations 2017 [available electronically only]

CD7.10 Water Resources Act 1991 [available electronically only]
CD7.11 Infrastructure Act 2015 [Extract – Section 49] [available electronically only, save for extract provided in hard copy]
CD7.12 Petroleum Act 1998 [Extract – Section 4A] [available electronically only, save for extract provided in hard copy]
CD8.1 Committee on Climate Change: Onshore Petroleum – The Compatibility of UK Onshore Petroleum with Meeting the UK's Carbon Budgets (March 2016, published 7 July 2016)
CD8.2 Potential greenhouse gas emissions associated with shale gas extraction and use: A study by Professor David J C MacKay FRS and Dr. Timothy J Stone CBE (September 2013)
CD9.1 Statement of Common Ground as agreed between the Council and the Appellant on 7 December 2018

FRACK FREE ELLESMERE PORT & UPTON CORE DOCUMENTS

EP01 Adequacy of Current State Setbacks for Directional High-Volume Hydraulic Fracturing in the Marcellus, Barnett and Niobrara Shale
EP04 Rossmore Ward Snapshot 2017 Cheshire West and Chester Council
EP05 Everything you always wanted to know about Acidising
Kathryn McWhirter et al. for Weald Action Group, Revised 2018
EP07 Fracking Lancashire: The planning process, social harm and collective trauma
Damien Short, Anna Szolucha
EP08 Fracking under the Radar Weald Action Group 2017
EP09 Fracking: How far from Faults? M P Wilson, et al 2018
EP10 IPCC Global Warming of 1.5C: A summary for Policymakers
Intergovernmental Panel on Climate Change 2018
EP14 Site Map of proposed development site Frack Free Ellesmere Port and Upton
EP16 The Manchester Marl Seal and the freshwater Eccles Mudstone
Robin Francis Grayson
EP17 THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT
The Precautionary Principle United Nations General Assembly 314 June 1992
EP19 Ellesmere Port Development Board Vision and Strategic Regeneration Framework: Executive Summary
EP20 Use of acid at oil and gas exploration and production sites
Environment Agency 2018
EP21 Ellesmere Port Snapshot 2017 Cheshire West and Chester Council
EP22 Netherpool Snapshot 2017 Cheshire West and Chester Council
EP23 Correspondence between FFEP&U and IGas Oct-Dec
IGas
EP24 Carbon Management Plan 2016-2020 Phase 2
Cheshire West and Chester Council
EP25 Air Quality Status Report 2017
Cheshire West and Chester Council
EP26 Air Quality Status Report 2018
Cheshire West and Chester Council
EP27 Cheshire West and Chester Council Locality Dashboard Ellesmere Port

	Cheshire West and Chester Council 2015
EP28	Environmental Permit EPR/BB3708GN Environment Agency
EP29	EA Screening tool V1 EPR BB3708GN DST Environment Agency
EP31	Offshore Statistics and Regulatory Activity 2017 HSE
EP32	OGP Blowout Frequencies International Association of Oil and Gas Producers
EP33	HSE Offshore Hydrocarbon Releases HSE
EP34	Letter from HSE to CW&C 4 Dec 2017 HSE
EP36	A guide to the Borehole Sites and Operations Regulations 1995 HSE
EP37	Cheshire West and Chester Council. (2014). Integrated Strategic Needs Assessment: Summary NHS: West Cheshire Clinical Commissioning Group
EP38	Cheshire West and Chester Inequalities Report Cheshire West and Chester Council 2015
EP39	Health Impacts of Pollution. What do we Know? Annual Report of the Chief Medical Officer 2017.
EP40	Oil and Gas Wells and their Integrity: Implications for shale and unconventional resource exploitation RJ Davies et al 2014
EP41	Fourth Carbon Budget Review Part 2 - Extract Committee on Climate Change
EP42	Methane and CO2 Emissions from the Natural Gas Supply Chain ICL / SGI 2015
EP43	Is Shale Gas a Major Driver in Recent Increase in Global Atmospheric Methane? Robert Howarth 2018
EP44	Carbon Budgets: How we monitor emissions targets CCC - current webpage - 9 Dec 18
EP45	Local Authority Carbon Dioxide Emissions Estimates 2016 Dept BEIS 2018
EP46	Paris Climate Agreement 2015
EP47	Potential Air Quality Impacts of Shale Gas Extraction in the UK Air Quality Expert Group, for Dept. for the Environment, Food and Rural Affairs, 2018

PROOFS OF EVIDENCE

APPELLANT

APP/DA/1	Summary proof of David Adams
APP/DA/2	Proof of David Adams
APP/DA/3	Appendices to proof of David Adams
APP/DA/4	Rebuttal proof and appendices of David Adams
APP/JF/1	Summary proof of Jonathan Foster
APP/JF/2	Proof of Jonathan Foster
APP/JF/3	Appendices to proof of Jonathan Foster
APP/JF/4	Rebuttal proof and appendices of Jonathan Foster
APP/KEH/1	Summary proof of Katrina Early Hawkins
APP/KEH/2	Proof of Katrina Early Hawkins

APP/KEH/3	Appendices to proof of Katrina Early Hawkins
APP/KEH/4	Rebuttal proof and appendices of Katrina Early Hawkins
APP/KBH/1	Summary proof of Kevin Honour
APP/KBH/2	Proof of Kevin Honour
APP/KBH/3	Appendices to proof of Kevin Honour
APP/SS/1	Summary proof of Simon Stephenson
APP/SS/2	Proof of Simon Stephenson
APP/SS/3	Appendices to proof of Simon Stephenson

COUNCIL

CC1	Proof and appendices of Conor Vallelly
CC2	Proof of Dr Paul Balcombe
CC3	Rebuttal proof of Dr Paul Balcombe
CC4	Proof of Dr John Broderick
CC5	Rebuttal proof of Dr John Broderick

FRACK FREE ELLESMERE PORT & UPTON

EPP01	Proof and appendices of Colin D Watson
EPP01S	Summary proof of Colin D Watson
EPP2	Proof and appendices of Prof. Andrew Watterson
EPP2S	Summary proof of Prof. Andrew Watterson
EPP3	Proof and appendices of Dr Patrick Saunders
EPP3S	Summary proof of Dr Patrick Saunders
EPP4	Proof and appendices of Dr Anna Szolucha
EPP4S	Summary proof of Dr Anna Szolucha
EPP5	Proof and appendices of Robin Grayson
EPP5S	Summary proof of Robin Grayson
EPP6	Proof and appendices of Dr David Smythe
EPP6S	Summary proof of Dr David Smythe
EPP7	Proof and appendices of Prof. Kevin Anderson
EPP7S	Summary proof of Prof. Kevin Anderson
EPP8	Proof and appendices of David Plunkett
EPP8S	Summary proof of David Plunkett
EPP9	Proof of Jackie Copley
EPP9S	Summary proof of Jackie Copley
EPP10R	Rebuttal proof and appendices of Colin Watson
EPP11R	Rebuttal proof of Prof. Andrew Watterson
EPP12R	Rebuttal proof and appendices of Robin Grayson
EPP13R	Rebuttal proof of Jackie Copley
EPP14R	Rebuttal proof of prof. Kevin Anderson

DOCUMENTS SUBMITTED DURING THE INQUIRY

DOCUMENTS SUBMITTED BY THE COUNCIL

C1	Oil and Gas Authority Announcement re Shale Gas Regulator dated 5 October 2018

C2 Clarification of the terms 'capture of natural gas', 'carbon capture and storage' and 'direct air capture' as used in the Council's evidence
C3 A clarification on estimates of methane emissions from exploration activities
C4 This Is a Crisis: initial report by IPPR February 2019
C5 Letter in the Times dated 27 February 2019
C6 Statement on agreed estimate of greenhouse gas emissions from well testing activities
C7 *The Queen oao Jeremy Bailey, Allan Norman and Peter Wilson v Secretary of State for Business, Enterprise and Regulatory Reform and others* [2008] EWHC 1257 (Admin)
C8 *Gateshead Metropolitan Borough Council v Secretary of State for the Environment and another* [1996] CoA 71 P. & C. R. 350 (also submitted by the appellant as Document A12 and by Frack Free Ellesmere Port & Upton as Document R11)
C9 *Ian Frank Harrison v Secretary of State for Communities and Local Government and another* [2009] EWHC 3382 (Admin)
C10 *Hopkins Developments Limited v First Secretary of State and North Wiltshire DC* [2006] EWHC 2823 (Admin)
C11 Response to the appellant's application for costs and submissions in respect of *Stephenson*
C12 Council's closing submissions

DOCUMENTS SUBMITTED BY THE APPELLANT

A1 Letter dated 14 January 2019 relating to and enclosing alternative site layout plans
A2 Environment Agency briefing note dated January 2019 and covering email dated 16 January 2019
A3 Extract from the Climate Change Act 2008
A4 Response to Calculation on Methane and Global Warming Potential
A5 Scheme Description: Proposed Amendment
A6 Cheshire West and Chester Local Plan Part 1: Strategic Policies Examination Inspector's questions 11, 12 and 13 on Matter 4 Ellesmere Port and Peel Investments (North) Limited's supplemental response.
A7 Email exchange between the appellant and Natural England
A8 Revision of the statement on agreed estimate of greenhouse gas emissions from well testing activities (Document C6) to include only those matters with which the appellant agrees
A9 *The Queen (oao) Frack Free Balcombe Residents Association v West Sussex CC* [2014] EWHC 4108 (Admin) (also submitted by Frack Free Ellesmere Port & Upton as Document R13)
A10 *Plan B Earth and others v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 1892 (Admin)
A11 *West Midlands Probation Committee v Secretary of State for the Environment* [1997] COA
A12 *Gateshead Metropolitan Borough Council v Secretary of State for the Environment and another* [1996] CoA 71 P. & C. R. 350

A13 *R v Broadland DC and St Matthew Society Limited and Peddars Way Housing Association ex parte Dove* [1998] EWHC
A14 *Newport BC v Secretary of State for Wales and Browning Ferris Environmental Services Ltd* CoA (also submitted by Frack Free Ellesmere Port & Upton as Document R15)
A15 *Westminster Council v Gt. Portland Estates Plc.* [1985] H.L.(E)
A16 *People over Wind & Sweetman v Coillte Teoranta* (C-323/17) [2018] Env LR 31
A17 Application for costs against the Council
A18 Response to application for costs by Frack Free Ellesmere Port & Upton
A19 Submissions in respect of *Stephenson*
A20 Response to Council's costs application response
A21 Appellant's closing submissions
A22 Appellant's email response to commencement conditions dated 6 March 2019

DOCUMENTS SUBMITTED BY FRACK FREE ELLESMERE PORT AND UPTON

R1 Policy Paper Clean Air Strategy issued by Defra, DoHSC, DoT, DBIS, Treasury dated January 2019
R2 Missing pages from evidence document EP39
R3 Schedule of suggested conditions and all parties' comments
R4 Section 106 Agreement relating to land near Retford, Nottinghamshire
R5 Appeal decision APP/P4415/W/17/3190843 Harthill
R6 Appeal decision APP/X4725/W/17/3190207 Fell House
R7 Tinker Lane Community Liaison Group Terms of Reference
R8 Ellesmere Port 1 Lithography Log
R9 Annotated Google Earth images of Mr Fosters' office and nearby well
R10 Submissions supporting Rule 6 Party's conditions
R11 *Gateshead MBC v Secretary of State for the Environment* CoA
R12 *W E Black Ltd v Secretary of State for the Environment and London Borough of Harrow* EWHC
R13 *The Queen (oao) Frack Free Balcombe Residents Association v West Sussex CC* [2014] EWHC 4108 (Admin)
R14 *Felicity Norman v Secretary of State for Housing Communities and Local Government and others* [2018] EWHC 2910 (Admin)
R15 *Newport BC v Secretary of State for Wales and Browning Ferris Environmental Services Ltd* CoA
R16 Appeal decision APP/Z0116/W/18/3198899 Shirehampton, Bristol
R17 *H J Banks & Co v Secretary of State for Housing, Communities and Local Government and others* [2018] EWHC 3141 (Admin)
R18 *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin)
R19 Submissions in respect of *Stephenson*
R20 Application for costs against the appellant
R21 Frack Free Ellesmere Port & Upton's closing submissions

DOCUMENTS SUBMITTED BY INTERSETSED PERSONS AFTER THE INQUIRY OPENED

I1 Letter dated 16 January 2019 from Dr Andrew Barendt
I2 Letter dated 16 January 2019 from Dr Elizabeth Agnew
I3 Email dated 18 January 2019 from Professor Andrew Badsen
I4 Email dated 20 January 2019 from Esther Davies

DOCUMENTS ARISING AFTER THE CLOSE OF THE INQUIRY

PI1 *Net Zero: The UK's contribution to stopping global warming* Committee on Climate Change May 2019
PI2 Appellant's response to Net Zero report
PI3 Council's response to Net Zero report
PI4 Frack Free Ellesmere Port & Upton's response to Net Zero report
PI5 *Claire Stephenson v Secretary of State for Housing and Communities and Local Government* [2019] EWHC 519 (Admin): Sealed Order and Judge's approved note
PI6 Appellant's response to the Sealed Order and Judge's note
PI7 Council's response to the Sealed Order and Judge's note
PI8 Frack Free Ellesmere Port & Upton's response to the Sealed Order and Judge's note
PI9 Written Statement by Lord Bourne of Aberystwyth (HLWS1549)
PI10 Appellant's response to HLWS1549
PI11 Council's response to HLWS1549
PI12 Frack Free Ellesmere Port & Upton's response to HLWS1549
PI13 The Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI2019/1056
PI14 Appellant's response to Climate Change Act Amendment
PI15 Council's response to Climate Change Act Amendment
PI16 Frack Free Ellesmere Port & Upton's response to Climate Change Act Amendment
PI17 Response from Natural England to PINS request for comment
PI18 Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies
PI19 Energy Policy Update: Written Statement by the Secretary of State for Business, Energy and Industrial Strategy
PI20 Appellant's response to PI18 & PI19
PI21 Council's response to PI18 & PI19
PI22 Frack Free Ellesmere Port & Upton's response to PI18 &PI19
PI23 Inspector request for clarification of points in Mr Honour's Shadow Appropriate Assessment
PI24 Appellant's response to PI23 dated 18 November 2019

PLANS

A Extracts from various Council development plan policy maps submitted by the appellant

ANNEX B

ABBREVIATIONS

AA	Appropriate Assessment

BAT	Best Available Techniques
BLP	Ellesmere Port and Neston Borough Local Plan
CCC	Committee on Climate Change
DST	Drill Stem Test
EA	Environment Agency
ELP	Cheshire West and Chester Local Plan (Part Two) Land Allocation and Detailed Policies
EPDB	Ellesmere Port Development Board
EWT	Extended well test
FFEP&U	Frack Free Ellesmere Port & Upton
Framework	National Planning Policy Framework
GHG	Green House Gas
GWP	Global Warming Potential
HSE	Health and Safety Executive
IPCC	UN Intergovernmental Panel on Climate Change
LNG	Liquefied natural gas
LP	Cheshire West and Chester Local Plan (Part One) Strategic Policies
MLP	Cheshire Replacement Minerals Local Plan
NE	Natural England
OGA	Oil and Gas Authority
SOC	Statement of Case
SRF	Ellesmere Port Vision and Strategic Regeneration Framework
SPD	Supplementary Planning Document: Oil and gas Exploration, Production and Distribution
TVD	Total Vertical depth
UKOOG	United Kingdom Onshore Oil and Gas
WMS	Written Ministerial Statement

ANNEX C

PROPOSED CONDITIONS

1) The development hereby permitted shall commence before the expiration of 3 years from the date of this permission. Written confirmation of the date of commencement shall be provided to the local planning authority no later than 7 days after the event.

2) The development hereby permitted shall be carried out in strict accordance with the following plans and drawings except as otherwise required by any of the conditions set out in this permission:

   Location Plan (drawing number ZG-IGAS-EP-PA-01);
   Site Location Plan (drawing number ZG-IGAS-EP-PA-02);
   Existing Layout Plan (drawing number ZG-IGAS-EP-PA-03);
   Drill Stem Test and Well Completion Phase Layout Plan (drawing number ZG-IGAS-EP-PA04-ALT Rev 1);
   Extended Well Test Phase Layout Plan (drawing number ZGIGAS-EP-PA-05-ALT);
   Section Through Existing Wellsite (drawing number ZG-IGASEP-PA-06);
   Section Through Drill Stem Test and Well Completion Phase (drawing number ZG-IGAS-EP-PA-07-ALT Rev 1);

Section Through Extended Well Test Phase (drawing number ZG-IGAS-EP-PA-08-ALT);
Vehicle Access Route (with narrative) (drawing number ZGIGAS-EP-PA-09).

3) The development hereby permitted shall be limited to the flow testing and appraisal of hydrocarbons within the Pentre Chert formation.

4) The development hereby permitted shall not consist of matrix acidisation or acid fracturing, as defined by the Environment Agency in "Use of acid at oil and gas exploration sites" (January 2018).

5) No development shall take place until a scheme to convene and operate a Community Liaison Group has been submitted to and approved in writing by the local planning authority. The scheme shall include measures to seek membership from the local planning authority, Island Gas Limited (or any successor operator) and the local community. The scheme shall be implemented as approved and as far as practicable, unless otherwise approved in writing by the local planning authority.

6) Once commenced the Drill Stem Test (DST) and Well Completion, Extended Well Test, Well Suspension and Demobilisation of Well Test Equipment phases (as identified on drawing numbers ZG-IGAS-EP-PA-04-ALT Rev 1, ZG-IGAS-EP-PA-05-ALT, ZG-IGAS-EP-PA-07-ALT Rev 1 and ZG-IGAS-EP-PA-08-ALT) shall not exceed the maximum number of days for each phase identified in Section 6 of the Planning Statement (document reference IGAS- EP1-PA-001) unless in the interests of safety, security or in emergency. Any delay, the reasons for that delay and the anticipated length of the delay shall be reported in writing to the local planning within 7 days of the delay first occurring.

7) The shrouded ground flare shall not exceed 12.2m in height and shall only be located within 3 metres of the position shown on the drawing entitled 'Drill Stem Test and Well Completion Phase Layout Plan' (drawing number ZG-IGAS-EP-PA-04-ALT Rev 1) submitted with the planning application.

8) The enclosed ground flare shall not exceed 8.2m in height and shall only be located within 3 metres of the position shown on the drawing entitled Extended Well Test Phase Layout Plan (drawing number ZG-IGAS-EP-PA-05-ALT) submitted with the planning application.

9) The workover rig permitted by this planning permission shall not exceed 33m in height.

10) No development shall take place until details of lighting proposed to minimise light spillage along the northern boundary of the site and in the interest of transitory bats, have been submitted to and approved in writing by the local planning authority. The details shall be implemented as approved.

11) Construction traffic shall only access the site via the approved route as set out on drawing number ZG-IGAS-EP-PA-09.

12) Noise levels from the development hereby approved shall not exceed the following levels, when determined as a free field measurement/assessment, at nearby Noise Sensitive Receptors between 22.00 and 07.00:

i) Residential - 42 dB LAeq,1h at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission with the exception of the dwellings the subject of planning permission 10/02062/OUT during any of the 14 days over which the Drill Stem Testing takes place, where it shall be no louder than 45 dB LAeq,1h; and

ii) Offices - 55 dB LAeq,1h (free-field) (0700 to 2200) at a lawfully occupied office (defined for the purposes of this condition as a building within Use Class B1 of the Use Classes Order) which lawfully exists or had planning permission at the date of this permission.

13) No development shall take place until a Noise Monitoring Plan has been submitted to and approved in writing by the local planning authority. The plan shall detail the monitoring proposed to be implemented at each phase of the development, including night-time working and shall be implemented upon approval for the duration of the permission. The plan should allow for noise monitoring results to be available to the local planning authority within 72 hours of measurement, upon request.

14) No development shall take place until a detailed air quality monitoring plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:

i) The pollutants to be monitored: to include NO_2, PM_{10}, $PM_{2.5}$, SO_2, H_2S, Benzene, Top 10 VOCs and TPH;

ii) The methodology for the monitoring, including the frequency and location of monitoring;

iii) The procedure for reporting the results to the local planning authority;

iv) Identification of trigger points and procedures to be followed in instances where any of the triggers identified have been exceeded.

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

15) Any solids extracted from the well which are stored in open containers shall be covered to prevent wind transport and overflow during heavy rain.

16) The site shall be restored in accordance with the details shown on drawing number RSK/M/P660249/02/01/01 Rev 04 approved pursuant to condition 13 of planning permission 11/01541/DIS. Restoration in accordance with this approved drawing shall take place:

i) within 18 months from the date on which a decision is taken by the developer to abandon the EP-1 well; or

ii) within five years of cessation of the drill stem test; or

iii) within five years of cessation of the extended well test phase,

whichever is later.

ANNEX D

FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

Introduction

1. Article 6 of the Habitats Directive , which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (for plans and projects beyond UK territorial waters (12 nautical miles)), requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives. In particular, an assessment is required as to whether a development proposed is likely to have a significant effect upon a European site, either alone or in combination with other plans and projects.

2. The appellant's application included a report entitled Report to Inform Habitats Regulations Assessment (HRA) Screening (CD2.10c), which concluded there would be no likely significant effects to relevant European designated sites. However, this report pre-dated *People Over Wind & Peter Sweetman v Coillte Teoranta* (*'People over Wind'*) (A16). The *People over Wind* judgment ruled that it was not appropriate for measures intended to avoid or reduce significant effects on the designated features of a European site to be considered at the screening stage of the HRA process. It found that any such measures should only be considered as part of an AA. The appellant's conclusions in their report were predicated on the implementation of such measures. Consequently, the appellant acknowledged that in the event of the Secretary of State being minded to allow the appeal and grant planning permission an AA may be required [455].

3. To assist that exercise the appellant has prepared a 'shadow' AA (APP/KBH/3 Appendix 1). NE have given their views on this document to the appellant (A7) and to the Planning Inspectorate (PI17). I sought clarification on a number of points (PI23) to which the appellant responded on 18 November 2019 (PI24). Comment from the Council and FFEP&U on this exchange was not invited.

4. Following the convention used in the report, documents in Annex A that are referred to are shown in () while figures in [] are cross references to paragraphs in the report. Otherwise, all paragraph, table, figure and appendix references in this Annex are to content within the appellant's 'shadow' AA.

Project location

5. The proposed development would be located at Ellesmere Port Wellsite, Portside One, Portside North, Ellesmere Port, Cheshire CH65 2HQ. There are two relevant designations for the purposes of HRA located within 2km of the proposed development. The relevant sites are the Mersey Estuary Special Protection Area (SPA) and the Mersey Estuary Ramsar Site. Their boundaries are contiguous and lie some 240m north-east of the nearest appeal site boundary. A railway line, the Manchester Ship Canal and port facilities lie between the appeal site and the Mersey Estuary.

6. The qualifying features, conservation objectives and condition assessment are set out in detail at paragraphs 3.4 to 3.17. Brief details of each is set out below.

7. The Mersey Estuary SPA comprises large areas of saltmarsh and extensive intertidal sand and mud flats with limited areas of brackish marsh, rocky shoreline and boulder clay cliffs. It qualifies under Article 4.1 of the EU Birds Directive by supporting populations of Golden Plover over winter.

8. It also qualifies under Article 4.2 supporting Redshank and Ringed Plover on passage and Dunlin, Pintail, Redshank, Shelduck and Teal over winter.

9. Under the Article 4.2 'waterfowl assemblage' qualifying feature it is a wetland of international importance regularly supporting waterfowl including Curlew, Black-tailed Godwit, Lapwing, Grey Plover, Wigeon, Great Crested Grebe, Redshank, Pintail, Teal, Shelduck and Golden Plover.

10. The Mersey Estuary Ramsar Site is listed under criteria 5 and 6 of the Ramsar convention. The species with peak counts in autumn are Common Shelduck, Black-tailed Godwit and Common Redshank. Those with peak counts in winter are Eurasian Teal, Northern Pintail and Dunlin.

11. There are no formal conservation objectives for Ramsar sites but objectives for current and additional qualifying features have been set by NE. Paragraphs 3.10 to 3.12 set out the generic conservation objectives applicable to the Ramsar while the site-specific supplementary advice on conservation objectives issued by NE for the Mersey Estuary SPA are described in paragraphs 3.13 to 3.15.

12. The baseline conditions for the SPA and Ramsar sites, in the vicinity of the appeal site, have been established according to the NE condition assessment for the Mersey Site of Special Scientific Interest (SSSI); this is illustrated on Figure A3.1. Units 10 and 11 are of most relevance in this regard and have been assessed by NE as being 'favourable' (unit 11) or 'unfavourable recovering' (unit 10) although a more recent but limited survey suggests the vegetation may now be in favourable condition.

Habitats Regulation Assessment of the project

13. Table 4.1 sets out an initial assessment of the potential impacts of the development proposed. Impacts with a pathway to the designated sites are as follows:

Impact	**Potential Pathway**
Air quality	Short-term use of gas flares producing nitrogenous compounds
Surface water drainage	Possible route for contaminated surface water via Ship Canal which lies between appeal site and SPA before consideration of site drainage
Groundwater contamination	Possible release of fluids from well into groundwater before consideration of containment measures
Light pollution	Site will be illuminated during the night, so potential effect pathway (although distant from SPA)

Noise pollution	Operation of site involves some noise-producing activities such as flaring gas

Part 1: Assessment of likely significant effects

14. Taking the impacts set out in the table above in order, impacts from changes in **air quality** are assessed in paragraphs 4.6 to 4.11. In making this assessment the air quality modelling undertaken for the purpose of the Environmental Permit variation application and the application for planning permission (CD2.4 Appendix 11) and for the purpose of the appeal evidence (APP/KEH/3 Appendix 1) is relied upon. The evidence about oxide of nitrogen levels and nitrogen deposition rates was not challenged during the Inquiry and there is no reason therefore why the Secretary of State should not rely upon it as a basis for the conclusion drawn.

15. The conclusions reached are that neither the screening thresholds nor the environmental quality standards are predicted to be exceeded for oxides of nitrogen levels or nitrogen deposition rates by the process contribution. It can therefore be safely concluded that there will be no likely significant effect on SPA qualifying features as a consequence of flare emissions (4.11).

16. Neither of the responses from NE (APP/DA/4 Appendix 1 and A7) raise any concern with regards to this conclusion. I therefore agree with the conclusion of the appellant that there would be no likely significant effect on SPA qualifying features as a consequence of flare emissions.

17. Moving now to **surface water drainage** paragraphs 4.12 and 4.13 confirm that there is no surface water hydrological connectivity between the well site and the Mersey Estuary because of the way that the existing well site has been constructed. In short, an impermeable membrane beneath the site diverts the surface water runoff into the on-site drainage infrastructure prior to periodic removal via tankers.

18. The current baseline conditions appropriately isolate surface water runoff. It can therefore be safely concluded that there will be no likely significant effect as a consequence of emissions to surface waters. This is also a conclusion which NE does not dispute (APP/DA/4 Appendix 1 and A7) and is therefore a conclusion with which I agree.

19. **Ground water contamination** is the subject of paragraphs 4.14 to 4.16. The only possible pathway to groundwater would result from the failure of the well casings that are already in place and subject to periodic monitoring in accordance with a separate regulatory regime. That regime would operate and would require the well casings irrespective of the presence of the Natura 2000 sites (4.14).

20. The appellant's conclusion is therefore that it is safe to conclude that there would be no likely significant effect.

21. While NE does not disagree with this conclusion (APP/DA/4 Appendix 1) reference is made to the well casings in the context of embedded mitigation. The appellant sets out the reasons why the well casings should not be so considered (APP/KBH/2 paragraph 5.7). These are:

    i) The well casings are currently in place, having been constructed in accordance with standard industry practice in accordance with regulations, and have been subject to maintenance inspections under a

previous planning consent – they are therefore part of the current baseline, and do not require installation as part of the Proposed Development;

ii) The requirement to protect groundwater is subject to additional regulatory oversight, such as the Borehole Sites and Operations Regulations, overseen by an Independent Well Examiner and a specialist HSE wells inspector; and

iii) The regulatory regime to prevent ingress to groundwater would operate irrespective of the presence of a European conservation site – mitigation measures are not contingent on the identification of a potential effect pathway, but could reasonably be expected to be required for any development of this nature.

22. However, the appellant also accepts that it would be prudent to assume that it does represent embedded mitigation and proceed to AA [paragraph 2 above]. In that circumstance, NE has confirmed that it would expect to be able to conclude that the proposal would not have an adverse effect on the integrity of the SPA and Ramsar site either individually or in combination with other plans or projects (APP/DA/4 Appendix 1).

23. My conclusion is that, since the well casings are already in place and will not be installed through the implementation of the appeal project, the appellant's conclusion with regard to likely significant effect and the reasons for coming to it are reasonable. However, in view of the legitimate debate as to whether or not the well casings represent embedded mitigation, following *People over Wind* a likely significant effect cannot be discounted at Part 1 assessment stage.

24. Turning now to **light pollution**. The appeal site would be illuminated throughout the night when operational. Suggested condition 10 requires a lighting scheme to be approved before development commences and implemented as approved. This is therefore a matter that is wholly within the control of the Council as planning authority.

25. The indication is that the lighting for which approval will be sought will be provided by four portable lighting towers less than 9m in height (4.17). Given the distance to the Estuary it is very unlikely that any light spillage would occur. More importantly, there is an industrial user between the appeal site and the Estuary with taller lighting columns that is much more likely to contribute light spillage reaching the SPA (4.18).

26. The appellant also refers to certain empirical evidence indicating no deleterious effect of nocturnal light on waders and waterfowl using estuarine habitats and some positive effect through extended foraging periods due to the artificial lighting (4.19).

27. In conclusion, the appellant states that it can be safely concluded that there would be no likely significant effect as a consequence of light spillage.

28. In a response to the appellant in December 2018 (APP/DA/4 Appendix 1) NE noted that it was unclear if the lighting design was required to mitigate impacts on the designated sites. In short, the appellant confirmed that it was not. Rather, it is intended to limit light spill from the appeal site in general terms (A7). NE responded to that saying that it did not consider it necessary to

mitigate for impacts from light spill, citing both the distance and existing intervening development referenced by the appellant (A7).

29. Although it does not explicitly say so, it would be reasonable to infer from this that NE does not dispute the appellant's conclusion.

30. In my view, the lighting scheme that will be secured by condition and monitored by the local planning authority is not a measure put in place to mitigate any potential effects on the designated sites. Indeed, NE states that no mitigation for light spill is required in this case. I therefore conclude that there would be no likely significant effect as a consequence of light spillage.

31. Finally, **noise pollution**. This is addressed in detail at paragraphs 4.20 to 4.29.

32. In summary, it is considered that there would be two noise effects of concern. These are predicted noise levels generated by flaring operations during the short-term Drill Stem Test phase and sudden impulsive noise. With regard to the first, habituation is considered very likely to occur (4.21) and, in respect of the second, additional disturbance would not be likely to be caused due to habituation that would have already occurred (4.22).

33. In response to my query about the first of these two effects (4.21) the appellant has now clarified that the existing elevated noise levels experienced would not be significantly added to by the development proposed. Having regard to the conclusion drawn in the ecological report submitted with the planning application (CD2.4 Appendix 9), it is the case that birds are already highly likely to be habituated to existing noise levels (PI24 point 2).

34. The predicted noise levels on which these conclusions are based (and which are reflected in suggested condition 12 and will thus be secured by the local planning authority) incorporate noise mitigation measures. However, these are to be incorporated to reduce noise levels at residential receptors, not at the SPA. The effect of unmitigated noise levels on the SPA has not been modelled, nor is it considered to be necessary (4.23).

35. Similarly, although recognised as potentially of greater ecological importance, no mitigation measures have been proposed or are considered necessary in respect of sudden impulsive noise (4.24). The appellant has clarified (PI24 point 4) that this conclusion is based on information about the nature of the noise environment in the vicinity of the appeal site. The supplementary noise report states:

> *the area surrounding the wellsite is industrial in character, including 24 hour operating factories, petrochemical plants and a small active dock/port. Although it is not feasible to directly measure the contribution of noise at the SPA from these sources, they would be expected to include significant periods where noise levels rise due to local activity, especially activity which would include some impact and impulsive noise character that would result in high maximum levels of noise as measured using the LAmax metric. Noise from canal side industrial activity in the area, reaching the SPA, is likely to generate LAeq,T ambient industrial noise levels, aside from M53 traffic noise, of 50dB or more on occasions. With typical industrial activity, the metric LAmax, values at the SPA will also on occasions be as high as 60- 70dB, or even more, depending upon the precise nature of the industrial activity* (CD2.10b page 4)

36. Paragraph 4.25 concludes that it should therefore be possible to conclude that there is no likely significant effect on qualifying features of the SPA as a consequence of noise generation. The appellant has also clarified why this conclusion is not one of 'safely conclude' as with all the other impacts. It is not caused by any uncertainty about the ecological effects of noise on the SPA qualifying species. Rather, it reflects the legitimate debate as to whether the mitigation measures set out could be considered as incorporated or embedded mitigation (PI24 point 1).

37. NE confirmed that having reviewed all the noise information provided with the planning application it was considered that the proposal would not have likely significant effects on the SPA and Ramsar site (A7). NE thus agreed with appellant.

38. To summarise on noise impacts, a conclusion that there would be no likely significant effect as a consequence of sudden impulsive noise would be justified. The level which it is predicted would not be exceeded would be within the predicted baseline. Thus, no mitigation is required or proposed. However, mitigation measures are put forward to achieve the required levels at residential receptors. Since the impacts within the designated sites without those mitigation measures in place have not been modelled or assessed a finding of no likely significant effect cannot be confirmed.

39. **In-combination effects** taking into account four other projects have also been assessed and are set out in paragraphs 4.26 to 4.29. The overall conclusions drawn are that none of these developments increase the risk of a likely significant effect with respect to noise (4.27), surface and groundwater pollution or light spillage (4.29) and that none would act in combination with the proposed development in terms of air quality due to distance separation and low stack heights (4.28).

40. NE would appear to have agreed with this assessment (APP/DA/4 Appendix 1). I conclude that there would be no likely significant in-combination effects.

Part 2: Findings in relation to adverse effects on the integrity

41. In the case of groundwater contamination I am content that the existing well casing provides the necessary protection for the potential pathway and its effectiveness is regulated in accordance with the Offshore Installations and Well (Design and Construction) Regulations 1996 and the Borehole Sites and Operations Regulations 1995. As the appellant points out these regulations would need to be complied with whether or not the appeal site was near to the SPA and Ramsar site. Indeed, the well was constructed in 2014 in accordance with those Regulations (APP/JF/2 paragraph 3.38) and its integrity monitored annually with no change in its condition observed (APP/JF/2 paragraph 4.12). Nonetheless, the well casing is a suitable avoidance measure preventing a potential pathway for contamination to the sites. I am content that with this measure in place there will be no adverse effect to the integrity of the sites.

42. The position with regards to noise pollution is a little less clear. Again, I am content that the conditions on a grant of planning permission will secure a scheme that limits noise to defined levels and will avoid adverse effects on the integrity of the designated sites. Included within the scheme will be certain features, modifications and additions to the ground flares. While these have

been required to mitigate the impact on residential receptors and would therefore be in place irrespective of any beneficial impact on the designated sites, what that impact may be has not been assessed. While I consider that there would be no adverse effect on the integrity of the designated sites, I do not consider that it can be clearly stated that this is not the result of mitigation measures put forward and secured by condition. That is also the view of the appellant which prompted the cautious conclusion with regard to this impact.

43. I am therefore content that these measures are required to support a conclusion of no adverse effect on the integrity of the site.

Conclusions

44. For the reasons set out above I conclude on the evidence presented that for those impacts where a likely significant effect cannot be discounted (ground water contamination and noise) there would be no adverse effect on the integrity of the SPA and Ramsar site as a result of the proposed development either on its own or in-combination with other projects. This is because suitable measures are in place in order to avoid or reduce any effect from these impacts. NE has indicated in December 2018 (APP/DA/4 Appendix 1) that if consulted on the basis of the assessment in this Annex, it would expect to be able to conclude that the proposals would not have an adverse effect on the integrity of the SPA and Ramsar site either individually or in-combination with other plans or projects.

Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Neutral Citation Number: [2023] EWHC 1854 (Admin)

Case No: CO/2594/2022 & CO/2591/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/07/2023

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

PROTECT DUNSFOLD LTD	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) SURREY COUNTY COUNCIL** **(3) UKOG (234) LTD** **4) WAVERLEY BOROUGH COUNCIL** **(5) DUNSFOLD PARISH COUNCIL**	**Defendants**

- -
- -

Estelle Dehon KC and Alex Shattock (instructed by **Leigh Day**) for the **Claimant**
James Strachan KC and Robert Williams (instructed by **Government Legal Department**) for the **First Defendant**
David Elvin KC and Matthew Dale-Harris (instructed by **Hill Dickinson LLP**) for the **Third Defendant**
The Second, Fourth and Fifth Defendants did not appear and were not represented

- -

And Between :

WAVERLEY BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**Defendants**

(2) SURREY COUNTY COUNCIL
(3) UKOG (234) LTD

- -
- -

Jenny Wigley KC (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
James Strachan KC and Robert Williams (instructed by **Government Legal Department**) for the **First Defendant**
David Elvin KC and Matthew Dale-Harris (instructed by **Hill Dickinson LLP**) for the **Third Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 8 June 2023
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

A. Introduction

1. Protect Dunsfold Ltd ('Protect Dunsfold') and Waverley Borough Council ('Waverley') bring claims pursuant to s.288 of the Town and Country Planning Act 1990 ('the 1990 Act') challenging a decision of the Minister of State for Housing, taken on behalf of the Secretary of State, to grant planning permission for proposed development at Land South of Dunsfold Road and East of High Loxley Road, Dunsfold, Surrey ('the Site'). The decision was taken on 7 June 2022. The Secretary of State accepted the recommendation made by his Inspector, in a report dated 8 March 2022 ('the Inspector's Report' or 'IR'), to allow an appeal under s.78 of the 1990 Act brought by the third defendant ('UKOG') against the refusal of planning permission for the proposed development by Surrey County Council ('Surrey').

2. The proposed development consists of:

> "the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side-track borehole (Loxley-1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Road, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture."

3. On 2 March 2023, Lane J granted Protect Dunsfold permission to pursue two grounds and Waverley permission to pursue one ground which is to the same effect as Protect Dunsfold's first ground. Accordingly, the claimants contend that:

   i) the decision is unlawful by reason of the failure of the Inspector and the Secretary of State to have regard to the requirement in the first sentence of paragraph 176 of the National Planning Policy Framework (20 July 2021, 'the Framework'), that "*[g]reat weight should be given to conserving and enhancing landscape and scenic beauty in … Areas of Outstanding Natural Beauty*", or policy RE3 of the Waverley Borough Local Plan ('WBLP'), or alternatively to give reasons for departing from that policy ('Ground 1: Alleged failure to give great weight to harm to the AONB');

   In addition, Protect Dunsfold contends that:

   ii) The decision is unlawful by reason of the failure of the Secretary of State to explain substantial inconsistencies with his decision in the Ellesmere Port appeal, published on the same day as the challenged decision ('Ground 2: Alleged inconsistency with the Ellesmere Port decision').

B. The facts

4. Protect Dunsfold is a company limited by guarantee incorporated on 28 May 2019 to represent the views of local residents opposed to hydrocarbon development in the

Dunsfold area. Waverley is the Borough Council, and Surrey is the County Council, for the area in which the proposed development is located.

5. The Site forms part of a large agricultural field in use for grazing. The proposed access would cross this and adjacent fields to join the main road network on High Loxley Road which connects to Dunsfold Road. Dunsfold Road defines the southern edge of the Surrey Hills Area of Outstanding Natural Beauty ('AONB'). The Site lies just to the south of Surrey Hills AONB, forming part of the setting of the AONB, and it is within an Area of Great Landscape Value ('AGLV').

6. UKOG applied for planning permission on 26 April 2019. Against the recommendation of officers, Surrey refused planning permission on 15 December 2020. The reasons for refusal were:

> "1. It has not been demonstrated that the highway network is of an appropriate standard for use by the traffic generated by the development, or that the traffic generated by the development would not have a significant adverse impact on highway safety contrary to Surrey Minerals Plan Core Strategy 2011 Policy MC15.
>
> 2. It has not been demonstrated that the applicant has provided information sufficient for the County Planning Authority to be satisfied that there would be no significant adverse impact on the appearance, quality and character of the landscape and any features that contribute towards its distinctiveness, including its designation as an Area of Great Landscape Value, contrary to Surrey Minerals Plan Core Strategy 2011 Policy MC14(iii)."

7. UKOG appealed the refusal of planning permission and an inquiry was held (remotely) before an Inspector appointed by the Secretary of State over nine days, starting on 27 July 2021. Waverley participated in the inquiry as a main party, pursuant to rule 6 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. Protect Dunsfold did not appear at the inquiry but submitted representations in support of Surrey's refusal.

8. The Inspector identified the "*main issues*" as:

> "• the effect of the proposal on landscape character and appearance of the area, including that of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV);
>
> • the effect on living conditions for residential and commercial activities local to the site, with particular regard to noise and disturbance; and
>
> • the effect on highway safety, including the suitability of the road network and traffic movements associated with the operation." (IR §11.2)

9. The impact of the proposed (exploratory stage) development on greenhouse gas emissions was not a main issue but Waverley's submissions addressed the negative impact on greenhouse gas emissions of onshore gas production. Protect Dunsfold's representations did not address greenhouse gas emissions or climate change issues more generally. Other third parties, Ms Finch and the Weald Action Group raised issues as to the compatibility of an application for hydrocarbon exploration and appraisal with the UK's targets for reducing reliance on fossil fuels. UKOG adduced a statement addressing the extent of greenhouse gas emissions that would be caused by the proposed development from Tom Dearing, an associate director at RPS and a Chartered Environmentalist. Mr Dearing predicted that the unmitigated emissions would be either 28,778 tonnes of CO_2e or 29,111 tonnes of CO_2e, depending on the method of calculation. Mr Dearing's evidence was uncontested and he was not called to give oral evidence.

10. On 5 January 2022, the appeal was recovered for the Secretary of State's determination under s.79 of the 1990 Act. The Inspector sent his report to the Secretary of State on 8 March 2022, with a recommendation that the appeal be allowed. On 7 June 2022, the Secretary of State made the challenged decision allowing UKOG's appeal.

C. The legal and policy framework

Section 288 appeals

11. This appeal is brought pursuant to s.288 of the 1990 Act. The principles that guide the court in handling a challenge under section 288 were reiterated by Lindblom LJ in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government (Practice Note)* [2017] EWCA Civ 1643, [2018] PTSR 746 at [6] ('the *St Modwen* Principles'):

> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph: see the judgment of Forbes J in *Seddon Properties Ltd v Secretary of State for the Environment* (1978) 42P & CR 26, 28.
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration: see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No 2)* [2004] 1WLR 1953, 1964B-G.

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, provided that it does not lapse into *Wednesbury* irrationality (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1KB 223) to give material considerations whatever weight [it] thinks fit or no weight at all: see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1WLR 759, 780F-H. And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision: see the judgment of Sullivan J in *Newsmith Stainless Ltd v Secretary of State for Environment, Transport and the Regions (Practice Note)* [2001] EWHC Admin 74 at [6]; [2017] PTSR 1126, para 5 (renumbered)).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration: see the judgment of Lord Reed JSC in *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983, paras 17-22.

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question: see the judgment of Hoffmann LJ in *South Somerset District Council v Secretary of State for the Environment (Practice Note)* [2017] PTSR 1075, 1076—1077; (1992) 66P & CR 83, 85.

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored: see, for example, the judgment of Lang J in *Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB) at [58].

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development

> control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises: see, for example, the judgment of Pill LJ [in] *Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government* [2013] 1 P & CR 6, paras 12—14, citing the judgment of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65P & CR 137, 145." (Emphasis added.)

12. At [7], Lindblom LJ emphasised that there is no place for "*hypercritical scrutiny*" of planning decisions (including decision letters of the Secretary of State and Inspector's reports), cautioning against "*the dangers of excessive legalism*".

13. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 WLR 1865, Lord Carnwath JSC (with whom the other Justices agreed) held at [25]:

> "… the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly."

The National Planning Policy Framework

14. Paragraph 152 of the Framework provides:

> "The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure." (Emphasis added.)

15. Paragraph 176 of the Framework provides (omitting footnote):

> "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas." (Emphasis added.)

16. Paragraph 211 of the Framework provides (omitting footnotes):

> "When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy. In considering proposals for mineral extraction, minerals planning authorities should:
>
> a) as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;
>
> b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;
>
> c) ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source, and establish appropriate noise limits for extraction in proximity to noise sensitive properties;
>
> d) not grant planning permission for peat extraction from new or extended sites;
>
> e) provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;
>
> f) consider how to meet any demand for the extraction of building stone needed for the repair of heritage assets, taking account of the need to protect designated sites; and
>
> g) recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites." (Emphasis added.)

17. Paragraph 215 of the Framework provides, so far as relevant:

> "Minerals planning authorities should:
>
> a) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for; …"

Surrey Minerals Plan 2011

18. Policy MC12 of the Surrey Minerals Plan 2011 provides:

> "Planning applications for drilling boreholes for the exploration, appraisal or production of oil or gas will be permitted only where the mineral planning authority is satisfied that, in the context of the geological structure being investigated, the proposed site has been selected to minimise adverse impacts on the environment. The use of directional drilling to reduce potential impacts should be assessed.
>
> Planning applications for drilling to appraise potential oil or gas fields will only be permitted where the need to confirm the nature and extent of the resource, and potential means of its recovery, has been established. Well sites, including the re-use of wellheads used at the exploratory stage, should be located such that there are no significant adverse impacts.
>
> Commercial production of oil and gas will only be permitted where it has been demonstrated that the surface/above ground facilities are the minimum required and there are no significant adverse impacts associated with extraction and processing, including processing facilities remote from the wellhead, and transport of the product." (Emphasis added.)

19. Policy MC14 of the Surrey Minerals Plan 2011 provides, so far as relevant:

> "Mineral development will be permitted only where a need has been demonstrated and the application has provided information sufficient for the mineral planning authority to be satisfied that there would be no significant adverse impacts arising from the development. …" (Emphasis added.)

Waverley Borough Local Plan

20. Policy RE3 of the WBLP provides:

> "New development must respect and where appropriate, enhance the distinctive character of the landscape in which it is located.
>
> i. Surrey Hills Area of Outstanding Natural Beauty
> The protection and enhancement of the character and qualities of the Surrey Hills Area of Outstanding Natural Beauty (AONB) that is of national importance will be a priority and will include the application of national planning policies together with the Surrey Hills AONB Management Plan. The setting of the AONB will be protected where development outside its boundaries harm public views from or into the AONB.
>
> ii. The Area of Great Landscape Value
> The same principles for protecting the AONB will apply in the Area of Great Landscape Value (AGLV), which will be retained for its own sake and as a buffer to the AONB, until

> there is a review of the Surrey Hills AONB boundary, whilst recognising that the protection of the AGLV is commensurate with its status as a local landscape designation." (Emphasis added.)

21. The Surrey Hills AONB Management Plan (referenced in Policy RE3) includes Policy P1 which states:

> "In balancing different considerations associated with determining planning applications and development plan land allocations, great weight will be attached to any adverse impact that a development proposal would have on the amenity, landscape and scenic beauty of the AONB and the need for its enhancement." (Emphasis added.)

D. The Inspector's Report

22. At IR §§3.1-3.14, the Inspector addressed the climate change and energy policy context. He stated:

> "3.5 This is a period of considerable and rapid change in the energy industry. Climate change concerns are driving a transition from fossil fuels to renewable and low carbon sources. I am very conscious of the considerable concern of many objecting to this proposal that the exploration and production of new fossil fuel resources should not be contemplated today, irrespective of the licences granted by the government, through the Oil and Gas Authority.
>
> 3.6 While I address the main issues against policy below, it is nonetheless important to understand the current policy position on this matter specifically.
>
> 3.7 The Overarching National Policy Statement for Energy (EN1) set out, in 2011, that the UK must reduce its dependence on fossil fuels, which nonetheless were considered to still be needed as part of the transition to a low carbon economy. The development plan for this area includes the Surrey Minerals Plan 2011 (the SMP) in which Policy MC12 deals specifically with Oil and Gas Development. This plan was informed by a Climate Change Strategy from 2008, but I am conscious that this has been updated in 2020, and the new strategy refers to a 'climate emergency' and delivering net zero carbon by 2050. Nonetheless, the SMP identifies the Weald Basin as one of only two locations in southern England where commercial deposits of hydrocarbon are thought to exist and noted a number of exploration and production sites across the County.
>
> 3.8 It recognises three separate stages of development, exploration, appraisal and production, and the expectation that exploratory wells will consider locations minimising their

intrusion, controlling vehicular activity and routeing and controlling noise and light emissions. The policy itself requires that the drilling of boreholes for any of these phases will only be permitted where the authority is satisfied that, in the context of the geological structure being investigated, the site has been selected to minimise adverse impacts on the environment.

3.9 This separation of the three stages of development is consistent with the more recent national policy and guidance. The National Planning Policy Framework (the Framework), recently updated in July 2021, does set out that the planning system should support the transition to a low carbon future, but still requires that mineral planning authorities plan positively for the three phases of development, and differentiates specific requirements only for coal. It records the need to ensure there is a sufficient supply of minerals for the energy that the country needs and that great weight should be given to the benefits of mineral extraction, including to the economy, although it explicitly sets out expectations regarding the natural environment, noise, restoration and aftercare, amongst other matters.

3.10 As I said above, this is a rapidly changing area and the latest government position is perhaps most clearly set out in the Energy White Paper 2020. Although I note the recent publication of the Government's Net Zero Strategy, this does not change the position as regards conventional gas production; that it will continue to play a part in the transition from a fossil fuel economy to one based on clean energy.

3.11 The Energy White Paper, while it acknowledged that onshore gas represents a much smaller proportion of the domestic supply to potential offshore sources, still clearly states the transitional importance of natural gas supplies. While it projects a decrease in production of up to 80% by 2050, the projection for demand is forecast to reduce but continue for 'decades to come'. That gas will come from somewhere, and currently the UK is reliant on imports, both by pipeline from Europe and as Liquefied Natural Gas (LNG) by sea.

3.12 As recently as March 2021, the Climate Change Committee (CCC) advice to the Secretary of State for Business, Energy and Industrial Strategy (BEIS), in addressing the context for onshore petroleum production in the UK, noted that even if consumption falls in line with the recommended path, there will be a challenge to meet the UK's fossil fuel demand, given the decline in North Sea production. It is suggested that this means the UK will continue to need additional gas supplies beyond that available from Europe and the North Sea until 2045 and potentially beyond 2050. This also identified a role for fossil gas with

> Carbon Capture and Storage (CCS) to assist in scaling up hydrogen use." (Emphasis added.)

23. At IR §4.4 the Inspector noted that the probability of the exploration being successful was quoted by UKOG as 60-70% and 30-40% for the secondary target. Independent analysis suggested this would be "*the second largest gas accumulation found in UK onshore history*". It was described by UKOG as a "*meaningful regional project size*".

24. The Inspector summarised the submissions made by the parties and other persons appearing at the Inquiry at IR §§5.1-10.4. At IR §5.25 the Inspector recorded UKOG's submission that Surrey "*agrees that its own Climate Change Strategy is not predicated upon restricting hydrocarbon exploration*". The Inspector noted that Surrey's case included the following "*material points*":

> "6.8 All parties accept that the whole appeal site is within the setting of the AONB. This point is significant in statutory and policy terms for a number of reasons, as accepted by the appellant's landscape witness in cross examination.
>
> …
>
> 6.11 Additionally, there is a further emphasised importance to AONB setting, and the great weight to be accorded to harm to it, in the new addition to the Framework (para 176), discussed in the planning balance section below.
>
> …
>
> 6.16 In addition to being within the setting of the AONB, the site is in an AGLV designated under WLP Policy RE3. The policy text protects the setting of the AONB (at para (i)) and states (at para (ii)) that the AGLV is to be retained for its own sake and as a buffer until there is a review of the AONB boundary…
>
> 6.21 It is clear form all the above that the appeal site is valued in landscape terms. It is within the setting of the AONB, it acts as a buffer to the AONB, it shares characteristics with the AONB (with no detracting features), it includes important features of the AONB and it is within views to and from the AONB. Its important role in these respects is recognised in the PPG, the AONB Management Plan and in the Framework itself.
>
> …
>
> 6.76 As to the site's location in the setting of the AONB, the appellant's planning witness agreed that Framework, para 176, recognises that insensitive development within the setting of the AONB is capable of causing adverse impacts on the AONB itself. Further, he accepted that the effect of para 176 is that great weight is required to be accorded to any such adverse impacts in accordance with the first part of para 176. Plainly (and again, as

> shown in the landscape evidence) this proposal does constitute insensitive development in the setting of the AONB and its adverse impacts on the AONB (particularly in terms of view to and from the AONB) should be accorded great weight in the planning balance."

25. The Inspector noted at IR §1.6 that Statements of Common Ground had been submitted to address, among other matters, landscape. The *Statement of Common Ground – Landscape and Visual Matters* ('the Landscape SoCG') included, under the heading "*Areas of Agreement*":

> "6.2 All parties are in agreement with the overall sensitivity of the landscape resource as identified by the Appellant and included in Appendix B-F of this document that include:
>
> 1) Site and context characteristics including landscape fabric, biodiversity of the site and its context; and perceptual and sensory of the site and its context, included in WW5 Grafham to Dunsfold Wooded Low Weald LCA (Part of AGLV and Surrey Hills AONB setting) – **High**
>
> 2) Wooded Low Weald LT and WW5 – Graham to Dunsfold Wooded Low Weald LCA (Part of AGLV and Surrey Hills AONB setting – **High**
>
> 3) Wooded Low Weald LT and WW2 – West Dunsfold Wooded Low Weald LCA (Part of AGLV and Surrey Hills AONB setting) – **High**
>
> 4) Surrey Hills AONB Greensand Hills and Wooded Weald Hascombe – WW4 Pink Hills to Park Hatch Wooded Low Weald LCA and GW8 Loxhill to Catteshall Wooed Greensand Hills LCA – **Very High**".

26. The parties agreed that the assessment methodology used by UKOG, described in the Landscape and Visual Appraisal, "*broadly follows the relevant guidelines*": *Statement of Common Ground – Landscape and Visual Matters,* §3.2. The Landscape and Visual Appraisal recorded that the effect of the proposed development is assessed through consideration of a combination of the overall sensitivity to the proposed form of development and the overall magnitude of change that would occur. "*Sensitivity is made up of judgements about the 'value' attached to the receptor, which is determined at baseline stage, and the 'susceptibility' of the receptor…*": Landscape and Visual Appraisal*,* §A2.12. "*Table EDP A2.1: Landscape Sensitivity Criteria*" recorded the criteria for the "*Landscape Receptor Value*" to be recorded as "*Very High*" as:

> "Nationally/internationally designated/valued countryside and landscape features; strong/distinctive landscape characteristics; absence of landscape detractors."

27. The Inspector's conclusions are recorded at IR §§11.1-11.130. At IR §11.1 he expressly recorded that he had reached his conclusions taking "*account of the evidence in this case, including the submissions and representations on which I have reported above*".

28. The Inspector addressed the first main issue, the effect of the proposal on the landscape character and appearance of the area, including that of Surrey Hills AONB and the AGLV, at §§11.3-11.65. The Inspector concluded on this issue:

> "11.63 Taking all these matters into account, if the impacts I have found regarding landscape character, visual effects and tranquillity, were permanent or of medium to long-term duration, then this proposal would clearly conflict with the policy aims and objectives for the mineral planning authority and the AONB. However, it is a compelling fact that any harm would be reversed in terms of these matters under the restoration scheme. Nonetheless, I consider that there would be harm to the landscape character and appearance of the area, including the AONB, and therefore conflict with SMP Policy MC14, which seeks to ensure no significant adverse impacts from the development. However, the weight I give to this is tempered by the short-term nature of the proposals.
>
> 11.64 I also find conflict with Policy MC12, as the evidence before me does not demonstrate that the site has been selected to minimise such adverse impacts. The weight I give to this conflict is tempered by an acknowledgement that there would be environmental constraints associated with sites within an area that would meet the significant technical constraints, especially noting the influence of the Dunsfold Aerodrome/Dunsfold Park development, which lies within the optimal location, and the alignment of the crestal area for both the primary and secondary targets.
>
> 11.65 Such policy conflict must be weighed against supporting policies and the benefits of the scheme in the planning balance."

29. In reaching these conclusions, the Inspector observed:

> "**Landscape and Visual Context**
>
> …
>
> 11.6 The site is within National Character Area 121, Low Weald, and the WW5: Grafham to Dunsfold Wooded Low Weald landscape character area, as defined by the Surrey County Council Landscape Character Assessment (2015). Following my site visits, I consider that it generally accords with the key landscape characteristics, including the undulating landform, blocks of woodland, scattered farmsteads and the land rising north to form the setting to wooded greensand hills. Indeed, a recognised element of this landscape is its position just to the

south of the Surrey Hills AONB, whose boundary currently extends to the edge of the Dunsfold Road.

11.7 The site also lies within the setting of the AONB; this was not only accepted by the main parties, but is a function of the wider landscape designation of the AGLV. This designation was retained in the WLP under the policy relating to the AONB, Policy RE3. In this, the AGLV is designated for its own sake, which I read as its landscape value, but also as a buffer to the AONB, subject to a review of the AONB boundary. That review is not complete, and yet work has been done in assessing the relevant areas of the AGLV and their common characteristics.

…

Landscape and Visual Sensitivity

11.10 As agreed by the main parties in the Landscape SoCG, the sensitivity of the landscape outside of the AONB was agreed to be high, while that of the AONB, very high. I see no reason to disagree.

…

11.21 In this case, the site is agricultural grassland, it is part of a wider context with an agricultural character, and has some features of the protected AONB but other detractors. Within this context, there is undoubtedly some value to this part of the AGLV in its role providing a setting to the AONB, some recreational value, not directly, but in terms of maintained rural character in wider views, and some cultural association, albeit not immediately visible, but associated with certain features within the woodlands and potentially medieval or older remains. However, these elements do not represent significant differences to the wider AGLV or rural landscape areas more generally. Overall, I cannot recommend that this be considered a valued landscape in Framework terms. However, it clearly retains protection, both in policy terms and within the revised Framework which seeks that development within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

Landscape and Visual Effects

…

11.39 The activity would be seen from the AONB, both from footpaths rising towards the upper slopes and from the strategic viewpoint within it. The outlook from the strategic viewpoint is an important one as much of the footpath in this part of the AONB is within woodland. There is an enhanced value to the

> sudden vista which opens up, as it provides an important context to the high escarpment and landscape change from the low weald. The landscape experienced in this outlook is typical of that of the AGLV designation providing the setting to the AONB. The framed view offers a layered context with the dispersed woodland blocks, open fields and a strong rural character; there is limited influence from settlements or the road network. The aeroplanes on Dunsfold Aerodrome are a clear and obvious anachronistic element. However, the proposal would introduce HGV traffic crossing the area of open space in the foreground of this, and on removal of the Burchett's, a view of the large compound site. Taking account of the high sensitivity and importance of this contextual element of the setting to the experience of those within the AONB, I consider the effect to be major/moderate adverse.
>
> …
>
> 11.52 On that basis, I am satisfied that the effects of this proposal would be short-term, and while there may be evidence of the construction elements and hedgerow loss for a period after the end of the temporary permission, very significant improvement should have been made and the level of harm accordingly reduced.
>
> 11.53 Nonetheless, I have identified significant harms to the character and appearance of the landscape from the proposal. The scale of this harm is tempered by its short-term nature, but the impacts are to the AONB, its setting and the AGLV. The Framework has recently been up-dated confirming that development within the setting of an AONB should be sensitively located and designed to avoid or minimise impacts." (Emphasis added.)

30. The Inspector addressed the second main issue, the effect on living conditions and local businesses, at IR §§11.66-11.79. At §11.79 he stated:

> "Overall, I consider that the introduction of the access gates, compound and drilling operation could have the potential to introduce a negative perception of the venue if association is made by future clients, although actual impacts would be limited. In light of the temporary nature of the proposal, and the mitigation measures that would be secured through conditions, I consider that this would contribute a moderate level of additional weight to my earlier findings of harm to the overall character and appearance of the area. In this regard, it would be contrary to Policy MC14 of the SMP, which seeks to ensure there would be no significant impacts arising from the development."

31. The Inspector addressed the third main issue, the effect on highway safety, at IR §§11.80-11.103, and "*other matters*" at §§11.104-11.111, before turning to address the overall planning balance at §§11.112-11.130. The Inspector stated:

> "11.112 I have set out that, while I have not found harm in transport terms, I consider that the proposal would result in harm to the landscape character and appearance of the area and degrade the qualities of the setting of the AONB. Although I do not find this to be a valued landscape in Framework terms, it is a landscape that is clearly valued by local residents and the associated businesses. It has value too from its function as an AGLV, and as setting to, and buffer on the edge of the AONB. Furthermore, while I have found only limited effects on the AONB itself, it is of high sensitivity and that harm too must be weighed in the balance. However, the wholly reversible nature of the proposals and possible long-term benefits must be weighed against any harm.
>
> 11.113 I have found that the temporary period over which there would be activity on the site, the limited period over which the rigs would be present and the proposals and controls to ensure restoration, limit that harm. Nonetheless, I find that there would be adverse impacts contrary to both WLP and SMP policies in that regard. Developments must be considered against their compliance with the development plan unless material considerations suggest otherwise.
>
> 11.114 Accordingly, it is necessary to consider the benefits of the proposal, and the compliance with local and national policy and guidance in relation to mineral resources to understand whether the adverse impacts are unacceptable.
>
> …
>
> 11.119 As set out in the Background section to this report, this country is actively seeking to substantially reduce the use of hydrocarbons, including fossil gas, with a considerable focus on the move to a net-zero position. Nonetheless, planning policy at present stops short of a moratorium on conventional fossil gas production, although the benefits of such production must now be considered in light of the very substantial reductions, re-alignment of energy sources and the global need to respond to climate change imperatives.
>
> …
>
> 11.122 To my mind, the projected 44-70 bcf represents a locally significant resource, although it would represent a small proportion of the UK's energy demand, even allowing for the significant reductions forecast. The weight to give to such benefits must be tempered by this. Nonetheless, the appellant

argues that the security of supply and the offsetting of the need, and carbon implications, of importing gas, particularly LNG, weighs heavily in favour of such domestic sources.

11.123 I have noted the arguments of WBC, the Parish Councils and many interested parties, including the Weald Action Group, that the continued extraction of fossil fuels is incompatible with the increasing commitments being made both in the UK and globally, to comply with climate agreements and maintain global temperature rise to 1.5oC. To achieve such a target will require a very substantial change in our energy mix and use, and the reduction in the use of fossil fuels is at the forefront of this change.

11.124 However, current guidance and policy, while acknowledging these changes, forecasts a transition period where fossil gas would still play a part as infrastructure requirements and other energy sources are aligned with a low carbon future.

11.125 The Framework currently emphasises that minerals are essential to provide for the energy the country needs and the economic advantage they deliver. In addition, despite the strong arguments of others, current government policy recognises the continuing need for fossil fuels for many years, albeit at significantly reduced levels, including for natural gas. Under existing policy, the need for future sources of gas has not currently been discounted, rather it is accepted that natural gas will remain part of the energy mix in the UK during the process of transition to a clean energy future, although it is not specific regarding onshore gas deposits or the exploitation of new reserves.

11.126 As a consequence, there are benefits to the scheme. The exploration and production of gas is, in principle, consistent with and encouraged by current national policies. The appellant has indicated that while the deposit is known to exist, this appraisal phase is necessary to determine if it is viable, and quote the probability of success at between 60-70%.

11.127 Without the exploration phase, it would not be possible to identify the extent and viability of the resource and so achieve the benefits on which national policy still acknowledges great weight to be given. Therefore, although this proposal would be short-term, and would not, in itself, deliver commercial quantities of gas, nonetheless, there are positive benefits that must accrue from this exploration/appraisal phase. I cannot accord the great weight sought by the Framework for extraction of minerals, but accord significant weight to this exploration and appraisal phase, with a reasonable likelihood of confirming a viable resource for extraction.

> 11.128 Finally, the operation in terms of exploration and possible production, would contribute to the economy in terms of jobs and potentially some local spend, albeit I have found the weight to be given to this benefit quite limited.
>
> 11.129 Overall, although I have found harm and conflict with SMP Policies, the overall thrust of government policy currently, as well as the vision of the SMP, are supportive of the utilisation of mineral resources within acceptable environmental constraints. The harms I have noted can be tempered by their short-term nature and by mitigation through conditions, specifically those associated with noise, lighting and the coordinated working with neighbouring businesses. As such, the weight I give to the harms, while significant for short periods such as when the drilling rigs are in place, can nonetheless be considered overall as moderate.
>
> 11.130 Consequently, I would recommend that on the basis of current policy, the benefits [of] the proposal would outweigh the harm I have identified and a decision otherwise than in accordance with the development plan is warranted." (Emphasis added.)

E. The Secretary of State's decision

32. In his decision, the Secretary of State entirely agreed with the Inspector's analysis and recommendations on the landscape issue at IR §§11.3-11.64. The decision stated, under the heading "Conclusion on the Landscape and Visual Impacts":

> "18. The Secretary of State agrees for the reasons given [at] IR11.22-11.64 and at IR11.112 that the proposal would result in harm to the landscape character and appearance of the area and degrade the qualities of the setting of the AONB (IR11.112). He further agrees that while there are only limited effects on the AONB itself, it is of a high sensitivity (IR11.112). As such he agrees that the proposal conflicts with SMP Policy MC14 (IR11.63) and WLP policies in that regard (IR11.113). However, he further agrees that for the reasons given at IR11.63, 11.113 and 11.129 that the weight given to this harm is tempered by the short-term nature of the proposals."

33. The Secretary of State also entirely agreed with the Inspector's analysis and recommendations as to the effect on living conditions and businesses at IR §§11.66-11.79. With respect to the wedding business, the Secretary of State agreed that:

> "21 … in light of the temporary nature of the proposal, and the mitigation measures that would be secured through conditions, the potential for negative perceptions of the venue would contribute a moderate level of additional weight to the harm to the overall character and appearance of the area. He further

> agrees that in this regard the proposal would be contrary to Policy MC14 of the SMP in this regard (IR11.79)."

34. The decision continues:

> "*Conclusion on Landscape Character and Appearance and Effect on Living Conditions and Local Businesses*
>
> 22. For the reasons given above, and at IR11.129, the Secretary of State agrees with the Inspector that the harms he has identified can be tempered by their short-term nature and by mitigation through conditions, specifically those associated with noise, lighting and the coordinated working with neighbouring businesses. He further agrees that the weight given to the harms, while significant for short periods such as when the drilling rigs are in place, can nonetheless be considered overall as moderate."

35. The Secretary of State agreed with the Inspector on the highway issue (IR §§11.80-11.103), noting that the development would not have any significant adverse impacts on highway safety or the effective operation of the highway.

36. The Secretary of State disagreed with the Inspector as to the weight to be given to the benefits of the proposed development, in the following terms:

> "25. For the reasons given at IR11.114-11.115 and IR11.128 the Secretary of State agrees with the Inspector that the operation in terms of exploration and possible production, would contribute to the economy in terms of jobs and potentially some local spend and agrees that the weight to be given to this benefit is limited (IR11.128).
>
> 26. Whilst the Secretary of State has considered the exploratory and appraisal application before him on its own merits, for the reasons given at IR11.116 the Secretary of State agrees that exploration and appraisal are a necessary part of mineral development and without it, the currently acknowledged benefits of production cannot be realised. For the reasons given at IR11.117-11.127 the Secretary of State agrees that there is a reasonable likelihood of confirming a viable resource for extraction, and that while the proposal would not, in itself, deliver commercial quantities of gas, nonetheless, there are positive benefits that must accrue from the exploration/appraisal phase (IR11.127). He further agrees (IR11.129) that the overall thrust of government policy, as well as the vision of the SMP, are supportive of the utilisation of mineral resources within acceptable environmental constraints. <u>While he has had regard to the Inspector's analysis at IR11.127 and acknowledges that the project is not itself an extraction project, and would be short term, he considers that the exploration/appraisal phase is a necessary precursor to extraction without which it would not be possible to identify the extent and viability of the resource so as</u>

> to consider and possibly achieve the potential benefits. Whilst he again agrees with the Inspector that granting permission for this proposal does not create any presumption in favour of consent for subsequent phases (IR11.117), the Secretary of State affords great weight to the benefits of the proposed development in line with the Framework." (Emphasis added.)

37. The Secretary of State agreed with the Inspector's recommendation, stating:

> "**Planning balance and overall conclusion**
>
> 32. For the reasons given above, the Secretary of State considers that the appeal scheme is in conflict with SMP Policies MC12 and MC14 relating to oil and gas development and minimising the impact of mineral development, and is in conflict with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
>
> 33. Weighing against the appeal are harm to the landscape character and appearance of the area, including degrading the qualities of the setting of the AONB and failure to demonstrate the site has been selected to minimise adverse impacts; and harm to local businesses. The Secretary of State affords these matters collectively moderate weight.
>
> 34. In favour of the appeal the Secretary of State affords the benefits of the gas exploration/appraisal phase great weight, and the economic benefits limited weight.
>
> 35. Overall, the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan – i.e. a grant of permission.
>
> 36. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted, subject to conditions." (Emphasis added.)

F. Ground 1: Alleged failure to give great weight to harm to the AONB

38. The claimants submit that the Secretary of State, and the Inspector, failed to have regard to the requirement imposed by the first sentence of §176 of the Framework to give "*great weight*" to conserving and enhancing landscape and scenic beauty in the AONB (which is also incorporated into the development plan by Policy RE3 of the WBLP, read with Policy P1 of the Surrey Hills AONB Management Plan).

39. Ms Jenny Wigley KC, Counsel for Waverley, whose submissions on this issue were adopted by Protect Dunsfold, submits that *Monkhill Ltd v Secretary of State for Housing Communities and Local Government* [2021] EWCA Civ 74, [2021] PTSR 1432 shows that the effect of the first sentence of §176 of the Framework is that where a decision-

maker finds harm to the AONB, they must increase the weight to be given to that harm. At [19], Lindblom LJ set out paragraphs [51]-[52] of Holgate J's judgment at first instance:

> "51. It is necessary to read the policy in paragraph 172 [now 176] as a whole and in context. Paragraph 170 requires planning decisions to protect and enhance valued landscapes in a manner commensurate with their statutory status and any qualities identified in the development plan. Paragraph 172 points out that National Parks, the Broads and AONBs have 'the highest status of protection' in relation to the conservation and enhancement of landscapes and scenic beauty. Not surprisingly, therefore, paragraph 172 requires 'great weight' to be given to those matters. The clear and obvious implication is that if a proposal harms these objectives, great weight should be given to the decision-maker's assessment of the nature and degree of harm. The policy increases the weight to be given to that harm.
>
> 52. Plainly, in a simple case where there would be harm to an AONB but no countervailing benefits, and therefore no balance to be struck between 'pros and cons', the e□ect of giving great weight to what might otherwise be assessed as a relatively modest degree of harm, might be su□cient as a matter of planning judgment to amount to a reason for refusal of planning permission, when, absent that policy, that might not be the case. But where there are also countervailing benefits, it is self-evident that the issue for the decision-maker is whether those benefits outweigh the harm assessed, the significance of the latter being increased by the requirement to give 'great weight' to it. …" (Emphasis added.)

40. Lindblom LJ expressed his agreement with Holgate J's conclusion and reasons at [25] and observed at [30]:

> "…The policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the 'landscape and scenic beauty' of an AONB, or against harm to that interest. But that, in e□ect, is the real sense of it - though this, of course, is not the same thing as the proposition that no development will be permitted in an AONB. If the e□ects on the AONB would be slight, so that its highly protected status would not be significantly harmed, the expectation might - I emphasise 'might' - be overcome. Or it might be overcome if the e□ects of the development would be greater, but its benefits substantial. This will always depend on the exercise of planning judgment in the circumstances of the individual case."

41. The claimants acknowledge that *Bayliss v Secretary of State for Communities and Local Government* [2014] EWCA Civ 347 establishes that the term "*great weight*" does not have to be recited "*as some form of incantation*" when considering harm to an AONB. Nonetheless, they submit it is striking that there is no acknowledgement in the

Inspector's report or Secretary of State's decision of the required weight to be given to the assessed harm to the AONB. There are references within the Inspector's report to §176 of the Framework, but those references are to the new addition to the policy contained in the last sentence of that paragraph. Harm to the *setting* of the AONB does not attract "*great weight*", so references to the last sentence of §176 of the Framework are no indication that the policy in the first sentence was applied.

42. The claimants accept that the policy in the first sentence is of long provenance, and the Inspector and Secretary of State will have been aware of it, but contend that the starting assumption that they would have taken into account the policy is rebutted by clear "*contrary indications*".

43. Ms Wigley submits that the Inspector identified three broad areas of harm, namely (i) to the landscape (including to the AONB), (ii) in policy terms due to the choice of site (in breach of MC12), and (iii) to the perception of the wedding business. It follows from the finding in IR §11.63 of conflict with policy MC14 of the Surrey Minerals Plan that the Inspector found the harm to the AONB constitutes a "*significant adverse impact*". When the Inspector addressed the planning balance, *increased* weight should have been accorded to the assessed harm to the AONB. But the approach taken was to address all three harms together, and determine that collectively those harms attracted moderate weight. In doing so, the Inspector (and the Secretary of State who agreed with him) treated harm to the AONB on a par with other harm to landscape character and appearance, and failed to increase the weight accorded to the harm to the AONB compared to the weight accorded to other harms which did not attract the requirement to give great weight.

44. Ms Estelle Dehon KC, leading Counsel for Protect Dunsfold, submits that the decision-maker must proceed from the starting point that national policy requires that great weight should be attached to conserving and enhancing landscape and scenic beauty in the AONB, albeit there may then be factors that diminish the weight to be accorded. She contends that this is the obvious way to approach the process of reasoning where priority is given, and contrary to the Secretary of State's submission that it is formulaic and mechanistic, submits that it is analogous to the approach taken when applying s.38(6) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act').

45. The claimants submit that the contrast with the way in which the Inspector and the Secretary of State addressed the weight to be given to the *benefits* of the proposal is stark. The requirement in §211 of the Framework to give "*great weight*" to the benefits of mineral extraction, which was also a long-standing policy, was identified and addressed in express terms by both the Inspector and the Secretary of State.

46. I agree with Mr James Strachan KC, leading Counsel for the Secretary of State, that it is important to approach this ground with the *St Modwen* Principles (paragraph 11 above), particularly 1, 2, 5 and 6, in mind. The assumption that national planning policy is familiar to the Secretary of State and his inspectors (principle 6), and the presumption that a specialist planning inspector will have understood it, expressed by Lord Carnwath in *Hopkins Homes* (paragraph 13 above), applies with particular force to the policy of giving great weight to conserving and enhancing landscape and scenic beauty in AONBs, which can be traced back to the first version of the Framework published in 2012 (and beyond), and which is within the basic toolbox of any decision-maker in this field.

47. In *Bayliss*, Sir David Keene observed at [17] that, in circumstances where the Inspector expressly stated that he had had regard to the parties' submissions about the Framework ([8]), and reliance had been placed by a party and other objectors on paragraph 115 of the Framework,

> "it is to be assumed that the Inspector took account of that guidance unless his decision letter clearly indicates otherwise."

48. Sir David Keene further observed:

> "18. For my part, I cannot see that there is any such contrary indication in his decision letter. There is no doubt that he was not required to use the words 'great weight' as if it were some form of incantation. … Moreover, that national policy guidance, very brief in nature on this point, has to be interpreted in the light of the obvious point that the effect of a proposal on an AONB will itself vary: it will vary from case to case; it may be trivial, it may be substantial, it may be major. The decision maker is entitled to attach different weights to this factor depending upon the degree of harmful impact anticipated. Indeed, in my view it would be irrational to do otherwise. The adjective 'great' in the term 'great weight' therefore does not take one very far. Here the Inspector found that the impact on the adjacent part – and I stress the fact that this was the adjacent part – of the AONB would be 'limited'.
>
> 19. So did he fail to reflect the policy approach to the protection of the AONB? I am not persuaded that there was any such failure on his part. It has to be borne in mind that the designation of land as an AONB and its significance is not novel. The concept and importance of this national approved designation are well known and well understood in the planning world. That, in my view, is why the Inspector referred explicitly and separately to the effect on the AONB in his decision as something to be taken into account above and beyond the impact on landscape generally. As Hickinbottom J said in his judgment at paragraph 17:
>
> > '… paragraph 59 makes clear that the Inspector had well in mind the special nature of the AONB and harm the development may have upon it. The only reason for him considering harm to the AONB discretely was that he understood that such harm was to be inherently given particular weight as required by the NPPF.'
>
> (The 'NPPF' being of course what I have referred to as the Framework.)" (Emphasis added.)

In *Monkhill*, at [31]-[32], Lindblom LJ agreed with Sir David Keene's observations in *Bayliss* at [18] that the decision maker is entitled to attach different weights depending upon the degree of harmful impact anticipated.

49. In *R (Co-Operative Group Ltd) v West Lancashire Borough Council* [2021] EWHC 507 (Admin), Holgate J stated at [38]:

> "… It is clear from a collection of authorities, which includes: *O'Connor v Secretary of State for Communities and Local Government* [2013] EWCA Civ 263, *Bayliss v Secretary of State for Communities and Local Government* [2014] EWCA Civ 347, *Mordue v Secretary of State for Communities and Local Government* [2016] 1WLR 2682, and *Palmer* that it is not essential to the legal validity of a decision by an inspector, or by a local planning authority, that a policy phrase such as 'substantial weight', or 'great weight' is mentioned explicitly in a decision letter or an officer's report. The court will proceed on the basis that the decision maker has understood and applied the policy lawfully, particularly well-trodden policy, in the absence of any positive indication to the contrary. …"

50. In this case, the Inspector expressly recorded Surrey's (undisputed) submissions that great weight is to be accorded to harm to the AONB (IR §6.11), and Surrey's note reminding him that this was a point with which UKOG's planning witness had agreed (IR §6.76) (see paragraph 24 above), before stating in terms that he had taken account of those submissions. No one contended that the Inspector should depart from the policy in the first sentence of §176 of the Framework, and there is nothing in the Inspector's Report or the decision to suggest the Inspector or the Secretary of State chose to do so. It follows that unless there are clear, positive indications to the contrary I should assume – and indeed consider the only reasonable assumption is – that the Inspector applied that policy.

51. In *Mordue v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1243, [2016] 1 WLR 2682, Sales LJ observed at [28]:

> "Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the inspector referred to paragraph 134 of the NPPF in the decision letter in this case) then - absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned."

52. In this case, the Inspector did not merely refer to a paragraph within a *grouping* of provisions, he referred to the very paragraph of the Framework to which the claimants contend he failed to have regard: see his conclusions at IR §11.21 and IR11.53 (paragraph 29 above). In my judgment, the fact that he did so is a strong indication that he in fact had the whole of §176 of the Framework (which is short, consisting of only three sentences) in mind. It is true that in his conclusions he only referred to the policy

in the last sentence of §176 of the Framework, not to the policy in the first sentence of that paragraph. But I agree with the Secretary of State that it is unsurprising that he considered it appropriate to refer expressly to a policy that had recently been added to the Framework, while regarding it as unnecessary to address a policy of very long-standing in relation to which there was no dispute.

53. In addition, the Inspector's Report contains his focused analysis of the harm to the AONB (see IR §11.39: paragraph 29 above). As in *Bayliss,* the Inspector considered harm to the AONB itself discretely (see IR §11.53: paragraph 29 above). I accept the claimants' contention that the endorsement in *Bayliss* at [19] of Hickinbottom J's observation (paragraph 48 above) should not be treated as a general principle of law that mere mention of harm to the AONB automatically demonstrates that the policy in the first sentence of §176 has been applied. Nonetheless, focusing on the way the Inspector addressed the issues in his report, it seems to me that the reason he considered harm to the AONB discretely was that he understood the long-established policy in the first sentence of §176 regarding the weight to be accorded to such harm.

54. I reject the claimants' contention that the contrast with the way in which the Inspector (and the Secretary of State) addressed the weight to be given to the *benefits* of the proposed development is an indication that he failed to apply the policy in the first sentence of §176 of the Framework. The Inspector addressed the weight that should be given to the benefits in accordance with §211 of the Framework because there was an issue as to whether the "*great weight*" to be given to the benefits of *extraction* of minerals applied where the proposal concerned the earlier stage of exploration and appraisal, and Waverley and others argued that extraction of fossil fuels was incompatible with the UK's commitments. The Inspector took the view that "*significant*" rather than "*great*" weight should be accorded to the exploration and appraisal phase (IR §11.127: paragraph 31 above). Similarly, the decision addressed the issue because it was the one point on which the Secretary of State disagreed with the Inspector, taking the view that as the exploration/appraisal phase is a necessary precursor to extraction, "*great*" rather than "*significant*" weight should be accorded to the benefits of the proposal (decision §26: paragraph 36 above). By contrast, there was no dispute about the applicability of the AONB policy in the first sentence of §176.

55. The claimants' contention that the *omission* of any reference to the requirement that great weight should be attached to conserving and enhancing landscape and scenic beauty in the AONB itself amounts to a positive indication of failure to apply the policy is inconsistent with the clear position on the authorities that the policy phrase "*great weight*" did not need to be used: see *Bayliss*, [18], and *Co-Operative Group,* [38] (paragraphs 48-49 above). Insofar as they contend that in assessing the weight to be given to harm to the AONB a decision-maker must expressly proceed from the requirement to give such harm great weight (explaining any factors that diminish the weight to be accorded in the particular instance), this too is contrary to the authorities that make clear explicit reference to the policy phrase "*great weight*" is not essential. I also agree with the Secretary of State that such a formulaic and mechanistic process, needlessly requiring the incantation of well-known policy, is contrary to the courts' oft-stated cautions against "*the dangers of excessive legalism*" (*St Modwen*, [7]: paragraph 12 above).

56. The fact that harm is to the AONB increases the weight to be attributed to it. But the harm to the AONB from a temporary development such as this clearly can, in principle,

attract moderate weight in the overall planning balance: see *Bayliss,* [18] and *Monkhill*, [31]-[32] (paragraph 48 above). This is not disputed. That the Inspector regarded the short-lived nature of the harm as a key factor in concluding that only moderate weight should be given to the assessed harm is manifest in his conclusions. The fact that he expressed his conclusion as to the weight to be given to the assessed harm to the AONB, collectively with the other harms that he had found, does not provide a positive indication that he failed to apply the policy in the first sentence of §176.

57. Finally, although this point is not necessary to my decision, I agree with Mr David Elvin KC, leading Counsel for UKOG, that reading the Inspector's Report in a reasonably flexible way, it is apparent that in referring to the "*high sensitivity*" of the AONB, in assessing the overall planning balance, the Inspector was indicating that he viewed the harm to the AONB as carrying greater weight than would otherwise have been the case given the "*limited effects*" which he had identified (IR §112: paragraph 31 above).

58. For the reasons that I have given, I conclude that the Inspector's reasoning, which so far as this ground is concerned was adopted by the Secretary of State, does not give rise to a substantial doubt as to whether he went wrong in law. Accordingly, I dismiss Waverley's claim and Ground 1 of Protect Dunsfold's claim.

G. Ground 2: Alleged inconsistency with the Ellesmere Port decision

The law relevant to Ground 2

59. In relation to this ground, too, it is important to bear in mind the *St Modwen* principles (paragraph 11 above). Principles 1, 2 and 7 are of particular relevance.

60. It is well established that previous decisions of the Secretary of State or his inspectors on planning appeals are capable of being material considerations: see *Baroness Cumberlege of Newick v DLA Delivery Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305 [2018] PTSR 2063, Lindblom LJ, [29].

61. However, there is an important distinction between a consideration to which regard *must* be had ('a mandatory consideration') and one to which the decision-maker *may* have regard if in his judgement and discretion he thinks it right to do so. A decision can only be held to be unlawful for failure to have regard to a material consideration if it was a mandatory consideration. A consideration may be mandatory because a statute identifies (whether expressly or impliedly) that it is a matter to which regard must be had. Or, applying the familiar *Wednesbury* irrationality test, a consideration may be mandatory because it is "*so obviously material*" that it must be taken into account. See *R (Friends of the Earth Ltd) v Secretary of State for Transport* [2020] UKSC 52, [2021] PTSR 190, Lord Hodge DPSC and Lord Sales JSC (with whom the other Justices agreed), [116]-[121], and *Baroness Cumberlege*, Lindblom LJ, [21]-[25] (endorsed by the Supreme Court in the *Friends of the Earth* case at [119]).

62. In *Baroness Cumberlege*, Lindblom LJ observed at [28]:

> "It is well established, as a general principle, that policies issued to guide the exercise of administrative discretion are an essential means of securing consistency in decision-making, and that such policies should be consistently applied: see, for example, the

> judgment of Lord Dyson JSC in *R (Lumba) v Secretary of State for the Home Department (JUSTICE intervening)* [2012] 1 AC 245, paras 26, 34. And that principle certainly applies in the sphere of land use planning, where, under the statutory code, decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004. As Lord Clyde said in *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2AC 295, para 140:
>
> > 'Planning and the development of land are matters which concern the community as a whole, not only the locality where the particular case arises. They involve wider social and economic interests, considerations which are properly to be subject to a central supervision. By means of a central authority some degree of coherence and consistency in the development of land can be secured. National planning guidance can be prepared and promulgated and that guidance will influence the local development plans and policies which the planning authorities will use in resolving their own local problems.'"

63. The classic statement of the principle of consistency in planning decision-making is that of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137 at 145:

> "In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons tor departure from the previous decision.
>
> To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for

> the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? …"

64. The *North Wiltshire* case concerned decisions which Mann LJ described as "*indistinguishable*". Two applications were made, about eight years apart, for planning permission to build a house and garage within the walled garden of Notton Lodge. Both were refused by the planning authority and considered on appeal by inspectors. A critical issue on both appeals was whether the appeal site was within or outside the physical limits of the village of Notton, as that had an effect on the applicable policies (which remained unchanged). In the earlier decision, the inspector found that the appeal site was outside the village. In the later decision, the inspector found that the appeal site (which was smaller than, but encompassed within the earlier appeal site) was in the village. The later decision was unlawful as the inspector had failed to take into account, or give any reasons for departing from, the earlier decision.

65. In *Baroness Cumberlege,* the Court of Appeal addressed the question how the court should approach the principle of consistency of decision-making in planning decision-making in circumstances where the court was

> "concerned with a previous appeal decision of the Secretary of State issued after the close of the inquiry in the case under consideration, and not relied upon by any of the parties in further representations to the Secretary of State before he made the challenged decision."

That is the position in this case.

66. The Court held that there is no "*absolute rule*" that the Secretary of State is never obliged to have regard to a previous decision that has not been placed before him. Such a rule would be inconsistent with the general obligation on a decision-maker, in accordance with the *Tameside* duty, to acquaint himself with the relevant information to enable him to decide relevant questions correctly: *Baroness Cumberlege*, Lindblom LJ, [32]-[33].

67. Ms Dehon submits that in *Baroness Cumberlege* the Court of Appeal approved as correct the *obiter dictum* of HHJ Belcher (sitting as a judge of the Administrative Court) in *Dear v Secretary of State for Communities and Local Government* [2015] EWHC 29 (Admin) at [32] that "*the Secretary of State should be cognisant of decisions in his name whether or not flagged up in the materials before him*". That is plainly wrong. Lindblom LJ made clear that it was unnecessary to the judgment in *Dear,* in which the materials had been "*clearly flagged*" ([33]) and he continued at [36]:

> "Like the judge, I would not accept that, as a matter of law, the Secretary of State ought to be aware of every previous decision taken in his name, whether by himself or a ministerial predecessor or by one of the inspectors to whom his decision-making function is largely delegated. In my view that concept is unrealistic and unworkable, given the number of decisions on planning appeals that have been made, year upon year, since the modern statutory code came into existence under the Town and

> Country Planning Act 1947. There will, however, be circumstances in which, having regard to the interests of consistency in decision-making, the court is prepared to hold that the Secretary of State has acted unreasonably in not taking into account a previous decision of his own. Whether this is so in a particular case will always depend on the facts and circumstances: [2017] PTSR 1513, paras 102-104. A possible example would be a case in which, within a short span of time, the Secretary of State has called in applications for his own determination, or recovered jurisdiction in appeals, in cases of a sufficiently similar kind, to which the same policies of the development plan apply." (Emphasis added.)

68. In *Baroness Cumberlege*, Lindblom LJ stated the following three general propositions at [34] (in agreement with the judge's conclusions at [2017] PTSR 1513, [100]-[105]):

> "… First, because consistency in planning decision-making is important, there will be cases in which it would be unreasonable for the Secretary of State not to have regard to a previous appeal decision bearing on the issues in the appeal he is considering. This may sometimes be so even though none of the parties has relied on the previous decision or brought it to the Secretary of State's attention: para 100. And it may be necessary in those circumstances, in the interests of fairness, to give the parties an opportunity to make further representations in the light of the previous decision. Secondly, the court should not attempt to prescribe or limit the circumstances in which a previous decision can be a material consideration. It may be material, for example, because it relates to the same site, or to the same or a similar form of development on another site to which the same policy of the development plan relates, or to the interpretation or application of a particular policy common to both cases: see para 92 of Holgate J's judgment in the *St Albans City and District Council* case [2015] EWHC 655. Thirdly, the circumstances in which it can be unreasonable for the Secretary of State to fail to take into account a previous appeal decision that has not been brought to his notice by one of the parties will vary. But in tackling this question, it will be necessary for the court to consider whether the Secretary of State was actually aware, or ought to have been aware, of the previous decision and its significance for the appeal now being determined: paras 100, 101 and 105 of the judgment. As the judge said at para 101:
>
> > 'Before the close of the 'adversarial' part of the proceedings, the Secretary of State and his inspectors can normally rely, not unreasonably, on participants to draw attention to any relevant decision[, but] that does not mean that they are never required to make further inquiries about any matter, including about other . . . decisions that may be significant.'" (Emphasis added.)

69. The challenged decision in *Baroness Cumberlege* concerned "*the Newick appeal*". The Secretary of State's decision on the Newick appeal was made, on the recommendation of his inspector, nine weeks after he had made another decision, again on the recommendation of his inspector, in "*the Ringmer appeal*". In the Ringmer appeal, the inspector had concluded that a local development plan policy (CT1) "*should be regarded as up to date for the purposes of the appeal*" (emphasis added). The Secretary of State had agreed. In the Newick appeal, the inspector had concluded that policy CT1 was *out-of-date*, and the Secretary of State, again, agreed.

70. The Court of Appeal held:

> "41. … The decision in the Ringmer appeal was undoubtedly a material consideration in the Newick appeal. And there was, between the two decisions, an obvious and unexplained difference in the Secretary of State's approach to the status of policy CT1, which was a matter of basic importance in both appeals.
>
> 42 There were, I think, at least three factors that, taken together, made it unreasonable for the Secretary of State not to have regard to the Ringmer decision before determining the Newick appeal, and, in particular, before reaching a conclusion on the question of whether policy CT1was up to date.
>
> 43 First, the two proposals were for the same form of development in the same district … They were subject to the same district-wide policies in the development plan, including the relevant policies of the joint core strategy and the 'saved policies' of the 2003 local plan, one of which was policy CT1. Each was on the edge of a rural settlement for which a neighbourhood plan had been prepared. The schemes were of similar scale; … And the applications for planning permission had been before the council for determination at the same time. …
>
> 44 Secondly, both appeals had been recovered for determination by the Secretary of State for the same reason … Implicit in the decision to recover appeals in such cases was the need for a consistent approach to their determination.
>
> 45 Thirdly, the appeals were before the Secretary of State at the same time, and the two decision-making processes were largely concurrent. … So both inspectors' reports were with the Secretary of State at the same time, before he issued his decision on the Ringmer appeal. …
>
> 46 It would not have been difficult for those whose task it was to prepare decision letters on behalf of the Secretary of State to find out whether another decision had recently been made by him in which effectively the same issues had been dealt with. But I think it is right to go further. In the particular circumstances here, no

> reasonable Secretary of State, aware of his responsibility for securing consistency in development control decision-making, would have failed to take reasonable steps to ensure that his own decisions on cases of the same kind, in the same district, taken within the same period, and which, for the same reason, he had recovered to determine himself, were consistent with each other - or, if they were not consistent, that the inconsistency was clearly explained. In determining the Newick appeal, he was, in my view, obliged to have regard to his very recent decision in the Ringmer case, even though none of the parties had sought to rely on that decision or brought it to his attention. In the circumstances the onus lay on him to inform himself of the decision, and to have regard to it.
>
> …
>
> 56 The two cases were, as Mann LJ put it in the *North Wiltshire District Council* case 65P & CR 137, 145, 'like cases', in the sense of their being, on the face of it, indistinguishable on an issue of critical importance in their determination - the interpretation and application of a relevant and significant policy in the development plan …" (Emphasis added.)

71. Ms Dehon submits that the effect of *Baroness Cumberlege* is that if a decision under consideration is sufficiently similar to a previous decision for the decisions to be regarded as "*alike*", then it necessarily follows that the earlier decision is a mandatory consideration in determining the later decision. This is not an accurate analysis of *Baroness Cumberlege*. The question for the court is whether the earlier decision is one which no reasonable decision-maker would have failed to take into account in the circumstances. An assessment of the similarity of the matters for determination in each decision is a key aspect of the assessment, but the question I have identified does not collapse into no more than a question whether the decisions are sufficiently alike. Although I have referred to earlier and later decisions, I accept that the question may be at least equally relevant where decisions are made contemporaneously.

The Ellesmere Port decision

72. The Ellesmere Port decision concerned an appeal against the decision of Cheshire West and Cheshire Council to refuse an application for planning permission for:

> "mobilisation of well test equipment, including a workover rig and associated equipment, to the existing wellsite to perform a workover, drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension"

at the Ellesmere Port Wellsite, Portside North, Ellesmere Port.

73. The inquiry sat for 12 days between 15 January and 6 March January 2019. On 27 July 2019, the appeal was recovered for the Secretary of State's determination. In report dated 6 January 2020 ('EPIR'), the inspector recommended that the appeal be

dismissed. The Secretary of State's decision ('EP decision'), dated 7 June 2022 (the same date as the challenged decision), was made by the Minister of State for Housing, Stuart Andrew MP (the same Minister who made the challenged decision). He agreed with the inspector's recommendation and dismissed the appeal.

74. The main issues for the Ellesmere Port inquiry were:

> "(a) Whether the proposed development would have an unacceptable effect on:
>
> (i) Human health and well-being;
>
> (ii) Landscape, visual or residential amenity;
>
> (iii) Noise, air, water, highways;
>
> (iv) Biodiversity and the natural environment.
>
> (b) Whether the proposal fails to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation;
>
> (c) The effect the development would have on the regeneration of Ellesmere Port." (EPIR §592; EP decision, §14)

75. The Council's refusal of planning permission had been based on the effect of the proposed decision on climate change and the Council submitted:

> "This Inquiry is about the effects of shale gas exploration on climate change." (EPIR §58)

The inspector stated with respect to "*main consideration (b)*":

> "The wording of this main consideration is taken directly and fully from the decision notice … It is the reason why the Council considered the appeal proposal to be contrary to the provisions of LP policy STRAT1. It is the sole reason why planning permission for the development was refused." (EPIR, §661)

76. The inspector addressed three Written Ministerial Statements ('WMSs') issued in 2015, 2018 and 2019, and a report commissioned by the Secretary of State for Energy and Climate Change from Professor David MacKay and Dr Timothy Stone ('the MacKay and Stone report'), entitled *Potential Greenhouse Gas Emissions associated with Shale Gas Extraction Use*, dated 9 September 2013. The WMSs and the MacKay and Stone report were all concerned with the production of shale gas.

77. The Ellesmere Port Inspector's Report stated:

> "738. To conclude this further assessment, the evidence is that the appeal proposal would give rise to unmitigated GHG [Greenhouse Gas] emissions of between 3.3 to 21.3 kt CO_2 equivalent although the actual release is more likely to be

> towards the top end of the range in my view. Given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. The proposed development would therefore conflict with Framework paragraph 148 [now 152].
>
> 739. The proposal may well be supported by the 2018 WMS as the appellant contends [469] and, although the appellant does not rely upon it, by the 2015 WMS too. However, in my view, limited weight may be given to these WMSs. Since Framework paragraph 209(a) has been quashed there is no shale gas policy within the Framework to set against the climate change policy in Framework paragraph 148. For the reasons set out more particularly by the Council [151 to 153] the 2019 WMS does not amount to such a policy." (Emphasis added.)

78. The statement that Framework paragraph 209a has been quashed was a reference to an order made by Dove J following his judgment in *Stephenson v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 519 (Admin) [2019] PTSR 2009 (referred to in the EPIR and EP decision as *'Stephenson'* or the '*Talking Fracking judgment*'). Dove J quashed paragraph 209a of the 2018 version of the Framework which had provided:

> "Minerals planning authorities should: (a) recognise the benefits of onshore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction." (Emphasis added.)

79. The Ellesmere Port Inspector's report stated:

> "746. On this main consideration my conclusion, which I commend to the Secretary of State, is that the appeal proposal would mitigate the effects of climate change as far as practicable and would thus not conflict with the relevant development plan policy [688]. However, the unmitigated GHG emissions, which the appellant acknowledges would be inevitable from this, and, as I understand it, any, shale gas exploration proposal, would be contrary to Framework paragraph 148. This is a material consideration of significant weight in the planning balance [738 to 740].
>
> …
>
> 769. The appellant identifies very few benefits arising from the development beyond those which flow from government energy and planning policy [463, 466 and 487]. These have been addressed above … and, of course, the specific national planning policy as it related to shale gas expressed through Framework paragraph 209a which has now been quashed.

…

781. Moreover, the development would not contribute directly to radical reductions in GHG emissions; it would have the opposite effect. It would therefore be inconsistent with Framework paragraph 148 which, as a very recent expression of government policy, attracts great weight [738]. For the reasons given, I conclude that the 2019 WMS does not amount to a policy that can be set against that Framework paragraph in the way that the now quashed Framework paragraph 209(a) would have been [733 to 739]." (Emphasis added.)

80. The Ellesmere Port decision (which post-dated the publication of the 2021 version of the Framework) stated:

"*Energy, shale gas and climate change policy*

15. The Secretary of State … has considered the proposal against national shale gas policy, including various Written Ministerial Statements (WMS); the November 2019 BEIS WMS (IR8), May 2018 BEIS WMS, May 2019 MHCLG WMS and September 2015 DECC WMS. The WMSs remain extant. In assessing the weight they carry, he has taken into account that specific shale gas policy in the Framework was quashed in 2019 by the Talk Fracking judgment, following which paragraph 209(a) of the 2019 version of the NPPF was withdrawn (IR704 refers).

16. On the basis of the evidence put before this inquiry, and for the reasons given at IR690-732, the Secretary of State agrees with the Inspector at IR732 that neither the 2015 nor the 2018 WMSs can be said to reflect the latest climate change science put before the inquiry. The Secretary of State considers that they must therefore, in this case, be read accordingly. He notes that the MacKay and Stone report was published in September 2013 and underpins the 2015 WMS and the 2016 Climate Change Committee ('CCC') reports (IR691) and while the 2018 WMS references the (CCC) report, it too relies on the MacKay and Stone report for evidential justification (all IR691). He has taken into account that scientific information is available that post-dates the MacKay and Stone report and was presented to the Inspector at the inquiry (IR709-716). The Secretary of State further agrees with the Inspector for the reasons given at IR717-727 that the evidence on greenhouse gas (GHG) emissions in this case casts doubt on the extent to which the MacKay and Stone report can be considered consistent with the 2019 CCC net zero report and the latest science that it reports upon (IR727). Overall, based on the evidence before him, the Secretary of State considers that the weight which can be afforded to the 2015 and 2018 WMSs should be reduced. He further considers that while the proposal does draw some support from the element of paragraph 152 of the Framework regarding transition to a low

carbon future, the weight attaching to that support should be reduced.

17. The Secretary of State has further considered the Inspector's assessment of the May and November 2019 WMSs at IR733-745. He agrees with the conclusion at IR734 that paragraph 210 of the Framework is not directly relevant to the determination of this appeal. However, as exploration is a necessary precursor of exploitation, and the Secretary of State considers that this paragraph of the Framework does cover shale gas, he considers that paragraph 211 is a material consideration, as is paragraph 209 (differing from the Inspector's view at IR711 and 734). He notes that the November 2019 WMS, which introduced an 'effective moratorium', states that 'the shale gas industry should take the Government's position into account when considering new developments', and considers overall that this WMS is a material consideration in this case, albeit not one which carries more than limited weight.

18. Taking the matters set out in paragraphs 15-17 into account, the Secretary of State considers that on the basis of the evidence put forward in this case, national policy support for the benefits of shale gas exploration in this case should carry no more than moderate weight.

19. He has gone on to consider whether the proposal is in conflict with paragraph 152 of the Framework as a whole. The Secretary of State agrees with the Inspector's reasoning at IR717-726 and IR738, and has taken into account that government legislated to give effect to the headline recommendation that by 2050 emissions of GHGs should be reduced to net-zero (IR729 - The Climate Change Act 2008 (2050 Target Amendment) Order 2019 refers). He agrees with the Inspector that taking into account the unmitigated GHG emissions in this case, and given the finding in the CCC net zero report that every tonne of carbon contributes towards climate change, the proposal would not shape Ellesmere Port in a way that contributes to a radical reduction in GHG emissions. Taking into account his conclusion on the element of paragraph 152 regarding transition to a low carbon future in paragraph 16 above, he considers that the proposal would conflict with Framework paragraph 152 as a whole. For the reasons given at IR746, he agrees with the Inspector that this is a material consideration, albeit one that in his view should carry moderate weight in the planning balance.

…

The Secretary of State has gone on to consider the Inspector's assessment against LP policy STRAT1 as a material consideration. For the reasons given at IR689-740 (but excluding the elements where he differs from the Inspector as set out in

> paragraph 17 above), he agrees with the Inspector that the appeal proposal would give rise to unmitigated GHG emissions of between 3.3 to 21.3 kt CO2 equivalent although the actual release is more likely to be towards the top end of the range (IR738). He further agrees that this is a material consideration that weighs significantly against the proposal in the planning balance (IR740)." (Emphasis added.)

81. The Secretary of State agreed with the inspector that "*the appeal site is embedded in a community that is specifically vulnerable to the adverse health effects that may be caused by stress and anxiety*" (EP decision §28) and, on the basis of the evidence before the inquiry, considered that "*these adverse impacts carry moderate weight against the proposal in the particular facts and circumstances of this case*" (EP decision §29).

82. Addressing the planning balance and his overall conclusion, the Secretary of State stated:

> "35. In the light of the evidence put forward in this case, and for the reasons set out above, the Secretary of State attaches moderate weight to national policy support for the benefits of shale gas exploration in this case. The short-term economic benefits and reuse of the existing well site each attract limited weight.
>
> 36. The Secretary of State considers that the unmitigated proportion of the GHG emissions carries significant weight against the proposal, and the conflict with paragraph 152 of the Framework as a whole also carries moderate weight. He further considers that the harm arising from the adverse effects of stress and anxiety on the local community in the particular circumstances of this case carries moderate weight.
>
> 37. Overall the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan – i.e. a refusal of permission."

Analysis and decision

83. Protect Dunsfold submits that the decision under challenge and the EP decision are irreconcilable in their approach to unmitigated CO_2e emissions and to §152 of the Framework. In the context of this ground, Ms Dehon makes no criticism of the Inspector's Report: it is only the Secretary of State's decision that she contends is flawed.

84. There are a number of similarities between the decisions. They were made by the same Minister and issued on the same day. In circumstances where the Ellesmere Port decision was not – and could not have been – referred to by anyone at the inquiry, the fact that the decisions were made contemporaneously is significant in considering whether the Secretary of State would have known about the Ellesmere Port decision when making the Dunsfold decision: see *Baroness Cumberlege* at [36] and [45]. I

accept that through his officials and the Minister who made both decisions on his behalf, the Secretary of State would have been aware of the Ellesmere Port decision.

85. Both proposals were for exploratory and appraisal phases of natural gas extraction (albeit the Ellesmere Port proposal related to the working over of an existing wellsite and Dunsfold concerned the construction of a new wellsite). The proposals involved the emission of broadly similar quantities of GHG. The unmitigated GHG from the Ellesmere Port proposal was considered by the inspector and the Secretary of State to be towards the top end of a range from 3.3 to 21.3 kt of CO_2e, compared to a range of 28.77 to 29.11 kt of CO_2e for the Dunsfold proposal.

86. In both cases the appeals were recovered by the Secretary of State. The reason given for recovery of the Dunsfold appeal was that: "*the appeal involves proposals giving rise to substantial regional or national controversy*" (IR §1.5). While the reason given in respect of Ellesmere Port was that: "*the appeal involves proposals for exploring and developing shale gas which amount to proposals for development of major importance having more than local significance*" (EPIR §16). In broad terms, there is a degree of similarity in these reasons, but the reason given in respect of Ellesmere Port focused on a key difference between the proposals, namely that the Ellesmere Port proposal concerned shale (or unconventional) gas, whereas the Dunsfold proposal concerned conventional gas. Ms Dehon emphasises, and I accept, that conventional gas and shale gas are the same gas (i.e. natural gas, primarily methane). The distinction between them relates to the method of extraction.

87. In the Ellesmere Port decision, the Secretary of State concluded that, given the level of unmitigated gas emissions that would result from the proposed development, and the finding in the Climate Change Committee's net zero report that every tonne of carbon contributes towards climate change, the proposal conflicted with §152 of the Framework as a whole. That was a material consideration that he considered should carry moderate weight in the planning balance. Ms Dehon submits that, similarly, the Secretary of State should have recognised that every tonne of carbon from the proposed development at Dunsfold contributes towards climate change, and conflicts with §152 of the Framework, or given reasons for reaching a different conclusion.

88. Despite the similarities to which I have referred, in my judgment, the Ellesmere Port decision is not one which no reasonable decision-maker would have failed to take into account, in the circumstances, when making the challenged decision.

89. First, the sole reason the local planning authority refused permission for the Ellesmere Port proposal was climate change. Whether the proposal should be granted in light of local and national policy on climate change was one of the principal important controversial issues at the Ellesmere Port inquiry. In contrast, Surrey did not refuse the Dunsfold proposal on climate change grounds. Climate change was not one of the main issues at the Dunsfold inquiry. Climate change was raised as an issue (with the focus on production and subsequent use of conventional gas), and Mr Dearing's assessment of the GHG emissions from the Dunsfold proposal was adduced as relevant evidence, but no one suggested that the calculated emissions from exploration weighed against the development, or rendered the development contrary to §152 of the Framework, or any other policy. As Ms Dehon acknowledged, that point - whether it was a good one or not - was available to be taken at the inquiry if anyone had wished to do so.

90. The duty to give reasons is a duty to give reasons for the conclusions reached on the principal important controversial issues. The reasons need refer only to the main issues in the dispute, not to every material consideration: *St Modwen* principles 1 and 2. As the *North Wiltshire* and *Baroness Cumberlege* judgments show, a previous decision may be highly relevant to one of the main issues even if no party or objector has referred to it. But in this case, the question whether the emissions from the proposal rendered it contrary to policy, and weighed against the grant of permission, was not an issue at all, still less a principal, important or controversial issue. Neither the Inspector nor the Secretary of State can be criticised for not addressing a point no one raised.

91. Secondly, the policy context for the exploration and extraction of shale gas was different to the policy context for exploration and extraction of conventional gas, albeit the exploration phase at Ellesmere Port did not involve hydraulic fracturing (otherwise known as "*fracking*"). It is true that §152 and §211 of the Framework applied to both proposals, but the weight to be given to reliance on shale gas in the transition to a low carbon future (§152), and the weight to be given to the *benefits* of mineral extraction (§211), was reduced in the context of the Ellesmere Port proposal as a result of considering it "*against national shale gas policy*" (EP decision §15).

92. The evidence put before the Ellesmere Port inquiry showed that the weight to be given to the shale-specific WMS made by the Secretary of State for Energy and Climate Change on 16 September 2015, and the shale-specific WMS made by the Secretary of State for Business, Energy and Industrial Strategy on 17 May 2018 was reduced. The policy context for the Ellesmere Port proposal included the quashing of "*the specific shale gas policy in the Framework*" (EP decision §15). The WMS made by the Secretary of State for Business, Energy and Industrial Strategy on 4 November 2019 made clear that the Government was taking a "*precautionary approach*" to "*shale gas exploration*", and that "*the shale gas industry should take the Government's position into account*" – which included the imposition of an "*effective moratorium*" on hydraulic fracturing – "*when considering new developments*". That "*effective moratorium*" had a significant impact on the extent to which reliance on shale gas as part of the transition to net zero could be given weight.

93. This contrasts with the Inspector's analysis of the climate change and energy policy context with respect to conventional gas, when considering the Dunsfold proposal. It is striking that the claimants make no criticism of this analysis. The Inspector found that "*conventional gas production … will continue to play a part in the transition from a fossil fuel economy to one based on clean energy*" (emphasis added); and that the Framework requires mineral planning authorities to plan positively for the three phases of development, to ensure there is a sufficient supply of minerals for the energy that the country needs, and to give great weight to the benefits of mineral extraction (see paragraph 22 above).

94. Thirdly, this is not a case where the decisions relate to the same site (as in the *North Wiltshire* case), or to the same form of development in the same district (as in *Baroness Cumberlege*). I readily acknowledge that the circumstances in which an earlier decision may be regarded as a mandatory consideration are not prescribed or limited (*Baroness Cumberlege,* [34]). This factor alone is not determinative. But it is significant as, if the point had been taken that the calculated emissions weighed against the proposal, it would have required evaluation of the assessed level of emissions in the context of Surrey Minerals Plan and the level of emissions in Surrey.

95. The Ellesmere Port decision concerned a local community in Cheshire that was vulnerable in terms of health and deprivation. The inspector considered the emissions from the proposal in the context of Cheshire's Carbon Management Plan, noting that the council planned to reduce its own annual CO_2 emissions by 30% over a five-year period from 45.5 kt CO2 equivalent to 31.8 kt CO2 equivalent, giving "*an aspirational saving of some 13.7 kt each year*". The inspector observed:

> "On the Council's range, the proposed development would represent a once-only 'use' of between 29% and 79% of the Council's aspirational saving in about 100 days." (EPIR §724)

Whereas Surrey agreed that its own Climate Change Strategy was "*not predicated upon restricting hydrocarbon exploration*" (IR §5.25). This difference was, of course, reflected in the different reasons given for refusal by the local planning authorities.

96. In my judgment, the decisions are not sufficiently similar to trigger application of the consistency principle, and it is clear that in the circumstances the Ellesmere Port decision is not one which no reasonable decision-maker would have failed to take into account.

97. Given my conclusion, it is unnecessary to determine the Secretary of State's objection to this new point being raised on a statutory review: *Trustees of the Barker Mill Estate v Test Valley Borough Council* [2016] EWHC 3028 [2017] PTSR 408, Holgate J, at [77]; *R (ClientEarth) v Secretary of State for Business Energy and Industrial Strategy* [2020] EWHC 1303 (Admin) [2020] PTSR 1709, Holgate J, at [192].

H. Conclusion

98. The claims are dismissed.